



# Jean Monnet Centre of Excellence – Tensions at the Fringes of the EU Stream 1: Balancing economic, ecological and social integration

## Academic seminar Mobility and Equality – Friend or Foe?

7 June 2016, Queen's University Belfast, 13:00 – 16:15, 27 University Square Room 101

(Summary report)

Opening the seminar, *Professor Dagmar Schiek* recalled that free movement of persons under the conditions of equality is a central element of the EU Internal Market, which distinguishes the EU



from all other regional integration projects. Free movement has also become a central concern in the UK referendum on the EU, and she wondered how an internal market without free movement could ever become the preferred model for the working class in Britain. After all, an internal market without free movement of workers would allow companies to offer goods and services across borders, and guarantee free movement of capital across borders, while restricting the free movement of those whose jobs might be threatened by all that movement of capital and companies. She identified the equal treatment

principle as the central tenet of free movement aligned with social justice, and predicted that free movement of people would remain relevant regardless of the result of the referendum.

### Panel one: Beyond EU citizens – critical perspectives

*Chair/Discussant: Dr Bal Sokhi Bulley, Queen's University Belfast, UK (from 9/2016: University of Sussex)*

*Dr Margarite Helena Zoeteweij (University of Fribourg)* analysed the variations of equal treatment for non-EU citizens invited to work in the EU. She compared the Seasonal Workers' Directive (SWD) with the Directive concerning highly skilled workers (Blue Card Directive, BCD), finding that the EU's heightened interest in highly skilled migrants is reflected in a wide scope for equal treatment in the BCD. By contrast, the SWD grants significant discretion to the Member States to allow for unequal treatment of seasonal workers, refusing them rights to education and access to social security, as well as family reunification. *Ms Cristina Juverdeanu (London School of Economics)* argued from a political science perspective that there is a sliding scale from "Eurostar" EU citizens, second class EU citizens and non-EU citizens as regards the right to, remain and be integrated in the EU. Recalling the expulsion of Roma EU citizens from France in 2010, she illustrated the weaknesses of European

citizenship law resulting from this layering, and the distinction between economically active and inactive citizens. *Ms Nina Miller Westoby (University of Edinburgh)* offered a detailed analysis of the legal positions of carers in the EU, summarising their public image with the observation that care is provided by slaves, servants and women. Examining CJEU case law on primary carers' right to reside, she stressed that any rights are conditional on actively providing care, putting carers in a vulnerable situation once they need



care themselves after a long working life characterised literally by heavy lifting. While Nina does not regard the CJEU case law is not an example of clarity, she finds the main cause for a lack of carers' rights to lie in the intersection of free movement law and gendered categorisation of workers. The discussion focused on the institutionalisation of inequalities between EU citizens and non-EU citizens, but also between different categories of EU citizens.

In the resulting discussion, the concept of 'migration management' (as raised by Margarite) and some related themes were highlighted: what is equality (is it manifested in rights?); what is citizenship (is citizenship a fundamental right or does it favour the 'good migrant', a phrase used by Cristina); and, whether migration management is based on a hierarchy of citizenship that promotes utility (here the comments drew on Nina's presentation and whether it is possible to evaluate care, and whether carers can/are enacting a kind of resistance to the dominant conception of economically active citizens which currently leaves them as a vulnerable sub-class).



### **Key note: The Benefits of Benefits: the Changing Face of Free Movement in the European Union**

*Professor Catherine Barnard, University of Cambridge, UK*

Professor Catherine Barnard started by portraying the public perception of free movement, in particular in the United Kingdom, but also beyond, as a misconception based on welfare envy. She established that there is little evidence in the literature that EU citizens move to other Member State in order to receive benefits, or that information on the benefit system was obtained before moving. However, she also stated that the results of research and the positive perception of EU mobility is not always aligned with the view of the public. Evaluating how the practical implementation of EU mobility rights had developed, she underlined the role of the Court. She stressed that the Court initially opened national welfare systems to mobile workers, relying on an integration narrative in order to justify the expansion of social rights. However, she also stressed that more recently (most notably in *Garcia Nieto* and *Dano*) the Court is adopting a more restrictive approach. In its *Dano* ruling, the Court did not proceed with a case-by-case proportionality assessment; sufficient resources now appear to be a *precondition* for the right of equal treatment. Similar thoughts underpin the *Alimanovic* ruling, she explained. She concluded by pointing out that if migrants generally are moving for work, the emphasis on benefits in the debate on the membership of the EU was misleading. The speaker questioned whether EU integration was actually the cause for the public sector cuts performed by two consecutive

governments, and whether the coincidence of increasing migration and those cuts not had helped create a misperception.

