



The Socio-Legal Status and Experiences of EU8 Migrant Workers: Supranational, Domestic and Regional Dimensions



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Presentation Structure

- Supranational status: EU legal provisions which shape formal status of EU8 migrant workers
- Domestic dimension: Interpretation of transitional provisions in domestic law (UK)
- Regional activity: collaborations between employers and agencies at local level



Supranational Status

- Transitional arrangements on the free movement of persons: Treaty of Accession 2003 [2003] O.J. L 236/17
- Permit EU15 to derogate (for max. period of 7 years) from provisions which grant EU nationals right to work in other Member States: Articles 1-6, Regulation 1612/68 [1968] O.J. L257/2
- Do NOT permit derogation from rights which apply when in employment, e.g. equal treatment with nationals as regards employment conditions, social advantages (Article 7(2), Regulation 1612/68)



Supranational Status ⁽²⁾

- Distinction between workers / self-employed persons
- ‘Flexible’ design of transitional arrangements: EU15 Member States granted a wide margin of discretion
- Free movement entitlement of EU8 nationals determined on basis of individual EU15 Member States’ labour market needs and demands
- Reserve army of labour status



Domestic Dimension: UK Context

- Open labour market... combined with restricted access to social benefits
- Accession (Immigration and Worker Registration) Regulations 2004 SI 2004/121
- Social Security (Habitual Residence) Amendment Regulations 2004 SI 2004/1232



Domestic Dimension: UK Context (2)

Worker Registration

- ❑ Legal requirement to register employment
- ❑ (Formally) lawful residence depends on being in registered work
- ❑ 30 day deadline
- ❑ Fee of £90
- ❑ Must register each job
- ❑ Applicable for 12 months

Social Security Eligibility

- ❑ Introduction of 'lawful residence' condition (in addition to test of habitual residence)
- ❑ Result: non-registered EU8 workers denied right to rely on equal treatment principle in order to access 'social advantages'
- ❑ Disproportionate in some cases?



Zalewska v Department for Social Development [2007] NICA 17

- ❑ July 2004: Zalewska arrived in Northern Ireland and started work as mushroom picker (registered on WRS)
- ❑ January 2005: Found new employment via recruitment agency (this job was not registered)
- ❑ Joined in NI by partner and daughter
- ❑ June 2005: Family break up following domestic violence
- ❑ July 2005: Left employment and applied for income support (living in Women's Aid hostel)
- ❑ Application refused on basis Z not 'lawfully resident'



Zalewska: Findings of NICA

Lord Justice Girvan:

- ‘had she been a citizen of a non-Accession Member State she may well have qualified...’
- ‘...the applicant only worked as a registered worker for a 6 month period and thereafter took unregistered employment. She, therefore, failed to fulfil the condition to be satisfied if she was to be treated as lawfully admitted to the labour market during the relevant period’ (para 24)



Compatibility of UK Approach with EU Law

- Terms of transitional arrangements relate only to employment *access...*
- Once EU8 national has gained access to employment their position should be assimilated to that of EU15 workers (?)
- ECJ emphasises proportionality... excessive to classify an individual as unlawfully resident due to failure to comply fully with WRS
- Non-registration is common



Role of Employers

- *“I must confess it was an illegal job because I didn’t pay any insurance or tax or register myself. I worked with a girl from Hungary and a girl from Brazil. It was illegal and I think that a lot of people work like that. **Even though now it can be legal for us to work employers don’t want to hire people legally because they can pay less to illegal workers. In such places there are only foreigners working there because no English people would accept that. It’s not nice but they can always say: ‘if you don’t want a job there are plenty of people who would take your place’”***
- *“I gave the letter to my employer at the time and I am still waiting for it so I haven’t got a clue what will happen because I was told 30 days is the deadline and I have passed the deadline”*



Activities at the Regional Level

- Existence of employer-agency organised migration schemes across wide range of sectors
- Typically occurs in areas where employers have experienced difficulty recruiting local workers
- *“We usually rent a coach and put all of the people, about 20-40, to one coach and drive them directly to the place where they work. Then we’ve got the person who arranges their accommodation so someone takes them from the coach and gives them keys to their accommodation”*



Concluding Remarks

- ❑ Self-interest shrouds each level of ‘regulation’
- ❑ Supranational, domestic and regional dimensions shape status and experiences
- ❑ Transitional arrangements reflect interests of EU15
- ❑ UK decision based on need to plug labour market gaps... arguably incompatible with EU law
- ❑ Actors at regional level concerned with promoting own (economic) interests