

**Rights, Mobility and Integration of Intra-
corporate Transferees in Europe: The Case
of Slovakia and England**

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ABSTRACT

This thesis is placed at the intersection of international labour law, EU law, human rights and migration. It focuses on workers employed and transferred temporarily across borders by multinational corporations within their company structure – intra-corporate transferees (ICTs) – and on their family members. The thesis analyses the protection of their economic, labour and social rights from the perspective of equality and integration. The work examines and compares the level of rights protection granted to EU nationals and third-country (non-EU) national ICTs in Slovakia and England under the national law and policy, EU law, human rights law, and international labour law. The study involves doctrinal and theoretical considerations of the law and policy relating to the protection of rights of ICTs and their families, which are then contrasted with accounts of ICTs’ practical experiences within these legal and policy frameworks, obtained through interviews conducted in Slovakia and England. The aim is to identify the differences in rights protection guaranteed in law and as experienced in practice in each country, and to compare the diverse approaches in the two countries and at EU level (through the Intra-Corporate Transfers Directive) to find the weaknesses and strengths of each system. This comparative exercise enables an identification of the best practices, which could serve as an inspiration for policy makers in Slovakia, England, at EU level and for ICTs’ employers regarding improvements of their rights protection, integration, and experience during the intra-corporate transfer.

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LIST OF ABBREVIATIONS

BCD	Blue Card Directive
CD	Citizenship Directive
CEAR	Committee of Experts on the Application of Conventions and Recommendations
CFI	Court of First Instance
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CVEK	Centrum pre Výskum Etnicity a Kultúry
ECSR	European Committee of Social Rights
EEA	European Economic Area
EESC	European Economic and Social Committee
ETUC	European Trade Union Confederation
ETOC	Extra-Territorial Obligations Consortium
EU	European Union
FRD	Family Reunification Directive
HRC	Human Rights Council
HRComt	Human Rights Committee
IBLF	International Business Leaders Forum
ICTs	Intra-Corporate Transferees
ICTD	Intra-Corporate Transfer Directive
IHRB	Institute for Human Rights and Business
ILC	International Labour Conference
ILO	International Labour Organisation
IMI	International Migration Institute
IOM	International Organisation for Migration
IPU	Inter-Parliamentary Union
IVO	Inštitút pre Verejné Otázky
LTRD	Long-Term Residence Directive
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OUP	Oxford University Press
PWD	Posted Workers Directive
SWD	Seasonal Workers Directive
UN	United Nations
UK	The United Kingdom

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Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

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1. SETTING THE SCENE FOR INTRA-CORPORATE TRANSFEREES

1.1. Introduction

The primary aim of this thesis is to measure the level of rights protection, equality¹ and integration² of a specific group of temporary migrant workers³ – intra-corporate transferees (ICTs) – in the European Union (EU).⁴ The *status quo* in the EU is that the equality with nationals, which constitutes the “ideal” level of integration, is granted to permanent migrant workers, whether they are an EU national⁵ or third-country national⁶. States have an interest in excluding temporary migrants, such as ICTs, from access to rights, for instance economic and social rights or secure residence. This way States can guard their “resources”, which reinforces the idea that only nationals and permanently resident non-nationals are entitled to them. Temporary migration programmes, such as those concerning ICTs, tie migrants to the employer and allow States to remove them once they have served their purpose.

This thesis promotes a human rights-based approach to migration, endorsed at international level within the International Labour Organisation (ILO)⁷ and the United Nations (UN)⁸. It also recognises States’ prerogative to differentiate between nationals and non-nationals at the point of entry into their territory. However, after that everyone, including temporary migrants, should be treated on as near-equal footing as possible to nationals in accordance with the cosmopolitan ideals that all human beings belong to a single community, based on a shared morality. In a cosmopolitan community, individuals

¹ For a definition of equality see section 1.5.

² For a definition of integration see section 1.8. Integration as a concept is discussed in chapter 2, section 2.2.2.

³ The term “migrant worker” has a broad and general meaning in this thesis. It covers workers moving across borders from third countries to the EU and within the EU from one Member State to another, whether they are an EU or third-country national and regardless whether they are moving to seek work by themselves or are transferred by their companies as in the case of ICTs, and regardless whether they are temporary or more permanent migrant.

⁴ ICTs are defined in section 1.2.

⁵ EU national is anyone, who has a citizenship of one of the (still) 28 Member States. Similar treatment is granted to nationals of countries belonging to the European Economic Area (EEA), which includes the EU Member States plus Norway, Liechtenstein and Iceland. In addition, nationals of Switzerland, which is not an EU or EEA country, also enjoy similar treatment as EU nationals.

⁶ Third-country national is anyone, who is not a national of the EU or EEA country or Switzerland.

⁷ ILC, *Towards a Fair Deal for Migrant Workers in a Global Economy* (Report VI, 92nd Session, Geneva 2004).

⁸ Declaration of the High-level Dialogue on International Migration and Development, UNGA Res 68/4 (1 October 2013) 68th Session UN Doc A/RES/68/4.

from varying locations (physical, economic, etc.) enter relationships of mutual respect despite their differing beliefs (religious, political, etc.).⁹ Granting as near-equality with EU nationals as possible to temporary migrants is currently unattainable in the EU due to the lack of political will in many Member States. Though, it should be aspired in the long run to achieve an inclusive and cohesive society to deal with the social inequality and cultural diversity, and to avoid the exploitation of migrant workers.¹⁰ The economic case for temporary migration has been disputed¹¹, because it is hard to quantify the economic contribution of temporary migration programmes, and these programmes also create costs¹².

It is vital to highlight from the outset that it is not argued in this work that granting third-country national ICTs' rights protection and equality (with EU nationals) would automatically lead to their integration. It is possible that a migrant worker can integrate even without them, though it is submitted that if the adequate rights protection and equality exist in law and in policy, they can facilitate integration. For the purposes of this thesis, rights protection and integration are connected and one can be measured by the other through equality: more equality means better rights protection and integration.

Thus, migrant workers are at the forefront in this thesis, because too much emphasis has been given in law and in policy to the interests of the States as well as the employers, and not to the views of temporary migrants. This thesis seeks to give them a voice and the opportunity to participate in the debate on temporary migration, rights protection, and integration.

1.2. Who Are ICTs?

This thesis aims to explore the level of rights protection, equality and integration enjoyed by third-country national ICTs and their families compared to EU nationals and their families. EU nationals enjoy almost the same rights as nationals of the host EU Member State. This thesis is concerned only with regular labour migrants, not with asylum

⁹ KA Appiah, 'Cosmopolitan Patriots' (1997) 23(3) *Critical Inquiry* 617.

¹⁰ CoE, *New Strategy and Council of Europe Action Plan for Social Cohesion* (Committee of Ministers, 7 July 2010).

¹¹ G Hugo, 'Best Practice in Temporary Labour Migration for Development: A Perspective from Asia and the Pacific' (2009) 47 *International Migration* 23.

¹² IPU/ILO/OHCHR, *Migration, Human Rights and Governance: Handbook for Parliamentarians No. 24* (IPU 2015) 22.

seekers, refugees, those granted humanitarian protection, irregular migrants or forced migrants. Two countries were chosen as case studies, Slovakia and England.¹³

ICTs are temporary highly-skilled migrant workers employed by multinational corporations (MNCs)¹⁴, who move to perform their jobs within the company structure – a process referred to as an intra-corporate transfer. It happens when a company, usually the mother company, decides to send one or more of their employees to work temporarily at an office of theirs, branch or affiliate company located elsewhere, often in another country. At the end of their initial transfer period, their contract can be renewed, or they move on to work at a different subsidiary, or they return to the mother company. This thesis is focussed on ICTs, who are third-country nationals, transferred from a third country¹⁵ to the EU, and who also were over the age of 18 years old.

There are many definitions of highly-skilled migrants or ICTs. For instance, Iredale specified that “[h]ighly skilled workers are normally defined as having a university degree or extensive/equivalent experience in a given field.”¹⁶ The EU instrument covering the admission conditions and the rights protection of ICTs – Intra-Corporate Transfer Directive (ICTD)¹⁷ – also sheds some light on their definition. As set out in the Recital 13, ICTs should encompass managers¹⁸, specialists¹⁹ and trainee employees²⁰ and their definitions should build on the specific commitments of the EU under the General Agreement on Trade in Services (GATS) and bilateral trade agreements.²¹ The GATS Mode 4 regulates the movement of service suppliers according to trade rules. It does not concern persons seeking access to the employment market in the host Member State, nor does it affect measures regarding citizenship, residence or employment on a permanent basis. In this respect, the ICTD goes further than the GATS Mode 4.

¹³ This thesis concentrates on analysing the legislation and policies of England and Wales, as the other constituent parts of the UK, namely Scotland and Northern Ireland, have their own distinct laws and policies. However, terms “England” and “the UK” are used in this thesis interchangeably. The choice of Slovakia and England as case studies is discussed in chapter 2, section 2.3.2.1.

