

"Testing EU Citizenship as Labour Citizenship: From Cases of Labour Rights Violations to a Strengthened Labour-Rights Regime" (LABCIT) project is cofunded by the Europe for Citizens Programme of the European Union. We start from the position that a decent wage and working conditions are necessary for promoting full citizenship and the democratic participation of all European Union citizens. As such, the project aims to "test" the ability of European citizenship to be extended to work, favoring the respect of social and labor rights which form labour citizenship. We perform the testing through analyzing "extreme" cases of labour violations and exploitation in several EU countries, aiming to understand which existing and new instruments can be used for strengthening the protection of workers' labour rights.

As part of LABCIT's activities, the Diversity Development Group organised individual interviews with several Lithuanian migrant workers who returned to Lithuania after working abroad in the United Kingdom, as well as a public hearing with labour rights experts. This Country Report investigates migrant labour exploitation in various phases of labour migration.

### **Short overview**

Emigration continues to be a dominant migration pattern in Lithuania. The outward mobility occurs especially towards the western part of the EU and is strongly motivated by economic aspects. Since the restoration of independence in 1990, emigration flows have been growing, peaking in 2010 when Lithuania registered the largest outward migration per 1000 persons in the EU. The large wage differences among EU member states are a key factor in emigration growth and the creation of a mobile worker population. However, according to various research studies (Rudžinskienė and Paulauskaitė 2014; Karalevičienė, Matuzevičiūtė, and Karalevičienė 2009; Šimanskienė and Paulauskaitė 2014), the decision to migrate is not influenced solely by economic factors. The lack of social security, mistrust towards the state, employers' demanding attitudes towards employees and the resulting stressful work environments also figure among emigrants' motives. In addition, the perception that better work opportunities exist abroad is also considered another key aspect of outward mobility.

Between 2004 and 2009, on average, 16 000 people emigrated from Lithuania annually. After this period, their number increased to 83 000 in 2010 and decreased to 54 000 in 2011. In 2014, 36 600 people left the country.¹ The main countries of destination are the UK, Ireland, Germany and Norway, mainly due to well-established social networks and relatively easy access to labour markets. As non-governmental organisations emphasise, Lithuanians' emigration processes have been accompanied by cases of labour exploitation. For example, Lithuania is on the list of the top ten countries with the largest number of victims of human trafficking in the UK.

Diversity Development Group (DDG) organised a hearing in the fall of 2015 in order to extend the analysis of cases of migrants' labour rights violation (revealed during preparatory activities) and discuss potential solutions for the identified challenges. During the hearing, national and foreign experts shared their work experience on migrant labour violation cases: they presented the activities of their organisations, singled out patterns of violations and identified weaknesses in the protection mechanisms. Experts supported migrant workers' testimonies on the scope and severity of the violations of their labour rights. Thus, the hear-

<sup>&</sup>lt;sup>1</sup> Statistical methodologies for collecting such data have to be considered with reservation as there are many external factors influencing data on emigration. For example, the peaking of emigration in 2010 could be explained by the introduction that year of the statistical practice of considering numbers of health insured as an indirect measurement of actual emigration flows. 2010 was the year when persons already living abroad began to formally declare their departure from the country in order to avoid registering for compulsory health insurance, thus driving up the years' numbers.

ing validated the research findings based on previous interviews with migrants. Not only did the session contribute to broadening the understanding of labour rights violations, but it also enabled a detailing of different cases of migrant labour exploitation. As the hearing revealed, a certain portion of interviewed workers might be considered victims of severe forms of migrant labour exploitation.

Emigration reports and studies suggest that Lithuanian migrants are usually present in the unskilled labour sector or in workplaces that are unappealing to the local population (Friberg and Eldring 2013; Migration Advisory Committee 2014). It is also argued that the unskilled labour of Lithuanian migrants is often performed within the "grey economy" or in the least prestigious sectors of the labour market, a position that limits social mobility opportunities. In such cases, migrant status can contribute to exploitability, due to the language barrier, poor understanding of labour law and the lack of mechanisms of prevention, legal representation and support.

