



I-CLAIM

Improving the Living
and Labour Conditions
of Irregularised Migrant
Households in Europe

Country report

The Legal and Policy Infrastructure of Irregularity

Poland

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Executive summary (English)

Embedded within the conceptual framework of 'irregularity assemblage', this report focuses on 'the production of irregularities' in the context of migration, aiming to illuminate its complexity from the perspective of the national policy level in Poland. Drawing on our qualitative empirical material and secondary data, this report explains the complexity of the phenomenon of irregularised migrants and irregular migration to Poland between 2004 and 2023. Although the attractiveness of immigration to Poland has increased in recent years, channels of irregular immigration (mainly from post-communist countries or Vietnam) were already observed in the 2000s. The government's response to this new challenge was to launch three regularisation campaigns in 2003, 2007, and 2012, which involved only a few thousand people. The estimated number of irregular migrants in Poland around 2016 was less than 100,000, with more precise figures for 2019 suggesting a decrease to 15,000-20,000 people. Importantly, in refugee migration, Poland has never been a leading destination country; instead, it has been treated as a transit country. This was encouraged, among other things, by a rather hostile policy to refugees and migrants from outside the Christian cultural sphere. A turning point in the discussion of irregular migration was the refugee crisis on the Polish-Belarusian border, which has continued to dominate political and media discourse since mid-2021.

Apart from the regularisation measures, successive governments have not introduced separate solutions concerning irregularised migrants. Foreigners without the necessary residence permits have significantly limited access to public services or social assistance. The lack of an overall vision of immigration and integration policy results in numerous difficulties for foreigners living in Poland. The study also highlights the problem of racialisation and ethnicisation in political discourse, legislation, and the practices of public institutions. Moreover, the study has found that the provisions of the immigration laws remain unclear, administrative procedures take much longer than the law requires, and there is a shortage of qualified staff in public institutions dealing with foreigners. What is more, foreigners residing in Poland can fall into the trap of irregularity relatively quickly (and unknowingly).

The main area of political or academic discussion in relation to undocumented migration remains the presence and activity of foreigners in the labour market. The evidence presented in this report confirms the existence of labour market niches in which conditions favour work in the informal economy (e.g., agriculture, domestic work). Despite the introduction of numerous measures to liberalise access to the labour market in Poland since 2006, examples of illegal employment of foreigners can still be observed. Immigrants from Ukraine, who can count on privileged treatment, remain the dominant group of foreign workers in Poland. This is facilitated, among other things, by the special law introduced in March 2022, which is dedicated to displaced people fleeing the full-scale Russian aggression in Ukraine. At the same time, recent years have seen a growing presence of workers from Asian or South American countries, who are often victims of the unfair practices of employers or migration intermediaries.

Executive summary (Polish)

W ramach koncepcji „asamblażu nieregularności” (ang. *irregularity assemblage*), niniejszy raport koncentruje się na problematyce wytwarzania nieregularności (ang. *the production of irregularities*) w kontekście migracji i ma na celu rozpoznanie jej złożoności z perspektywy poziomu polityki krajowej w Polsce. W oparciu o analizę danych z naszych badań empirycznych oraz danych wtórnych, raport wyjaśnia złożoność zjawiska nieuregulowanych migrantów i nieuregulowanej migracji do Polski w latach 2004-2023. Chociaż atrakcyjność imigracji do Polski wzrosła dopiero w ostatnich latach, kanały nieuregulowanej imigracji (głównie z krajów postkomunistycznych czy Wietnamu) obserwowano już na początku lat 2000. Odpowiedzią rządu na to nowe wyzwanie było zorganizowanie trzech akcji regularyzacyjnych w 2003, 2007 i 2012 roku, które jednak objęły zaledwie kilka tysięcy osób. Szacowana liczba migrantów o nieuregulowanym statusie w Polsce około 2016 roku wynosiła mniej niż 100 tysięcy, zaś według bardziej precyzyjnych szacunków z 2019 roku populacja ta wydawała się zmniejszyć do jedynie 15-20 tysięcy osób. Co ważne, w migracji uchodźczej Polska nigdy nie stała się głównym krajem docelowym, raczej była traktowana jako kraj tranzytowy. Sprzyjała temu, m.in. raczej niechętna polityka wobec uchodźców i migrantów spoza chrześcijańskiego kręgu kulturowego. Punktem zwrotnym w dyskusji na temat nieuregulowanej migracji stał kryzys uchodźczy na granicy polsko-białoruskiej, który od połowy 2021 r. zdominował dyskurs polityczny i medialny w Polsce.

Poza działaniami regulacyjnymi, kolejne rządy nie wprowadziły odrębnych rozwiązań dla migrantów o nieuregulowanym statusie pobytowym. Cudzoziemcy bez wymaganych zezwoleń na pobyt mają znacznie ograniczony dostęp do usług publicznych czy pomocy społecznej w Polsce. Brak spójnej wizji polityki imigracyjnej i integracyjnej skutkuje licznymi utrudnieniami dla cudzoziemców mieszkających w Polsce. Nasze badanie ukazuje również problem urasowienia i etnicyzacji w dyskursie politycznym, ustawodawstwie i praktyce instytucji publicznych. Co więcej, badanie wykazało, że przepisy prawa imigracyjnego pozostają niejasne, procedury administracyjne trwają znacznie dłużej niż wymaga tego prawo, a w instytucjach publicznych zajmujących się cudzoziemcami brakuje wykwalifikowanych pracowników. Ponadto cudzoziemcy przebywający w Polsce mogą stosunkowo łatwo (i nieświadomie) znaleźć się w sytuacji nieregularności.

Głównym obszarem dyskusji politycznej lub akademickiej w odniesieniu do nieudokumentowanej migracji pozostaje obecność i aktywność cudzoziemców na rynku pracy. Dowody przedstawione w niniejszym raporcie potwierdzają istnienie nisz na rynku pracy, których warunki sprzyjają zatrudnieniu w szarej strefie (np. rolnictwo, prace domowe). Pomimo wprowadzenia licznych środków liberalizujących dostęp do rynku pracy w Polsce od 2006 roku, nadal można obserwować przykłady nielegalnego zatrudniania cudzoziemców. Imigranci z Ukrainy, którzy mogą liczyć na uprzywilejowane traktowanie, pozostają dominującą grupą cudzoziemskich pracowników w Polsce. Sprzyja temu, m.in. wprowadzona w marcu 2022 r. specustawa dedykowana uchodźcom wojennym z Ukrainy. Jednocześnie w ostatnich latach obserwujemy rosnącą obecność pracowników z krajów azjatyckich czy Ameryki Południowej, którzy często padają ofiarą nieuczciwych praktyk pracodawców lub pośredników migracyjnych.

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1. Introduction

The report aims to depict the legal and policy factors that shape the living and working conditions of irregular migrants in Poland. In particular, we examine the interplay of migration, labor, and welfare regulatory regimes using the concept of ‘irregularity assemblage’ (Gonzales et al. 2019; Sigona et al. 2021). We chart how perceptions and policies regarding irregular migration to Poland evolved between 2004 and 2023. We understand irregularity as conditions produced by host societies that migrants encounter and operate within. We use a broad concept of irregularity related to entry, stay, or work to examine different ways of falling into regularity (e.g. overstaying visas, losing work permits or losing work) and expose the narrow, simplistic, dualistic, racialised and hierarchical representations of irregularity within political and media discourses and in public opinion.

