

Two practical cases of the National Labour Inspectorate: Infringements of employee rights – Posting to Belgium

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Case 1

1. Overview

Signals sent to National Labour Inspectorate (NLI) by the Polish Police Force and an employee of the Polish Embassy in the Kingdom of Belgium (**the case with characteristics typical of human trafficking for forced labour**).

The case concerned employees posted by the Polish employer in the framework of the provision of services to work in three companies producing mushrooms in Belgium.

2. Findings and reported irregularities

- The workers were supposed to work **20–22 hours** per day
- Employees were only paid **advances for remuneration**, once a month, in the approximate amount of 50 - 300 EUR, whereas they were promised remuneration of 1.317 PLN and 1200–1600 EUR per month,
- **Standards of accommodation** provided to employees were glaringly different from what had been promised to them before departure (they were provided places for sleeping, but without bedclothes, and of very low standard)
- **Frauds** related to working time records and the amount of collected mushrooms, which resulted in lowering amounts of their pay
- The employees were supposedly trapped in the so-called “**debt spiral**”.

3. Steps undertaken and follow-up action

- NLI forwarded the case to the Belgian Labour inspection.

The case was examined by the **following Belgian authorities**: prosecutor's office, federal court police and Labour inspectorate.

These two authorities conducted inspection activities in the mushroom producing company. As of the day of the inspection, the Polish entrepreneur involved in that matter, no longer employed the workers. The female employees present in the mushroom producing company were employed by two other Polish companies, of which one was established following the transformation of the posting entrepreneur.

- The Belgian services submitted a fine report to the court, asking to punish the posting entrepreneur for:
 - o failure to submit a LIMOSA declaration,
 - o failure to report the expected extension of the period of posting,
 - o failure to pay minimum remuneration for work,
 - o failure to comply with the duty to pay remuneration regularly.

Inspection activities and court investigation are still underway.

- Employees of the Polish Embassy in Belgium intervened on the spot two times (they participated in meetings with employees and the Belgian Police with a view to questioning the wronged individuals).
- Based on testimony of the workers who returned to Poland, the Provincial Police Headquarters in Gorzów Wielkopolski initiated proceedings concerning exploitation of individuals for forced labour in the territory of Belgium.

Case 2

1. Overview

A Polish construction entrepreneur posted **29 employees** to work in Belgium.

The above-mentioned company had been established by a Belgian enterprise for whose benefit the posted workers performed work.

The owner of both companies, Polish and Belgian, was the same person.

- **Infringements mentioned by the employees:**
 - o failure to pay remuneration for work for the period of several months,
 - o failure to pay sickness benefits, allowances for business trips and financial equivalent in lieu of unused annual leave,
 - o failure to refund the costs related to return to Poland,
 - o failure to issue work certificates and RMUA documents confirming the payment of contributions for social insurance and health insurance,
 - o failure to fulfil formal requirements -failure to submit Z3 forms to ZUS necessary for the payment to employees of financial benefits from social insurance.

2. Exchange of information and follow-up action

- Polish labour inspectors attempted to conduct an inspection of the Polish company. Their attempts failed because **the entrepreneur did not conduct activity at the address known to the Polish authorities**. The company had not been crossed out from the court register, so formally speaking it still existed.
- Chief Labour Inspectorate sent a letter to the Belgian liaison office, asking them to verify charges against the Polish employer.
- Belgian inspectors undertook activities aimed at proving that the Polish entrepreneur who posted the workers established a **bogus company**. Through this, they hoped to be able to **enforce claims of the Polish workers from the Belgian entity**.
The case of the owner of both companies was investigated by a Polish judge.
- **After over two years from sending the case to Belgium**, NLI received a reply with the following details:
 - o In June 2008, bankruptcy was declared by the Belgian entity to which the workers had been posted;

- The owner of both companies conceded that he had not paid wages for May 2008. He claimed, however, that the employees had been paid wages for all earlier months. Yet, he did not present payment confirmations.

The workers were informed by Chief Labour Inspectorate that they may enforce their claims from the employer in proceedings before a Labour Court.