



**THE TREATMENT OF POLISH AND OTHER A8 ECONOMIC  
MIGRANTS IN THE EUROPEAN UNION MEMBER STATES**

**A research programme prepared for**

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## **NOTE**

Pascal in his "*Pensées*" said "*Le moi est haïssable*"!

I am in total agreement with this saying hence the reason why, throughout this Report, the third person singular is used. Two exceptions have been made, however, where I use the first person singular. The first one is in the part of the Report entitled 'Terms of Reference'; the second is in the 'Acknowledgements' part. The reason for these two exceptions is that since the Commissioner for Civil Rights Protection of the Republic of Poland has commissioned me personally to carry out this work, it is fitting that this part which treats the terms of reference should be personalised. The same is true with regard to the Acknowledgements which expresses personal gratitude to all those who contributed, in their different ways, to making this ambitious and complex research programme possible.

## **TERMS OF REFERENCE**

### **The Treatment of Polish and Other A8 Economic Migrants in the European Union Member States**

On 6<sup>th</sup> March, 2006, I was invited by the Commissioner for Civil Rights Protection of the Republic of Poland, Dr. Janusz Kochanowski, to carry out a major, complicated and ambitious European research programme.

The relevant part of the commissioning letter, referenced: RP0 526052/06/VIII, reads as follows:

“For quite a long time now, Polish press has reported cases of alarming as well as inadmissible practices to which Polish citizens fall victims when trying to find a job or while working in the European Union countries. This is affirmed by letters directed to my Office. This problem is in the centre of my attention.

In my opinion, the issue requires thorough investigation as well as decisive steps aimed at preventing such practices from being spread. It is necessary to determine the legal status of Polish workers in the EU countries in the light of the European law and possible actions to be taken in order to protect their rights.

Would you agree to prepare a proper expert opinion for the Polish Ombudsman and would you consider organising an international conference on the subject in Warsaw?”

On 13<sup>th</sup> March, 2006, I replied to the effect that “I shall be pleased to prepare an expert opinion for the Ombudsman of the Republic of Poland concerning the abuse of Polish workers in the ‘old’ countries of the European Union and particularly in the United Kingdom, Ireland and Sweden which have adopted an open door policy to the new A8 countries’ workers... I shall be pleased to organize a European conference in Warsaw”.

### Extension of the research programme

In a letter dated 8<sup>th</sup> June, 2006, the Commissioner for Civil Rights Protection of the Republic of Poland suggested to me that this research programme should be extended to the other A8 countries which joined the European Union on 1<sup>st</sup> May, 2004. The relevant part of that letter states: “The scale of infringements of the rights of Polish workers by employers abroad and by employment agencies mediating in the employment process is so great that it is hard to believe that it only affects Polish citizens. In my opinion, if only because of the fact that the parties engaged in these labour relations are citizens or subjects of various countries, the problems that have arisen in the course of these relations make this a European problem. This is testified to by the variety and scale of the infringements of employees’ rights. It seems to me therefore, that it would be expedient to become acquainted with the scale of this problem, also in other regions of Europe.”

This letter was confirmed verbally by the Commissioner during the first conference held on the topic at the Palace in Radziejowice on 3<sup>rd</sup> to 5<sup>th</sup> October, 2006, where progress of the research programme was examined and where a number of preliminary issues were raised.

I accepted readily, and welcomed, the Commissioner’s suggestion that the research programme should be extended to economic migrants of each of the seven remaining Central and Eastern European accession countries which acceded to the European Union on 1<sup>st</sup> May, 2004.

The advantages of this extension are fourfold. First that the research programme would focus on a wider range of economic migrants; second, that the research would cover all of the eight accession countries, thus, giving a more complete picture of the issues under discussion. Third, the treatment of economic migrants would cover a wider range of exploitative and abusive practices meted by a wider range of unscrupulous agencies and employers which would, in turn, allow for a more realistic and balanced approach to be taken with regard to this research programme. Fourth, this research programme itself would be more meaningful and richer in quality in that, in addition to the Republic of Poland, it would address the treatment of economic migrants’ issues in the other seven Republics. This would constitute a bonus to those

other States in that they will be made aware of the problems which exist in respect of their own respective economic migrants.

The research programme title has thus been amended from the original version to reflect this extension. The amended title being: “The Treatment of Polish and Other A8 Economic Migrants in the European Union Member States”.