Sobczak-Szelc and co-authors (2023) claim that the Polish authorities did not see irregular migration to Poland as a real challenge until 2021. Researchers emphasise that previously, Poland was not a destination country for migrants crossing borders irregularly (Igllicka & Gmaj 2010). Szulecka (2016) explicitly pointed out that the number of irregular arrivals in Poland was much lower than that of foreigners working irregularly. The phenomenon of undocumented migration remained only a subject of expert and academic discussions until 2015. It was only with the so-called Schengen crisis and resistance to intra-EU relocation and the related processes of securitisation and politicisation of immigration, accompanied by the rule of right-wing party ‘Law and Justice’, that irregular migration started becoming an issue on the public agenda. However, the government’s policy, especially between 2015 and 2023, was full of contradictions and paradoxes. On the one hand, Poland has one of the most liberal policies for the recruitment of selected groups of foreign workers, while on the other hand, rhetorically, it remains a country with rather negative attitudes towards non-European immigration and a reluctance to accept refugees as well as restricting access to the asylum procedure.

2. Methodology

Our analysis is based on data from desk research analysis and fieldwork consisting of individual expert interviews and one focus group interview. The former includes academic publications, reports, and other studies, mainly in Polish. We have searched for key publications in Google Scholar and Scopus and works published by leading research centres and researchers specialising in migration in Poland. The report also draws on official reports published by the Border Guard, the National Labour Inspectorate, or the Central Statistical Office. Official government publications or documentation illustrating legislative work in Poland (e.g., explanatory memoranda to laws) were also important sources of information.

The expert individual interviews were conducted between October 13 and December 15, 2023. In total, 14 interviews were conducted most of them remotely (see Appendix). All interviewees were informed about the aim of the study and how the empirical data would be used (e.g., the principle of confidentiality). Before the interview, all were asked to consent (in writing or verbally) for the conversation to be recorded and for extracts to be used in project publications. The interviews were undertaken based on the interview schedule adapted to the specific context and expertise of the interviewee for each interview. The recorded interviews were transcribed using the AI-based Good Tape application.

The participants of the individual interviews were a diverse group of experts purposely selected. They included academic researchers, NGO representatives, or national and local government officials. In selecting the interviewees, we considered their long experience in studying or dealing with irregularised migration in Poland at various levels. We were particularly keen to talk to individuals with a law background and representatives of organisations working directly with migrants with irregular status. As a result, we were able to gather data on the migration management processes in Poland, the situation of migrants affected by irregularity in the social welfare system, their position and functioning in the labour market, or the possibilities of applying for protection in Poland.

The analysis presented in this report also uses empirical data collected during an on-site seminar with invited stakeholders held in Warsaw on December 5 2023. In addition to presenting the I-CLAIM project, the meeting included a focus group interview. This group discussion aimed to collect additional data, verify the information gathered earlier during the individual interviews and broaden the perspective with the voices of other experts. Seven participants took part in this group interview, representing different institutions and perspectives on migration and migrants in Poland: migrant organisations (Belarusian and Ukrainian), researchers, lawyers working for NGOs, and representatives of the state administration. In order to ensure security and confidentiality for the participants, this focus group interview was not recorded, but the project team took detailed notes with the prior consent of the attendees. The PI of the Polish I-CLAIM project team moderated the interview. The questions asked during the interview related to the scenario of the individual interviews and the findings from them.

While undertaking the study, we encountered certain methodological and organisational limitations and challenges. The period of conducting the interviews coincided with the campaign for the Sejm and Senate (i.e. the two chambers of the Polish parliament) elections in Poland on 15.10.2023, accompanied by a

referendum including two questions related to migration¹. The issue of migration, already highly politicised, was one of the dominant topics in the pre-election political debate. The humanitarian crisis on the Polish-Belarusian border and the general reluctance of the Polish authorities to accept displaced people other than Ukrainian and Belarusian remained among the dominant issues over months, with the visa scandal occurred before the election regarding alleged corruption in granting visas, with the involvement of the Ministry of Foreign Affairs, the Polish consular services, and subcontractors². Consequently, some ministry experts, we contacted, hinted that they were forbidden to speak about migration-related issues in Poland.

¹ Question 3: Do you support the elimination of the barrier on the border between the Republic of Poland and the Republic of Belarus?; Question 4: Do you support the admission of thousands of illegal immigrants from the Middle East and Africa under the forced relocation mechanism imposed by the European bureaucracy?

² On November 22 2023, the newly elected legislature passed a law establishing a commission of inquiry, the name of which highlights issues related to the legality of foreigners' stay in Poland - the Commission of Inquiry to investigate the legality, correctness and purposefulness of activities, as well as the existence of abuses, negligence and omissions in the field of legalisation of stay of foreigners in the territory of the Republic of Poland in the period from January 1 2019, to November 20 2023.

3. Definitions of irregularised migration and migrants

In terms of describing the phenomenon of irregularised migration, there is a lack of terminological consistency in the Polish language. First and foremost, government institutions, including the Border Guard in particular, continue to use the term illegal migration (in Polish 'nielegalna migracja'). This term is used in the Act regulating the functioning of the Border Guard and their everyday practice as emphasised by our participant:

To this day, illegal immigration remains. (...) For a Border Guard, people who cross the border are illegal border crossers. Yes, that is it. I think that in official documents, it still works to this day. [GVT6]

Such terminology on illegal migration appears in official government documents, especially those related to national security. However, most of our interviewees pointed out that this nomenclature is no longer used by international organisations, mainly because of its incompatibility with human rights and migrants' rights.

While defining irregularity, participants in the study, especially those with legal expertise, emphasised different dimensions related to illegal entry of Poland and/or the right to stay in Poland. One of our interlocutors mentioned the following example of falling into irregularity:

Even at the level of corporate clients, there is the issue of irregular migration because there is the issue of a person who, for example, through the fault of the employer or the fault of an incompetent lawyer, suddenly becomes a person in Poland illegally, or becomes a person who suddenly turns out to have been working illegally in Poland for a year. He or she has paid ZUS (English Social Security Institute), he or she has a contract, and everything is fine, but there is this one document missing that someone forgot to legalise along the way. [LAW4].

Therefore, as seen above, important element in defining irregular migration is related to the legality of work in Poland. The Employment Promotion and Labour Market Institutions Act of 2004, which regulates the functioning of the labour market in Poland and issues of the employment of foreigners in Poland, uses three terms: illegal employment³, illegal entrustment of work⁴ and illegal performance of work by a foreigner⁵. In Polish law, illegal employment (or non-compliant work) is the umbrella term under which these other types of irregularity fit. What is more, illegal employment occurs when one of the following conditions is met:

- a foreigner does not have a valid visa or other document entitling him/her to stay on the territory of the Republic of Poland or a basis of stay entitling him/her to work,
- a foreigner does not have the necessary work permit,
- a foreigner works in a different position or under different conditions than those specified in the work permit,
- a foreigner does not have a contract with the employer.

