

**LABCIT
COUNTRY
REPORT**

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**POLISH MIGRANT
WORKERS IN IRELAND:
NAVIGATING EXPLOITATION
UNDER THE 'ZERO HOUR'
CONTRACTS, WAGE THEFT,
AND DISCRIMINATION**



Co-funded by the
Europe for Citizens Programme
of the European Union

“Testing EU Citizenship as Labour Citizenship: From Cases of Labour Rights-Violations to a Strengthened Labour-Rights Regime” (LABCIT) project is co-funded 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, favouring the respect of social and labour 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.

Together-Razem Centre organized an online survey, individual interviews, and a focus group with Polish migrant workers in Ireland (97% of the Centre’s clients are of a Polish migrant background). The report investigates specific working conditions and labour rights violations that these workers experience, and complements findings in the project’s Country Reports.

Short overview

Eleven years have passed since Poland joined the European Union and the markets of several Western European countries were officially opened to Polish workers. Since 2004, Ireland has become a destination for a large number of migrants, including from Central and Eastern European member states (CEE). The below table demonstrates the migration impact of the so-called EU13 in thousands, which includes Bulgaria and Romania (who joined the union in 2007) as well as Croatia (who joined in 2013) (Central Statistics Office, 2014):

Year ending April	2009	2010	2011	2012	2013	2014
Nationality						
Irish	3,958.0	3,994.7	4,017.9	4,035.0	4,038.6	4,045.3
UK	117.1	115.9	114.9	113.0	113.4	114.9
Rest of EU15	55.3	52.4	49.4	45.5	43.2	38.1
EU13	240.8	233.0	231.5	229.4	228.6	230.7
Rest of World	162.2	158.7	161.2	162.5	169.3	180.5
Total	4,533.4	4,554.8	4,574.9	4,585.4	4,593.1	4,609.6

According to the most recent Eurostat research published at the end of 2015, 12% of the population in Ireland consists of foreign nationals (Eurostat 2015). Polish citizens form the largest non-Irish minority at 22% (118,042), followed by UK nationals at 21% (115,658); Lithuanians at 7% (35,617) followed by Latvians (20,086) and Nigerians (19,727) who add up to 4% each. In total, 8.1% of the non-Irish population is from EU member states and 3.7% is originally from outside the EU (ibid 2015).

The 2007/2008 global financial crisis had a high impact on certain sectors in the economy which employ large numbers of Polish migrant workers in Ireland, including construction, manufacturing, agriculture, and hotel and catering services. Unemployment has increased in Ireland from less than 5% at the beginning of 2008 to more than 13% in the second half of 2010. While unemployment of Irish nationals has increased from 4.5% to 13%; the unemployment for non-nationals overall has increased from 6.4% to 17% (Central Statistics Office 2011). Migrant construction workers – the majority of whom are men – have been among the first to lose their jobs when the crisis hit Ireland by the end of 2008. Since then, employment of Irish workers has declined by almost 50%, whereas the employment of migrant workers in the same sector has dropped by more than 60% (ibid 2011).

Further, the after-effects of the economic crisis in Ireland expose EU migrant workers to more precarious conditions even today. For example, the Irish labour market remains subject to the demand of increasing flexibility to hire and fire, a growing popularity of temporary and part-time contracts, extremely flexible working hours, a downward pressure on pay, and limited investment in training and up-skilling. In addition, all basic protections for workers, such as the statutory minimum wage, pay agreements, the low income tax regime for low paid workers, and social protection rights and entitlements encounter cuts and push backs.

According to the data collected in a survey by the Together-Razem Centre, the most common economic sectors where Polish, Lithuanian and other Eastern European citizens are facing exploitation are construction and the service sectors of cleaning and catering. Jobs in these sectors remain undervalued, underpaid and in some cases exploitative. In 2014, the National Employment Rights Authority (NERA) carried out 5,591 inspections, of which 43% uncovered incidences of labour exploitation (NERA 2014).

Sectors

■ CLEANING SECTOR

The cleaning sector in Ireland employs workers from many countries around the world, most of whom migrate from Poland and other Eastern European countries. When mass immigration from new EU member states began, Ireland was one of the few countries in the European Union to have an open border policy, and thus, migrant workers became part of the Irish labour force and trade unions.

In 2008, the National Employment Rights Agency (ERA) began releasing statistics related to employment rights violations. Contract cleaning came out as one of the worst sectors based on inspections that the agency conducted. Among the worst areas of non-compliance were employment law, statutory rates of pay, holiday pay, breaks and working time. The sector was further impacted by the economic downturn which pushed already low-wages to even lower rates, taking advantage of immigrant workers vulnerability.

