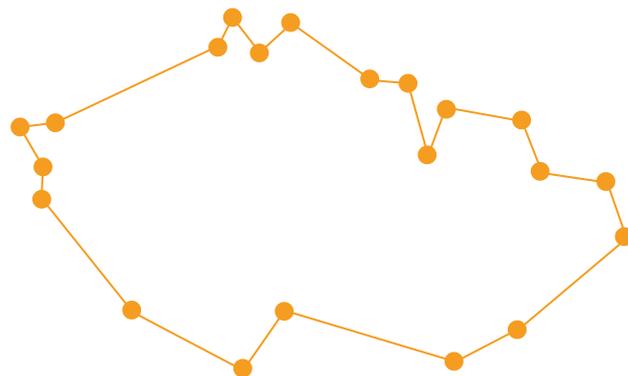




COUNTRY STUDY



CZECH REPUBLIC

Enhancing Economic Democracy for Posted Workers: The Case of Czech Republic

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This paper will address the issue of cooperation of social partners in enforcing the labour citizenship of posted workers. Labour citizenship “is the specific manifestation of citizenship rights in the workplace, which contests the commodification inherent in deregulation and marketization of labour” (Lillie, 2016, pp.2). This basic set of rights that stems from labour citizenship must be enforced and supported by social partners, such as trade unions, work councils or non-governmental organisations (NGOs) to be effective.

This paper will firstly describe the support structures provided to posted workers by unions and NGOs. Secondly, we will briefly introduce the possibilities of claiming labour rights of posted workers. Thirdly, three chapters on cooperation will follow, focusing on the cooperation of domestic authorities, transnational cooperation of trade unions/work councils and social partner’s cooperation in the area of social and wage dumping.

As the category of “posted workers” is very wide and consists of workers posted to the Czech Republic and also Czech workers posted to foreign countries, we are not able to provide exhaustive information on the issue. This paper will limit itself mostly to the situation of posted workers coming to Czechia.



Mapping local, regional and national union and other support structures of posted workers; Social partner initiatives – rights and information for posted workers

According to the number of issued A1 forms, 22 743 workers were posted to the Czech Republic in 2016 (most coming from Slovakia and Poland) and the numbers are growing every year. Majority of the workers posted to Czechia is employed in the sector of construction or industry (De Wispelaere and Pacolet, 2018). These numbers include only the “legal posting”. However, the phenomena of migration of Ukrainians to Czechia through so-called Polish visas (Schengen or national D types of visas issued mostly by Poland) amounted to around 7 000 at the beginning of 2017 as based on statistics of the Ministry of Labour and Social Affairs (Čaněk et al. 2018: 29). The position of these workers is different from the workers posted through legal posting practices, mainly because of their semi-legal or illegal status¹.

In general posting of workers has been a relatively marginal issue for the Czech trade unions from the point of view of its impact on the Czech labour market. On the other hand, the unions and especially the main confederation – the Czech-Moravian Confederation of Trade Unions (ČMKOS) – has been vocal about its support of the “equal pay for equal work” principle in posting (see the part on Fight against wage and social dumping below). The Czech trade unions have mainly favoured a regulatory approach to migrant workers (including posted workers) present in the local labour market in general. This means relying on the regulatory functions and capacities of various state institutions (e.g. referring cases of labour rights’ violation to the State Labour Inspection) and the legislation (Čaněk 2017).

Collective bargaining has been mostly happening at the company level, which is related to the post-1989 trend of decentralisation and fragmentation of Czech trade unions (Myant 2010). As of 2018 there were five sectoral collective bargaining agreements (CBAs) valid for employees in agriculture, construction, glass and ceramics, textile as well as transport². These “extended” CBAs provide coverage to employees of all employers in these sectors even if there is no trade union present with the particular employer. However, not all sectoral CBAs negotiate wage levels and therefore leave this to the company level bargaining. Posting as such is usually not mentioned specifically in the sectoral CBAs with some exceptions. For example the sectoral CBA for the construction sector provides specific protection of workers posted out of the country in case of accidents³. The revised directive on posted workers adopted in June 2018 should broaden the applicability of collective agreements to posted workers when effective (Posting of workers, 2018).