³ It occurs when the foreigner is not entitled to work, does not have a work permit, or the place of residence does not entitle the foreigner to work.

⁴ It occurs in similar circumstances as in the case of illegal employment and still when the foreigner performs work under different conditions/position than specified in the permit.

⁵ It occurs when an employer employs a foreigner without a written contract and does not declare the foreigner for insurance.

Although the legal and administrative aspects related to the entrance and stay of migrants largely prevail in the definitions of irregular migration in Poland, some of our participants also linked irregularity with insecurity and vulnerability. During our interviews, some of our informants appreciated the complexity and ‘shadows’ of irregularity and other aspects of irregularity than those closely related to legal statuses at entry and in Poland, reflected by the notion of irregularity assemblages (e.g. how irregularity is conveyed in discourses and popular representations).

4. Scale of irregularity: statistical overview

Poland's place on the map of European migration has changed considerably over the last 20 years. Despite being a typical emigration country, Poland has started to become a European leader in attracting foreigners. From the beginning, migration was economic in nature, mainly temporary and not leading to settlement in Poland. Due to its geographical location, Poland's attractiveness increased after 2004, especially as the European Union's frontline country and as a gateway for migration to Western Europe (Igllicka & Gmaj 2010). Although the share of long-term migrants fluctuated around 1 per cent of the total population in Poland before 2022, foreign workers accounted for up to 10% of the total workforce (i.e. around 1.5 million workers). Over the past two decades, Ukrainians have been the largest foreign population, followed by Belarusians. Their significant presence is due to geographical and cultural proximity, social networks and geopolitical factors in the countries of origin (Brunarska et al. 2016). It is worth noting that migrants from more distant destinations, mainly Armenia, Vietnam, and Chechnya, began arriving in Poland as early as the 1990s and forming ethnic communities. In recent years, the phenomenon of cultural diversity in Poland has increased, mainly due to new labour migration from Asian countries (e.g., India, Uzbekistan, Tajikistan, Filipinos, Kazakhstan or Nepal). As one of the experts interviewed [GVT9] pointed out, a new phenomenon that poses challenges to the migration management process in Poland, especially in the context of legality, is the growing presence of migrants from South America. Experts have raised the problem of the activities of private labour market intermediaries, who organise the arrival of workers from these countries in violation of the legislation in force in Poland. This is an example of a new overseas migration corridor to Poland, underpinned by increased activities of non-public rather than public actors. Moreover, these migrations are of an economic nature, motivated by the desire to attract labour for low-wage employers in a country where Latin American migration networks have not yet developed.

As in most EU countries, it is challenging to assess the scale of irregular migration and migrants who become irregularised after arriving in Poland. Nevertheless, experts have been trying to estimate the scale of this migration and immigrants to Poland for a long time. The data collected by the Border Guard makes it possible to approximate trends in migration to Poland, particularly about illegal border crossings and unauthorised stays in Poland. Around 2010, the estimations of migrants with irregular status varied between 70,000 (according to the Office for Foreigners) and up to half a million (according to NGOs) (Szymańska-Matusiewicz 2012)⁶. According to the Pew Research Center, the estimated number of irregular migrants in Poland around 2016 was less than 100,000, while more precise estimates for 2019 put the figure at only 15,000-20,000 people (Beręsewicz & Pawlukiewicz 2020).

Some information on trends, particularly on the population of migrants with irregular status in Poland, shows data on three regularisation campaigns. In the case of two of them, in 2003 and 2007, the voivodes (i.e., governors at the regional level) received applications from 5470 foreigners wishing to legalise their temporary (12 months) stay in Poland. The percentage of positive decisions was 76% in 2003 but only 66% in 2007 (Szymańska-Matusiewicz 2012). The vast majority (around 85%) of applications and positive decisions concerned citizens of Armenia and Vietnam. They were followed by citizens of Belarus, Russia, and Ukraine, but the number of their positive decisions did not exceed 300 people. During the third regularisation in 2012, 9521 applications for legalisation of stay were submitted. Once again, Vietnamese nationals dominated, but Ukrainians were the second largest group of applicants. A new phenomenon was the application for regular stay by the citizens of

⁶ However, the figures referred to are not explained, in particular, it is not known how the figures indicated were estimated.

Pakistan, Bangladesh, China, India and Egypt. However, the percentage of their positive decisions were much lower than, for example, in the case of Armenians, Belarusians or Ukrainians (over 90% on average).

Other types of data concerning irregularised migration constitute those performing non-compliant work, the number of refusals of entry, and the number of those detained/disclosed by the Border Guard for illegal stay (see Table 1). This data reveals the growing numbers of those performing non-compliant work, as the National Labor Inspectorate announced. However, this appears to result from increased control capacity and does not confirm that more foreigners are working illegally. During the Law and Justice government, particularly in the period 2016-2019, we could observe a significant increase in refusals to enter Poland and in the number of foreigners detained/disclosed by the Border Guard for irregular stay. The reasons for refusals were various, e.g. suspicion of unauthorized stay in Poland or false identity documents. The refusals of entry apply to procedures at legal crossings, not to attempts at undocumented border crossings, e.g., at the Polish Belarusian border. In recent years, we have also noted a decline in the number of people identified by the Border Guard as staying irregularly. This may also result from the Border Guard's ability to control the increasing presence of foreigners in Poland. In general, the data mentioned above must be interpreted carefully, and it primarily reflects the work and ability of inspection services to disclose cases of law-breaking, not the size of irregularity.

Table 1. Selected indicators on irregular migration in Poland, 2007-2022

| YEAR | NUMBER OF REFUSALS OF ENTRY | DETAINED/DISCLOSED BY THE BORDER GUARD FOR ILLEGAL STAY | PERFORMANCE OF NON-COMPLIANT WORK |
|------|-----------------------------|---|-----------------------------------|
| 2007 | n.a. | n.a. | 269 |
| 2008 | 16 862 | n.a. | 343 |
| 2009 | 26 941 | n.a. | 697 |
| 2010 | 23 758 | n.a. | 1 011 |
| 2011 | 21 657 | n.a. | 901 |
| 2012 | 32 138 | n.a. | 644 |
| 2013 | 33 887 | n.a. | 494 |
| 2014 | 24 519 | n.a. | 873 |
| 2015 | 41 580 | 6 980 | 1 122 |
| 2016 | 118 202 | 13 982 | 5 186 |
| 2017 | 72 716 | 22 558 | 5 385 |
| 2018 | 77 287 | 26 547 | 4 562 |
| 2019 | 96 559 | 26 625 | 5 947 |
| 2020 | 34 917 | 9 823 | 2 817 |
| 2021 | 33 173 | 6 812 | 4 958 |
| 2022 | 28 170 | 7 166 | 5 183 |

Source: own elaboration based on annual reports of Border Guard and National Labour Inspectorate

5. Milestones and policy developments

A milestone in Poland's policy on irregularised migration was the first regularisation action (in Polish *abolicja*) for foreigners residing illegally in Poland, organised in 2003 (September - December). According to the experts interviewed, this action was linked, inter alia, to Poland's accession to the European Union and an attempt to solve the problem of migrants with irregular status who had already appeared in Poland in the 1990s (e.g. migrants from the post-Soviet bloc or the Vietnamese). The second regularisation campaign took place in 2007 and coincided with Poland's accession to the Schengen area and the tightening of the visa regime for citizens of Poland's neighbouring countries. Both actions were based on similar conditions imposed on foreigners (EMN 2011):

1. Continuous residence on the territory of Poland for six years,
2. Indication of an apartment in which the foreigner intends to reside and presentation of the legal title to occupy it,
3. Possession of an undertaking to issue a work permit in the territory of Poland or a written declaration by the employer that he intends to employ the foreigner or possession of income or property sufficient to cover the subsistence and medical expenses of the foreigner and his/her family members,
4. There are no contraindications to legalising the stay on the grounds of a threat to national defence or security or the protection of public safety and order.