According to a trade union representative, Mr. Barnaba Dorda, migrant workers are not organized in this sector. Many are not English speakers, and are unaware of their rights. They fear unemployment and thus they work under constant pressure. The cleaning sector is ruled by an aggressive attitude towards workers, who are not treated with respect and get punished or penalised for minor mistakes.

CONSTRUCTION SECTOR

The construction sector experienced large-scale migration since the EU enlargement in 2004. In light of significant skill and labour shortages during the boom, many construction jobs were filled by Polish and other Eastern European migrant workers. According to a trade union's representative Mr. Barnaba Dorda, when the construction sector was booming in 2004, Irish companies resorted to hiring a cheap work force as a profit-making strategy. However, this sector itself has shifted from boom to bust (Krings et al. 2011). Since 2008, employment in the construction sector sharply declined. This forced many Polish migrant workers to leave Ireland or to hold on to their jobs in spite of a worsening in the terms and conditions of employment.

Many of the discussed incidents were related to the absence of payment for work in the construction sector. Long working shifts and safety on the work site were the other key issues in this sector. In addition, subcontracting arrangements are popular in the construction sector in Ireland, wherein bigger companies outsource individual tasks of the production process to smaller firms.

Cases

The following cases were collected from migrant worker testimonies in three sectors: construction, the service sector of cleaning and catering, and the meat processing sector. The cases were collected through qualitative interviews and during a focus group conducted by the Together-Razem Centre on December 19th 2015 with 14 Polish migrant workers who are employed in one of the three sectors. In addition, a public survey was conducted to complement some of the information gathered in the testimonies, which includes data from 43 individual contributors. As such, the cases reflect a widerange of situations of labour exploitation among mostly Polish workers in Ireland, as well as several Lithuanian workers as well.

CASE 1

CLEANING SECTOR – ZERO HOUR CONTRACTS

Magda came from Poland four years ago. She knew little English and started to work as a cleaner in a hotel. She explained she took the job because: "I had no choice. I had no access to social welfare and a sick mother back in Poland and I needed money. I studied in college and never expected to end up working in the cleaning sector." Magda was paid

the minimum wage of €8,65 per hour and had to clean more than 20 rooms per hour. Meanwhile, the regularly-employed cleaning staff were given 30 minutes for a “departure” room and 15 minutes for a “stayover” room. Magda was crying while doing her job. She had a part-time contract in which the working hours were not specified. She never knew how many hours she would be working on a given day. The supervisor was exerting additional pressure on the employees by shouting at them to work faster. The job was stressful and insecure and Magda ended up quitting. When she applied for social welfare, she did not receive it due to the few working hours spent and the little contribution paid. At the Together-Razem Centre she was advised on how to apply for other kinds of social assistance in case of a difficult financial situation, and she found another job soon after that.

CASE 2

CLEANING SECTOR – INSECURE AND IRREGULAR HOURS

Kasia started working for a cleaning company in Cork, and believed that she had found a secure and solid employment in cleaning big stores. The company proposed a specific type of contract called “If and when”, to which she agreed without fully understanding how it worked. She was looking for a part-time job as she wanted to have enough time for her four year old daughter. At the beginning she worked 14 hours per week on selected days as per a verbal agreement with her boss. However, the working hours began to decline and her boss was calling her 30 minutes in advance to come for a shift of 4 hours (twice per week) or 2 hours (three times per week) and sometimes for 6 hours once a week. Additionally, she was spending large sums of money on commuting expenses. As a result, she discussed the situation with her boss, who shouted at her and told her to go back to Poland, telling her that she is just a cheap working force of which he can find many and that her contract does not entitle her to a fixed number of working hours. Shortly after, she was not called for work for an entire week and when she went to speak to her boss, he shouted at her again and told her to go back to Poland if she did not like Ireland. Kasia decided to accept the support of an NGO and to not go back to work anymore. However, she was not entitled to receive any social benefits as her boss refused to give her a document (P45) certifying that the work contract was finished. In addition, she replied to the NGO’s request for clarification that Kasia was still employed on a “zero hours” basis.

Due to stress symptoms Kasia is currently on sick leave and has transferred the case to a lawyer for bullying and harassment.

