

Citizens' Panel on Workers Mobility Rights - Cases Review

I. LOOKING FOR A JOB



Mr Ondrej Manda, a Czech national, arrived in Ireland before the 1st May 2004, the date of the Czech Republic's Accession to the EU. He worked part time and studied in a language school. Mr Manda has a Czech university degree in sociology and economics. After 1st May 2004 he tried to find a full time job corresponding to the level of his studies. However, he was only able to find a job in a factory.

It is difficult to say if Mr Manda was a victim of discrimination or of the tough market economy conditions. EU law specifies clearly that any EU citizen has the right to take up an activity in another Member State under the same conditions that apply to its own nationals. The employment may not be restricted in number or percentage nor depend on criteria which are discriminatory by comparison with those applied to nationals. An exception applies for linguistic knowledge: a certain level of language may be required, provided that it is reasonable and necessary for the job in question. Mr Manda admitted that for a foreigner it is difficult to speak brilliantly any foreign language even after having studied in a language school. On the other side, good conversation level is sufficient for the majority of jobs. Unfortunately, the situation described is not an isolated one, especially in respect of nationals from the new Member States coming to work in the EU-15.

"The Czech Republic entered the EU and I could be employed full time. Administrative barriers fell down but social barriers still exist. (...)Even if the foreigner is more qualified for the job than native speaker, who will be invited for the interview?" asks Mr Manda.



Ms Martina Fava, an Italian national, studied in France and in the United Kingdom; she now works in Belgium, Brussels. Her International and European law degree was accepted by the EU institutions, especially the European Parliament, where she did her work placement, and the Belgian Louvain-La-Neuve University for which she worked as a researcher. She found an interesting but interim position in a key Belgian company. In the future she hopes to get a job in one of the European Institutions or NGOs dealing with Human Rights.

Ms Fava has fully enjoyed her free movement rights, first as a student and later as a worker. It was not always easy but she thinks that her level of education, her language skills and determination helped her to overcome obstacles.

"For a native of Italy, being a European Citizen means not only exercising free movement rights but also broadening the own horizon, opening many perspectives," says Ms Fava.



Mr Christophe Audicq, a French national, had a lengthy period of work within the EU. His professional practice abroad, in the field of international financial services and education in business development, was mainly in the United Kingdom. The main difficulty he experienced was the return to the home country after several years of residence abroad. Problems of recognition of qualifications and practices gained abroad made this difficult.

Mr Audicq had a very positive experience and could not say he had encountered any serious obstacles to his right of free movement. The question of the return to the home country though remains an important one. There are many initiatives designed to help people moving to another country of the EU, but only a few for those who need to re-integrate into their own country's social and business environment after many years having lived and worked abroad, especially having an international, specialist profile.

"It is important to remember, the cost associated with a European-wide job search is higher (time, travelling and accommodation expenses) compared with staying in one's home country. Brighter job prospects abroad and new stability, however, make it definitely worthwhile", says Mr Audicq.

II. RESIDENCE



Ms Vilma Bucaite, a Lithuanian national, was preparing to come to Belgium, Brussels, in March 2006, for a traineeship at the European Commission. The Commission traineeship office informed her that she, just as all trainees from the ten new Member States (with exception of Cyprus and Malta), had to apply either for a temporary residence permit or, if the embassy did not issue it, a visa, in order to be able to come to Brussels and stay there for the period of traineeship. The Belgian embassy in Lithuania insisted that in accordance with Belgian legislation people from Lithuania were obliged to arrive in Belgium in possession of a Belgian visa. Consequently, obtaining a visa, due to the need to present numerous documents, was rather time and money consuming. Ms Bucaite has also dealt with unfriendly and bureaucratic procedures while obtaining a residence permit at the local "commune" after she came to Brussels.