Experts have criticised these solutions, pointing out, in particular, the exorbitant requirements imposed on foreigners (Słubik 2011). A foreigner who fulfilled all the above conditions could obtain the right to stay in Poland for one year. A third abolition was planned for 2011, which, according to one participant in our study from the central administration, was mainly related to the organisation of the EURO 2012 football championship in Poland. This action had a preventive character, and it aimed to try again to address the issue of illegal migrants' stay during a mass sports event jointly organised by Ukraine and Poland. As emphasised in the explanatory memorandum of the draft law regulating the third abolition in Poland, the legalisation of the stay of foreigners residing illegally in Poland was the result of social expectations, including the voice of migrant organisations. The fundamental change compared to the first two abolitions was extending the possibility of legal residence in Poland to two years. This third abolition under different (more liberalised) conditions⁷ took place in the first half of 2012. Unlike the previous ones, an extensive information campaign accompanied it and foreigners could use a specially prepared website (abolicja.gov.pl).

⁷ Foreigners could benefit from the amnesty while staying in Poland:

- continuously (*) since at least December 20, 2007, whose stay is illegal on the date the Act enters into force, i.e. January 1, 2012.
- (*) Continuously, when none of the breaks in the foreigner's stay in Poland was longer than 6 months and did not exceed a total of 10 months in the period in question. Unless the break was caused by the performance of professional duties or work outside the territory of the Republic of Poland (based on an agreement concluded with an employer whose registered office is in the territory of the Republic of Poland), accompanying a spouse performing professional duties or providing work in the above-mentioned conditions or was caused by treatment.
- continuously since at least January 1, 2010, for whom a final decision refusing to grant refugee status was issued before that date, including a decision on expulsion, and whose stay in Poland is illegal on the date the Act enters into force,
- for whom, on January 1, 2010, proceedings for granting refugee status were initiated as a result of a subsequent application.

The issue of irregular migration was featured in the media and political agenda in Poland in mid-2021 due to the significant increase in the number of people crossing or attempting to cross the Polish-Belarusian border.

It is worth adding that growing resistance at borders towards the admission of foreigners willing to seek protection in Poland could be observed since the mid-2010s. According to Polish NGOs, the pushbacks have been growing on a smaller scale since 2015 (Amnesty International, 2017). Szczepanik writes about the first adopted 'closed door' policy towards Russia's North Caucasus asylum seekers (2018). The book 'Children from the Brest Station' (Hulia & Głuska-Durenkamp 2019) presents a provisional informal 'school' created by activists for Chechen children accompanying their families who were repeatedly attempting to file an asylum application in Poland but instead being sent back numerous times to Belarus.

The humanitarian crisis at the Polish-Belarusian border escalated in 2021 with unprecedented high numbers of people trying to enter Poland, often not through official crossings and prevented by the Polish authorities. It is seen as perpetuated by the Lukashenko regime, which allowed smugglers and migration brokers to organise the travel of migrants from third countries (mainly Afghanistan, Iraq, and Syria) to Belarus and then try to smuggle them into Poland.

The political response of the Law and Justice government was to pass a law on the development of state border security. As a result, constructing a fortification on the border with Belarus began in 2021. The explanatory memorandum to this law states that the main aim of this measure is to help 'combat illegal migration'. As it is written, the migratory pressure stimulated by the Belarusian authorities is aimed at 'destabilising the situation on the territory of the Republic of Poland and the European Union'. In January-September 2021, the Border Guard prevented 9.3 thousand attempts to cross the state border in violation of the applicable regulations.

6. Local and regional initiatives related to irregularity

Recently, local and regional governments have started to play an increasingly important role in migration management, especially in the integration of foreigners in Poland. Mainly as a result of the so-called Schengen crisis in 2015 and 2016 and the increasing immigration pressure in Poland, some of the largest cities have initiated their own measures for the social and economic integration of foreigners. One of the most interesting examples of a comprehensive strategy for immigrant integration and the city's openness to the experience of multiculturalism has been proposed by Gdańsk. Although the 2016 'Immigrant Integration Model' document does refer to the issue of unregulated immigration as a problem or challenge, there are repeated references to legal residence and supporting immigrants in this process. Specific solutions and institutions have been identified and proposed to promote the effective and rapid legalisation of the stay of all residents in Gdańsk (Model Integracji Imigrantów 2016).

However, our research revealed that local authorities have a rather limited capacity to initiate activities that could benefit irregular migrants. Under current legislation, local authorities cannot formally provide benefits or services to irregular migrants through their institutions (e.g., social assistance). However, one expert [EXP3] pointed to a practice in a Polish metropolitan area where local authorities try to support this category of migrants through funds allocated to migrant NGOs. He gave the example of advocacy services and activities to support the legalisation of migrants' stay in the municipality. Although municipalities do not mention it directly, organisations within municipalities can try to use the support they receive for legalisation activities and possible support of migrants regardless of their status.

7. Legal framework

At present, migration policy in Poland is not based on a strategic document and has been shaped by different events and political developments rather than attempted to be created proactively and comprehensively. So far, Poland has not developed a coherent vision that would constitute the state's migration doctrine. The adoption of the strategy 'Migration Policy of Poland - Current State and Proposed Actions' in 2012 constituted an important milestone, which, however, was repealed by the conservative government in 2016. The sub-section 'Combating illegal immigration' identified several directions for intervention:

- effective use of visa policy instruments to combat illegal immigration,
- modification of the provisions on the control carried out during the administrative procedure for the legalisation of the stay of foreigners in a direction that ensures that the competent services are able to assess the factual situation,
- reduction of illegal immigration channels,
- dissemination of information in the countries of origin on the possibilities of legal migration while pointing out the consequences of violating immigration law,
- reducing the time it takes to execute deportation decisions, especially in the case of minors detained in guarded centres, and creating the most favourable conditions for minors, especially with regard to access to education and health care,
- introducing legislative amendments setting the minimum age for placement of unaccompanied minors in detention centres at 13 years,
- concluding further readmission agreements and improving their implementation, promoting the voluntary return of illegal migrants.

