

Report on the FIN-EST Regional seminar on free movement of workers, Tallinn 16.9.2011

The purpose of the seminar was to disseminate information and ideas as well as to identify and discuss any possible problems that relate to free movement of workers in the regional context of Estonia and Finland. The conclusions of the seminar may be summarised as follows:

- The labour movement between Estonia and Finland is very lively. Estonians constitute the largest group of EU citizens working at the Finnish labour market and Finland is the most common target country for Estonians working abroad. Many of the speakers and participants of the conference emphasised the great value of free movement of workers and the benefits it has both to the states and to the individuals concerned. The right to free movement increases the freedom of choice and flexibility and has remarkable economic benefits at both individual and societal levels. However, the labour movement between these two countries is not a fully unproblematic phenomenon. A relatively large share of Estonians working in Finland is in a marginal position as posted, self-employed, or frontier workers. According to the estimations of the Central Organisation of Finnish Trade Unions (SAK), the number of posted workers at the Finnish labour market is between 40 000 and 50 000, although exact figures are not available. In such situations discrimination and disadvantaged treatment regarding e.g. salaries and other working conditions is not uncommon. This is problematic to the individuals concerned and has harmful effects on the structure and functioning of the Finnish labour market. The importance of the availability of correct information on the rights of workers as well as the role of labour organisations and Eures-advisers in disseminating such information was stressed.
- With certain exceptions, the national legislation concerning freedom of movement and position of EU workers does not seem to be particularly problematic in either of the countries concerned. However, the practices are not always fully in line with the legislation. Furthermore, the rapid evolution of the interpretations of the relevant norms through the practice of the CJEU poses particular challenges at the national level. The importance of constant and systematic follow-up of the relevant case law was stressed.
- The economic recession and its impact on the position of workers raised some discussion. Along with creating difficult personal situations, it may give cause for legal problems. The legal position of a worker who has worked only for a short period of time and thereafter rendered unemployed is somewhat ambiguous.
- Regarding the issue of recognition of qualifications, it was noted that in the FIN-EST relationship there seem not to be any major formal problems. The system functions rather smoothly. The low number of appeals against negative decisions on recognition attests this. In practice, however, the recognised qualifications do not necessarily open doors to the labour market. This is because of the negative attitudes prevailing there as well as the language requirements that are at times rather demanding.
- Regarding the co-ordination of social security, it was noted that particular challenges relate to the position of posted, frontier, and self-employed workers. Many of such workers work simultaneously in both countries, which makes the co-ordination of social security rather complicated. Challenges arising from this kind of situations include the determination of the country of residence; the determination of who is to be regarded as a frontier worker; the determination of the responsible country if a person works in two or more countries; the

determination of a 'common household' for social security purposes; and overlapping payment of unemployment benefits. The question of access of family member of frontier workers to study grants was also raised, as was the Estonian system where the study loan is limited to Estonian citizens and to foreigners with a permanent right of residence or a long-term residence permit.

- Regarding job-seekers, it was noted that the national laws of the countries concerned do not define for how long a job-seeker is permitted to stay in the country in question without registering her right of residence, and furthermore, what are the criteria for assessing whether the individual in question may be regarded to be a genuine job-seeker. Access to social security and benefits may raise particular issues in case of job-seekers. Although job-seekers do not have a right to social assistance, they may be entitled to benefits that seek to promote access to the labour market. It is, however, not fully clear which of the national benefits fall within this category.
- The seminar addressed also the issue of family members of EU workers. It was noted that marriages of convenience and problems pertaining to the application of the requirement of 'dependency' as a precondition for members of extended family to be regarded as family members do not come up in cases involving EU citizens as often as they do in cases involving third country nationals. Furthermore, the question of reverse discrimination has not raised particular attention in the countries concerned, although in the national legislation of both of them the family members of EU citizens are treated more favourably than others, for instance in that in the former case the notion of family is more extensive.
- Regarding the position of seafarers, it was pointed out that the legislation and collective bargaining agreements of the states concerned apply without discrimination to all workers working in the vessels flying under their flag. Despite this, discrimination occurs in practice. In the fear of harmful consequences, the victims of discrimination only rarely instigate legal proceedings against their employers. Although de jure nationality requirements are not applied in either of the countries, in practice higher positions are often reserved for nationals.