This key note speech triggered a lively discussion. Participants from the Northern Irish Council for Ethnic Minorities stressed the need to change the perceptions of migrants generally. The reference to the general public was queried with the consideration whether there is a truly European public, or whether not the perception of EU mobility depends on the national context. Further, there was wide criticism of the recent case law of the Court, which curtailed the equal treatment principle in relation to benefits, which is so important for integrating migrants.

## **Panel two: Maintaining Equal Treatment? Recent developments in protecting mobile EU citizens**

*Chair/Discussant: Dr Nikos Vogiatzis, University of Liverpool, UK*

This panel highlighted free movement of persons who work. *Dr Rebecca Zahn (University of Strathclyde)* analysed the position of posted workers, with a first assessment of the Commission's proposal to revise the Posted Workers' Directive by adding the principle of equal pay (March 2016).



She highlighted that posted workers are excluded from the equal treatment rights usually associated with moving to other Member States for work, and criticised the existing regulatory framework for entrenching inequalities with particularly detrimental effects for workers in sectors such as transport and construction who do not command rare skills. She did not find that the newest proposal addressed those detriments adequately. *Nicolas Rennuy (University of Cambridge)* investigated whether there

might be gaps in the social protection of migrants moving to the host Member State. He distinguished three potential models on securing social protection for workers on the move: the cumulative model (in which migrants must accumulate access rights through longer periods of work), the “in concreto model”, which focused on the need to show a real link with the host state, and the “assimilation model, which demands equal treatment on the basis of present work. He found that these models were inadequate in balancing the solidarity and mobility through an overly schematic reliance of equal treatment. *Dr Michael Johns Laurentian (University, Ontario, Canada)* presented results from an empirical research project concerning local communities and the integration of EU citizens. His hypothesis was that local conditions are crucial for the integration of migrants (whether from the EU or not) in two respects: new comers may be viewed with suspicion as they make demands on local provisions such as housing and leisure facilities, and the local communities may embrace the opportunities created by an increase in immigration, or reject this influx. He used the case study of Llanelli in southwest Wales to demonstrate the possibilities at the local level in so far as the protection of the rights of migrant EU citizens is concerned.

In the discussion of this panel, it was pointed out that even in the core of EU internal market law, mobility and equality were not always running in parallel. The unequal treatment of posted workers – after all workers who move, was the most obvious example. As regards social security in general, it

was pointed out that the Dano judgment created a gap in the protection of not only social assistance, but also other welfare benefits. The case study of Llanelli was also seen as an illustration of the lack of adequate social planning for communities in the UK which receive large amounts of migrants.

### **Where to go from here?**

In her concluding remarks, *Professor Dagmar Schiek* acknowledged that this event brought together different disciplines and perspectives not usually combined. She stressed that there were surprising commonalities between the papers: several papers highlighted intersections between gender inequalities and unequal treatment of mobile workers (Westeboy and Zoetewey) as well as discrimination on grounds of racial and ethnic origin in relation to EU legislation and its application (Juverdneanu, Zoetewij, Zahn). Less surprisingly, all papers highlighted frictions and contradictions between the fundamental Treaty concepts, EU legislation and the Court's case law. For example, the recent line of case law analysed by Catherine Barnard can be viewed as dismantling not only the telos of the social security regulations, but also as contradicting the Citizens' Rights Directive (Directive 2004/38). However, analysing these contradictions and frictions from purely doctrinal perspectives would not constitute a satisfactory perspective. In order to understand why that case law is as contradictory as it is, and why discrimination on grounds of racial and ethnic origin or gender is not more considered in these cases, a more holistic analysis is necessary. She identified the interaction of empirical and doctrinal research as well as the communication between researchers working on free movement rights and EU equality law from different disciplinary perspectives as lines for future research (whether in a unified or fragmented European Union).

*The full programme, abstracts and bibliographical notes of speakers are available [here](#). A selection of papers will also be published on the Jean Monnet on-line paper series hosted by the [Centre of European and Transnational Legal Studies](#), School of Law, of Queen's University Belfast.*