Unfortunately, until now, Lithuanian migration research, public and political discourse, governmental political strategy regarding emigration and diaspora policies have not emphasised such issues as living and working conditions, vulnerability and exploitation, assistance and representation of Lithuanian migrants living abroad. The public and political debates are weighted toward the topics of return migration, ties with diaspora, identity, culture and language. There exists little emphasis on subjects such as labour law, labour conditions, exploitation and other extreme situations, such as trafficking for (forced) labour.

## Cases of violation of labour rights

Two cases prosecuted in the UK in 2015 following the involvement of the country's Gangmasters' Licensing Authority illustrate the mechanisms frequently involved in the trafficking and exploitation of Lithuanian migrants. Both cases, detailed below, entail severe violations of Lithuanian citizens' labour rights. In both of these cases, workers were promised well-paid jobs they never received, charged for rent and transportation, trapped in "debt bondage", and threatened with violence.

# CASE 1 LABOUR CONTROL AND "DEBT BONDAGE". A CASE OF MIGRANT WORKERS' EXPLOITATION BY GANGMASTERS IN THE UK IN 2013 (GANGMASTER'S LICENSING AUTHORITY)

In 2013, local police arrested a Latvian citizen who exploited Latvian and Lithuanian migrant workers in the UK. The workers said they were promised well-paid work. In reality, they rarely received a work opportunity promptly after arrival. Moreover, the work was tightly controlled, and the workers were forced to work to pay off debts to the employer and thus remained dependent on him. The gangmasters (i.e., persons who oversee the work of casual manual labourers) organized substandard accommodation for workers, charging them a rent of £50 per person per week. In addition, they charged each worker £5 per day for the use of transport which carried them to a farm where they picked leeks. In some cases the workers were left with only £20 or less per week to live on. At the same time, in order to control migrant workers, violence and threats were used. The offenders were arrested and questioned on suspicion of conspiracy to defraud after a labour inspector saw the migrant workers' poor living conditions and subsequently built a case. The trial took only nine weeks, and the offenders were prosecuted and found guilty.

# CASE 2 HUMAN TRAFFICKING AND FORCED LABOUR. THE EXPLOITATION OF THE SUBATKIS TWINS IN THE UK (GANGMASTER'S LICENSING AUTHORITY)

Two twin brothers – one with a learning disability, the other of limited education – were brought to the UK from Lithuania in a mini bus in July 2013. They had been promised well-paid jobs by "a friend of a friend." They agreed to pay an £800 fee for the transport and employment of two other Lithuanian citizens, who were supposed to arrange employment and housing. Yet in the UK the brothers' accommodation was very poor – the house was missing beds and other basic furniture, for instance. Despite the improper living conditions, the brothers were charged for rent. Moreover, they were only given small amounts of food and were frequently very hungry. They suffered significant weight loss as a consequence. Both were told to declare false address details on job application forms and to ask hiring companies that wage payments be made to the offenders' bank account. The brothers were led to believe their wages from a food processing factory would be passed on to them but they never received any payment for work. In total they

received £20 for four months of work. When they were rescued, they were wearing the same clothes in which they had arrived, four months earlier. They had been threatened with violence and received death threats. The factory's human resources manager who was alerted to the problem reported his concerns to the Gangmaster's Licensing Authority (GLA). Each of the offenders received three-and-a-half years in prison.

### **Main issues**

#### INSUFFICIENT REGULATION OF RECRUITMENT

The recruitment of workers has been stimulated by a rise in labour subcontracting companies, multinational companies and the growing commercialization of migration in general. In 2015, 123 employment mediation service providers were registered in Lithuania; and a total of 117 legal entities registered in Lithuania were engaged in recruitment activities. Ninetytwo of these agencies were recruiting migrant workers for employment abroad (Lithuanian Labour Exchange 2015). These agencies employed workers in Lithuania, the Netherlands, Norway, UK and other countries. Employment agencies are regulated by several institutions, which monitor business operations and engage in activities of prevention of illegal employment: the State Labour Inspectorate, the Financial Crime Investigation Service, the State Tax Inspectorate, the Police Department and the State Social Insurance Fund Board under the Ministry of Social Security and Labour. Even though many different institutions are involved in the monitoring and regulation of recruitment agencies, the number of exploitation cases is relatively high. This might be an outcome of lack of cooperation between organisations at local and international levels as well as the failure to deliver clear information on recruitment regulation (e.g. by regulatory bodies to migrant workers in order to raise awareness about their rights). In order to clarify the situation, the use of labour subcontractors could be limited to a few well-trusted and licensed partners.