¹⁴ MNCs have facilities and other assets in at least one country other than its home country. Such companies have offices and/or factories in different countries and usually have a centralised head office, where they coordinate global management.

¹⁵ Third country is a country that is not an EU or EEA Member State or Switzerland.

¹⁶ R Iredale, ‘The Migration of Professionals: Theories and Typologies’ (2001) 39(5) *International Migration* 8, 8.

¹⁷ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [2014] OJ L157/1 (ICTD). A more detailed analysis of the Directive can be found in chapter 4.

¹⁸ ICTD, Art 3(e).

¹⁹ ICTD, Art 3(f).

²⁰ ICTD, Art 3(g).

²¹ The General Agreement on Trade in Services (GATS) was adopted in 1994. It came into effect on 1 January 1995 and is being negotiated under the auspices of World Trade Organisation (WTO). It is the first set of multilateral rules covering international trade in services.

It is the organisation-dominated nature of ICTs' migration and employers' significant involvement in the decision-making process, which sets ICTs apart from other highly-skilled migrants, who are independent individuals freely seeking jobs in different destinations. Even though ICTs may not have as much choice regarding the job, destination and conditions under which they are transferred, they, same as other migrant workers, have their own motivations for accepting international assignments. One of the main reasons for accepting overseas assignments is the career advancement, followed by the attraction of the assignment, including living overseas and the attendant advantages.²² Other pull factors could be the benefits and remuneration in the host country.²³ In this respect, improving the financial situation for themselves and their families in third countries (especially developing countries) could be a catalyst for accepting the transfer.²⁴ In addition, other reasons could involve the possibility to travel and learning about new cultures²⁵, or even more personal reasons, such as meeting a partner and wanting to establish a family in the partner's country of origin.²⁶

Some ICTs can be pressured to accept international assignments, and even threatened with unemployment or other repercussions, if they refuse a transfer to another country. This also increases their vulnerability, along with the fact that they are temporary migrants.²⁷ Even highly-skilled migrants can be vulnerable due to being a new entrant, not speaking the national language, lack of knowledge and access to information about their work place entitlements and heavy dependence on the sponsoring employer, who has the power to terminate employment, which essentially equates to a power of removal from the territory of the host State.²⁸

²² EL Miller and JLC Cheng, 'Circumstances that Influenced the Decision to Accept an Overseas Assignment' (1976) National Academy of Management Proceedings 336, 338.

²³ S Mahroum, 'Highly Skilled Globetrotters: Mapping the International Migration of Human Capital' (2000) 30 R&D Management 23, 29.

²⁴ Interviews with E14 and E15. Full anonymised and coded list of participants interviews is presented in Appendix I.

²⁵ Interview with S4.

²⁶ Interviews with E8, S2, S5 and S8.

²⁷ C Costello and M Freeland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in J Howe and R Owens (eds.), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart 2016) 20.

²⁸ J-C Tham, I Campbell and M Boese, 'Why is Labour Protection for Temporary Migrant Workers so Fraught?: A Perspective from Australia', in Howe and Owens (n 27) 171.

1.3. Challenges to the Study of ICTs

It is important to study ICTs, because unlike argued in the literature on highly-skilled migrants²⁹, they can also be considered vulnerable, which affects their human dignity. It has been argued that

[...] the vulnerability of migrants is in great part constructed or induced by state policies and practices. By denying or limiting migrants' access to and enjoyment of fundamental rights, states also create environments conducive for non-state actors to take advantage of and exacerbate migrants' socially constructed vulnerability, i.e. precariousness.³⁰

Accordingly, the precariousness of ICTs and their families is caused by the lack of regulation and protection of their immigration statuses by States, reasons for which are numerous. Firstly, intra-corporate transfers within MNCs can have human rights implications, but they are a relatively unregulated area, so that international business is facilitated and not hindered. There is a dichotomy between ICTs as migrants and ICTs as factors of production or factors of facilitating business. ICTs are regulated by the EU immigration law, namely the ICTD, or national immigration law, such as the Tier 2 ICT route in England, because they are individuals. However, the manner, in which ICTs are regulated in these EU or national immigration instruments, is similar to the way in which companies are regulated. More specifically, the right of establishment of companies allows them to start and expand their business to new countries with as little obstacles as possible (protecting rights of workers can constitute such an obstacle). Likewise, the main purpose of immigration instruments regulating ICTs is to facilitate intra-corporate transfers for the economic benefit of MNCs and host countries rather than protecting ICTs, which makes them rather vulnerable.³¹

Secondly, ICTs are not afforded better protection and more secure status, because they are often temporary migrants. However, they should be distinguished from other temporary migrants, such as seasonal workers, who usually migrate only for several

²⁹ Discussed in Chapter 2, section 2.2.1.

³⁰ I Atak, D Nakache, E Guild and F Crépeau, "Migrants in vulnerable situations" and the Global Compact for Safe Orderly and Regular Migration', Queen Mary University of London, School of Law Legal Studies Research Paper No. 273/2018, 19.

³¹ Costello and Freeland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in Howe and Owens (n 27) 34-36.

weeks or months. ICTs typically migrate to the host country for a period of 1-5 years, or even longer³², which warrants their better protection and integration.

1.4. Temporal and Material Scope of the Thesis

This thesis covers a period of study between September 2012 and December 2016. Thus, it considers the legislation as was in force during this period in Slovakia and England. When the research for this thesis commenced (in September 2012), the ICTD was just a Proposal. The final text was only adopted on 14 May 2014. It was implemented into the Slovak national order on 11 January 2017 through an amendment of the Foreigners Act³³ and the Act on the Employment Services³⁴. The changes in the Slovak legislation, resulting from the transposition of the Directive, are outside the scope of this thesis. Therefore, this thesis covers the Slovak legislation, as in force prior to the implementation of the Directive. Nevertheless, the provisions of the Directive itself are scrutinised elsewhere in this thesis.³⁵

The UK opted out of the ICTD³⁶, which means that England retained its national scheme regulating ICTs.³⁷ In the absence of EU legislation, the protection of rights of ICTs in the UK could be derived from international and Council of Europe (CoE) legal instruments, which the UK has ratified. These instruments were also the main source of protection for ICTs in Slovakia prior to the implementation of the ICTD.³⁸ Therefore, international and CoE legal instruments relevant to the rights protection of regular migrant workers are also analysed in this thesis.³⁹

Regarding the material scope, this thesis concentrates on rights which are most likely to have an impact on ICTs' and their families' integration. These include rights granted under the national or EU immigration law, such as rights of entry and residence, family reunification or intra-EU mobility rights. In addition, they include some human rights granted to migrant workers under international and CoE human rights instruments.

³² Interviews with S7, SD and E2.

³³ Act No. 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts (Foreigners Act).

³⁴ Act No. 5/2004 on Employment Services and on Amendment of Certain Laws (Act on Employment Services).

³⁵ See chapter 4.

³⁶ Protocol (No. 21) to the Treaty on the Functioning of the European Union on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice [2016] OJ C202/295.

³⁷ See chapter 6.

³⁸ Indeed, these instruments continue to be the source of protection for ICTs along with the ICTD.

³⁹ See chapter 3.

Human rights can be divided into three groups: civil and political rights, socio-economic rights and other social and cultural rights. Civil rights⁴⁰ are considered as basic human rights and are granted to everyone without exception regardless of their nationality and immigration status. Political rights⁴¹, although also belonging to basic human rights, are often attached to the citizenship, and as such are not accessible by non-citizens. Civil and political rights are often considered as “higher” or “first-generation” rights compared to socio-economic rights, such as access to employment, right to education, healthcare and social security, which are considered to be “second-generation” rights. This differentiation of rights is reflected in the international and CoE human rights instruments, in that civil and political rights are included in one instrument with well-defined rights⁴², and economic, social and cultural rights in a separate instrument with rights expressed in vague terms that can be implemented gradually⁴³. This “*hierarchy of rights*”⁴⁴ can result in States curbing access to socio-economic rights by migrant workers and their families.

This thesis primarily focusses on the protection of socio-economic rights, because this is where the differential treatment between nationals and non-nationals is more visible compared to civil rights, which belong equally to everyone, and compared to political rights, which do not apply to non-nationals. In addition, the work does not cover the protection of cultural rights, for example the right to exercise own culture and traditions in the host country, although the study assesses the “practical” dimension of ICTs’ social and cultural integration in Slovakia and England. In this respect, it will be considered whether ICTs learned the language of the host country, and about its culture, and what was their interaction with the national population and authorities.

⁴⁰ For example, the right to life, prohibition of torture and slavery, freedom of expression and association.

⁴¹ For instance, the right to vote and stand in national elections.

⁴² For instance, the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (UN ICCPR); or the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights, as amended by Protocols Nos. 11 and 14, and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13) (adopted on 4 November 1950, entered into force 3 September 1953) ETS No. 005) (ECHR).