Issues related to irregularised immigration to Poland and, in particular, the fight against this phenomenon are regulated by several different legal acts. Participants in the expert interviews highlighted the limitations resulting from regulating issues related to the residence or employment of foreigners in different legal acts. At the same time, they pointed out that the regulations related to the functioning of immigrants in the labour market are less and less in line with the dynamically changing reality of migration.

These acts are listed below in the order of their importance and scope:

1. Act of 12 December 2013 on Aliens;
2. Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland;
3. Act of 14 July 2006 on entry to, stay in and departure from the territory of the Republic of Poland of nationals of the Member States of the European Union and its Member States;
4. Act of 15 June 2012 on the effects of delegating work to foreigners residing in the territory of the Republic of Poland contrary to regulations;⁸
5. Act of 20 April 2004 on the promotion of employment and labour market institutions;
6. Act of 6 June 1997 - Criminal Code;

⁸ This Act has transposed the Employer Sanctions Directive (Directive 2009/52/EC).

7. Act of 12 October 1990 on the Border Guard;
8. Act of 13 April 2007 on the State Labour Inspectorate;
9. Act of 2 July 1994 on Freedom of Economic Activity.

Several specific regulations have also been adopted in Poland, which is particularly relevant to the last two crises: the COVID-19 pandemic and the full-scale war in Ukraine. In general, the special regulations were intended to simplify residence procedures for foreigners in Poland, but they also proved to be an opportunity to introduce unfavourable provisions on administrative procedures. For example, the Act on Law of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of the country introduced a provision depriving foreigners of the right to appeal to a court in cases of inaction by the voivodeship office and lengthy procedures for issuing residence permits.

8. Irregularity traps and ways of falling into irregular statuses in Poland

Our analyses based on desk research and empirical study have made it possible to identify various situations and the degree of ease of falling into an irregular status in Poland. We have identified a number of reasons and circumstances that can lead to irregularity. These can be culpable situations on the part of migrants or people who assist them in entering the territory of Poland, as well as cases in which migrants unintentionally violate the applicable laws.

As in most countries, the standard way to get into an undocumented (except for applying for international protection) situation is to cross the border violating the law or extend the stay without the necessary permits. Some migrants enter Poland knowing that they do not have the necessary documents and do not meet the requirements for legal residence in the country. Perkowska (2017) provides a detailed analysis of the scale and structure of law violations committed by foreigners at Poland's borders, pointing out suspicion of illegal border crossing and suspicion of using an inadequate document as making up the majority of detected infringements according to the Border Guard. Organised criminal groups and smugglers who organise the illegal crossing of Poland's borders have been involved in this procedure for years (Perkowska 2017).

One of the routes to Poland that has involved breaking the law is 'bogus educational migration'. As in other countries, enrolling in tertiary education in Poland has become one of the entry routes into the EU. The document 'Polish Migration Policy' (MSW 2012) states:

The pursuit of studies at Polish higher education institutions by foreigners is also accompanied by attempts at illegal immigration. In recent years, consular offices (especially in Asian countries) have reported an increase in the number of foreigners applying for visas in connection with their intention to study in Poland in various forms (higher education, internships, language courses), who do not meet the minimum requirements for entry to the territory of our country or present false school documents or certificates. At the same time, the Border Guard notes numerous cases of non-appearance at universities of persons who have obtained visas and are qualified to study in Poland. The wider opening of the education market to students from third countries is therefore accompanied by an increase in the number of foreigners wishing to enter the territory of Poland for purposes other than studying, using the procedures provided for students.

A significant number of foreigners staying in Poland lose their legal status in various situations. As the experts indicated during our research, it is often the case that migrants' documents lose their validity during their stay in Poland and long-lasting procedures and malpractices:

Residence procedures are too long and too difficult, and some people cannot get a residence card, and others have to go to intermediaries who just take money from them and then do not get them these residence cards. [NGO7]

In this context, falling into the trap of irregularity may also result from a foreigner's failure to notify the relevant authority of a change of address in Poland. As a consequence, the foreigner's stay may become illegal.

Irregularity results from the fact that consciously or unconsciously, migrants staying in Poland extend the validity of their residence permits. A new and serious risk of falling into the 'irregularity trap' for foreigners legally residing in Poland is repealing the COVID-19 special regulations in July 2023. Other special laws since

2020 have liberalised residence regulations for foreigners and those related to access to the labour market. One focus group participant explicitly stated that there would be an exponential increase in irregular migrants after 31 July 2023. This is when the liberal rules governing the stay of migrants who entered Poland legally for a limited period during an epidemiological emergency will cease to apply. The potential scale of this phenomenon is not known, but our interviewees pointed out that the migrant population in Poland is not sufficiently informed about the possible change in their legal status.

The illegal performance of work does not lead to an illegal stay in Poland. It may, however, result in a deportation decision. This phenomenon has been observed since the beginning of the intensification of the influx of foreign workers and has gained particular significance in connection with the migration of Ukrainians triggered by the full-scale aggression of Russia. Even though the special Law concerning Ukrainian citizens fleeing the war of March 2022 created new opportunities for the fast legalisation of the stay of forced migrants from Ukraine⁹ in Poland, new threats to the legality of their employment emerged at the same time. During the research, experts unanimously mentioned the example of abuse of a new legal institution - the entrustment of work to a Ukrainian citizen by an employer in Poland. According to the provisions of the special law, the employer is obliged to inform the relevant district labour office of this fact within 14 days from the start of the foreigner's employment. As it turns out, not all employers comply with this obligation, which makes it relatively easy to fall into a situation of work that does not comply with the regulations in Poland. As a result, such a person may also lose the right to social assistance. However, no expulsion proceedings will be initiated against Ukrainian nationals, while initiated proceedings will be discontinued. Another issue constitutes the fact that Ukrainians under temporary protection who leave Poland can lose their special status and related social welfare and other rights even if they return to Poland within 30 days as required, but their return is not notified in a special database by the Polish Border Guard. A representative of one of the central administrative institutions drew attention to the complex problem of faking in the situation of inspections by the Labour Inspectorate when employers often declare that a Ukrainian worker, who may, in fact, be employed for a longer period, is performing work on the first day [GVT9].

According to one focus group participant, the different unobvious nature of irregular status in Poland is because Ukrainian children may not attend compulsory schooling. As she noticed, children of school age should attend Polish schools during their stay in Poland. In reality, many children's compulsory education is neglected (some take part in online teaching in Ukraine, while others remain entirely outside the education system), which is also influenced by the lack of appropriate educational policy instruments and the general acceptance of this situation.

A different form of irregularity may occur when foreigners enter Poland without any document confirming their identity or recognised under international law. This is aptly illustrated in the context of forced migrants from Ukraine, who, according to one participant in the focus group interview, are in a particularly problematic situation. These are children or refugees from the occupied territories to whom Russia has issued its own documents or birth certificates, which are not recognised by the Ukrainian authorities or EU states. This problem also affects Ukrainian Roma in Ukraine, who were often undocumented in Ukraine and,

⁹ The new opportunities only covered citizens of Ukraine, excluding, for example, migrants from third countries who arrived in Poland after 24 February 2022 - this mainly applied to foreign students enrolled in universities in Ukraine.

therefore, face problems when crossing state borders. Also, the renewal of documents or getting documents for children were mentioned as problematic in the case of Belarusian dissidents.