### HIGHER RISK OF EXPLOITATION IN CERTAIN ECONOMIC SECTORS

According to the data from preparatory activities and the hearing, the economic sectors where mobile Lithuanian citizens face exploitation most often are construction and agriculture. In the UK alone, more than 3 000 workers in the agriculture sector were assisted in order to protect them against exploitative practices (Gangmaster's Licensing Authority 2015). The trend is confirmed in Nordic Countries (construction in Norway, agriculture in Sweden),

# ■ IDENTIFICATION OF VICTIMS AND VICTIM SUPPORT SERVICES IN COUNTRIES OF ORIGIN

Following the case analysis presented in the hearings and interviews, different types of issues can be distinguished. While experts present at the hearing focused on the lack of preventative action and legal shortcomings, victims of labour rights violations emphasised that the relevant institutions which should act in the cases of workers exploitation are too passive and the victims feel too vulnerable to look for help.

In general, the experts identified the same problems as the workers, while, at the same time, providing broad contextual explanations of the phenomena discussed. In addition, the invited foreign experts (Darryl Dixon from UK, Virginija Petrauskaitė from Ireland and Natalia Ollus from Finland) concentrated in their interventions on challenges arising in the migration phase, occurring in the country of destination. The Lithuanian Caritas and human rights NGO experts emphasised the lack of collaboration between countries of destination and origin (e.g. governmental institutions do not deliver requested information to each other), the shortage of financial and human resources in dealing with labour right violation cases and the lack of services provided for the victims (e.g. no day centres that provide various services for their specific needs). According to trade union "Solidarumas" expert A. Cuzanauskas, the biggest challenge is connected to the political approach towards emigration policies in general, and the low level of awareness or representation of labour rights in particular.

# CONCRETE CHALLENGES FACED BY MOST MOBILE LITHUANIAN CITIZENS BEFORE, DURING AND AFTER MIGRATION

### PRE-MIGRATION

Experts present at the hearing confirmed that migrant workers lack knowledge on labour rights in countries of destination. Workers do not have access to full information on their rights and do not know where to look for legal assistance in case of labour rights violations. Once victims receive information and assistance in a manner and language they can understand, they are in a position to decide if and how they choose to be assisted in reporting violation of their rights.

Usually, migrants experience language obstacles. This increases the space for exploitation and decreases the possibilities for self-representation. In addition, usually, migrants are unaware of working and living conditions, which, after arrival to the country of destination, can be much worse than expected. This aspect is complicated by unclear recruitment procedures: workers often do not know for which company they will work and who is responsible for payments and working or living conditions.

### MIGRATION AND SETTLEMENT

In the phase of migration and settlement, the role and responsibilities of local organisations that regulate labour relations (such as labour inspectorates) are not well-known to labour migrants. On the one hand, labour migrants do not come forward and report that they have been exploited. On the other hand, local authorities are not active enough in the prevention and identification of labour rights violations. Representatives from Gangmaster's Licensing Authority emphasised the lack of involvement of local organisations, responsible for the regulation of labour migration, to identify particular violations. For example, collective and resonant cases are identified and subsequently publicized (especially in the UK), while individual types of cases are not dealt with. On the contrary, it was observed that it is very difficult or even impossible to proceed with certain cases. This is especially so when support from the victims (the migrants) is missing; they are usually afraid to push particular cases forward. In general, public institutions in Europe with workplace inspection responsibility (including Labour Inspectorates) tend to not consider the monitoring of workers' labour exploitation as a priority.