⁴³ For instance, the International Convent on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force on 3 January 1976) 993 UNTS 3 (UN ICESCR); or the European Social Charter (adopted on 18 October 1961, entered into force on 26 February 1965) CETS No. 035 (Charter), and the European Social Charter (Revised) (adopted on 3 May 1996, entered into force on 1 July 1999) CETS No. 163 (Charter (Rev)).

⁴⁴ A Eide, ‘Economic and Social Rights’, in A Eide, C Krause and A Rosas (eds.), *Economic Social and Cultural Rights: A Textbook* (Martinus Nijhoff 1995).

1.5. EU Nationals as a Comparator for Third-Country National ICTs

The basis of a comparative exercise in this thesis is the concept of equality of treatment and non-discrimination as defined by the Court of justice of the European Union (CJEU), which held that “*the principle of equal treatment is breached when two categories of persons whose factual and legal circumstance disclose no essential difference are treated differently or where situations which are different are treated in an identical manner.*”⁴⁵ At first glance, the EU nationals and third-country national ICTs are not entirely alike, because they fall under different legal regimes granting them different legal statuses under EU law. The pathway to integration of migrant workers is affected by their legal (immigration) status to which usually a mixture of rights and restrictions on access to rights is attached. ICTs, who are either EU nationals or third-country nationals, have different legal statuses within the EU law, based on their nationality – EU versus non-EU nationality.⁴⁶ This, for example, means that EU nationals are not subject to immigration control and enjoy a privileged status in the host EU Member States, whilst third-country nationals are subject to immigration control and enjoy less rights protection. For this reason, arguably, EU national and third-country national ICTs are not *per se* similar so that it could be claimed that things which are alike should be treated alike. However, they have more in common than it would initially seem.

This is because the EU law differentiates in the treatment between EU and third-country nationals not only based on nationality, but also between non-nationals according to the length of residence, between those who have at least five years of continuous legal residence, and those who have not, thus between long-term and temporary residents. This distinction is applied to EU and third-country nationals alike, albeit in a slightly different way. EU primary law equalises long-term resident EU nationals with nationals of host EU Member States, while it is only the EU secondary law regarding long-term resident third-country nationals, which results in a more privileged status of EU nationals. The CJEU also ruled that third-country nationals, who are long-term residents, should be treated on an equal footing with nationals.⁴⁷ Thus, long-term resident non-nationals in the EU, whether EU or third-country nationals, are comparable according to EU law and the

⁴⁵ CJEU, Cases C-279/93 *Finanzamt Köln-Altstadt v Roland Schumacker* [1995] ECR I-225 [30]; C-149/10 *Zoi Chatzi v Ipourgos Ikonomikon* [2010] ECR I-8489 [64]. See also CFI, Case T-10/93 *A v. Commission* [1994] ECR II-0000 [42]

⁴⁶ This is discussed in detail in chapter 4.

⁴⁷ Case C-508/10 *European Commission v Kingdom of the Netherlands* Judgment of 26 April 2012.

CJEU caselaw. By implication, temporary residents, whether EU or third-country nationals, should also be treated alike.

To be sure, EU nationals, who are not long-term residents, enjoy less rights protection than EU nationals with a long-term residence status. Into this category of temporary EU migrants belong two sub-groups: those residing for up to three months and those residing for more than three months but less than five years. EU migrants exercising their residence rights for periods over three months should not become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, their right of residence for periods more than three months and less than five years is subject to conditions, as it is the case of third-country nationals, such as being a worker or if not having a comprehensive health insurance.⁴⁸ In addition, EU Member States can require these temporary EU nationals to register their residence with national authorities. Job-seekers have the right to reside for a period exceeding six months without having to meet any conditions, if they continue to seek employment in the host Member State and have a “*genuine chance*” of finding work and during this time they cannot be expelled.⁴⁹ Moreover, access to full social assistance is conditioned upon becoming a long-term resident. Before then Member States have certain discretion over access to social assistance by EU nationals. EU national ICTs would fall into this category of EU migrant workers. As their rights are curtailed and there are conditions attached to their stay, they constitute the most suitable comparator for third-country national ICTs whose rights are also restricted and conditions attached to their stay. Consequently, third-country national ICTs should be treated upon their arrival in the EU on as near-equal as possible footing with EU nationals. The treatment granted to EU nationals under EU law constitutes the “ideal” standard of protection that ICTs can be afforded in the EU. Against this standard, the treatment of third-country national ICTs, in Slovakia and England, is assessed in this thesis. The treatment that EU nationals enjoy will be discussed in chapter 4 dealing with EU law and policy, which will then be compared and contrasted with the treatment granted to third-country nationals in Slovakia and England in chapters 5 and 6, respectively.

⁴⁸ Recital 10 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 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 [2004] OJ L158/77.

⁴⁹ Case C-292/89 *Antonissen* [1991] ECR I-745. For a comparison between the EU and CoE regarding expulsion see S Morano-Foadi and S Andreadakis, ‘The Convergence of the European Legal System in the Treatment of Third Country Nationals in Europe: The ECJ and ECtHR Jurisprudence’ (2011) 22(4) EJIL 1071.

1.6. How are ICTs' Rights Protected under International Law?

This question will be explored in more detail in chapter 3 analysing the relevant international and CoE legal instruments. In this section, some preliminary considerations are offered. For instance, two major actors play an important role in rights protection and integration of ICTs and their families, namely States and MNCs. The primary protectors of human rights are States. Human rights law has developed in the aftermath of the World War II to protect all those in the territory of a State, including migrant workers, from violations of their rights by that State. There is a vast international human rights regime covering States obligations to protect, respect and fulfil rights of the individuals in their territory, not only by protecting them from the actions of the State, but also from the adverse impacts of third-parties, called non-States actors (NSAs), such as MNCs domiciled in their jurisdiction. This regime is comprised of the UN international treaties that are widely ratified⁵⁰, as well as many ILO labour standards, and other treaties. Legal instruments were also elaborated at regional level, within the CoE⁵¹ and the EU⁵². Finally, national instruments may also exist in this area⁵³. All these instruments directly relate to the responsibilities of States to protect human rights, not to MNCs as NSAs. However, there are often issues with the States' implementation and enforcement of these treaties and standards, also against MNCs, for various reasons, such as States wishing to attract foreign direct investment or facilitate trade. Thus, there are potential gaps in human rights compliance by MNCs at a national level, which adds to the precariousness of ICTs.

States have an obligation to respect, protect and fulfil human rights also extraterritorially, including actions of MNCs.⁵⁴ However, the international community is rather reluctant to regulate companies extraterritorially.⁵⁵ States are happy to negotiate trade and investment

⁵⁰ See 1966 UN ICCPR and ICESCR, as well as the Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

⁵¹ This includes, for example, the 1950 ECHR, the 1961 Charter, and the 1996 Charter (Rev).

⁵² Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L330/1, which will be implemented domestically in all EU Member States in 2017, calls upon companies of a certain size to report on material non-financial issues, including human rights.

⁵³ This includes, in the UK, the Modern Slavery Act 2015.

⁵⁴ Principle 25 of the 'Maastricht Principles on Extraterritorial Obligations in the area of Economic, Social and Cultural Rights' (ETO Consortium 2011). See also recent activity within the CoE, where the Committee of Minister adopted Recommendation CM/Rec(2016)3, on Human Rights and Business (adopted on 2 March at the 1249th meeting of the Ministers' Deputies).

⁵⁵ OHCHR, 'Business and Human Rights: The Accountability and Remedy Project' (Background Paper Accompanying Consultation Draft)

agreements, which give protections to MNCs, even at the expense of human rights.⁵⁶ This demonstrates the imbalance under international law between the interests of MNCs and human rights of individuals, such as ICTs.

Currently, there is no legally binding international treaty that would oblige businesses directly, including MNCs, as NSAs, to protect human rights. Human rights responsibilities of businesses are sparse in legally binding instruments (such as certain ILO conventions), and include mainly ensuring no forced or child labour, adequate health and safety, fair terms and conditions of employment, non-discrimination on various grounds or the right to be paid a minimum wage. The responsibilities of businesses for human rights protection have been spelled out mainly in non-binding instruments, such as the UN Guiding Principles on Business and Human Rights⁵⁷ or the ILO Tripartite Declaration on Multinational Enterprises and Social Policy⁵⁸. The UN Guiding Principles state that businesses are capable of positively and negatively affecting nearly all, if not all, of the rights of individuals and communities, and accordingly, States have the duty to protect them from all these possible impacts and companies have a responsibility to respect internationally recognised human rights. However, as the UN Guiding Principles are a soft law instrument, there is a rights gap in international law in that respect. Thus, the present situation regarding cross-border movement of ICTs is that “[d]espite the liberalisation of goods and trade heralded by globalisation, the associated international movement of people at unprecedented levels has been undermined by very little cross-border policy agreement between governments of sending and receiving countries, let alone between states and the private sector.”⁵⁹ Therefore, companies are operating in a space, where governments are not regulating international trade (in the name of easing the conduct of business), which creates a “governance gap” that in turn brings with it risks of human rights violations.⁶⁰

<http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/OHCHR_ARP_Background_Paper_to_Draft_Guidance.pdf> accessed on 4 November 2016.