Ms Bucaite was confronted with an infringement of EU law. The authorities could not require a visa from her, as visas among all EU Member States for all the EU nationals have been abolished. It makes the issue even stranger to know that the Commission was aware of this fact and even mentioned it in its paper on residence formalities sent to Ms Bucaite. On the other hand, Ms Bucaite's mobility experience in Italy was very positive, where she did not need to have a visa and obtained a residence card easily for a stay of around a year.

"I did not have a strong feeling of Belgium welcoming citizens of new member states", says Ms Bucaite.



Ms Eve Geddie, an Irish national, graduated with a European Masters in Human Rights in Venice and came to Brussels in order to find a job corresponding to her qualifications. While trying to register by the local “commune”, Ms Geddie was treated with suspicion, and unfriendly and humiliating conduct. Apart from other documents the authorities asked Ms Geddie to present her birth certificate, with a certified translation into French, and was interrogated (in a room full of people) by a “commune” official regarding the reason for the absence of her father’s name from the birth certificate. Issuance of the residence card was delayed, without which employment agencies refused to register her.

Unfriendly and ignorant attitudes towards Ms Geddie, and the unwillingness to issue her a residence document without her having a job in Belgium, placed her in a complicated catch-22 situation, where it was very difficult to look for a job not having a residence card. She ran out of financial resources, but at the same time was not able to receive clear information about benefits she might be entitled to until finding work.

“As a fully literate member of the EU, I shudder to think what reception non-EU citizens, those with social problems or literary difficulties receive by these agencies [local Belgian authorities]”, says Ms Geddie.



Mr Stefano Giorgio Brazzoduro, an Italian national, came first to the Netherlands and after that to Belgium. He found it difficult to receive a Dutch social security number without having a permanent work contract there (a condition for opening a Dutch bank account, the latter being a condition to receive salary as no cash payments were allowed). Upon his arrival in Belgium and planning to settle down there, Mr Brazzoduro received contradictory information from the Italian embassy and consulate in Brussels. In order to be able to reside legally in Belgium he was advised, first, by the embassy, to get a permanent work contract; the consulate on the other hand maintained that a temporary contract should suffice, but that Mr Brazzoduro should get his work permit renewed from time to time.

The problem was mainly created by the Italian embassy’s and consulate’s misinterpretation of the EU law, according to which Mr Brazzoduro in no case needs a work permit and can live in Belgium solely on presentation of evidence of sufficient financial resources and comprehensive health insurance. The overall mobility experience of Mr Brazzoduro was very positive.

“Have you ever seen Europe as the sea where sailing your dreams and its cities as the harbours where docking? Once it happened to me, accidentally, and now I barely see and recognize the border between those dreams and reality. In my opinion, moving in Europe is a wave of passion!”, says Mr Brazzoduro.



Mr Radoslav Hajgajda, a Slovak national, came to the Netherlands from the UK in order to work. Employment agencies did not want to register him because workers from the new Member States were still required to have work permits. Even trying to start working as self-employed for only one employer, as a Slovak - Mr Hajgajda still needed to get a work permit. Furthermore, having a company registered in the Slovak Republic, Mr Hajgajda faced difficulties in employing people in Holland as posted workers for limited period of time. He has heard about a simplified notification procedure, but none of the services, agencies or authorities (e.g. Centrum for Work and Income) he contacted could explain the exact requirements.

Because of the application of transitional measures for the nationals of the new EU Member States, Mr Hajgajda found it difficult to start working in the Netherlands. In addition, the authorities and employers seemed not to be sufficiently informed about EU legislation (e.g. requirements of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services). Mr Hajgajda felt that the Dutch employers feared employing citizens from the new countries, even as a freelancer, because they were not aware of the conditions and legal consequences of employing non-Dutch nationals.

“The European “Free Movement Rights Hotline” was helpful to me but in real life there are still some paths in the local regulations which are too difficult to overcome without the help of lawyers”, says Mr Hajgajda.



