



Labour migration and the systems of social protection

***Recommendations
for policy makers***

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1. BACKGROUND:

Trickered by the economic crisis, the decreasing demand for labour in the Czech Republic put many labour migrants into existential crisis. Lacking social protection, recent migrants were in some cases lacking both the resources to return to their home countries and to pay for their further stay in the country. In the consequence, the situation of the migrants represented not only a serious humanitarian problem and moral dilemma, but also a security threat for the Czech state, which apparently had failed to foresee the risks entailed by a migration policy that satisfied the short-term needs of the Czech economy. Aiming to minimize the problem, the Czech Republic began offering programmes for voluntary returns. However, the interest in these offers did not meet the expectations. Being in many cases indebted after having invested large sums of money for the arrangement of their stay abroad, many of the migrants did see the return to their home countries not as a viable option.

Seeking to prevent in the time after the crisis a repetition of the mistakes that had opened the way to the crisis, the Czech Ministry of the Interior began to prepare a new Strategy for Economic Migration. According to this strategy, the state seeks to increase the responsibility of employers, which shall be made liable if migrants refuse to return voluntarily to their home countries. The ministry also aims to make it more difficult to use the status of an entrepreneur in order to circumvent restrictions to labour migration. The most controversial point of the strategy is the promotion of the concept of circular migration. In the case of less qualified migrants, whose long-term stay in the Czech Republic seems not desirable even though there might be a short-term demand for their work force, the strategy asks for the limitation of maximal stays. Migrants who are seen as being not suitable to enter the path towards permanent residency would need to leave the country before gaining the right to permanent residency on the basis of length of stay. Back in their home country, these migrants could apply again for a new limited work period. In the view of critics, this arrangement might lead to the creation of a category of *“permanently temporarily”* migrants, who would live most of their time in the Czech Republic to return home after the expiration of their stay only to wait for the granting of a new limited work permit.

Are there alternatives to the strategy outlined by the Czech Ministry of the Interior? The following recommendations were written on the basis of findings from the Multicultural Centre Prague’s FLEXI-IN-SECURITY project. Initiated in reaction to the above-described crises and realized in co-operation with partner organisations from four countries, the idea of this project was to share knowledge and experiences with the social protection of migrants in a number of EU member states.

Belgium, the Czech Republic, Germany, Great Britain, Poland and Sweden, the countries represented in the project through country reports and / or journalist reportages, were selected as examples of countries that have very different migration histories. Whereas Poland and the Czech Republic did only very recently turn into countries of immigration. immigration to Belgium, Germany, Great Britain and Sweden started already soon after World War II.

Yet there are also striking differences in-between these countries with a long migration history. While Belgium, Sweden and Great Britain embraced immigration at an early stage, Germany is known for its long-lasting refusal to accept being a country of immigration. The country was also one of the last to open its labour market for citizens from the new member states. At the opposite, Great Britain opened its labour market already in 2004 and has attracted the bulk of migrants from the new EU member states. It attracts also a large number

of migrants from outside the European Union. Britain is in the same time known for a high level of inequality and a highly deregulated labour market. Sweden was also among the countries that enabled citizens of the new member states to work without restriction. However, the Swedish approach towards migration differs nevertheless radically from the British one. Till very recently, the migration process was heavily influenced by the Swedish trade union, which embraced migrants, yet sought to ensure that they would offer their work for the same conditions as Swedish citizens.

Which lessons can new immigration countries like the Czech Republic apply from the migration history of Britain, Germany, Belgium and Sweden? Which mistakes should be avoided, which succesful strategies could be applied?

2. KEY ISSUES

Issue 1: Impact of migration on domestic workforce

Opening the borders for workers from poorer countries is almost everywhere controversial. While some resistance is based on cultural fears or outright xenophobia, fears about the impact on the situation on the domestic labour market and the standing of the domestic workforce can be very legitimate and should not be made away with false truisms such as "that migration is beneficial for all sides involved." While this often-made statement might in many situations be true if looking on sending and receiving countries as a whole, it tends to be more problematic when looking specifically on the position of vulnerable parts of the domestic workforce, such as members of ethnic minorities or inhabitants of disadvantaged regions.