In general, migrants with an irregular status in Poland have limited possibilities to change their situation and protect themselves from being ordered to leave the territory of Poland. Białas (2015) distinguishes several official ways to regularise the stay of migrants residing in Poland in violation of the law. In addition to abolitionist actions, foreigners can apply for one of the forms of protection or a temporary residence permit on the grounds of the need to respect their family life, right to respect for private life, the protection of children's rights, or because they are victims of human trafficking. For example, the rights of persons who were issued the certificate confirming the presumption of being a victim of trafficking include: the unacceptability of expulsion; the right to legal stay throughout the validity period of the certificate (their temporary residence permit shall be granted for at least six months but no longer than three years); the right to obtain a Polish identity document; the right to an immediate release from a guarded centre or a detention facility for foreigners; the right to welfare benefits; the right to make use of aid offered by the National Consulting and Intervention Centre for the Victims of Trafficking (EMN 2019).

It should be emphasised that it is rather difficult to get protection in Poland within the following national and international pathways: refugee status, asylum, subsidiary protection, temporary protection; or to receive humanitarian or tolerated stay. The latter is the national form of legalisation of stay in a case when deportation or return is impossible or should not happen as this would infringe on the foreigners' right to family life or the rights of children specified in the Convention on the Rights of the Child. Except for citizens of Belarus and Ukraine in 2020-2023, the rates of positive decisions concerning protection are usually low (Klaus & Szulecka 2023). The interviewed experts also highlighted that negative decisions are not accompanied by justification when reasoned by state security, defence reasons or protection of public safety and order. There are examples of people eventually granted permission to stay on a humanitarian basis after unsuccessful applications for refugee status and appeals, and a period in a detention camp. Examining whether circumstances justify granting a foreigner a permit for a tolerated or humanitarian-based stay is only carried out within the procedure related to expulsion from the country.

Foreigners try to legalise their stay in Poland using various strategies, some of which can be illegal. Already in the early 2000s or 2010s, the phenomenon of bi-national marriage between a foreigner and a Polish citizen could be observed. According to the law, marriage to a Polish citizen protects an irregular migrant from being ordered to leave the country. However, this does not apply in the case of a sham marriage to legalise the stay. Another strategy was pointed out by an interviewed expert [NGO7]. When discussing the strategies of migrants from Vietnam, he referred to the case of a newborn child of a Vietnamese mother whom a Polish father recognised. According to this expert, such paid strategies could allow children of a parent with irregular status and a Polish citizen to acquire Polish citizenship and thus protect their parent from deportation:

Those with a legal visa can apply for a residence permit, i.e. a residence card. If someone has already entered Poland without a visa, he or she has already left without a visa, i.e. illegally. I think you will find some, someone will find a person there and marry them and start a family, then maybe at the family reunion, they will get this residence card. But it is tough because there are interviews, hearings and the Foreign Office does not give legal residency to illegals so easily. [NGO7]

9. The situation of irregularised migrants in the labour market

In general, there are several ways for foreigners to work legally in Poland. As in other countries, third-country nationals can apply for a work permit for a period of up to three years (which can be extended in certain cases). However, as our research confirms, this process is time-consuming and offers little flexibility as it ties the worker to a specific employer. A much more popular way of obtaining work in Poland is the so-called simplified procedure, under which an employer wishing to employ a foreign worker from a specific group of countries submits the relevant documents to the district labour office (for 24 months). Then, such an employer does not have to apply for a labour market test (i.e. check whether there are local candidates for the position for which the employer is looking for an employee). Another form, in force since 2018, is a seasonal work permit for third-country nationals for nine months. There are also several other ways to enter the labour market, including for international students or holders of the Karta Polaka (Card of Pole).

Both the literature review and the interviews with the experts confirmed the persistence of long-standing trends in sectoral allocations, practices, and strategies of migrants with irregular status, their employers, and intermediaries. A characteristic feature of the Polish labour market remains the relatively high proportion of undeclared work. According to the Central Statistical Office, there were more than 1.3 million undeclared workers in 2004, compared to 880,000 in 2017. In 2010, around 5% of all employees were in informal employment. Although the scale of the phenomenon has decreased in recent years, there are still sectors and niches in the labour market where informal employment still dominates. Even though there is a lack of data on the proportion of these workers in Poland who are immigrants, available expert reports and studies shed light on some persistent phenomena.

Paradoxically, migrants with irregular residency status, as Białas (2015) notes, are not prohibited from doing business. It can only be one form of the listed category of the company (e.g., limited liability companies). However, there is a lack of studies on the entrepreneurship of undocumented migrants. Our research has only partially confirmed the reports of lawyers who point out that the way to enter the Polish labour market, with serious consequences for foreigners, is to become a member of the a company registered abroad and operating in Poland (as a fake entrepreneur).

The main problem continues to be the performance of work by foreign workers without a contract and thus without paying taxes and social security contributions. In the Polish context, the situation of combining legal residence with undeclared work was striking (Grabowska-Lusińska & Szulecka 2010). As can be seen from the data mentioned above from the National Labour Inspectorate, the number of cases of non-compliant work performed by foreign workers has increased over the years. The studies of employers show that such situations have been common since the early 2000s and that the reasons for this phenomenon remain the same. The main reasons for hiring without a (written) contract were too complicated formalities related to the legalisation of a foreigner's stay, lack of knowledge about the application of these regulations, and the social acceptance of employment in the grey market. Moreover, labour costs and the desire to minimise them are also factors in the lack of formalisation of employment (Klaus 2011). Some studies showed that foreigners in Poland prefer to work in the informal economy without being formally tied to a particular employer (Konieczna-Sałamatin 2010). As explained by scholars, this is mainly due to cultural conditions, the temporary nature of migration strategies, and the desire to maximise the benefits of working in Poland (Klaus 2011; Iglicka & Gmaj 2013; Górny & Kaczmarczyk 2020; Fiałkowska & Matuszczyk 2021). It is worth noting that the issue of legality has not been the subject of specific efforts in employment policy in Poland. The only clear example in this area was the 'I work legally' (in Polish '*Pracuję*

legalnie) information campaign, which was jointly implemented by the Social Insurance Institution and the National Labour Inspectorate in 2017-2019.

It is worth noting that the possible penalties for employers who hire foreigners illegally do not act as a deterrent. As one interviewee [GVT9] pointed out, the National Labour Inspectorate can impose a maximum fine of PLN 30,000 (approx. EUR 6,700). The deterrent effect against entrustment of work is the possible prohibition of applying for a permit for further foreigners in a situation where the employer concerned is sanctioned for non-compliant employment. There are also negative consequences for foreigners who are found to be working illegally. According to the 2013 Aliens Act, a foreigner may be fined PLN 5,000 (approx. EUR 1,160), ordered to return, or banned from re-entering the territory of Poland and other Schengen countries for 1 to 3 years.

