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CRISIS OF WELFARE-BASED IMMIGRATION- THE CAUSE OF BREXIT?

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ABSTRACT

On March 29, 2017 the United Kingdom invoked Article 50 of the Treaty on European Union and officially confirmed her exit from the EU. The scheduled departure which was due on March 29, 2019 has been extended until April 12, 2019 and therefore the UK should immediately renegotiate her trade deals with EU and its Member States while organising the method of exit before the said extended period. Currently, discussions are under way between the UK and the EU in regard to the said process. The crisis of welfare-based immigration is one of the major concerns in these negotiations.

KEYWORDS: Immigration, European Union, Brexit, Treaty on the Functioning of the European Union, Free Movement of People

INTRODUCTION

During the past migrant workers within the EU had rights only to move freely to be employed while they had no access to social benefits. In *Centre public sociale de Courcelles v. Marie-Christine Lebon*, migrants did not have the right to receive social assistance benefits.¹ Later, in the Treaty of Maastricht signed in 1992 the principle of Free Movement of People (FMP) was introduced. This right was subsequently enhanced by the Directive 2004/38/EC.² Presently, it is one of the four freedoms provided by the EU enshrined in the Article 26 (2) of the Treaty on the Functioning of the European Union (TFEU).³

According to Article 45 (1) of the TFEU, freedom of movement of workers should be protected within the Union.⁴ Any type of discrimination relating to work, remuneration and other employment conditions on the grounds of nationality is prohibited.⁵ Although at the beginning there was no access to social benefits, subsequently, migrant workers and the students have become entitled to many benefits including social assistance benefits.

However, later in *The Queen, on the application of Dany Bidar v. London Borough of Ealing and Secretary of State for Education and Skills*⁶, the Court held that living allowances offered to students should be governed under EU laws and it should not be discriminated under any circumstance.

The EU had been enlarged on many occasions since its commencement. The 2004 enlargement was critical due to its adding ten States at once. Another three States had been added between 2007-2013. Due to this enlargement the

¹ [1987] ECJ Case 316/85.

² Directive 2004/38/EC of the European Parliament and of the Council 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

³ Treaty on the Functioning of the European Union (TFEU) 1957(as amended in 2007 by Treaty of Lisbon), art 26 (2).

⁴ *ibid* art 45 (1).

⁵ TFEU, art 45 (2); and art 18.

⁶ [2005] ECJ Case C-209/03.

problem of welfare-based immigration has become a key issue and therefore, the British have made many attempts to restrict it. Eventually, immigration reached a position that it could be no longer controlled while the only solution left was to leave the EU.

BENEFICIAL ASPECTS OF LARGE SCALE IMMIGRATION

Large scale immigration has brought in economic and social benefits to the UK. Immigration is beneficial to agriculture and commerce as it brings skilled workers into the UK and letting the British people to move anywhere else within UK and EU to work. Irrespective of nationality many immigrants have contributed to the economy of UK. Not only to British citizens, but large-scale immigration has brought in benefits also to every EU citizen across Europe. Even if a worker loses his job due to certain reasons he has a right to remain.⁷

In *Collins v. Secretary of State for Work and Pensions*⁸, a person was denied access to the job seekers allowance. The Court held that he was entitled to the said benefit as if he was a British national or national of a Member State. One such remarkable achievement in FMP is the university exchange programme which enables students to move across Europe to study in another member state without many restrictions. Due to the 'Schengen Agreement', these students could travel freely between Member States without being halted at internal borders for immigration tests or passport control.

The Court held In *European Commission v. Austria*,⁹ that there should be no type of discrimination against students who wish to pursue higher studies in another Member State. In addition, FMP motivates EU citizens to seek vocational training in Member Countries. In *Françoise Gravier v. City of Liege*¹⁰, Court held that having a common policy on vocational training is significant in order to improve the quality of work within Member States. In *V. J. M. Raulin v. Minister van Onderwijs en Wetenschappen*,¹¹ Court held that an EU citizen had the freedom to reside in any Member State throughout his vocational course.