⁵⁶ Amnesty International, *Human Rights, Trade and Investment Matters* (Amnesty International 2006).

⁵⁷ J Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (HR/PUB/11/04, UN 2011).

⁵⁸ ILO, *Tripartite Declaration on Multinational Enterprises and Social Policy* (5th ed., ILO 2017, original version adopted in 2006).

⁵⁹ IHRB/IBLF, ‘Business and Migration Roundtable for Collective Action: Strengthening Migrant Worker Protection in the Supply Chain’ (First Roundtable, London, 24 March 2010) <https://www.ihrb.org/pdf/Business_and_Migration_Roundtable_1_Strengthening_Migrant_Worker_Protection_In_Company_Supply_Chains_Report.pdf> accessed on 28 September 2016.

⁶⁰ HRC, ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John

At present, the possibility of elaborating an international legally binding instrument on business enterprises with respect to human rights is being investigated.⁶¹ So far, the discussions revolved around the protection of domestic workers in developing countries rather than addressing a specific situation of ICTs.⁶² It is possible to hypothesise, that if such a treaty were to be adopted, it would be general. Therefore, it is questionable, whether any such treaty could address issues relating specifically to ICTs. Another issue may be, as already mentioned, that such a treaty may not be implemented or adequately enforced by States. In addition, it is debatable, whether presently there is enough political will for such a treaty. However, that is not to say that eventually there should be no such treaty. It would expressly clarify the general contours of human rights obligations of MNCs, as there is a lot of confusion around this topic.

To sum up, due to the lack of regulation and governance, MNCs perform human rights due diligence on a voluntary basis. Such companies could be undercut by other unscrupulous businesses, which exploit the lack of regulation to their economic advantage.⁶³ States also seem reluctant to regulate international trade (and with it the movement of persons). However, it is the States' primary responsibility to ensure the rights protection for everybody within their territory and this responsibility cannot be outsourced to companies on a voluntary basis. The interests of MNCs should not prevail at the expense of their employees, who, after all, so crucially contribute to the success of these companies. Thus, companies can and should do more to protect human rights.

1.7. Why Should MNCs Protect Human Rights?

The foremost reason for protecting human rights is an ethical one. ICTs are human beings who deserve protection. This is even more so, because economic players, especially MNCs that operate across national borders, have gained unprecedented power and influence across the world. Companies have an enormous impact on peoples' lives and communities in which they operate. Sometimes such impact is positive (for example,

Ruggie' (A/HRC/8/5, 7 April 2008) [105] <<https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>> accessed on 28 September 2016.

⁶¹ HRC, 'Resolution 26/22 on the Human Rights and Transnational Corporations and Other Business Enterprises' (23 June 2014) UN Doc A/HRC/RES/26/22.

⁶² Business and Human Rights Resource Centre, Intergovernmental Working Group Second Session on 24-28 October 2016) <<https://business-humanrights.org/en/binding-treaty/intergovernmental-working-group-sessions>> accessed on 29 May 2017.

⁶³ M Gunther, 'Whose Job Is It to Protect Human Rights?' *Guardian* (London, 3 December 2014) <<https://www.theguardian.com/sustainable-business/2014/dec/03/un-human-rights-business-government-policies>> accessed on 28 September 2016.

jobs are created). Other times the weak domestic regulation leads to exploitation by MNCs, often with devastating consequences for workers and members of communities.⁶⁴ As companies could have negative impact on human rights, they should share (some of) the responsibility for their protection.

In addition to ethical reasons, MNCs could be motivated to protect rights and facilitate the integration of ICTs for business-related reasons. First of all, “*more effective integration increases worker loyalty, reduces employee turnover and absenteeism, and boosts worker productivity and motivation, thereby increasing businesses’ efficiency and competitiveness.*”⁶⁵ Moreover, studies have also shown that many international transfers fail, because the companies do not manage and train their employees adequately.⁶⁶ They fail because of the “*insufficient organizational support during the assignment in areas such as inadequate or inflexible assignment policies, insufficient preparation and settling-in support, poor dual-career support, inadequate company communication, and repatriation issues.*”⁶⁷ Therefore, companies should support their employees through, among other measures, “*adequate compensation*”, to ensure the success of international assignments.⁶⁸ This kind of support could ensure that ICTs and their families adapt to the host country easier, which in turn would guarantee the success of the assignment, and ultimately the return on the companies’ investment in it. Another incentive for companies can be improved reputation, which would boost their business operations and performance.⁶⁹

1.8. What Rights Protection and Integration for ICTs?

Against this background, this thesis analyses the level of rights protection and integration, achieved by third-country national ICTs and their families in Slovakia and England. It is argued that the higher the protection of rights, the better chances third-

⁶⁴ Human Rights Watch, ‘Corporate Accountability’ <<https://www.amnesty.org/en/what-we-do/corporate-accountability/>> accessed on 17 February 2017.

⁶⁵ S Segal and J Marczak, ‘Cities, Migrants and Integration’, in I de Sola (ed.), *The Business Case for Migration* (World Economic Forum 2013) 39.

⁶⁶ JS Black and H Gregersen, ‘The Right Way to Manage Expats’ (1999) March/April Issue Harvard Business Review <<https://hbr.org/1999/03/the-right-way-to-manage-expats>> accessed on 8 September 2016.

⁶⁷ N Cole and K Nesbeth, ‘Why Do International Assignments Fail?: The Expatriate Families Speak’ (2014) 44(3) *International Studies of Management and Organization* 66, 71.

⁶⁸ SR Moulik and S Mazumdar, ‘Expatriate Satisfaction in International Assignments: Perspectives from Indian IT Professionals Working in the US’ (2012) 2(3) *International Journal of Human Resource Studies* 59, 61. What could constitute an “adequate compensation” will be discussed in chapter 7.

⁶⁹ C Overman, ‘A New Role for Businesses in Safeguarding Human Rights’ (Contribution to Oxford Human Rights Hub blog, 10 September 2013) <<http://ohrh.law.ox.ac.uk/a-new-role-for-businesses-in-safeguarding-human-rights/>> accessed on 28 September 2016.

country national ICTs have to integrate. Consequently, they will not be vulnerable, and their human dignity will be preserved. In this case, higher protection of rights means equality of treatment with EU nationals, who enjoy equality with nationals of the host EU Member State. Accordingly, the following definition of integration is adopted in this thesis as a starting point for the analysis:

An individual or group is integrated within a society when they:

- achieve public outcomes within employment, housing, education, health etc. which are equivalent to those achieved within the wider host communities;
- are socially connected with members of a (national, ethnic, cultural, religious or other) community with which they identify, with members of other communities and with relevant services and functions of the state; and
- have sufficient linguistic competence and cultural knowledge, and a sufficient sense of security and stability, to confidently engage in that society in a manner consistent with shared notions of nationhood and citizenship.⁷⁰

This model of integration constitutes the “ideal” level of integration that can be achieved by migrants with a more permanent status in the host country, such as EU nationals, which is sought for ICTs too. This model, however, does not realistically reflect the way, in which temporarily migrating ICTs subject to the intra-corporate transfer, experience integration. Therefore, the ICTs’ Indicators of Integration are created for the purpose of this thesis (*Figure 2* in chapter 2). This set of indicators of integration is used throughout the thesis to test the actual level of ICTs’ integration in comparison with EU nationals.

Moreover, the above discussion demonstrates that rights protection and integration of ICTs and their families can be influenced by States and MNCs. Their level of integration would also depend on the personal characteristics of ICTs, as well as their perception and attitude towards integration. Therefore, it becomes apparent that there are three crucial actors involved in the rights protection and integration: States, MNCs and migrants. This triangular concept of rights protection is not unfamiliar in international law. Within the ILO, it is the tripartite of representatives of States, employers and the trade unions that participate in negotiating and adopting the ILO labour standards. In the EU, legislative proposals, such as that for the ICTD, are subject to consultation with States, the

⁷⁰ A Ager and A Strang, *Indicators of Integration: Final Report* (UK Home Office Development and Practice Report No. 28, 2004) 5. Chapter 2 explains the “ideal” and “traditional” notions of integration embraced in this thesis, in more detail, in its different dimensions and related concepts.

European Trade Union Confederation⁷¹, the European Economic and Social Committee⁷², as well as MNCs.