### An implication

It was stated above by implication that the Commissioner requested, in his terms of reference, a research programme which covered the treatment of A8 economic migrants in each of the twenty five European Union Member States (as the situation was in 2006). The word ‘implication’ is used judiciously in that the real problem of exploitation exists mainly in the ‘old’ EU 15 Member States. Bearing in mind that exploitation also occurs in, or is connected with, A8 Member States, flamboyant examples being the European cases of *Laval un Partneri Ltd. v Svenska Byggnadarbetareförbundet* and another - Case N° C-341/05 and *The International Transport Workers’ Federation and the Finnish Seamen’s Union v Viking Line ABP and OÜ Viking Line Esti* – Case N° C- 438/05 of May 2007, discussed briefly in, and annexed to, this Report, I thought it prudent and desirable, for reasons of completeness, to extend the research to the A8 Member States, thus making a total of twenty five European Union Member States.

Bulgaria and Romania which joined the European Union on 1<sup>st</sup> January, 2007 are not included in this research programme although they do receive the occasional mention. Their exclusion is necessitated for two reasons: First, that at the time this research was commissioned, these two countries were not Member States of the European Union; second, that it would have been too early subsequent to their accession, to enable me to reach any meaningful conclusions, on their respective economic migrants’ treatment in the other European Union countries bearing in mind that some European Union countries, for example, the United Kingdom, have not granted them free movement of workers’ facilities.

### A team

It will readily be noticed that for one person to carry out single-handed a research programme of such magnitude involving the whole of the twenty five Member States would be a physically and humanly unachievable task to complete in the period allocated. The research could not have been ready within the time limits agreed with the Commissioner, namely 31<sup>st</sup> August, 2007, (a period of one year and five months) if I were to be the only researcher. Additional assistance had therefore to be sought.

It is with this in mind that I approached, - with the Commissioner's consent, - a group of authorities in the European Union Member States who have expertise in, *inter alia*, human rights law, labour law and immigration law in their respective countries. Fifteen such experts were eventually selected, - the selection having been a careful one, - to act as Correspondents for their respective countries. Correspondents' names, their institutions (where appropriate) and their country will be found in the list of Correspondents.

It has not been possible to find suitable correspondents from the following countries, namely, Austria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Luxembourg and Slovakia.

This does not mean that these nine countries are not represented in this research programme. Enough academic and research materials and government documentation from the respective countries were found to enable me to prepare this Report. In addition, the substantial correspondence I had with individuals, government officials and Ombudsmen from the respective countries proved to be an added bonus.

All Correspondents were sent a *modus operandi* by way of an Aide Mémoire which is attached to this Report as Appendix 'A'. This document being self-explanatory does not need its contents to be highlighted, suffice to explain that the Aide Mémoire was drafted and sent to Correspondents before I knew (in June and October 2006) of the extension of this research to cover the other A8 States (see above). Correspondents were, of course informed of this extension by e-mail.

Correspondents were requested to have their national reports ready by 30<sup>th</sup> March, 2007 to give me enough time to peruse and digest their materials and to include

relevant parts of their reports in this Report by the submission date of 31<sup>st</sup> August, 2007.

### Reasons for this research programme

It will be recalled that this research programme was commissioned as a recognition by the Commissioner that there was a dearth of anecdotal information through the media and elsewhere in relation to the exploitation of economic migrants from Poland and other A8 countries. This anecdotal information raised a number of issues which needed to be examined, verified and confirmed. Research was therefore required to answer hitherto unanswered questions.

Economic migrants, according to anecdotal information, are reputed to receive ill-treatment from their agencies and/or employers in the host countries; to encounter problems relating to their employment; to be paid meagre wages; to experience breaches of contracts of employment (where they exist); etc... Because of their weak language skills and lack of information regarding the employment rights in the host country and ignorance of local knowledge, they become vulnerable workers and thus are more prone to exposure to exploitation and abuse by the employer or agency. All these factors, and others, prompted the Commissioner to commission this research so as to verify and confirm if that anecdotal information had in fact any substance.

The objective I set myself was to establish whether or not the anecdotal information “held any water”, or whether it consisted of “words writ in water” and therefore media and other forms of sensationalism. The main aim of this research was to examine the anecdotal allegations made and, if true, to examine the background and scale of abuses, the undertakings in which they occur and the reasons behind these occurrences. Thus, a number of factors had to be analysed, such as existing problems inherent in A8 economic migrants’ employment, access to public services, discrimination, social housing, employment rights, legal status, homelessness, accommodation, etc... Once it was established that concrete evidence existed of such “irregularities” taking place, then, the aim would be to examine more closely (but briefly) their source and background before formulating recommendations asked for by the Commissioner.