Mr Geraint Pugh, a British national, first came to Poland in 1997 as a TEFL English language teacher. Upon this “pre-accession” arrival, he faced a generally unfriendly and suspicious reception by the country in different spheres of life: he has been offered jobs with fictitious contracts, had difficulties challenging an unfair dismissal or non-payment for overtime, employers ignoring labour law provisions, and unwilling to bear the full costs of national insurance, he found it extremely difficult to open a bank account and obtain credit, being a non-Pole although married to a Polish woman. His work contract has been regarded as inadequate even though he had a competitive salary; he also encountered extensive red tape while obtaining a residency. (In contrast, Mr Pugh’s work experience in Portugal was much more positive.)

The case shows that it is important also to look at a possible national protectionist approach from the other side: carried out against nationals of the old Member States trying to settle down in one of the new EU countries. Even though the situation improved significantly when compared with the time before and after accession Poland’s to the EU, according to Mr Pugh there is still insecurity and lack of information about working conditions and work contracts, a protectionist attitude in the banking system and uncertainty as to coordination of social security issues across the EU.

“(...) my time in Poland has seen me being regarded as a novelty in 1997, as someone “who is overpaid and taking Polish jobs”(...) in 2002 I am regarded as someone who is redressing the balance of the number of Poles working in Britain”, says Mr Pugh.

III. SITUATION OF FAMILY MEMBERS



In 2003 Ms Iris Hillman, a French national, moved from Poland to Belgium and was refused unemployment benefits by reason of her last job being in Poland, which was at that time not a member of the EU. She was also refused residence, on the grounds that “*free circulation only applies to goods and not to persons*”. Ms Hillman was told that her bank records, being a tool rather unreliable and subject to manipulation, were not sufficient to prove that she had enough money to support herself. On her own initiative, Ms Hillman found the Directive 90/361/EEC on the right of residence, and presented it to the local “commune”. Only after that did she receive a residence card valid for 6 months. In order to make her partner, an American citizen, claim his residence right, the couple was asked to sign a “*Pacte de Cohabitation Légale*”, which is a document produced by a private notary (a paid service) and they also had to provide “*Certificat de Célibat*” - this was impossible as France did not issue such a document. The problem was solved only after written confirmation by the French consulate that such a document did not exist.

Ms Hillman’s mobility experience was twofold: negative and positive. Local authorities’ ignorance of EU law placed her in a complicated situation; only because of her own initiative was she able to claim her rights as a European citizen. It is important to know that social security coordination in the EU is retroactive and also valid for the periods before the accession of 1 May 2004. She is saying that settling down in Belgium was paradoxically more difficult than in Poland, not an EU country at that time. Ms Hillman expected much better systems of information and cooperation in civil law matters between France and Belgium, both EU Member States. Eventually, she was able to solve all the difficulties and lives happily with her husband in Belgium.

“I do believe that EU mobility mechanisms are hard to operate when presenting a slightly atypical profile”, says Ms Hillman.

IV. SOCIAL SECURITY BENEFITS



Mr Hendrik Achterberg, a Dutch national, has retired in Sweden. Due to the reforms of the Dutch healthcare legislation as from 1 January 2006, Mr Achterberg was confronted with a system making him pay twice: healthcare contributions to the Dutch State, the country which pays his pension, and contributions (in the form of tax) to the Swedish government, the country providing him with the healthcare.

The source of the problem seems to be the fact that EU legislation (i.e. Council Regulation 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving

within the Community) in the area of social security is based on a principle of coordination and not of harmonisation. EU Member States are largely allowed to arrange their own social security systems, respecting however the basic principles laid out in the EC Treaty. A great number of Dutch pensioners are affected by these negative financial consequences and numerous complaints have been sent so far to the Dutch government, to the authorities of the pensioners' residence country and EU institutions.

“The Member State acting like this is violating the discrimination paragraphs and the paragraphs regarding free movement of people within the EU”, says Mr Achterberg.



Ms Agata Szarek, a Polish national, came to Ireland in order to work. Since her English was fairly good she found a job, and after some time in Ireland she started her own business, opening a grocery shop. She realized slowly that she was working on different principles from the Irish. During her free time she has been helping the local Polish community in sorting out administrative issues by interpreting in hospitals, social welfare administration and district courts. Polish citizens are free to work in Ireland but they have to face significant

information.