Later, the Citizens' Directive No. 38 of 2004 has enhanced EU citizens' rights. According to Article 6 of the said Directive, Union Citizens and their family members accompanying with them have the right of residence on the territory of another Member State for a period of up to three

months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.¹²

In other words, once an EU citizen and his family members accompanying with him arrives in another member country, even if none of them have an occupation, they have a right to reside in that country for three months. Hence, only after three months the immigrant is required prove that he is likely to get a job or there is a risk of being deported by the Member State. According to Article 16 of this Directive, the workers who have resided legally for a continuous period of five years in the host Member State have the right of permanent residence.¹³

Furthermore, this Directive has reduced the harshness of restricting FMP based on public policy by adding a clear interpretation to that. According to Article 27 (2) of the said Directive, there must be a genuine, present and sufficiently serious threat to the state from a person in order to restrict his right to move based on public policy.¹⁴

THE NEGATIVE IMPACT

The welfare-based immigration has brought many issues to the UK as it affected public services including healthcare, education and housing-benefits. For instance, there is a substantial waiting list in hospital surgeries, etc. Since the total population of the UK could rise rapidly owing to immigration, the Government would be unable to provide equal services to all citizens. An argument could be advanced that jobs and houses are being taken by immigrants which would lead to British citizens to facing difficulties in finding employment and accommodation. For instance, there are many Romanian, Bulgarian and Polish citizens who had migrated to the UK and occupy at different levels of employment.

Since immigrants are claiming social security benefits at a large-scale, there is much possibility for a certain numbers of immigrants to abuse the system of benefits. For instance, in *The Queen v. Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen*,¹⁵ a person was in the UK for more than six month. Court held that he had reasonable time to find a job and therefore deporting him was considered valid.

In the afore-said matter, the European Court of Justice (ECJ) ruled that, 'it is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the

⁷ TFEU, art 45 (1) - (3).

⁸ [2004] EUECJ C-138/0.

⁹ [2005] ECJ Case C-147/03.

¹⁰ [1985] Case 293/83.

¹¹ [1992] ECJ Case C-357/89.

¹² Directive 2004/38, art 6 (1) & (2).

¹³ *ibid*, art 16 (1).

¹⁴ Directive 2004/38, art 27 (2).

¹⁵ C-292/89 [1991].

territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged'.¹⁶

One of the main issues is that, UK government is paying benefits to the children of immigrants, though some of these children do not live in the UK. This has cost a lot to the government. Even parents of a minor who is an EU citizen could claim the right of residence and migrate to UK as the minor is a dependent of theirs. Once they migrate, they could claim the social benefits. In *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)*,¹⁷ it was held by Court that Article 20 of TFEU should be interpreted as to mean that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the member state.

If the doors are open for the freer flow of Europeans, there can be more burdens on the public services, including National Health Services. For instance, in *Steven Malcolm Brown v. The Secretary of State for Scotland*,¹⁸ the Court held that paying living allowance to EU students has to be policed by the Member States and not by the Union as it has a significant impact on national economy. There are a number of cases where decisions have been made to restrict free movement of immigrants in terms of public policy, public security and public health. In *Yvonne van Duyn v. Home Office*,¹⁹ the Court held that restricting access of the person concerned based on public policy was correct. In *Regina v. Pierre Bouchereau*,²⁰ Court held that the FMP could be restricted based on public security if there were serious criminal convictions on a person. In addition, FMP does not apply to the jobs in the public sector.²¹

Article 18 of the TFEU says that, "within the scope of application of the Treaties and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited." The same principle is enshrined in Article 12 of the Treaty establishing the European Community (TEEC). In *Michel Trojani v. Centre Public d'Aide Sociale de Bruxelles (CPAS)*,²² Court held that a person in a situation such as that of the claimant in the main

proceedings is in possession of a residence permit, he may rely on Article 12 of the TEEC in order to be granted social assistance benefits such as the 'minimex'.

DESIRABLE REMEDIAL MEASURES

In order to solve the crisis of welfare-based immigration it would be necessary to limit the benefits of immigrant workers at least during a reasonable period of their work in the UK. Further suggestions could be made to restrict unemployment benefits paid to immigrants. Additionally, the UK should prevent paying child benefits to immigrants' children living outside the UK. The laws should be prepared to prevent marriages conducted by illegal immigrants. Migrant criminals should be deported with immediate effect. If these proposals were to become a reality, then FMP will become less controversial at the time of quitting trade agreements with the EU by 12 April 2019.

There is lack of control of immigration. The UK Independent Party (UKIP) has campaigned during the referendum on their main theme 'leave the EU to regain control over migration policies'. Sometimes deporting people due to various reasons have become difficult because of fundamental rights applicable uniformly throughout the EU. Hence, immigration policies must be made with the consent of the British people, giving more control to them rather than adhering to EU Directives agreed by other countries. In other words, such policies need not be policed by the Brussels Commission or need not be adjudicated by Court in Luxembourg.

CONCLUSION

The welfare-based immigration crisis tends to assume serious proportions. Unless precautionary measures are taken diligently by the British Government to minimise the malefic effect of the large scale immigration, this could lead to straining of good relations among those involved nations. The reputation of the UK would be at stake if adroit measures were not implemented to prevent this problem from getting aggravated.

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