### RETURN MIGRATION

The consensus among stakeholders was that it is almost impossible to identify cases of labour rights violations after migrants return to the country of origin, unless migrants seek assistance and legal representation. Not all migrants are prone to seek help due to their lack of trust in institutions that would handle their cases, and usually they prefer to leave unpleasant experiences behind and move on. Institutions lack guidelines for assessing migrant labour exploitation and identifying victims, and lack a mechanism for identifying Lithuanians who return to Lithuania after experiencing labour rights violations. Consequently, activities of governmental institutions and non-governmental organisations concerning migrant labour exploitation do not operate in sync. Due to the lack of awareness, only a limited number of victims receive assistance.

Although the Lithuanian Labour Exchange claims that "[u]pon returning to Lithuania, a person has identical rights to the ones that he (she) had prior to leaving" (Lithuanian Labour Exchange 2015), the returning migrant is not eligible for unemployment benefits if the last

workplace was not in Lithuania or if they had worked for less than eighteen months during the last three years (Republic of Lithuania 2003). It is possible to transfer unemployment benefits from abroad to Lithuania, provided that the person was lawfully employed abroad. Returning migrants are not covered by medical insurance in the event of sickness and cannot access basic social benefits (e.g. maternity-related benefits), if the work abroad was illegal. The persons may apply for Lithuanian mandatory health insurance. Yet the insurance only starts running after three months (The National Health Insurance Fund under the Ministry of Health 2012). If the person was insured by state medical insurance abroad, he or she is also eligible for medical services during this three month period, provided that they can show a special certificate issued by the foreign state's insurance institution.

# Legal Regulation of the Status of Migrants Returning to Lithuania

(Section by Prof. Laima Vaigė, Mykolas Romeris University)

The legal regulation of the status of returning migrants can be analyzed in two main contexts: first, in the relation to the topic of the exploitation of forced labour (i.e., human trafficking) and second, in the context of preventing the abuse of migrant workers' rights, especially those of posted workers.

Lithuanians often become victims of trafficking in human beings, or fall prey to fraudulent job-finding agencies. The Criminal Code applies in the event of forced labour, exploitation of forced labour, and fraud regarding work promised abroad (Articles 147, 147<sup>(1)</sup>, 147<sup>(2)</sup>, 157, 293, 182) (Republic of Lithuania 2000).

Forced labour and exploitation of forced labour is seen as a form of modern slavery. Under Lithuanian law, forcing another person to work through the use of threats, fraud or violence may result in sanctions of up to eight years imprisonment (Article 147<sup>(1)</sup>) while using the services of such a worker is punishable by a sanction of up to two years of imprisonment, provided that a person knew about the situation of forced labour and never reported it (Article 147<sup>(2)</sup>). Legal persons (companies) can also be held responsible under these articles, i.e. they can face penalties or even be dissolved. Moreover, private persons who organized travel abroad for the purposes of illegal work may face sanctions up to seven years of imprisonment (Article 293); the responsibility also applies to companies. The legislation has been amended a few times to accord with the EU Trafficking Directive (European Parliament

and European Council 2012). The Directive was fully transposed in 2014. The most recent amendment ensures that hearings which include the questioning of victims must be held in private, if an open hearing could cause a mental damage (Government of Lithuania 2015). Earlier, the possibility to avoid repeated interviewing during open hearings applied only to underage victims.

Two of the biggest legal problems in this area are that not all the victims acquire the official status of the "victim" and that the crimes of forced labour and its exploitation are difficult to prove. At the EU level, the standards of victims' rights have been improved significantly with the adoption of the Victims' Rights Directive, which provides for the harmonization of standards on victim protection and assistance to victims within the EU member states (European Parliament and European Council 2012). The Directive recognises the repeated victimisation of victims of human trafficking (including forced labour) and stresses that their needs must be assessed individually (Article 22 part 3). The Directive provides for a wide definition of "victim" and "offender", which means that in certain situations, exploited workers and their family members may also be eligible for assistance, support, protection and compensation. The Directive had to be transposed into the national law by 16 November 2015 but the process is registering a slight delay. The legislative package, which includes amendments to the Criminal Procedure Code, was registered on 3 December 2015. Its passage is seen as an urgent matter for the improvement of victims' rights.

