

The Swedish labour migration system - challenges and new solutions

Seminar: L'immigration économique au-delà des norms

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The Swedish labour migration system



- The most open labour migration regime within the OECD
- Outline for today is:
 - Characteristics
 - and
 - Consequences

The seminal year 2008

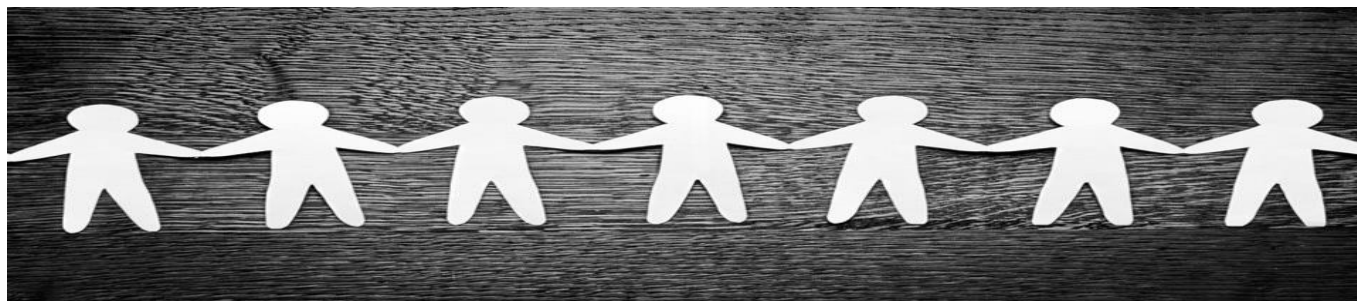
- Before
 - Strict control by labour market authorities and trade unions - shortage or not? – before entry
- After
 - The single employer decides



Aim

- Facilitate labour migration
- Boost competitiveness

Characteristic



- A unified system – the same conditions for entry and stay for any kind of labour migrant

Entry conditions in the Aliens Act

- Offer of employment from an employer
- Including working conditions
 - (wage, working time , insurances)
 - at least corresponding to the level provided for in the relevant collective agreement or custom in the branch
- Why?
- Safeguard that unserious employers did not chose to employ TCN because they can pay them a lower wage

Conditions related to the work/residence permit

- All work permits temporary
- Max 2 years, can be extended to 4 years (6 years)
 - After 4 years permanent residence permit
- The permit restricted to one employer and one profession for the first 2 years
- Then possible to change employer but not profession

Consequences

Year	No of approved work permits
2007	≈ 8 000
2009	14 481
2017	15 552

The composition of the labour migrants

year	total	Berry pickers	Highly qualified	Low skill service sector etc
2009	14 481	7200	≈ 3000	The rest

A new composition of this labour force

- Three distinct groups
- Berry pickers
- Low skilled service sector (cleaning, restaurant, hotel)
- Highly qualified workers (IT-sector)

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26/03/2018 /Name Name, Institution or similar

Similar exploitation reported

- Chinese chefs
- Cleaners from Uzbekistan
- Construction workers from Ukraine etc

Something had to be done

- A seriousness check
- In 2010/2011 the Migration authority initiated control/screening of the employers before approval
- In the sectors most prone to exploitation
 - Berry picking, cleaning, construction, temporary agency workers etc....

Effects

- The total number of labour migrants decreased
- AND

• Year	2009	2010
• Berry pickers	7200	4500

Problems continued to occur

- The required working conditions in the Aliens Act was not upheld?
- How to deal with this situation?

Interaction migration law/labour law

- It is well known that migration law can lead to vulnerability, which leads to exploitation
- If the right to stay and live in a country is depending on an employer's will to employ you it is not likely, if you are eager to stay in this particular country, that you will enforce rights entitled to against the employers will
 - (B Andersson, J Fudge, C Costello/M Freedland ...)

Loss of permit

- Before 2014
 - If the labour migrant had not started the offered work four months after arrival
 - If the labour migrant lost the offered work
- The problem
 - The aim behind the entry condition on Swedish working conditions was not upheld
 - The offer was not a binding employment contract and new conditions could be agreed on after arrival → exploitation/violation of entry condition

How to solve the situation?



The solution

- Failure to apply the prescribed wage etc →
- Withdrawal of permit to stay and work in Sweden
- Denial of extension
- Denial of permanent residence permit

What about balancing the risk here?

- The employer's risk
 - Loose a valuable worker
- The employee's risk
 - Loose the right to stay in Sweden including the possibility to earn the expected income

The view on this solution

- Public opinion
 - Unfair
 - No incentive for the employer to stick to the rules
- Legal arguments
 - In all EU-directives on TCN i.e Blue Card, seasonal workers and ICT a proportionality principle should be applied in withdrawal cases
 - Was or was soon to be transposed to Swedish law

Reaction.....

- An inquiry appointed
- Meanwhile a disputed case entered the Supreme Migration Court in December 2017
- A pizza baker Danyar Quadir had been working in Sweden for 24 months, during 4 months his wage was 45 euro below the level in the collective agreement → expulsion
- The Migration Supreme court changed its previous position and introduced a proportionality principle for withdrawal, denied extension etc

Remaining problems

- More risk allocated to the employer
- Inquiry proposal
- Criminalize intended exploitation
- Heavily criticised

Alternative solutions

- EU-law again
- The seasonal workers directive, art 17
- Withdrawal-employer liable to pay compensation
– meaning – any outstanding obligations which
the employer would have to respect if the permit
had not been withdrawn

Two solutions

- 1) Seasonal workers – a new law transposing art 17
- 2) For the rest a new proposal (Feb. 2018)
 - During the same circumstances the employer must pay compensation for the wrong endured
 - Not economically based – up to 7500 euro

Effects of the measures taken

year	total	Berry pickers	Highly qualified	Low /medium skilled service sector
2009	14481	7200	≈3000	≈3000
2010	13612	4500	≈3000	≈5000
2014	12094	2855	≈4500	≈4000
2017	15552	3043	≈6000	≈6000

Effects of transposing the EU-law acquis on TCN-workers

- The unified system disrupted. Three new chapters in the Aliens act,
- one for EU Blue Card,
- one for seasonal workers and
- one for ICT

Remaining challenges

- Decision making processes very long
- The connection to one employer during the first two years
- The given temporariness
- The increasing number of roads to permanent residence permit in Sweden for asylum-seekers through work – a number of unanswered questions

- Thank you for listening!