This thesis builds on this triangular concept of rights protection in creating a new legal and policy framework on rights protection and integration of ICTs and their families. This framework is a combination of legally binding duties of States and the EU and recommendations made to MNCs and to policy makers in Slovakia, the UK and the EU.⁷³

This new framework also encompasses a novel way of thinking about, and understanding of, integration.⁷⁴ Traditionally integration was viewed as a two-way process between States and migrants, where integration was conceived only within the borders of the host country and integration measures targeted mainly long-term migrants. This understanding of integration is not suitable for ICTs for several reasons. Firstly, there is a third actor involved in their rights protection and integration – employers. Secondly, given the nature of the intra-corporate transfer, there are several stages in the integration process of ICTs and their families: pre-departure, stay in the host country and the end of the transfer. Thirdly, ICTs as temporary migrant workers tied to one employer, experience integration process in a different way compared to classical job-seeking migrants, or those who have a better prospect of attaining long-term residence in the host country, such as EU nationals. EU nationals have a better chance of achieving integration in a host country. However, third-country national ICTs are often forced to leave the host country at the end of their assignment. Therefore, they may achieve only a certain level of integration. Fourthly, as it will be seen in the chapters dealing with national law dimensions in Slovakia and England⁷⁵, the equality of treatment with EU nationals is not always the most effective way to protect certain rights of third-country national ICTs. The following chapter will explore these ideas further, and thus lay down the theoretical and methodological foundations upon which the rest of this thesis is based.

⁷¹ ETUC, ‘Agenda Item 9: Seasonal Work and Intra-Corporate Transfers’ (ETUC Executive Committee, EC/189/EN/9, 13-14 October 2010) <<http://online.cisl.it/dept.int/I0DB3F2B8.9/09-EN-Seasonal-work-intra-corporate-transfers.pdf>> accessed on 19 October 2016.

⁷² EESC, ‘Opinion on the Proposal for a Directive of the European Parliament and of the Council on Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer’ (13 July 2011) OJ C218/101.

⁷³ See chapter 7.

⁷⁴ See chapter 7.

⁷⁵ See chapters 5 and 6, respectively.

2. THEORETICAL FRAMEWORK AND METHODOLOGY

2.1. Introduction

This chapter has two primary aims. Firstly, in the part of this chapter setting the theoretical framework the current study is placed within the existing literature. Then, the objectives of this thesis are discussed in the context of the existing literature. Afterwards, the different definitions, aspects and approaches to integration are explored so that an appreciation of the complexity and diversity of this concept is gained. Finally, the “ideal” and “traditional” definition and indicators of integration, as developed by Ager and Strang, are adopted as a starting point for analysis, but have been adapted for the purpose of this thesis, in order to formulate a new model of indicators of integration for ICTs and their families. These indicators of integration will be used throughout the thesis to measure the actual level of integration of third-country national ICTs in Slovakia and England, which will be contrasted against the level of integration achievable by EU nationals, as exemplified in the “ideal” and “traditional” definition of integration of Ager and Strang. Secondly, in the part of this chapter discussing the adopted methodology the research design of this socio-legal research is outlined.

2.2. Theoretical Framework

2.2.1. Existing Research on ICTs

The literature on ICTs can be divided into three strands: firstly, literature on integration and rights protection of highly-skilled migrants; secondly, literature dealing with rights protection and integration of temporary migrants; and thirdly, the works in the area of international human resources management. Regarding the first strand, most of the integration research concentrated on low-skilled migrants. In the late 1990s, there was a period in the sociology literature on highly-skilled migrants, which dealt with intra-company expatriates transfers¹, who seemed to enjoy undeterred mobility². The dominant opinion was that these “transnational elites”³,

¹ JV Beaverstock and JT Boardwell, ‘Negotiating Globalisation, Transnational Corporations and Global City Financial Centres in Transient Migration Studies’ (2000) 20(3) Applied Geography 277; AM Findlay, FLN Li, AJ Jowett, and R Skeldon, ‘Skilled International Migration and the Global City: A Study of

...a small group of highly-skilled, globally mobile top earners endowed with plenty of economic, cultural and social capital, was considered to be unproblematic. Since top managers or scientists would be migrating into global metropolises like London, New York or Singapore for a specific job and for a set period of time, “ordinary” integration problems, e.g. finding a job, an apartment, learning the language or integrating into social networks, were considered as inexistent.⁴ (*citations omitted*)’

It is only recently that scholars have underlined the diversity of the highly-skilled mobile group, which includes different employees from the top to other mid-level highly-skilled employees and other highly-skilled migrants⁵, such as “*gap years*” or “*career sabbaticals*”⁶. This diversity is also reflected within the ICTs sub-group of highly-skilled migrants. This sub-group includes the elites, such as the top managers and chief executives as well as other migrants, such as mid-level managers, specialists or even trainee employees. Each of them possesses unique characteristics and skills, migrating through different routes to different countries, for varying lengths of time, and within different companies, all factors that will affect, in different ways, their ability and opportunity to integrate in a host country. Thus, the research into the integration of different types of highly-skilled migrants is relatively new, for instance, in sociology studies in Germany⁷, in the Nordic countries⁸, and some English-speaking countries⁹.

In addition, some authors argued that a lot of the existing research has focussed on the labour market integration. They identified a research gap regarding the well-being of highly-skilled migrants outside work and criticised the overall focus of the research into

Expatriates in Hong Kong’ (1996) 21(1) Transactions of the Institute of British Geographers 49; AM Findlay and FLN Li, ‘A Migration Channels Approach to the Study of Professionals Moving to and from Hong Kong’ (1998) 32(3) International Migration Review 682.

² EL-E Ho, ‘Migration Trajectories of ‘Highly Skilled’ Middling Transnationals: Singaporean Transmigrants in London’ (2011) 17(1) Population, Space and Place 116, 4 <<http://profile.nus.edu.sg/fass/geoehle/psp%202011%20postprints.pdf>> accessed on 18 July 2016.

³ JV Beaverstock, ‘Transnational Elites in the City: British Highly-Skilled Inter-Company Transferees in New York City’s Financial District’ (2005) 31(2) Journal of Ethnic and Migration Studies 245, 248-249.

⁴ S Föbker, D Imani, J Nipper, M Otto, and C Pfaffenbach, ‘Translocal Life and Integration of Highly-Skilled Migrants in Germany’ (2016) 70(2) *Erkunde* 109, 112.

⁵ D Conradson and A Latham, ‘Friendship, Networks and Transnationality in a World City: Antipodean Transmigrants in London’ (2005) 31(2) Journal of Ethnic and Migration Studies 287.

⁶ D Conradson and A Latham, ‘Transnational Urbanism: Attending to Everyday Practices and Mobilities’ (2005) 31(2) Journal of Ethnic and Migration Studies 227, 229.

⁷ D Imani, J Nipper, and G Thieme, ‘Linguistic and Neighbourhood Integration among Highly-Skilled Migrants – A Quantitative Analysis Using the Example of Foreign University Staff Members in Aachen, Bonn and Cologne’ (2014) 39(4) *Comparative Population Studies* 727; Föbker and others (n 4).

⁸ For a recent literature review in Sweden see MP Frykman, I Bunescu, and K Mozetič, ‘The Work/Non-Work Experiences of Highly Skilled Migrants: An Outline of an Emergent Research Field’ (2016) Malmö Institute for Studies of Migration, Diversity and Welfare, Working Papers Series No. 16:1 <<https://www.mah.se/upload/Forskningscentrum/MIM/Publications/WP%2016%201%20Frykman%20et%20al.pdf>> accessed 13 July 2016.

⁹ Beaverstock (n 3).

skilled migration mainly from the economic perspectives of brain drain risks and brain gain opportunities.¹⁰ However, the opportunities for managing work, family, private and social domains of life¹¹, in a satisfactory manner, rest not only on macrostructural and institutional aspects that frame the migration experience¹², but also on micro factors of adaptation¹³, which are intrinsically subjective to each migrant. Moreover, on the one side, it is not automatic that economic inclusion brings about social and cultural integration.¹⁴ On the other side, being employed can help social and cultural integration, because migrants have a great opportunity to interact with colleagues, who are members of the host society.¹⁵

In the existing literature, the highly-skilled migrants are often presumed to be economically integrated. Indeed, it can be true, because they often already have a job, when they arrive. However, the extent of their economic integration can vary across the spectrum of different types of highly-skilled migrants, depending on whether they are a chief executive¹⁶ or trainee employee¹⁷, or because they are tied to one employer, like ICTs, and thus cannot freely seek employment in the host country. This does not constitute full economic integration. According to the previous literature, issues of integration in general, including social and cultural integration, would not normally be relevant for highly-skilled migrants. However, this research uncovered many issues with ICTs' economic, social and cultural integration and that integration mattered to ICTs too.¹⁸ Thus, integration of highly-skilled migrants is an important area to be explored, as

¹⁰ Frykman and others (n 8).

¹¹ J-C Languilaire, 'Experiencing Work/Non-Work: Theorising Individuals' Process of Integrating and Segmenting Work, Family, Social and Private' (2009) Jönköping International Business School Dissertation Series No. 060 < <http://hj.diva-portal.org/smash/get/diva2:278502/FULLTEXT01.pdf>> accessed 13 July 2016.

¹² JG Reitz, J Curtis, and J Elrick, 'Immigrant Skill Utilization: Trends and Policy Issues' (2014) 15(1) Journal of International Migration and Integration 1.