If labour shortages are not reaching a scale that endangers the economy as such, such groups' employment prospects tend to increase if labour is scarce. The lack of alternatives forces employers to overcome prejudices or to accept additional costs (e.g. for higher wages, for training and supervision of unskilled workers, for the relocation of the production to areas with higher unemployment rate, for the provision of housing or transportation for employees from these regions).

Issue 2: Impact on social security systems

From the point of view of the state and its social security system, the priority should be to reduce domestic unemployment in order to reduce costs for social payments. As long as there are large numbers of domestic unemployed, it seems difficult to make the case for the immigration of new workers with similar skills.

From the point of view of the employers, however, it is in some situations much more attractive to employ migrants who are better motivated, cheaper and more flexible than many of the domestic unemployed. Obviously, this is true especially in countries where welfare

payments, or the combination of welfare payments and occasional informal jobs, allow for a relatively decent standard of living. Experiences in Germany, where attempts of forcing unemployed into hard and badly paid agricultural work failed regularly due to farmers' complaints about the unemployed person's lack of motivation, shows the often-existing gap between theory and practice. It seems nevertheless necessary to stress out that every state needs to reform its labour market and social security system in ways that will provide opportunities for all citizen.

The worst alternative to this is the clandestine division of the labour market in highly regulated privileged segments on the one hand side, and non-regulated badly-paid segments on the other hand side, where it is illegal or semi-legal immigrants without any rights who satisfy the economy's need for flexible work. Working in these shadow zones is no attractive starting point for a successful integration. It is also most unfortunate that a lot of migrants are actively hindered from contributing to their host countries' social security systems due to their lack of legal status.

Issue 3: Impact on the economy

Labour shortage will increase companies' labour costs. In the consequence, companies might decide against the enlargement of production facilities or consider relocation to countries with a better labour force supply. Shortage of labour can thus be a significant limitation to economic growth. However, difficulties in finding staff and increasing costs provide in the same time strong incentives to use human resources in more efficient way. Such a tendency can on the longer run increase the national economies' competitiveness.

The availability of cheap labour from abroad can on the contrary lead to problematic developments, such as the strengthening of labour-intensive industries, which might on the longer run not be viable branches. This could result either in the final relocation of such industries to countries with lower work costs or in a constant dependency on the labour of temporary migrants from poorer countries.

Issue 4: Inclusive or divided labour market?

Closely related to the question discussed above is the position of the foreigners in society and on the labour market. Sweden and the Czech Republic appear in this respect to be two extreme opposites: While Sweden pursued from the beginning a policy of equal payments and rights, with labour unions as central players, the Czech Republic experienced over the last years the emergence of a divided labour market. On the one side there is the official labour market, where people (Czechs and foreigners working in higher positions) are employed in accordance to the Labour Code, which has the reputation of being rather employee-friendly and inflexible. On the other hand is the world of temporary contracts, work co-operatives and agency employment. Even though the law guarantees same conditions for all workers in the same position (within one company, but including those employed indirectly through an agency), in reality these conditions are very often gravely violated. Currently there is a lot of talk in the Czech Republic about increasing controls to prevent misuses. However, the deeper cause of this situation is the rightlessness and desperation of many labour migrants, who fear

to lose their job as this could bring with it the loss of the right to stay in the country. As long as migrants are afraid to complain it seems doubtful whether controls will have the power to bring about fundamental changes.

Issue 5: Formal and informal, legal and illegal

It is important to realize that not the life of labour migrants is influenced not only by particular measurements and policies that concern migrants, yet also by the general structure of labour relations. One important aspect, which has a huge impact, is the size of the informal economy and the tolerance of informal labour relations. In this regard, Poland and Sweden can be considered to be opposing prototypes. While labour migration to Poland is predominantly occurring informally in an economy, which is characterized by a comparably high tolerance towards informal business and work relations, Sweden's world of labour is highly regulated. Interestingly, Sweden's high level of regulation and social control represents a major obstacle for illegal migrants, who are said to leave Sweden often out of frustration with the high level of social control.