Trade unions do not consider including posted or temporary workers into the unions. And as such, they do not have any programmes specifically for these workers. Company trade unions usually function within the boundaries of the particular company meaning they do not actively reach out to workers employed by other employers even if these work in the same workplace. Core workers themselves sometimes complain about what they see as preferential treatment of temporary agency workers (e.g. provision of lodging, travel allowances) (Štich 2018: 41) and thus help maintain a boundary between “domestic” and “migrant” workers (Silver 2003). Moreover, the interest from the side of posted workers is also low. There is a lack of politicisation of work and socialisation into unions and collective struggles at work in both Czechia but also in sending countries. The union density rate is not only low in Czechia (around 17 %) but

1. More information about this issue can be found in previous PROMO Country Study: http://www.solidar.org/system/downloads/attachments/000/000/778/original/TNC_Report_-_Country_Study_Czech_Republic.pdf?1527502287   
2. <https://www.mpsv.cz/cs/3856>.
3. See Art. 48, https://www.mpsv.cz/files/clanky/3856/0042016-76682_-_Stavba-KSVS.pdf



also in main sending countries of posted workers – the reported union density in Slovakia is 13% and in Poland 12% compared to the average of 23% union membership in the European Union (ETUI, 2016). Ukrainians, as another major group of posted workers in the Czech Republic, do not often have trust in official institutions or believe in solidarity: “the principle of social equality has no perspective in Ukraine, people do not believe in it” (Makhynko cited in Fedyuk and Volodko, 2018: 31). Consequently, neither the contacted trade unionists, nor the EURES representatives knew about any instances of posted workers claiming their rights or contacting them with complaint.

In Czechia, posted workers face additional barriers such as language barrier and most probably insufficient information about the function and the possibility to join the unions. The fee for membership might constitute another barrier, as Danaj and Sippola (2015) argue, nevertheless the fee is rather low (usually set at 1 per cent of net wage). However, the charge for membership in the unions needs to be perceived in connection with services of NGOs, which provide legal and social consultations for free.

The amount of information in foreign languages provided by individual trade unions varies. The ČMKOS provides information leaflets in Mongolian, Bulgarian, Romanian and Ukrainian.⁴ These leaflets do not target posted workers specifically and contain limited practical information on unions as such. It is possible to find for example information about the minimum wage but also about the role of trade unions in collective bargain in the Czech Republic. However, information about ways of joining unions and other practical information is scarce as mentioned earlier. Only some sectoral unions provide information to posted (or migrant) workers. Thanks to the EFBWW (European Federation of Building and Woodworkers) website - www.constructionworkers.eu - there exists

information for construction workers in every EU country including in Czechia including a contact to the local union, which is able to provide consultation in Czech and English.

ASO (Association of Independent Unions of the Czech Republic), the second biggest trade union confederation after ČMKOS, does not provide any information in foreign languages on its website, www.asocr.cz.

More specific and extensive information in foreign languages (Ukrainian, Russian, Romanian, Bulgarian, Polish, and English) is provided by the Nové odbory - The New Union, which was established in 2016. This trade union also explicitly states interest in including everyone, irrespective of their nationality or citizenship.⁵ Moreover, Nové odbory also offers the possibility of an individual membership. In practice there is a low membership of migrant workers in the union.

Historically NGOs have had an important role in the social integration of migration workers in Czechia. Unlike trade unions they are in more regular contact with posted workers (especially the semi-legal Ukrainian workers with so-called Polish visas) facing a labour rights' violation, residence or other social issue. Based on our information even NGOs meet posted workers, however, rarely. There are a few possible explanations: first, much more important for temporary migrant workers working in low-skilled jobs are intermediaries providing all kinds of services (employment, residence, and/or dormitories); second, Ukrainian workers wishing to legalise their stay in Czechia have limited possibilities to do it once residing in the country and thus NGOs can provide only some legal assistance in this primary need; third, workers may have little or no information about the existence of NGOs assisting migrant workers even if some of the NGOs are active in addressing workers in dormitories and other places where they regularly spend their time.

4. Find the information for foreigners here: <https://www.cmkos.cz/obsah/771/zahranicni-zamestnanci>

5. Their policy statement in English here: <https://noveodbory.cz/images/Policy-statement.pdf>

Claiming labour rights for posted workers

The main institution that posted workers can turn to in case of labor rights violation is the State Labour Inspectorate (SUIP). Although the SUIP does not have its own interpreters on its website it provides basic information in foreign languages (French, Polish, Ukrainian, German, Bulgarian, Romanian, Vietnamese, Russian) about the rights of workers in the Czech Republic; some language mutations include also a document about the rights of posted workers specifically and a link that redirects the reader to a form where they can fill in a complaint in case of labor rights violation (in Czech only). The possible barriers in using this electronic complaint form might not be limited to the language but also the complexity of the form, insufficient information about this complaint mechanism or possibly fear from using it in case of labour rights violation. The SUIP also cannot enforce the rights of individual workers, i.e. in case of unpaid wage, the worker will have to sue the employer to be able to get the wage. However, that is a long and expensive process and the access to legal representation is for foreigners also limited. They might use an NGO lawyer or pro-bono lawyers (issue of limited capacity). The workers might have already returned to their country of origin by the time the legal process is opened (Qubaiová et al. 2016).