¹³ J Zikic, J Bonache, and J-L Cerdin, 'Crossing National Boundaries: A Typology of Qualified Immigrants' Career Orientations' (2010) 31(5) Journal of Organizational Behavior 667.

¹⁴ K Magnusson, 'Integration of the Employed: The Sociocultural Integration of Highly Educated Migrants in Sweden' (2014) Malmö Institute for Studies of Migration, Diversity and Welfare, Working Papers Series No. 14:2 <<https://www.mah.se/upload/Forskningscentrum/MIM/Publications/WPS%2014.2%20Karin%20Magnusson.pdf>> accessed on 13 July 2016.

¹⁵ H Hosseini-Kaladjahi, *Iranians in Sweden: Economic, Cultural and Social Integration* (Almqvist & Wiksell International 1997) 88.

¹⁶ Interviews with E2 and S3.

¹⁷ Interviews with S9, E5 and E9.

¹⁸ Interviews with E11 and S2.

is also evidenced by the recent momentum in the research into this area.¹⁹ This thesis seeks to contribute to this new literature.

Regarding the second strand, another aspect that could play a significant role in the (non)integration of ICTs and their families is that they are often temporary migrants. Much of the literature on temporary migration dealt with the temporary guest worker programmes.²⁰ In general, integration of temporary migrants could be said to be an underdeveloped area. Thus, the existing research is relatively recent or ongoing²¹, or seems to concentrate on low-skilled migrants, such as agricultural workers²², as opposed to highly-skilled. Temporary migrants' vulnerability in the work place is well-documented²³, rather than outside work as well.

This temporal aspect is crucial for integration, because integration takes time: it means time to learn and time to adapt for both migrants and host societies.²⁴ However, certain types of integration happen faster than others, for instance, socio-economic integration happens faster than social and cultural integration.²⁵ Temporal aspect of integration is also connected to cultural proximity. This means that the further the cultures of the host society and that of the migrant are, this “[...] *does not impede integration, but makes the learning and socialization process harder, and necessitates more effort.*”²⁶ Integration is not only costly for migrants, but also for States, especially in the case of temporary migrants. This is often echoed in the temporary migration policies, which were

¹⁹ Frykman and others, (n 8); Imani and others (n 7); Föbker and others (n 4); M van Riemsdijk, S Basford, and A Burnham, ‘Socio-Cultural Incorporation of Skilled Migrants at Work: Employer and Migrant Perspectives’ (2016) 54(3) *International Migration* 20.

²⁰ R Bauböck, ‘Temporary Migrants, Partial Citizenship and Hypermigration’ (2011) 14(5) *Critical Review of International Social & Political Philosophy* 665, 669 <<http://cadmus.eui.eu/bitstream/handle/1814/19315/CRISPP-tempmig-preprint.pdf?sequence=2>> accessed on 13 July 2016.

²¹ EURA-NET Project, ‘Transnational Migration in Transition: Transformative Characteristics of Temporary Mobility of People’ (2014-2017) <http://cordis.europa.eu/result/rcn/177321_en.html> accessed on 13 July 2016.

²² J Hennebry, ‘Permanently Temporary?: Agricultural Migrant Workers and Their Integration in Canada’ (IRPP Study No. 26, February 2012) <<http://irpp.org/wp-content/uploads/assets/research/diversity-immigration-and-integration/permanently-temporary/IRPP-Study-no26.pdf>> accessed on 13 July 2016.

²³ S Yuan, T Cain and P Spoonley, ‘Temporary Migrants as Vulnerable Workers: A Literature Review’ (Wellington, New Zealand, Ministry of Business, Innovation and Employment 2014) <<https://www.massey.ac.nz/massey/fms/Research/ntom/Yuan%20Cain%20and%20Spoonley%202014.pdf?23A2F083283EE192CA49A530EA4B72F8>> accessed on 13 July 2016. See also C Costello and M Freedland, ‘Migrants at Work and the Division of Labour Law’, in C Costello and M Freedland (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law* (OUP 2014).

²⁴ F Heckmann, ‘Integration and Integration Policies’ (IMISCOE Network Feasibility Study, European Forum for Migration Studies, Bamberg University 2005) 17 <<http://www.efms.uni-bamberg.de/pdf/INTPOL%20Final%20Paper.pdf>> accessed on 11 July 2016.

²⁵ Heckmann (n 24) 17-18.

²⁶ Ibid 19.

considered to be exclusionist, denying typically the legal/political status to migrants, and reflecting “[...] *the non-acceptance of immigration and of newcomers as permanent immigrants.*”²⁷

Hence, if the integration of temporary migrants is such a time-consuming, costly and demanding process, is it relevant to, and achievable, by temporary migrants? The relevance of integration was questioned in relation to temporary migration, given the length of time it usually takes to integrate.²⁸ However, there are temporary migrants in the sense of seasonal workers or business people and “more permanent” temporary migrants, such as ICTs migrating for periods of 1 to 5 years, or even longer. Inevitably their integration experiences will vary from seasonal workers. Thus, it is argued that these different types of temporary migrants should not be put in one basket, but they can be, as there is no agreed definition of the term “temporary migration”. Integration is important and relevant even for temporary migrants too, as evidenced by the empirical research conducted for this thesis.²⁹ The aim of this thesis is to contribute to the understanding of integration as it is experienced by ICTs, which will help to see the inadequacies of the law and to formulate a new understanding of integration and protection of rights of temporary migrants.

The third strand of literature revealed that many works were concerned with expatriation and international assignments, mainly from the companies’ perspective regarding cost effectiveness of international assignments, but with less focus on the ICTs and their families’ perspective.³⁰ This thesis seeks to shed some light into their personal experiences during international transfers, which can help companies create policies that will ensure the success of international assignments.

²⁷ R Penninx, ‘Integration of Migrants: Economic, Social, Cultural and Political Dimensions’, in M Macura, AL MacDonald and W Haug (eds.), *The New Demographic Regime: Population Challenges and Policy Responses* (UN 2005) 139.

²⁸ WR Böhning, ‘Labour Market Integration in Western and Northern Europe: Which Way Are We Heading?’, in WR Böhning and R Zegers de Beijl, *The Integration of Migrant Workers in the Labour Market: Policies and their Impact* (ILO 1996) 3. Böhning stated that “*broadly speaking, integration is not relevant where non-nationals are admitted for the purpose of training; as professionals, traders or other highly qualified persons moving for business purposes inside or outside multinational enterprises; as project-tied workers; as specified-employment workers; or as seasonal workers. These are types of migrants whose authorized period of stay is envisaged by the host country to be brief and impermanent; and so are the migrants’ intentions, with a few exceptions.*” (<<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.772&rep=rep1&type=pdf>> accessed on 30 May 2017).

²⁹ Interviews with E11 and S2.

³⁰ SR Moulik and S Mazumdar, ‘Expatriate Satisfaction in International Assignments: Perspectives from Indian IT Professionals Working in the US’ (2012) 2(3) *International Journal of Human Resource Studies* 59; H-C Ko and M-L Yang, ‘The Effects of Cross-Cultural Training on Expatriate Assignments’ (2011) 20(1) *Intercultural Communication Studies* 158.

Against this background, it is necessary to take a fresh look at the temporary highly-skilled migrants tied to one employer, such as the ICTs, and study their integration and rights protection in more detail, and not only through the economic lens, but also through a more human perspective. Although they may be considered more privileged compared to low-skilled workers, they can also encounter a lot of issues and obstacles with integration. Thus, the objectives of this thesis are fourfold.

Firstly, international and Council of Europe (CoE) (chapter 3) and the EU (chapter 4) legislative and policy frameworks relating to the area of legal labour migration will be analysed to map out the current state of play regarding the rights protection of ICTs.

Secondly, the national legal and policy schemes relating to the ICTs' admission and rights protection in Slovakia (chapter 5) and England (chapter 6), both being Members of the EU and the CoE, will be evaluated against ICTs' practical experiences with each scheme. The level of ICTs' integration in both countries will be assessed using a model of ICTs' Indicators of Integration, specifically designed for them in this chapter.

Thirdly, a comparative analysis of the Slovak and English legal and policy frameworks with the provisions of the EU Intra-Corporate Transfer Directive (ICTD)³¹ will be conducted to identify the strengths, weaknesses and best practices in each framework (chapter 7).

Fourthly, drawing on the results of the comparative exercise, a new legal and policy framework for better rights protection and integration of ICTs and their families will be devised and accompanied by some recommendations addressed to legislators and policy makers at national and European levels and to MNCs (chapter 7). Also, the integration of ICTs and their families will be presented as a new "borderless" and triangular concept (this chapter and chapter 7). Chapter 8 will contain main conclusions of this thesis.

In this thesis, the angle of analysing and studying the rights protection of third-country national migrant workers, such as ICTs, is the integration and equality perspective. The link between integration and equality is in the role that equality plays in achieving integration. The concept of equality will be unpacked in more detail in chapter 4, and applied when comparing the treatment of third-country national ICTs with ICTs, who are EU nationals, working in Slovakia and in England. Here suffice it to say that the integration is a broader concept than equality. Integration as a concept is outlined in the following section.