The migrant employment structures of the Czech Republic can be considered as a rather unhealthy mixture of legal and illegal practices. The popular practice of employing foreigners through agencies and intermediaries allowed businesses to act in full accordance to the law. Many of the agencies have a bad reputation as they are said to violate frequently the rights of migrants, even if these migrants are legally in the country. Another problem of the current system is the 'production' of illegality: It is very easy for a migrant to turn illegal, e.g. because of minor administrative problems. In many cases migrants are not even aware of this as they are 'managed' by intermediaries.

Issue 6: Social and political rights

The Swedish reforms of the 1970s were promoted under the title 'Equality, Freedom of Choice, Co-operation' and had a strong focus on the provision of rights. Non-naturalized migrants were given the right to vote in municipal and regional elections and the Trade Union functioned as powerful watchdogs for the non-violation of social rights on the labour market.

From the perspective of the current situation in the Czech Republic and some other new immigration countries of Central and Eastern Europe, where we can observe tendencies of an effective division of the labour market between a better-protected domestic workforce and a much worse-protected foreign workforce, the stress of equal rights seems the most relevant aspect of the Swedish experience. Interestingly, in regard to the labour market, the main argument for equality was never the protection of the foreigners but the protection of the Swedish labour force, who would have to fear an erosion of wage and social protection standards when put into competition with foreigners not enjoying (or, as some might see it, bound by) these standards.

The crucial importance of rights is often overlooked in debates, where migration and integration are approached as cultural phenomena. Of course this is not only a question of legally established rights, but also whether legal procedures and the very position of migrants give migrants a fair chance to actually know about these rights and make use of them. In the Czech Republic the most broadly discussed problem of migrants is the economical exploitation and mistreatments by employers and especially intermediaries. It should be stressed that such practices are illegal, as the Czech Labour Law demands equal treatment and remuneration of people working in the same positions. Yet the division of the workforce in overwhelmingly domestic core staff, which is in some branches quite well-organized, and agency workers (usually only foreigners), who are legally employed by a different company, invites violations. It makes it also almost impossible to organize migrants in trade unions, as agencies can simply transfer their employees to another company if he / she expressed interest in joining the local branch of the labour union. To this point, there exist no specific labour union for agency-employed workers.

The current discussion in the Czech Republic is dominated by calls for stricter controls of labour agencies. While such steps are certainly very much needed, it seems doubtful whether it will be possible to solve the existing problems solely through more controls and policing. Stricter controls will be successful only if in the same the rights of migrant workers are strengthened. As long as migrants, who have invested a lot of money to be in the Czech Republic need to fear losing their right of being in the country when they lose their job with an exploitative employer, it will be very difficult to even get the testimonies needed for legal action. Another important step would be to make employers, which make use of labour of agency workers, directly accountable in cases where agencies or subcontractors fail to pay salaries or violate otherwise labour conditions. Such provisions were for example established in Germany to prevent planned bankruptcies of agencies that provided Polish and other Eastern European labourers in construction.

In general, the Czech Republic and Poland are certainly well-advised to study the strong emphasis on equality practiced in Sweden, even though one might object that the Swedish model will not function in a non-Scandinavian society, where trade unions are weaker, corruption and informal labour relations more widespread and social control less effective. It should, however, not be overseen that also the Swedish success story is not without weaknesses. While Sweden went to this point a rise in populist and openly xenophobic parties, it seems fair to say that the relationship between the Swedes and their foreigners has somewhat cooled down. As mentioned already in the overview on Sweden, the political and societal consensus on migration and integration policy does no longer exist. The constantly decreasing participation of foreigners in municipal and regional elections (60 per cent in 1976, 38 in 2002) is seen by some observers as sign for a decreasing identification with Sweden among non-naturalized immigrants, while the difficulties of well-qualified and Swedish-educated Swedes with foreign names (2. and 3. generation of migrants) on the Swedish job market tells of invisible cultural barriers, which seem in complete contradiction with equality as leitmotif of the official conceptions.