The sector with an above-average share of migrants with irregular status in Poland, mainly from Ukraine, remains domestic work (Kindler, Kordasiewicz & Szulecka 2016). As in many European countries, it is primarily female migrants who work without registering with the relevant authorities. The more significant irregularity in the domestic work sector can be linked to the specificity of predominant employment by private people in their houses in an intimate sphere outside the state's control. In this context, of particular importance is that these are employers who should notify the labour office about the employment of foreigners who have little influence on fulfilling these formalities and determining the legality of performed work. Even before the sharp increase in the presence of immigrants in the labour market in Poland, 6% of households admitted using undeclared work by foreigners in 2010 (Klaus 2011). This phenomenon is still observed today, especially in large urban areas. One explanation for this phenomenon may be the fact that every second Ukrainian migrant in the Warsaw agglomeration had her first job as a cleaner or caregiver (Górny & Jaźwińska 2019). Experts predict that the scale of this phenomenon will increase in the coming years due to the dynamic process of population ageing, the change in the model of care for the elderly (e.g., neoliberalisation and cutting down state provision of care), and the enrichment of society (Pater et al. 2023). The arrival of hundreds of thousands of females forced migrants from Ukraine in Poland after February 2022 may lead to an increase in the scale of undeclared work in this sector, where there are no formal entry thresholds (i.e., anyone can find employment quickly and without knowledge) (Klakla et al. 2023). In response to the growing participation of Ukrainian workers in the sector and their precarious position, the grassroots Workers and Domestic Workers Committee - Workers' Initiative, the first of its kind in Poland, was established in February 2022.

The agri-food sector remains another sector traditionally associated with work by foreigners and work without a contract. It is worth noting that farmers were the interest group whose lobbying in 2006 resulted in the start of the process of liberalising employment policy for foreigners. However, regardless of the so-called simplified procedure introduced (i.e., without the need to obtain a work permit and a labour market test), employers could legally employ foreign workers on a temporary basis. Despite the simplifications introduced (e.g., a system of employer declarations or seasonal permits), many agricultural employers and workers themselves choose to carry out seasonal work without formalising it (Frelak 2011; Iglicka & Gmaj 2013). According to research by Górny and Kaczmarczyk (2021), compared to other sectors, migrants employed in agriculture earn the lowest wages for the highest number of hours worked. Fiałkowska and Matuszczyk (2021) showed the strategies of Ukrainians, including that they took up informal employment in rural areas during the summer for several weeks based on a biometric passport (the declared purpose of their stay in Poland is tourism). The undeclared work of foreigners is mainly encouraged by the strategies of

employers who, according to one expert, look for cost optimisation and the cheapest solutions when employing immigrants [LAW4]. Farmers, as shown by Bieniecki and Pawlak (2010), were not concerned about inspections, partly due to the regulations of the State Labour Inspectorate. One of the experts interviewed pointed out that labour inspectors can only inspect enterprises and that most farms in Poland are individual farmers, not enterprises that can be inspected [GVT9]. What is more, Bieniecki and Pawlak (2010) pointed out that most Ukrainians working in Poland did not seem to be interested in the possibility of working legally, even if they had the opportunity to do so. According to the above study, while working in the informal economy, migrants felt more flexible and competitive - they could change employers and work for several ones at the same time. Similar conclusions were drawn in a later study by Fiałkowska and Matuszczyk (2021), who highlighted the strategic importance of informal intermediaries (bus drivers) in supplying workers to farmers with a demand for 'manual labour'.

A relatively new niche for foreign workers in Poland remains the gig economy, especially jobs related to transport services or food delivery. It is estimated that one in three workers in this sector in Poland has a migrant background (Kowalik, Lewandowski & Kaczmarczyk 2023). In terms of nationality, the sector is much more diverse than domestic services, agriculture, or construction (which have long been dominated by workers from Ukraine). A significant proportion of workers are migrants from Asia or Africa who cannot count on special arrangements to access the labour market in Poland. However, there is a lack of studies that shed light on the context of the legality of foreign workers in this type of service. It is generally known that employees working as couriers or taxi drivers, for example, must walk on the edge of the law in order to earn more (Polkowska and Mika 2023). Polkowska and Mika (2023) described a strategy used by platform workers called in Polish '*kombinowanie*' - i.e. the combination of small cheating, fiddling, and exploiting loopholes in the law. During the interview, one expert gave the example of a migration broker looking for an optimal solution to recruit workers for the gig economy without obtaining a work permit. The same expert added that employers and intermediaries in this sector create unique models of undeclared work, which can lead to an increase in the scale of illegal work performed by foreigners [LAW4]. Another participant in the study pointed to the problem of the lack of regulations standardising the conditions of platform work in Poland, which results in a precarious situation for workers, and leads to numerous cases of abuses in this sector [GVT9].

10. Welfare access for migrant families with irregular status in Poland

In general, migrant families with an irregular status in Poland are in a particularly vulnerable situation. As a rule, partners/spouses and children remain excluded from the public and social services system. As the interviewees pointed out, no specific policies or measures have been introduced in Poland to provide basic support to this group in terms of social or economic integration. Also, the 2004 Act on Social Assistance regulates the catalogue of foreigners entitled to benefit from welfare state services, leaving out the category of foreigners with an irregular status. Białas (2015) emphasises that immigrants with irregular status in Poland can benefit from healthcare services provided by emergency teams in non-hospital settings (i.e. only urgent healthcare). It should be noted that even a foreigner residing illegally in Poland may work under an employment contract and thus be covered by health insurance.

Foreigners residing in Poland in an irregular way are not allowed to register their residence (Białas 2015). As a result, migrants and their families are forced to seek alternative forms of support, mainly based on migrant networks and the purchase of services on the open market. Migrants with irregular status can purchase services and goods commercially. This includes renting accommodation or private medical care. It is mainly because sellers or paid service providers do not do checks on their clients and do not require proof of legal residence. From a legal point of view, these providers are not allowed to verify their legal residence; they only check ID documents. One expert gave the example of a migrant with an irregular status in Poland who managed to get married legally at a registry office [LAW4]. However, in practice, it often looks different. This expert pointed out that private institutions (e.g., banks), as well as public institutions (e.g., register offices) require the presentation of a document confirming the legal residence status:

If we look at the provisions of the law on civil status records, it is clearly stated that a foreigner must present an identity document... However, these regulations do not say anything about the need to prove the legal residence... However, it is absolutely standard practice. I think it may have changed a bit now, but I remember that ten years ago, it was quite standard for registry offices to require a residence card to register the marriage. And these were our constant calls to these offices, explaining that the law did not require it... Unfortunately, there were also situations where registry offices even felt obliged to notify the border guard that such a person had appeared at the office wanting to get married and did not have a residence status. [LAW4]

An exception in terms of access to public services is the school education system. Children of migrants with irregular status in Poland have access to public education. There is a law regulating the obligation of education for all children until the completion of primary school, but no longer than until the age of 18. According to an expert working with migrants in Poland, a similar right exists in many countries around the world [NGO8]. In the context of Poland, this means that when enrolling a child in nursery, primary school, or high school, staff or teachers do not ask for documents confirming the right to legal residence in Poland. The quoted expert even mentioned situations where schoolteachers contact NGOs for information on supporting pupils from families with irregular status. However, this rule does not apply to higher education, whether at public or non-public universities. As a rule, foreigners residing illegally in Poland are not allowed to pursue higher education studies, doctoral studies, or participate as researchers in scientific research and development (Białas 2015).

