

Public Consultation – Legal Migration by non-EU citizens

Fackligt Center för Papperslösa's (The Trade Union for Undocumented Migrants, hereinafter The Centre) contribution to the public consultation regard the Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. For this purpose, the opinion concerns long-term residents, who are exercising their right to reside in a second member state in coherence with Article 14 in the directive 2003/109/EC (hereinafter "long-term residents or LTR:s"). In this respect with focus on the exploitation of long-term residents on the Swedish labour market.

The Centre helps long-term residents at the organisation's open receptions. Through our work with labour rights relating to the long-term resident target group, we have recognised how the legal framework of the directive provides for a dependency between the LTR:s and the employers which obstructs the achievement of the objectives of the legal migration *acquis*.

Labour Rights and Directive 2003/109/EC

The purpose of Directive 2003/109/EC, as stipulated in recital 2, is to strengthen the legal status of long-term residents within the union so that they, to the furthest extent possible, enjoy the same right as EU-citizens. Furthermore, article 11.1(a) of the Directive stipulates that long-term residents shall enjoy equal treatment with nationals as regards access to employment. According to article 21 however, before long-term residents can claim such a right to equal treatment within a secondary member state, they must be provided with a residence permit. In accordance with article 14.2(a) employment can be used as a ground for residency in a second member state. Consequently, for job-seeking long-term residents equal treatment, with regard to access to the labour market, is de facto conditioned by employment.

By conditioning the possibility to invoke equal treatment with employment, it allows for a situation where long-term residents are dependent on employers so as to enforce the rights provided for by the directive. From the Centre's experience such dependency, in many cases, leads to exploitation of the worker. In our receptions we meet long-term residents who are being subject to exploitation such as being payed low salaries incompatible with collective agreements, who work in conditions that does not fulfill standard safety regulations or with employment contracts that are invalid with consideration to Swedish labour law. Even though the directive does not specifically regulate labour rights, the job-seeking long-term residents dependency on the employers, which is provided for by the legal framework of the directive, does limit the possibility of LTR:s to question the lack of labour rights in relation to an employer.

In addition, since long-term residents cannot invoke equal treatment, with regard to access the labour market before enjoying a residence permit, they are being excluded from taking part of governmental agency placement services. This being so, in conjunction with employment as a legal ground for residence, long-term residents are often left out to rogue employers in order to find employment.

Furthermore, long processing times at the Swedish Migration Agency enhances the dependency of long-term residents to their employers. The processing times at the Migration Agency are as of now far exceeding the time limit as stipulated in article 19 of the directive. Sometimes processing times reach up to 18 months. This adds to the LTR:s dependency on the employer because if the appointment ends at any time during this period, then by consequence also the legal ground for residence ends. Notwithstanding any extra administrative pressure that might be burdening the Swedish Migration Agency due to the high influx of migrants to Sweden during 2015, the long processing times provides for an increased insecurity and dependency on employers for long-term residents.

As it follows from recitals 4 and 12, the purpose of Directive 2003/109 is to further the integration of third country nationals who are long-term residents within the Union's member states. Seen in the context of the overriding objectives of legal migration, i.e. to effectively manage legal migration flows while providing fair treatment to third-country nationals, long-term residents dependency on their employers cannot be considered to be compatible with the legal migration *acquis*.

Therefore, for the purpose of the Commissions review of Directive 2003/109/EC, the Trade Union for Undocumented Migrants requests that the Commission take into consideration the consequences the legal framework of the directive has on the possibility for long-term residents to invoke labour rights.

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