Issue 7: Discrimination on the labour market

Another important issue is discrimination during the job application process. Persons of migrant background experience even in countries like Sweden or Belgium, which are

otherwise often presented as models of an immigrant-friendly society, great difficulties in finding jobs that reflect their level of skills. In many cases discrimination occurs without clear intentions. It is crucial to promote the key value of fairness and point to employers' co-responsibility for the creation of an inclusive society. Concrete measurements could include: anonymous job applications (to avoid discrimination on the basis of family name), diversity trainings for staff managers, certification of fair employers.

3. Recommendations:

1. **Economic development policies that depend on the recruitment of foreign manual workers** should be carefully evaluated in regard to their human and societal costs and potential security risks. Costs and risks that need to be considered especially carefully are:
 - Non-equal treatment and exploitation of foreign workers
 - Potential of humanitarian disasters in consequence of sudden mass unemployment and the resulting loss of income, health care, and housing.
 - Security risk linked to the emergence of criminal structures involved in the recruitment of foreign workers
 - Security risks linked to situation where foreign workers choose criminal strategies in situation when they face existential threats (loss of income, housing, lack of access to health care)
 - Undesired impact on social position of domestic workforce (pressure on wages, emergence of new employment structures, opportunities for vulnerable segments of domestic workforce)
 - Unsustainable direction of economic development (too labour-intensive, impossible to be maintained without the presence of temporary migrants)
2. **Circular migration schemes** that should satisfy short-term labour needs are always problematic, as the circularity might depend on restrictions on integration (e.g. insecurity and temporary character of status, restrictions of unification with family members). This could increase the potential for exploitation. In cases where migrants remain nevertheless, the experience of previous measurements against integration might later have the effect of an obstacle to integration success. If circular migration schemes are implemented nevertheless, it seems advisable to restrict the participation to geographically proximate countries, where cultural and linguistic barriers are lower and commuting schemes (consumption of earned money in country of origin with family left home) possible. Any scheme should include possibilities to change the migrant's status into the one of a permanent immigrant (e.g. on the basis of merit,

proof of long-term need of labour market, or language acquisition). It seems further advisable to regulate all aspects of the rights of temporary migrants (e.g. health care, contribution to social security and pension system and rights towards these systems, bodies responsible in case of misuse, membership in trade unions, control of recruitment agencies, validity of contracts signed in country of origin) in bilateral agreements with the sending countries.

3. Even short-term migrants should enjoy **the possibility to change their employer**. Otherwise the employer is likely to gain a highly dominant position, which invites misuse and exploitation. In situations of job loss, there should be realistic timelines for the finding of a new job, before unemployment has an effect on the legal status of the person in question).
4. The most effective way of preventing abuse of migrants is the **strengthening of their legal position towards employers and also state officials**. The formal demand of legal treatment is not sufficient if migrants are not aware of their rights or in a position where they are afraid. Therefore it is necessary to actively inform migrants of their rights and to create bodies, which provide assistance to migrants that experience unfair treatment. In regard to state officials, it is problematic if decisions (e.g. on visas) are solely based on the discretion of officials, as this clearly opens the way to corruption. To reduce the room for corruption, rules should be clearly established and published in a well-accessible form.
5. If the employment through agencies and other forms of intermediaries is tolerated, the **final beneficiary of the work should be hold accountable in cases of mistreatment or failures in paying salaries**. To minimize illegal employment, such mechanism might also be used to hold final beneficiaries accountable for the legal status of persons working in their premises.
6. **Trade unions should be encouraged to recognize their responsibility towards the position of labour migrants**.
7. The state should avoid procedures that have the unintended effect of **producing illegality**. Minor administrative mistakes, such as a delay in the prolonging of a permit, should be penalized with fees and not with a change of status into the one of an illegal migrant.
8. For selected groups of illegal migrants the state should offer **possibilities to legalize their stay**.