



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

Mobility and Equality – Friend or Foe? 7 June 2016 13:00 – 16:00 hrs

Abstracts (in order of presentation)

The Seasonal Workers Directive: ‘...but some are more equal than others’

Dr Margarite Helena Zoeteweij, University of Fribourg

The seasonal workers directive, harmonizing Member States laws regarding the entry, residence and certain labor rights of seasonal workers, entered into force in 2014 and should be implemented by Member States (except for the UK, Ireland and Denmark) until 30 September 2016. According to Article 23 of the Directive, in principle third country nationals coming to a Member State as seasonal workers are entitled to equal treatment with nationals of the host Member State. However, what does ‘equal treatment’ mean when there are almost no nationals doing seasonal work for comparison? Also, the Directive allows Member States to diverge from the principle with regard to family and unemployment benefits and education and vocational training. Furthermore, the Directive does not provide for family reunification, even though seasonal workers are allowed to work for periods up to nine months per year in the host Member State.

Considering the limitations to the principle of equal treatment, and the broad measure of discretion given to the Member States in the implementation of the Directive, can the Directive really improve the precarious position of seasonal workers? What is to be expected of the effectiveness of the Directive? Could the Directive also be attractive for application by countries (inside the EU or outside) that are not bound by the Directive?

The paper will try to answer these questions by critically analyzing the Directive, setting it in historical perspective and comparing it with similar legal instruments applied by Member States before implementation of the Directive, as well as legislation of non-Member States. It will also compare the Directive with other EU legal instruments on labor migration, to compare the legal position of seasonal workers with those of highly skilled workers and EU workers

The Triangle of European Citizenship

Cristina Juverdeanu, King's College

Imagine that ‘Eurostars’, ‘second class EU citizens’ and ‘non-EU citizens’ are the vertices of a triangle. The tension between these three categories creates the core of what European citizenship means. In order to comprehend the meaning and implications of European citizenship, attention needs to be paid not only to those who are full beneficiaries of this status and to those completely excluded from it, but also to a third category, that of ‘second

class EU citizens', legally included but socially, politically and sometimes ethnically excluded. 'Eurostars', understood as highly skilled and mobile workers and students, benefit to a greater extent from the European free movement rights. On the opposite side, for some European citizens such as Roma citizens –EU's biggest minority– the European citizen status sometimes acquires an ethnic dimension which hinders their freedom of movement and settlement (as was the case in France in 2010). Finally, there is the category of third country nationals who, at first glance, have a more precarious status than their fellow EU migrants. Notwithstanding the EU's efforts, the divide between EU citizens and non-EU citizens persists. I argue that it is generated by the very existence of European citizenship. The divide between 'Eurostars' and 'second class EU citizens' is maintained as a form of resistance to the equalizing power traditionally attributed to citizenship. I argue that this discrimination is, on the one hand, created and on the other hand reinforced by the European citizenship and its right of free movement. This research is based on the assumption that the EU discourse has a symbolic power and uses discourse historical analysis to unpack it.

Mobility, gender & care: examining the CJEU's 'primary carer' case law

Nina Miller Westoby, University of Glasgow

The interrelation of equality and mobility is not examined to the same extent as the interrelation of equality and other EU policy fields such as, equality and work. An exception to this is a small legal phenomenon taking place at the Court of Justice of the EU; a number of Grand Chamber cases on EU free movement and EU citizenship are touching upon issues significant to gender, care and mobility. On the basis of Article 20 of the Treaty on the Functioning of the EU, the 'primary carers' of EU citizens can derive EU free movement rights. This development was not envisaged by the legislature and it does not appear to be pursuing any equality based agenda but it nevertheless connects with new groups of EU citizens and third country nationals who otherwise may have been excluded from exercising free movement rights. It enables EU citizens who need care on a daily basis to be accompanied by their primary carer and it enables people who care for a relative, predominantly women, to engage free movement rights on the basis of their status as a primary carer.

I will look in detail at the legal basis for and scope of the rights of primary carers and give an up to date analysis of the law. As it stands, significant clarification from the CJEU is required. By probing the case law, to date, I will make the assessment that whilst this development enables new groups of EU citizens and third country nationals to enjoy mobility in the EU, the rights appear to be quite limited in scope and furthermore, are being disproportionately granted to third country national primary carers over EU citizen primary carers.