The whole exercise has been a challenging and rewarding one. It is hoped that the recommendations made in this Report will be carefully studied by all concerned and put into effect. Putting into effect the recommendations made would be a way of obtaining a humanitarian solution to the current exploitation of Polish and other A8 economic migrants.

### Deliberate omissions

There are many deliberate omissions in this Report!

It may be asked why I have not entered more closely and deeply into scholarly discussion in such matters treated in this Report, as the economic migrant workers' routes to employment (Chapter III); the legal status of the economic migrant (Chapter IV); the economic migrants' rights at work (Chapter V); statistical information (Chapter VI); the consequences of A8 economic migration (Chapter VII); the reverse side of the exploitative coin (Chapter IX); and so on. Furthermore, why have I not treated other peripheral issues connected with matters discussed in this Report?

My answer is twofold: First, that I was conscious of the limitations of space in keeping this already bulky Report to a manageable size; second, that I wished to focus on the terms of reference which constitute the important issues which needed to be developed and analysed in the Report, namely the exploitation and abuse of A8 economic migrants (Chapter VIII) and the Recommendations (Chapter X) asked for by the Commissioner. Therein, will be found an analysis of the "*solar plexus*", as required by the terms of reference.

It seemed to me that exploitation and recommendations are far more important and problematic than any of the issues discussed in the other chapters. These other chapters serve as a support, a background and an explanation/amplification, all of which merit a simplified reference, while attempting to keep the exploitation and recommendation chapters constantly in the foreground.

The scholar who wishes to acquire a deeper knowledge of the topics treated in the "supportive" chapters is referred in the footnotes to authoritative texts, jurisprudence,

codes, statutes, reports, opinions and other materials. These should satisfy in part his/her thirst for such knowledge.

It appeared to me that the method chosen would solve all the problematic issues raised by this ambitious research programme, namely: (a) the issue of keeping this Report to a manageable size; (b) the issue of focusing on the relevant matters as required by the terms of reference; and (c) the issue of giving the scholar the opportunity to consult additional materials, thus enabling him/her to acquire in-depth knowledge in the given topic.

Whether or not this thinking (a) is objective and (b) has been achieved will need to be answered by the reader! His/her indulgence is begged! “To be totally understanding makes one very indulgent” said Madame de Staël in ‘Corinne (1807) Bk. 18, Ch. 5.

**List of Correspondents**  
**involved in the research entitled**

**“The Treatment of Polish and Other A8 Economic Migrants in the European**  
**Member States”**

1. Professor Alessandro Anastasi      Vice-Rector,  
University of Messina.      Italy
2. Professor Maria Amparo Ballester-Pastor      University of Valencia and the Balearic  
Islands      Spain
3. Dr. Annika Burman      University of Dalarna      Sweden  
(Assisted by Dr. Kristina Lundberg)
4. Professor Jo Carby-Hall      University of Hull      Poland
5. Professor Jo Carby-Hall      University of Hull      United  
Kingdom
6. Professor Antonio Monteiro Fernandez      University of Lisbon      Portugal
7. Breda Gray *et al.*      Republic  
of Ireland
8. Dr. Ágnes Hárs, Dr. Judith Tóth and Julia Tráser      Hungary
9. Professor Antoine Jacobs      University of Tilberg      Netherlands
10. Professor Yota Kravaritou      University of Thessaloniki      Greece
11. Dr. Philippe Martin      CNRS, COMPTRASEC  
Université Montesquieu  
Bordeaux IV      France

- |   |                                    |          |
|---|------------------------------------|----------|
| 12. Dr. Gabriella Pace                    |                                    | Malta    |
| 13. Professor Bogumila Plachtej-Pavlin    |                                    | Slovenia |
| 14. Professor Pascale Vielle              |                                    | Belgium  |
| 15. Professor Dr. Dres h.c. Manfred Weiss | University of Frankfurt<br>am-Main | Germany  |
| (Assisted by Mr. Christoph Gyo)           | University of Frankfurt<br>am-Main |          |

## ACKNOWLEDGEMENTS

Without the assistance given to me by innumerable *legal personae* and natural persons, this ambitious research programme would never have been realised.

The number of persons and bodies who have given me assistance is so great that it would be an impossible exercise to name each one of them. The footnotes in the chapters of this Report bear testimony to *some* of these persons and bodies.