CASE 3

CONSTRUCTION SECTOR – HEALTH AND SAFETY ISSUES

Lukasz is experiencing exploitation in his work; he has the lowest pay rate in his job, which he has held for eleven consecutive years. His contract is legal, but he works in a dangerous environment. Safety regulations are not respected at his work place as they would impede the speed of work. Lukasz's colleagues are from Brazil, Slovenia, Czech Republic and Poland and none of them has a good level of English. They were told that they can "go back to their country at any time" if they don't like the job and its conditions. All supervisors are Irish as foreign employees are not employed for this position.

CASE 4

CONSTRUCTION SECTOR – SUBCONTRACTING, BOGUS SELF-EMPLOYMENT AND 'WAGE THEFT'

Stefan was employed by a big construction company in Cork from 2004 until 2008. Due to the economic crisis which has affected the construction sector he lost his job and was unemployed for four years. He started working again in 2012 under new conditions; he had to register as self-employed and become a subcontractor himself. The employer admitted that this would cost him less than offering Stefan a normal contract. Stefan did not receive his pay several times and when he fell sick, he could not claim financial benefits – according to Irish law, self-employed workers are not entitled to those benefits. He continued to work for two additional months until he found out that the company lost a deal with a large contractor and thus will not release the overdue pay.

CASE 5**CONSTRUCTION SECTOR SUBCONTRACTING,
BOGUS SELF-EMPLOYMENT AND 'WAGES THEFT'**

Tomasz is 39 years old and has been working for the same construction company with a full-time contract. His employer tried to convince him to change his contract for self-employment promising a higher income. As Tomasz did not agree to this change, his employer began gradually reducing his working hours, claiming that they were lacking contractors. When the amount of work declined dramatically and Tomasz was not earning sufficient money, the employer asked him not to come back to work as the business was in the process of liquidation. Tomasz had not received his pay for 4 weeks of work, he was not paid for his annual leave and did not receive any notice. Tomasz found another job and discovered that his old company is functioning under a new name. He never received the money that he lost as he did not know where to go for assistance in claiming it.

Main Issues**■ 'IF AND WHEN' AND 'ZERO HOUR' CONTRACTS**

These contracts are mainly applied in the cleaning and hotel sectors. According to the regulations outlined in section 18 of the Organisation of Working Time Act from 1997, the 'if and when' contract is an employment arrangement where the employee is not guaranteed any working hours at all and is paid only for the work carried out. Some contracts may fix a very low number of set hours, with the rest remaining unspecified. 'Zero hour' contracts require staff to be available for the set hours each week, but do not guarantee any specific amount of work. The contract signed by Kasia did not guarantee regular working hours and the employee had no chance to plan her free time. Migrants employed on such contracts have an uncertain income, problems with paying their bills or applying for social benefits.

According to the consulted legal experts, these contracts were created in order to offer the employer more flexibility but resulted in employers misusing them to keep wages to a minimum. These contracts are often the key method through which worker exploitation and inequalities are perpetuated.

Employees with ‘zero hour’ contracts are rather exposed to experiencing in-work poverty and are less likely to obtain access to non-pay related employee benefits, training opportunities or social protection coverage. Further the “zero-hour” contracts can often imply unfair work conditions, such as inadequate termination notice, a lack of transparency and terms of employment that place an unfair burden on the employee who feels compelled to accept the conditions rather than terminating the contract.

■ BULLYING, HARASSMENT, AND DISCRIMINATION

The labour market shows a high level of discrimination and racism against migrants, especially migrant coming from African countries. Polish people often become victims of discrimination as well, mainly when applying for higher positions. A focus group participant explained that when applying for a management position for which he was well qualified, he was told indirectly that his origin might be an obstacle in the management of staff and therefore he did not get the position. The Employment Equality Acts 1998-2015 define harassment as “unwanted conduct” which is related to 9 discriminatory grounds. Harassment and bullying at work – when related to one of the discriminatory grounds – are covered by the Employment Equality Acts.

There were two cases of harassment and bullying at work discussed during the Centre’s focus group. Among these, Maria, who is working for a cleaning company in Cork, had been humiliated and insulted by her supervisor who was also from Poland. She was especially touched by the words “Poland is waiting for you”. The difficulty of bullying cases consists of the legal approach to these cases in law, as there are no explicit legal acts defining an intervention in such cases. Victims often suffer from psychological strain and the litigation process is extremely expensive.

■ SUBCONTRACTING AND BOGUS SELF-EMPLOYMENT

Subcontracting is frequently utilized as a cost-saving strategy and even though the subcontractors are formally bound by the Registered Employment Agreements (REAs), inspections of smaller companies are not very common. This allows exploitation towards the employees, especially in terms of pay and benefits. The owners of smaller businesses assume that a low wage is sufficient for the migrant worker as he/she would spend it back in Poland when he/she goes back. One of the meeting’s participants explained how his boss proposed to him the following agreement: he would receive the lowest wage on the payslip and an additional pay in cash.