³¹ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [2014] OJ L157/1 (ICTD).

2.2.2. Integration as a Concept

Although integration is a widely-used term, its meaning varies considerably. Robinson described it as “*a chaotic concept: a word used by many but understood differently by most.*”³² This is a sentiment echoed by Castles and others, who stated that “[t]here is no single, generally accepted definition, theory or model of immigrant and refugee integration. The concept continues to be controversial and hotly debated.”³³ Although there are many definitions of integration³⁴, the present thesis embraces the one that appears in section 1.8. of chapter 1. Before that the diverse aspects of, and approaches to, integration are explored to gain an appreciation of the complexity of this concept.

For instance, Penninx divided integration into three dimensions: legal/political, socio-economic and cultural and religious rights.³⁵ This thesis is primarily concerned with the socio-economic integration and with some aspects of social and cultural integration. Regarding socio-economic integration, the issues to be considered in this thesis cover the social and economic rights of residents, irrespective of national citizenship. These include labour rights, and rights related to access to facilities³⁶. Do ICTs have (equal) rights to accept work and to use institutional facilities to find it? Do they have the same rights as national workers? Do they have access to work-related benefits, such as unemployment benefit and insurance as well as to state-provided social security provisions, such as social housing, social assistance and welfare and care facilities? Regarding the social and cultural integration, this thesis does not focus on whether ICTs have (equal) rights to assembly and organise themselves as cultural, ethnic or religious

³² V Robinson, ‘Defining and Measuring Successful Refugee Integration’ (Proceedings of ECRE International Conference on Integration of Refugees in Europe, Antwerp, November 1998, Brussels: ECRE) 118, cited in A Ager and A Strang, ‘Understanding Integration: A Conceptual Framework’ (2008) 21(2) *Journal of Refugee Studies* 166, 167 <<http://www.cpcnetwork.org/wp-content/uploads/2014/04/19.-Ager-Strang-Understanding-Integration-2008.pdf>> accessed on 30 May 2017.

³³ S Castles, M Korac, E Vasta, and S Vertovec, *Indicators of Integration: Mapping the Field* (Report of a Project carried out by the University of Oxford Centre for Migration and Policy Research and Refugee Studies Centre contracted by the Home Office Immigration Research and Statistics Service, December 2002) 114.

³⁴ WS Bernard, ‘Indices of Integration in the American Community’ (1973) 11(3) *International Migration* 87, cited in T Kuhlman, ‘The Economic Integration of Refugees in Developing Countries: A Research Model’ (1991) 4(1) *Journal of Refugee Studies* 1, 4-5 <http://dare.uvu.vu.nl/bitstream/handle/1871/12158/Scanjob_199000035.pdf?sequence=1> accessed on 30 May 2017. See also D Cervan-Gil, ‘Host Society Integration as a Development Vector: A Literature Review’ (Global Knowledge Partnership on Migration and Development, KNOMAD Working Paper 9, 2016) 2 <http://www.knomad.org/docs/integration_issues/KNOMAD%20Working%20Paper%209%20Integration%20and%20Development_final%20Formatted.pdf> accessed on 11 October 2016.

³⁵ Penninx (n 27).

³⁶ For example, labour market mediation and training, unemployment and other benefits. See Penninx (n 27).

groups³⁷, but rather whether “*interethnic contacts, friendships and marriages are common, and [whether] immigrants speak the destination language well.*”³⁸

Moving away from ideals and definitions, on practical level integration can be influenced by three groups of factors, which include “*personal characteristics of the immigrant population, the general context in the country and its specific migration and integration policies.*”³⁹ These three groups of factors may influence different levels of integration for different groups (or individuals) and in different countries settings.

Regarding the “*personal characteristic of the immigrant population*”, these can be distinguished as demographic⁴⁰, socio-economic⁴¹ and socio-cultural characteristics⁴², which will be unique to each category of migrants (or even to each migrant) and influence their integration in distinct ways. In the literature on highly-skilled migrants, it has been argued that due to their rich economic, cultural and social capital, they do not experience many issues with integration – a notion that is disputed in this thesis.

The “*general context*” refers to the labour market structures and economic growth, the education system, the welfare system, the housing market, and public opinion in a host country about migration.

In relation to “*specific migration and integration policies*”, migration and integration occur differently in different country settings. The development of each country’s migration programme and model of integration has been influenced by their specific economic and political history, including colonialism, the post-war economic situation, historical racism, and forms of nation building and citizenship.⁴³ Each country’s approach to integration varies depending on their attitudes to migration, meaning whether or not they are welcoming and open to migrants and embrace diversity. On the scale of openness, they range from multiculturalism, assimilation (or neo-assimilation), to segregation and marginalisation. Openness of the host society has been considered as a

³⁷ Penninx (n 27).

³⁸ F van Tubergen, *Immigrant Integration: A Cross-National Study* (LFB Scholarly Publishing LLC 2006) 7.

³⁹ T Huddleston, J Niessen, and J Dag Tjaden, *Using EU Indicators of Immigrant Integration* (Report prepared for the Directorate-General for Home Affairs of the European Commission 2013) 4.

⁴⁰ These are gender, age, family status, citizenship, country of birth (first or second generation), country of birth of the parents, length of residence/and age of arrival.

⁴¹ These are education, employment, income, occupation, level of development of country of origin.

⁴² These are mother tongue and language acquisition.

⁴³ S Castles and MJ Miller, *The Age of Migration: International Population Movements in the Modern World* (Palgrave-Macmillan 2003), cited in E Vasta, ‘The Controllability of Difference: Social Solidarity and Immigrant Integration’ (University of Oxford, ESRC Centre on Migration, Policy and Society Working Paper No. 71, 2009) 18 <https://www.compas.ox.ac.uk/media/WP-2009-071-Vasta_Social_Solidarity_Integration.pdf> accessed on 12 July 2016.

pre-condition for immigrants' integration.⁴⁴ There are other concepts closely related to integration, such as social inclusion and social (community) cohesion. All these concepts are explained and compared, and then applied to England and Slovakia below.

Social inclusion is a concept very close to integration, but it is broader, as it is directed at eliminating the exclusion of all disadvantaged groups (not just migrants) to enable everyone *“to have access to, use, participate in, benefit from and feel a sense of belonging to a given area of society.”*⁴⁵ Social inclusion is a policy aim for governments throughout the culturally diverse EU societies, as it contributes to social cohesion.⁴⁶

OECD sees a cohesive society as one that *“works towards the well-being of all its members, minimizing disparities and avoiding marginalization”* and entails *“fostering cohesion by building networks of relationships, trust and identity between different groups, fighting discrimination, exclusion and excessive inequalities, and enabling upward social mobility”*.⁴⁷ Social cohesion does not require society to merge, but it *“can be achieved in a pluralist society through the interaction of different communities that build a bond through the recognition of both difference and interdependence.”*⁴⁸

This provides space for shared norms and values, but there is room created for cultural diversity too, which supports integration. On the contrary, if the attitudes of the host society are based on prejudice and racism, it can hinder integration.⁴⁹

On the scale of the openness of the society, multiculturalism is the most accommodating approach towards migrants' integration, as it constitutes an embracement of *“the presence of, or support for the presence of, several distinct cultural or ethnic groups within a society”*.⁵⁰ It recognises the right to cultural maintenance and community

⁴⁴ CoE, *Measurement and Indicators of Integration* (CoE 1997) 27.

⁴⁵ Castles and others (n 33) 115.

⁴⁶ Council of the European Union, 'Joint Report by the Commission and the Council on Social Inclusion' (Doc No. 7101/04, Brussels, 4 March 2004).

⁴⁷ OECD Development Centre, *Perspectives on Global Development: Social Cohesion in a Shifting World* (OECD 2011), cited in A Norton and A de Haan, 'Social Cohesion: Theoretical Debates and Practical Applications with Respect to Jobs' (Background Paper for the World Development Report 2013) 11 <http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013_bp_Social_Cohesion_Norton.pdf> accessed on 30 May 2017.

⁴⁸ A Rudiger and S Spencer, 'Social Integration of Migrants and Ethnic Minorities: Policies to Combat Discrimination' (Paper presented at the conference entitled 'The Economic and Social Aspects of Migration' jointly organised by the European Commission and OECD, Brussels, 21-22 January 2003) 6 <<http://www.oecd.org/migration/mig/15516956.pdf>> accessed on 6 July 2016.

⁴⁹ Heckmann (n 24) 19.

⁵⁰ English Oxford Living Dictionaries <<https://en.oxforddictionaries.com/definition/multiculturalism>> accessed on 30 May 2017.

formation, and links these to social equality and protection from discrimination.⁵¹ The UK is cited as an example of a country embracing multiculturalism.