At the Council of Europe level, Lithuania ratified the Convention No.197 on Action against Trafficking in Human Beings in 2012 and it can now be directly relied on in courts. At the level of the International Labour Organisation (ILO), Lithuania is also a party to: the Convention Concerning Forced or Compulsory Labour (No.29), Convention Concerning the Abolition of Forced Labour (No.105) – both ratified in 1994, and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182), ratified in 2003.

The EU Directive on Posting of Workers (Directive 96/71) provides for the minimum standards and conditions of employment that must be applied with respect to workers posted in a host country, e.g. minimum paid annual holidays, minimum rates of pay, etc (European Parliament and European Council 1997). It has been transposed into the Law on Guarantees to Posted Workers in Lithuania (Republic of Lithuania 2005).

Over the years, it became evident that the EU Directive needed to be clarified. The Implementing Directive on Posting of Workers (European Parliament and European Council 2014)

was adopted and needs to be transposed into Lithuanian law by 18 June 2016. The new Implementing Directive provides for more legal clarity, improved access to information, cooperation between national authorities, the monitoring of compliance and control measures, and subcontracting liability. The term of transposition is rather distant, thus no legislative efforts have been taken so far to transpose it, except for a notice by the Legal Department of the Parliament, while commenting on the new draft of the Labour Code. The notice insisted that the Implementing Directive on Posting of Workers must also be taken into regard. The Parliamentary Committee on Legal Affairs agreed.

Thorough auditing of the effectiveness of this Directive and the difficulties of its transposition can be expected only in about five years, in accordance with Article 24 of this Directive. However, at the moment three main challenges have been identified for the transposition Directive 2014/64 in Lithuania (Polijančuk 2015). First, regarding Article 5 on the right to acquire information on work conditions, the question of what kind of information is sufficient and where it should be provided has been raised (e.g. on the Internet website). Should only collective agreements (between employees, employers and trade unions) be made available? Regarding Article 11 on the protection of rights, a question was raised on whether only trade unions can represent the worker at court: what about NGOs? Regarding Article 12 on subcontracting liability, the challenge is seen to be the adequate transposition in the areas of construction, renovation and maintenance. The Member States are given some discretion for manoeuvring the transposition of the Directive. At the same time, they must transpose due diligence standards of liability in order to prevent exploitation of posted workers.

There are no national laws or special programs designed for returning migrants. Two projects implemented by International Organization for Migration (IOM) should be mentioned: Renkuosi Lietuvą (Choosing Lithuania), funded directly by the Lithuanian Government and aimed at returning migrants, and Prekyba Žmonėmis (Human Trafficking), aimed at prevention of trafficking, including forced labour and exploitation of forced labour, which was funded by the European Social Fund (Migration Information Center 2015; International Organization for Migration-Vilnius Office 2014).

## **Diversity Development Group Recommendations**

- 1. Improvement of longitudinal monitoring and control mechanism of living and working conditions, employment agencies and online job advertisements combined with research based evidence and consequent policy responses.
- 2. Cooperation at the international and local levels, improved liaisons, including through joint activity between labour inspectorates to ensure that employment agencies providing services for labour migrants are effectively regulated by the authorities in both the sending and receiving countries; stronger intersectional cooperation between different governmental institutions and nongovernmental organizations (trade unions, labour inspectorates, EURES, NGOs and migrant associations).
- 3. Strengthening the role of labour inspectors (e.g., more frequent inspections, regular dialogue with migrant workers and trade unions), diplomatic staff and law enforcement officers' competence in the area of migrant labour exploitation issues.
- 4. Changing the political discourse towards emigration (diaspora) policies, emphasising not only cultural (identity, language, culture) and economic aspects (investments, social capital, remittances), but also labour rights, living and working conditions, vulnerability and exploitation, assistance and representation of Lithuanian migrants living abroad. Such a shift of emigration policies needs to be followed by adequate funding.

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