Ms Szarek's experience was both positive and negative. She could easily access the work market, and create her own business. But she also experienced discrimination in work conditions when she was an employee. Through her interpretation activities (not only for the Polish but also Slovak and Czech migrants), she realized the obstacles faced by her community: some employer abuse of this well qualified but misinformed workforce, and national authorities which were not ready to receive thousands of Polish workers who did not speak English fluently. EU law specifies clearly that any EU citizen has the right to take up an activity in another Member State under the same conditions that apply to its own nationals but nothing obliged the host countries to provide a minimum of information in different languages.

“The Polish are allowed to work in Ireland but they do have problems in getting social security numbers, child benefit, rent supplements, medical cards, and all types of social help - e.g. unemployment benefit”, says Ms Szarek.

V. POTENTIAL DANGERS OF ABUSE OR EXPLOITATION AT WORK...

(This person prefers to remain anonymous), a Czech national, came to the UK as a seasonal worker. She had found a job in a British farm through a Czech job agency. She was confronted with abusive behaviour from her employer: she had to work up to 12 hours a day 6 days a week under strenuous work conditions, was not always paid for overtime, and was sent from one farm to another without her opinion being considered. Only after she complained about her situation to the organisation responsible for the employment of seasonal workers in the UK has the attitude of her employer positively changed.

Our Panellist was *neither informed about her rights and obligations as a seasonal worker nor about the rights and obligations of her employer when coming to work in the UK. She had difficulties in receiving advice and in understanding the local dialect. The case shows one of the typical situations where abuse occurs, when the employer, knowing that a worker is not well enough informed, tries to profit from their lack of knowledge until “threatened” by a higher institution. On the other hand, our Panellist had a very encouraging experience while studying in Germany, where she was given a friendly and helpful reception.*

“When I was working in the UK, I remember the living conditions on the farm were very poor, sometimes rough for a woman <...>. When I got into trouble when working, studying or travelling abroad, mainly ordinary citizens gave me advice or helped me.”



Ms Joanna Kasztelan, a Polish national, came to Ireland in 2005 as a single mother and started to work in a bakery as a cleaning lady. She was paid a “social minimum” and was forced to work hard (e.g. to carry heavy things and work extra hours not being paid). After Ms Kasztelan found a new job the employer threatened not to pay her for unused holidays and outstanding salary; during the following days she was given even harder assignments (e.g. having to carry objects of 50-70 kg weight), and was constantly insulted by her colleagues. She was physically pushed out of the bakery and forbidden to come back. After some time Ms Kasztelan returned to the bakery arguing that she would inform the SIPTU - the Irish trade union. The cheque was almost thrown into her face.

This case is unfortunately not an isolated one, and shows arbitrary and abusive behaviour from an employer; while a worker is on his/her own in the unfamiliar environment and cannot easily find advice and help.

“The most common comment was [in the Irish bakery Ms Kasztelan used to work]: a Pole arrived here and she thinks she is clever - she will have a surprise”, says Ms Kasztelan.

(This person prefers to remain anonymous), a Polish national, came to France in 2003. He found a seasonal job via a Polish job agency, he was provided with a contract and a temporary work permit. He experienced very poor working and accommodation conditions (physically very demanding work and insufficient meals, which according to the contract, were provided by the employer). One of his colleagues was beaten by the employer, but the local French police did not intervene.

People who find themselves in such a situation have difficulties in getting out as usually they do not have enough money to seek legal advice, are not informed about their rights, are afraid to lose their only job and because of poor language skills (and possibly of their nationality) cannot find help (from the local police in this case). Now our panellist has moved to the UK. He admits that he still struggles because of the language barriers and the administrative vicious circles though he has not suffered abuse as his colleague in France.

“I indirectly encountered illegal and appealing treatment from the employer and directly extreme inconvenience in processing the documents.”