11. Race, ethnicity and the racialisation of immigration regimes

The management of international migration in Poland over the years reveals a difference in the treatment of migrants according to their ethnicity, race and gender. First and foremost, the most privileged group consists of citizens of Ukraine and, to a lesser extent, Belarus. This can be explained by cultural and geographical proximity but also by social ties or a common geo-political history. This was reflected in the liberalisation of the policy on the employment of foreigners after 2006 and the inclusion of Ukrainians, Belarusians, and Russians¹⁰ in the simplified procedure for access to the labour market in Poland. In the following years, this trend, according to which migrants from neighbouring countries formed the category of 'desired migrants', was clearly reinforced. From the statements of the experts interviewed, it can be concluded that in the case of these ethnic categories in Poland, there is a greater degree of tolerance for their informality (in terms of residence status or the legality of employment) than is the case for migrants from Asian or African countries. Once again, the practice of appeasing and privileging a particular group of nationalities has been revealed in the response of the Polish authorities to the forced migrations from Ukraine after the full-scale war outbreak in February 2022. The special act regarding the Ukrainians fleeing the war from March 2022 guarantees a much wider range of rights and privileges than those provided for in the 2001 Temporary Protection Directive, applied to Ukrainian citizens. Interviewees in our study drew attention to discriminatory practices at the Polish-Belarusian border but also experienced, for example, by non-Ukrainian citizens escaping the war in Ukraine, such as students from Asian or African countries studying at Ukrainian universities in 2022.

Arbitrariness in allowing entrance to Poland and applying for refugee status in the case of Belarusians versus migrants from more distant countries is also in line with the mentioned pattern. This is related to resentment towards third-country nationals, mainly those without European and Christian backgrounds. This became particularly visible during the so-called refugee crisis in 2015 when the Polish government refused to accept the relocation of refugees arriving in other EU member states to Poland. At the discursive level, politicians repeatedly spoke publicly about their reluctance to accept immigrants from so-called Muslim countries (a term used, for example, by 'Law and Justice' politicians). In the last two years, we have witnessed a severe humanitarian crisis on the Polish-Belarusian border, where the Border Guard refused to accept applications for protection from citizens of such countries as Afghanistan, Iraq, and Syria. Also, during the 2023 autumn election campaign, parties (mainly right-wing ones but also present in ads of relatively centrist and liberal Civic Platform) used images of non-European migrants to create moral panic among the public, reinforcing the hostile environment towards migrants.

Our interviewed experts also pointed out issues at the frontline bureaucracy. The focus group study raised the problem of the on-the-ground functioning of offices and institutions dealing with the administrative handling of foreigners' cases in Poland. The seriousness of this systemic problem has long been pointed out by scholars and lawyers, who emphasise that it is particularly exacerbated by discriminatory practices, biases, or disregard for certain groups of foreign applicants. This applies more to male than female migrants. One of our migrant interviewees gave examples of worse and more discriminatory treatment of her husband in terms of access to health and the regularisation of stay in Poland. While she and the children have received a permit for a tolerated status in Poland, her husband has been still waiting for a decision. Another example mentioned by this participant concerned differences in the acceptance of applications for refugee status

¹⁰ From 28 October 2022, employers in Poland will no longer be able to employ Russians under the simplified procedure.

between women and men. At the communication level, too, officials are sometimes prejudiced against foreigners and do not offer them the assistance they are entitled to in understanding procedures and official documents. One of the participants in our focus group interview drew attention to the random checks carried out by Border Guard staff on applicants at the legalisation of the Voivodeship Office (in Polish '*urząd wojewódzki*'). According to her observation, the main criterion for such checks is still the person's physical appearance (mainly skin colour). This is an example of illegal racial and ethnic profiling and, as such, a racist practice on the ground.

12. Concluding remarks

An analysis of politics of irregularity in Poland after 2004 has revealed several characteristics:

1. The irregularity associated with entrance and stay was not perceived as substantial in numbers and, therefore, not considered by politicians and officers as a key challenge and task in the management of international migration to Poland.
2. Due to the complexity of legal issues, complicated legislation procedures, and dysfunctionalities (including the length of procedures and improper offices practices), foreigners staying in Poland can easily fall into the trap of irregularised situations. Paradoxically, the introduction of special facilities for Ukrainians to stay in Poland or access the labour market is exacerbating this problem and creating further inefficiencies in immigration administration in Poland.
3. Concerning irregular migration, illegal work by migrants is seen as a more significant phenomenon than other forms of regularity (e.g., related to entrance or stay in Poland). Domestic work and agriculture are the main niches where informal employment and social acceptance of such practices prevail.
4. The adoption of a special law concerning forced migrants from Ukraine in March 2022 confirmed the long-observed approach of privileging Ukrainians over immigrants from other countries. Migrants from non-European cultural backgrounds (e.g. Vietnamese or refugees from African countries trying to cross the Polish-Belarusian border since 2021) face discrimination and greater suspicion from public services (e.g. when visiting government offices).
5. Although Poland has not adopted a specific doctrine concerning migration policy, in the last two decades, we could observe a visible economisation of the presence of foreigners and the emergence of an apparent paradox - despite the declared reluctance of the right-wing authorities towards immigrants from Asian and African countries, between 2015 and 2023 the same government admitted more and more foreign workers from these destinations.

Based on our fieldwork, we suppose that irregular migration is likely to receive more political or media attention in the near future. This may be mainly due to the intensification of new channels of migration to or through Poland and the increasing activity of various types of intermediaries who are often responsible for triggering irregularities in Poland. The new coalition government must urgently regulate, among other things, the procedure for granting protection to foreigners, resolve the crisis on the Polish-Belarusian border, deal with the so-called visa scandal, and actively participate in the European Union's immigration and asylum policies.

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Annex 1: List of Interviews/Stakeholders consulted

| SECTOR | POSITION | DATE | CODE |
|------------|---------------------------------------|------------|-------|
| Government | Policy maker | 10.11.2023 | GVT1 |
| Government | Civil servant | 02.11.2023 | GVT6 |
| Government | Civil servant | 15.12.2023 | GVT9 |
| Government | Civil servant | 8.12.2023 | GVT14 |
| Expert | Researcher | 13.10.2023 | EXP2 |
| Expert | Local advisor | 17.10.2023 | EXP3 |
| Expert | Researcher | 02.11.2023 | EXP5 |
| Expert | Researcher, policy maker | 9.11.2023 | EXP10 |
| Expert | Refugee | 18.11.2023 | EXP11 |
| Expert | Refugee | 7.12.2023 | EXP13 |
| Legal | Lawyer | 20.11.2023 | LAW4 |
| NGO | Interpreter with migration background | 14.11.2023 | NGO7 |
| NGO | Lawyer | 13.12.2023 | NGO8 |
| NGO | Lawyer | 4.12.2023 | NGO12 |

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