Revision of the Posted Workers' Directive: Equality at Last?

Dr Rebecca Zahn, University of Strathclyde

Recent evidence published by the European Commission suggests that the number of workers posted to work from one EU Member State to another is on the rise. However, posted workers often earn substantially less than local workers and there have been concerns about posted workers being vulnerable to fraudulent activities such as undeclared

work practices. The main regulatory framework for posted work has hitherto been the Posted Workers' Directive (Directive 96/71/EC) which was complemented by the Enforcement Directive (Directive 2014/67/EU); the latter was adopted in response inter alia to the much-debated decision of the Court of Justice of the European Union (CJEU) in *Laval* which created a difficult interface between the free movement provisions contained in the Treaty on the Functioning of the European Union (TFEU) and national labour law. In particular, the decision had the effect of increasing already existing inequalities of posted workers vis-à-vis local workers, particularly in relation to pay but also, for example, health and safety standards or access to trade union representation. As part of its Work Programme 2016 and in recognition of ongoing tensions in the area of posted work, the European Commission published a proposal for a Directive amending the Posted Workers' Directive on 8 March 2016. This paper first briefly outlines the problems surrounding the Posted Workers' Directive in relation to equality of treatment between posted workers and local workers in the area of pay. It then considers whether, in denying posted workers equal treatment with local workers in this area, the Directive has (in fact or in theory) entrenched existing inequalities on the basis of ability and gender. A second section discusses previous remedial attempts and identifies remaining gaps in protection. A final section examines the Commission's most recent proposal and assesses whether it alleviates some of these inequalities.

Mind the gap? Social Protection for Migrants

Dr Nicolas Rennuy, University of Cambridge

The paper first shows that, in respect of most branches of social security, EU law weaves a seamless web of social protection. By combining conflict rules with various provisions indebted to the principle of non discrimination on grounds of migration, Regulation 883/2004 ensures that migrants do not fall between two stools. Continuous work is considered to evidence sufficient integration for the economically active, and habitual residence for others. Further requirements of integration, whether plainly visible or hidden, are waived by a process that, if correctly implemented, puts high demands on the administrative capacity of the Member States.

The second part of the paper reflects on two looming threats to this guarantee of continuous protection, the first of which is the emergency brake. Besides, the *Dano* judgment creates a gap in protection as regards not only social assistance, but also other welfare benefits. Access to social protection is delayed, sometimes indefinitely. *Dano* and its progeny shift social responsibility from the host State to the home State. The paper will conclude by investigating whether migrants have a social safe haven to which they may return in times of need.

Local Communities and the Protection of Rights for Intra-EU Migrants in the UK: A Necessary Burden

Dr. Michael Johns, Laurentian University

The recent negotiation between the UK government and the EU in advance of the upcoming UK referendum on European Union has highlighted the increasingly chilly climate

for intra-EU migrants. Fuelled by some media and political parties, there has been a growing consensus that these migrants have been impacting the British economy and in particular levels of unemployment. As a result, the UK government has succeeded in curbing some rights as set out by EU law. In reality however, the Westminster government has never been overly involved in safeguarding EU rights for intra-EU migrants. Instead, the responsibility has fallen to local communities. In this the UK does not differ from other Member States: while EU Treaties and legislation have determined the rights of free movement for EU citizens, the actual work of integrating these migrants has generally fallen to local communities- many of whom lack the training or resources necessary to perform this task.

This paper will examine the role local communities have played in the integration of EU migrants and the protection of their rights. Using field research focussing on the movement of Poles into southwest Wales and secondary sources this paper will examine how local communities address integration of EU citizens and work to preserve the rights of the migrants. It will then discuss what the abdication of responsibility for integration by the EU and national governments means for all three levels of government and the intra-EU migrants themselves. By highlighting the increased role of local communities as a result of the growth of intra-EU mobility and understanding the impact of these communities' decisions the paper will be able to provide recommendations and predictions for not only intra-EU migration moving forward in an uncertain future in Britain, but also other migration flows the EU will face.