One of the interviewed legal experts explained that companies who try to convince their employees to work on a self-employed basis are playing with taxes. Costs are being cut down [which in turn harms the employee as well as all tax-payers, because taxes are not being declared properly. In addition, such activities cause unfair competition as they allow for selecting the cheapest working force, which in this case will always be the self-employed worker. This practice makes the existence of proper work contracts difficult.

■ **WAGE THEFT**

A union expert, Barnaba Dorda, explained that there are no penalties against employers who withhold wages or are refusing to pay the benefits their employees are entitled to receive. Thus, such practices should be perceived as theft and treated as a criminal offense, as is the case in some parts of the United States. In Ireland, even when an employer is brought to the Workplace Relations Commission and ordered by an adjudicator officer to pay the outstanding wages, additional penalties or an additional compensation (as punishment for withholding the due wages) are never applied.

Recommendations

Trade unions: many of the interviewed workers expressed distrust towards the trade unions. According to them, the unions only pay attention to corporations and dismiss individual cases. This is why they would not agree to pay a contribution for union membership. Only one interviewed worker is currently a member of a trade union, which he joined after he found out that he was entitled to do so (he had not been aware of his right to join the union as his employer claimed the opposite). Relations between trade unions and migrant workers should be strengthened and unions should take into consideration the migrant workers specific conditions.

Non-payment of wages: employers who 'withhold' or 'deduct' wages unfairly, or simply do not pay wages to their staff should be penalized for doing so. A legal act criminalising this practice needs to be introduced.

Contracts: contracts of employment should be translated into the worker's native language, especially in low-paid sectors such as construction and cleaning. Access to quality interpreting should be strengthened. In one case (known as the 'Good Concrete Case'), the Equality Tribunal required a construction company to pay €290,000 split between 58 of its foreign employees for failing to translate its contracts of employment and various health and safety documents. In this case, the foreign workers had successfully claimed discrimination on the basis of the higher salary received by an Irish employee who had received a contract in his first language.

Combating racism, discrimination, bullying and harassment: there is a need for implementing strategies that actively target, monitor and address racism and discrimination in the labour market. A lack of formal channels to resolve bullying cases persists. Legislation on harassment (including sexual harassment) is outlined in the Employment Equality Acts, but procedures are not clear and need to be imposed through lawsuits, which are very often too expensive for the migrant worker.

Access to information and advocacy: all participants present during discussion agreed that all NGOs, trade unions, church groups and other community groups in Ireland should provide advocacy and legal information services to more migrants with a limited command of English. This could be implemented through for example providing services in the workers' native language and also in integrating migrant worker issues as part of these institutions'

broader agendas. Many are working in sectors with poor trade union representation and most will not be able to afford the services of a private solicitor. The role of information and advocacy services such as Together-Razem Centre is vital and they require ongoing support to develop their capacity.

Awareness and Support: Most interviewed participants admit that although they do know their rights now, they would not know how to apply them, despite having lived and worked in Ireland for several years. Several mentioned that they would not know where to seek help. Some of those who experienced direct violations still do not want to raise their voices fearing the loss of their job. Out of ten participants who experienced labour exploitation, only three are involved in a legal procedure against their former employer (with unclear chances of winning the case). Migrant workers must be supported in navigating the various struggles for their rights.

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ABOUT TOGETHER-RAZEM CENTRE

In the Together-Razem Centre, which is in operation since 2006, our services are directed mainly towards the Polish Community and also other Eastern European nationals, such as Slovaks, Czechs, and Lithuanians living in County Cork. Our main aim is to provide services for migrants experiencing adaptive problems, which can result from a variety of factors: language barriers, cultural differences, ignorance of the Irish law, new living conditions, isolation, and the lack of family support. Among our regular services is the Social Information & Legal Clinic, where we provide legal assistance in cooperation with Irish solicitors. In 2015, we provided support to 1163 persons and legal assistance in 174 individual cases. These cases were primarily of Polish migrants who experienced various legal violations, including exploitation by their employers as well as general discrimination at work.



Co-funded by the
Europe for Citizens Programme
of the European Union

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2016

LABCIT Project Website: www.migrationonline.cz/labcit

Editor: Adriana Qubaiová

Graphics Designer: Michaela Padrtová