Apart from the support of NGOs, there are small informal networks migrants can turn to in case of rights violations, such as SOLIS Prague Solidarity Network (Trčka et al., 2018). The SOLIS Solidarity Network uses coercive actions, blaming and shaming and bad PR to claim labour rights for the employees that face exploitation. However, the cases when foreign workers turned to such volunteer solidarity network are rather rare (Trčka et al., 2018, Trčka a Moskvina in preparation).

Cooperation between domestic authorities (labour inspectorates, etc.), unions, works councils, NGOs

Unions and migrant assisting NGOs do not usually cooperate apart from specific initiatives. Although the interests or culture of these organisations differ, they can converge around the idea of equal conditions for everyone at the workplace. An example of cooperation is between the confederation ASO and Ukrainian Initiative in the Czech Republic within ASO's wider project focused on people disadvantaged in the Czech labour market.⁶

The SUIP sometimes cooperates with NGOs; communication channels and cooperation are usually developed between individual labour inspectors and social workers from particular migrant assisting NGOs. The SUIP has more experience in cooperation with trade unions but as there seem to be no posted workers included in trade unions, the cooperation is focusing on different domains.

Particular projects have been organised to support cooperation among the state authorities (including the SUIP), trade unions and NGOs, e.g. the Prevention of labour exploitation of EU citizens through innovations (focusing on Bulgarian workers in the Czech labour market)⁷ or Labour Citizenship project⁸.

Transnational Cooperation of unions/works councils

The transnational cooperation of unions⁹ includes mainly cross-border projects with neighbouring countries and membership or cooperation on European projects.

6. Information about the project is available only in Czech at: <https://www.asocr.cz/obsah/67/projekt-aso-v-roce-2016-uplatneni-obtizne-zamestnavatelnych/19374>. The report about employment of Ukrainians is available at: <https://goo.gl/qfKS4s>

7. https://portal.mpsv.cz/sz/zahr_zam/ukoncene-projekty/projekt_prevence_vykoristovani ▶▶▶

8. migrationonline.cz/labcit.

9. Works Councils are not mentioned here as they are rare in Czechia (Bittner 2018: 13).



As already mentioned, Trade Union of Building Workers (OS Stavba) is a member of the European Federation of Building and Woodworkers, which provides an information source for posted workers.

Several local trade unions (OS KOVO, OS TOK, OS ECHO, OS SKIP) are also members of IndustriAll. There is a system of cooperation between the members of IndustriAll concerning counselling to workers. If a Czech worker, who is a member of trade union in Czechia for example works in Austria, he/she can use the possibility of counselling in Austria without the need to become a member of the respective Austrian trade union, i.e. the counselling will be provided on the basis of his/her Czech trade union membership. The same mechanism applies for foreign workers coming to the Czech Republic, who are members of unions in their state that is part of IndustriAll. However, this cooperation is used more frequently in connection with Czech workers migrating to foreign countries (Čaněk and Kobová, 2016).

There exist a number of cross-border trade union projects. For example the ZUWINS project was realized with the cooperation of Austrian Trade Union Federation (ÖGB) and Czech-Moravian Confederation of Trade Union (ČMKOS). In pursuance of this project, free legal counselling was provided for Czech workers in the Austrian border region and in Vienna and organized free German lessons in the region. Similar initiatives were taken within the project EURES-Triregio and EURES Bavaria-Bohemia, which were targeted mainly at Czech workers travelling to neighbouring countries/regions.

Social Partner Cooperation – Fight against Wage and Social Dumping

ČMKOS has regarded posting as marginal in terms of numbers of both workers sent from and received in the Czech labour market. From the point of “social dumping” in the Czech labour market the ČMKOS has not been much concerned with posting

as a mechanism to undermine social and wage standards. For example the “posting” of Ukrainian workers through Polish companies/visas has not become connected much to the political debate on posting in the Czech context. This can be explained by the perception of Ukrainian workers on “Polish visas” in Czechia as mainly an issue of illegal temp agency employment and not a misuse of EU posting rules. In a similar vein the Czech Governmental report “Labour Mobility from the Czech Perspective”, which served as a basis for a policy debate on posting, also claimed that “the volume of posted workers in relation to other sources of potential social dumping in the Czech Republic has been negligible” (Chmelař et al. 2016).