Collectively, they include a variety of embassies; consulates; Ombudsmen and government departments in numerous European Union Member States; the European Commission; the European Court of Justice; the European Court of Human Rights; Non Governmental Organisations (NGOs) specialising in homelessness in various European Union States; Citizens' Advice Bureaux (CAB); job centres and police forces in the United Kingdom; social security offices in some European countries; the Advisory, Conciliation and Arbitration Service (ACAS); the Central Arbitration Committee (CAC); the Gangmasters Licensing Authority (GLA) - all in the United Kingdom; and the 183 "silent witnesses", as I have come to call them, consisting of economic migrants from Poland, Latvia, Lithuania, Slovakia, the Czech Republic, Hungary and Estonia, working in the United Kingdom, whom I interviewed, experiencing great difficulty in doing so because most of them were unwilling to describe their experiences and/or give their names for fear of repercussions from unscrupulous gangmasters, employment agencies and employers. In this respect, I wish to acknowledge the assistance given to me by BBC 1 television, BBC Radio Humberside and Lincolnshire, Radio Viking and Radio Orla, as well as some newspaper reporters.

I wish to acknowledge the assistance given to me by a number of authors, in the United Kingdom and other European Union countries, who have published in fields relevant to the terms of reference of this research programme. Their scholarly articles and books have been a source of inspiration and enlightenment to me, enabling me to enrich the Report through a better understanding of a variety of issues and concepts in the fields of national and European laws and policies, and immigration issues.

The ETUC, UNICE and CEEP at European level and the British TUC and CBI have all been helpful in answering a variety of question asked.

In addition to the above, I wish to single out persons who have not only given me invaluable assistance, but who have shown an unsurpassed degree of loyalty, altruism, generosity and understanding at times when I needed most help and advice. In this respect, I owe a great debt of gratitude to each of my Correspondents, all of whom are named in the list of Correspondents above. Each of these has made exceptional efforts in supplying me information relevant to his/her country which will be found in the pages of this Report. Without their national reports, the contents of this Report would have been that much poorer.

My deep thanks and my gratitude go to Pamela Barnes, Jean Monnet Chair of European Political Integration at the University of Lincoln, who, not only referred me to important scholarly European materials but also supplied me with some of these. For a number of months, Pamela and I were corresponding on several occasions on a daily basis.

Diane Ryland, Senior Lecturer in Law at the University of Lincoln, with expertise in European Union Law has patiently read some of the materials which feature in this Report and advised me in some of the complicated, uncertain and discreet areas of European Community Law. Furthermore, I appreciate her assistance and support in the preparation of the final stages of this Report, namely the pagination, scanning of various documents and the writing of the Report onto a CD Rom.

I am grateful to Helen Williams for her time given generously in advising generally with the necessary information technology.

The Office of the Commissioner for Civil Rights Protection of the Republic of Poland has given me enormous administrative support with regard both, to this research programme, as well as to the organisation of two European conferences relating to this research. I was kept informed, at all times, of all administrative matters relevant to this programme. I wish to single out in particular Mrs. Barbara Kurach, Mr. Piotr

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Professor Bengt Nibelius of Dalarna University in Sweden has been instrumental in finding the Swedish Correspondent. My thanks are extended to him.

Mr. Daniel Vulliami, Senior Lecturer in Life Long Learning at the University of Hull and an expert in British industrial relations, has been invaluable in providing me with essential materials on key topics covered by this research programme and in advising me to contact specialists in the field.

The lengthy correspondence and four hour meeting I had with Mr. Ian Fitzgerald, a researcher in the field of migration, enabled me to become better acquainted with a variety of issues treated in this Report.

Last but not least, I applaud Michèle Robillard for her generous offer to word process the whole of this report. In spite of her very busy work schedule, she has made super human efforts to word process the materials to an exceptionally high degree of accuracy making my proof reading task that much easier. Her patience is unsurpassed, especially since she had to wade through untidy manuscripts and numerous inserts and inserts to inserts! Her dedication, devotion to duty and her loyalty have all gone well beyond the bounds of reasonableness.

To all those singled out above, I extend my gratitude, my deep appreciation and my warmest thanks. None of the above persons or bodies is, of course, responsible for any omissions, mistakes, inaccuracies or for anything in this Report which displeases or offends. For all these imperfections I take full responsibility and apologise in advance!

Jo Carby-Hall