Both the strategic documents for the years 2010-2014 (ČMKOS 2010) and the one for 2014-2018 (ČMKOS 2014) regarded posting as one of the areas to follow in view of potential changes of the legislation that could be detrimental to workers. The concrete proposals for a revision of the 1996 posting directive put forward by the EC in March 2016 were mostly supported by the ČMKOS. Importantly the ČMKOS’ endorsement of the principle of equal remuneration in the same workplace has corresponded with its larger attempts at faster wage convergence between Czech and Western European wage and with abandoning of Czech low-wage economic model started in the 1990s. In spring 2016 the ČMKOS was already one year into its successful “An End to Cheap Labour” campaign (Drahokoupil and Myant 2017).

The ČMKOS stood up against the positions on the posting revision initially set by the Ministry of Labour and Social Affairs as well as employers which both defended wage competition in posting as a legitimate business strategy in the EU labour market (ČMKOS 2017). Josef Středula, the ČMKOS chairman, criticised the then Social Democratic Minister of Labour and Social Affairs, Michaela Marksová-Tominová: “How come she does not



realise that she should defend the interests of Czech employees? With [her statement defending competitive wage advantage] she creates a category of second-class employees and supports the maintenance of Czech Republic's position as a second-rate state in the European Union" (Dostál 2016).

Wage convergence in the EU has remained tied with the Czech debate on posting of workers. While the then Czech coalition government has in principle supported closing of a wage gap across the EU member states, it has, however, remained wary of what it saw as „protectionist measures of more developed economies and pre-election [political] fights“ behind the EU debate on posting (RHSD 2017). The political positions of at least some “new” EU member states (including Czechia) on “equal work for equal pay” principle for posted workers and other elements of the posting revision have started to approach those of “old” EU member states especially throughout summer 2017 (Richard 2017). The Czech government representatives brought up an argument on wage disparities in the EU at the Salzburg meeting with the French President Macron, Austrian Prime Minister Kern and Slovak Prime Minister Fico. This time it was done in a way to broaden the debate on “social dumping” to include “export of dumping” by French and Austrian MNCs by paying low wages in Central and Eastern Europe (ČTK 2016).

At the sectoral level the most contentious has been the regulation of international road transport. The head of the ČMKOS affiliated Trade Union in Transport, Luboš Pomajbík, has been critical of the low wages of Czech drivers. Their guaranteed minimum pay is currently 89.20 CZK per hour (3.5 euros) on top of which drivers receive per diems and pocket money. Thus his union supports the betterment of wage and working conditions of posted transport workers, however, he has been aware of the uneasy negotiating position of the

subcontracted Czech driving companies based vis-à-vis their main customers. The Association of Road Transport Operators, ČESMAD Bohemia, claims that they have had a low profit margin, which does not allow for the payment of e.g. a German or French minimum pay. At the same time the Czech truck companies have been looking for a middle ground so that a level-playing field is established in the European market (e.g. tackling letter-box companies) because they have been facing growing pressure from companies further east. Also partly for this reason the volume of freight transportation in international road transport by Czech companies was down by 20 per cent in 2016 and estimated at down another 15 per cent in 2017 (Pavlíček, Čihák 2018).





Conclusion

Posted workers' rights are embedded in law which in theory secures their basic rights on Czech labour market. The legally posted Czech workers do not approach actively any organization, be it NGO, union or other informal institution and they are not actively approached by majority of those institutions as well. Posted workers and social partners thus remain "invisible" to each other to a certain degree.

Somewhat different situation in terms of communication with NGOs, is in connection with Ukrainian workers posted through Polish visas. The basic rights of this group of posted workers are not guaranteed as they fall into category of illegal work and their rights are often violated, leaving the workers unable to demand their rights because of their migration status.

In connection with the main topic of this paper, which is economic democracy and industrial citizenship and the cooperation of social partners to achieve these rights, the posted workers are facing substantial barriers. Their rights are not protected by Labour Inspection because its competence is limited and it cannot enforce individual rights (such as unpaid wages). Trade Unions are perceived as inaccessible and NGOs are contacted quite rarely by this group of workers. There is not sufficient cooperation among social partners on the issue of industrial citizenship rights enforcement. The reasons for this are various, ranging from wider structural context to individual inactivity or lack of interest.



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