At the same time, there are less favourable approaches towards cultural diversity. Assimilation of migrants “means their assimilation to a pre-existing, unified social order, with a homogeneous culture and set of values.”⁵² It sees integration as a one-way process, where all the responsibility to integrate lies solely with the migrant and it does not take into account the diversity of the society. For instance, France applies an assimilationist approach. In the past, assimilation has fallen into great disfavour in Europe, due to its connection to extreme nationalism in Germany.⁵³ Recently some authors spoke of a revival of assimilation – the so-called neo-assimilation – where assimilation is seen not as one-sided process, but where “it can take place as changes in two (or more) groups, or parts of them, shrink the differences and social distance between them”.⁵⁴ It has been argued that the introduction of civic tests and integration programmes by a number of European countries, such the UK or the Netherlands, sparked the birth of neo-assimilation.⁵⁵

The least open societies pursue segregation and marginalisation of migrants. Segregation can be defined as “the action or state of setting someone or something apart from others” or as “the enforced separation of different racial groups in a country, community, or establishment”.⁵⁶ The term marginalisation means a “treatment of a person, group, or concept as insignificant or peripheral”.⁵⁷

The UK adopted, between the 1970s until early 2000’s, multiculturalism as an approach to integration to tackle the increasing diversity in its society and to fight discrimination.⁵⁸ Vertovec even referred to the development of what he called a “super-diversity” in the

⁵¹ S Castles, ‘Global Perspectives on Forced Migration’ (University of Oxford, Refugee Studies Centre, 2005, draft for special issue of Asian and Pacific Migration Journal) <http://meme.phpwebhosting.com/~migracion/modules/documentos/SC_Global_Pers_on_FM_for_APMJ-1.pdf> accessed on 30 May 2017.

⁵² Rudiger and Spencer (n 48) 4.

⁵³ Heckmann (n 24) 11.

⁵⁴ R Alba, ‘Immigration and the American Realities of Assimilation and Multiculturalism’, in R Münz and W Seifert (eds.), *Inclusion or Exclusion of Immigrants* (1999) Demographie Aktuell, Nr. 14, 3-16, 6, cited in Heckmann (n 24) 12.

⁵⁵ C Joppke and W Morawska, *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States* (Palgrave MacMillan 2003), cited in A Fleras, *The Politics of Multiculturalism: Multicultural Governance in Comparative Perspective* (Palgrave MacMillan 2011) 162.

⁵⁶ English Oxford Living Dictionaries <<https://en.oxforddictionaries.com/definition/segregation>> accessed on 30 May 2017.

⁵⁷ English Oxford Living Dictionaries <<https://en.oxforddictionaries.com/definition/marginalization>> accessed on 30 May 2017.

⁵⁸ S Saggarr and W Somerville, *Building a British Model of Integration in an Era of Immigration: Policy Lessons for Government* (Migration Policy Institute 2012).

UK, in the decade preceding the year of 2006.⁵⁹ This super-diversity, however, could significantly challenge integration. The critics of multiculturalism saw its embracement of diversity as reinforcing societal divides, exclusion and xenophobia and thus disturbing the social cohesion in the UK.⁶⁰ Indeed, the UK's integration model of multiculturalism was challenged by the 2001 and 2005 riots⁶¹ and the terrorist attacks of July 2005, and as a result "*the Home Office turned away from a liberal approach in favour of a more civic and national approach to integration, and denounced the "refusal" of members of ethnic minorities to adhere to British identity.*"⁶² Thus, the 2001 and 2005 riots marked a change in the UK's integration policy.⁶³ There was a shift to a more "*neo-assimilationist trend*"⁶⁴, exemplified through the introduction of civic integration tests⁶⁵. However, "forcing" immigrants to pass compulsory language and civic tests is trying to achieve "*liberal goals*", such as migrants' integration, "*with illiberal means, making it an instance of repressive liberalism*"⁶⁶, which could obstruct their integration, rather than to support it⁶⁷. This environment is not conducive to better integration of migrants. However, if the assimilationist approach were to be applied in the UK, all the "super-diversified" national, ethnic and religious minorities and immigrants would be required to abandon their language, cultural and religious identities and to adopt a majority – British – culture. There would be two issues with this approach. Firstly, it could lead to social unrests, if the numerous and diverse groups in it would be "forced" to assimilate and abandon their various identities. Secondly, there is the issue of what these groups

⁵⁹ S Vertovec, 'The Emergence of Super-Diversity in Britain' (University of Oxford, ESRC Centre on Migration, Policy and Society Working Paper No. 25, 2006) abstract <https://www.compas.ox.ac.uk/media/WP-2006-025-Vertovec_Super-Diversity_Britain.pdf> accessed on 30 May 2017.

⁶⁰ K Malik, 'The Failure of Multiculturalism: Community Versus Society in Europe' (2015) 94(2) Council on Foreign Relations 21 <<https://www.foreignaffairs.com/articles/western-europe/failure-multiculturalism>> accessed on 7 July 2016.

⁶¹ The 2001 riots relate to events in Northern towns of Bradford, Harehills and Oldham. The 2005 riots relate to events in Birmingham.

⁶² C Bertossi, 'French and British Models of Integration: Public Philosophies, Policies and State Institutions' (University of Oxford, ESRC Centre on Migration, Policy and Society Working Paper No. 46, 2007) 4 <https://www.compas.ox.ac.uk/media/WP-2007-046-Bertossi_French_British_Integration.pdf> accessed on 12 July 2016.

⁶³ Bertossi (n 62) 29.

⁶⁴ On the issue of the revival of assimilation as an approach to integration see, for example, R Alba and V Nee, 'Rethinking Assimilation Theory for a New Era of Immigration', in C Hirschman, P Kasinitz and J DeWind (eds.), *The Handbook of International Migration: The American Experience* (Russell Sage Foundation 1999) 137-160. This trend was also termed "integration and cohesion", see Vasta (n 43) 4.

⁶⁵ A Triandafyllidou, *Addressing Cultural, Ethnic and Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries* (ACCEPT PLURALISM Research Project, European University Institute 2012) 16-17.

⁶⁶ C Joppke, 'Beyond National Models: Civic Integration Policies for Immigrants in Western Europe' (2007) 30(1) West European Politics 1, 1.

⁶⁷ B Byrne, 'Testing Times: The Place of the Citizenship Test in the UK Immigration Regime and New Citizens' Responses to it' (2016) Sociology 1.

would be required to assimilate into. The notion of what Britishness means is not clear and is debated.⁶⁸

In Slovakia, prevailing nationalism is deeply rooted into the minds of the population.⁶⁹ Slovakia, an ethnically more homogenous society than the UK, and a country that was isolated for many decades in the Eastern bloc, is yet to become a more open society. A step towards the right direction was the adoption of the first comprehensive 2014 Integration Policy that defined integration as a “*two-way process of mutual acknowledgment and respect by and for the majority society and foreigners.*”⁷⁰ However, in practice, certain legislative reforms suggest that migrants in Slovakia are expected to assimilate into the majority population.⁷¹ This is supported by the fact that in the political and public discourse migration is seen as a “*security risk*” and “*cultural threat*”, which is also reflected in some policy documents.⁷² In the 2011 Migration Policy of the Slovak Republic Perspective until the year 2020⁷³ it is stated that “[*t*]he basic criterion applicable to the acceptance of foreigners within [...] is their potential for the development of the Slovak economy and society [...] with an emphasis on culturally related countries.”⁷⁴ The document also mentions that Slovakia “*inclines to an integration model based on the full acceptance by migrants of the current situation in [Slovakia].*”⁷⁵ This integration model requires, if not an assimilation, but at least provides for unequal rights and obligations, prioritising State interests over migrants’ rights.⁷⁶ It would appear to be similar to neo-assimilation. This unaccommodating approach to immigration and integration in the policies, political discourse and within the host society could have a negative impact on integration of migrants in Slovakia.

⁶⁸ R Langlands, ‘Britishness or Englishness?: The Historical Problem of National Identity in Britain’ (1999) 5(1) Nations and Nationalism 53; HJ Smith, ‘Britishness as Racist Nativism: A Case of the Unnamed ‘Other’ (2016) 42(3) Journal of Education for Teaching 298.

⁶⁹ M Hlinčíková, ‘Growth and Development of Diversity in Slovakia – Slovakia as the New Destination Country of Migration’ (2009) EURODIV Paper 65.2009 <https://www.academia.edu/7597737/Growth_and_Development_of_Diversity_in_Slovakia_Slovakia_as_the_New_Destination_Country_of_Migration?auto=download> accessed on 23 August 2016.

⁷⁰ Government of the Slovak Republic, ‘Resolution No. 45 of 29 January 2014 approving the Integration Policy of the Slovak Republic’, 3.

⁷¹ These included a reform of the Act on the Nationality, which made it very difficult for foreigners to obtain the Slovak nationality via naturalisation and the Act on Registration of Churches and Religious Groups, which practically prevented migrants to practice their religions. See E Gallová Kriglerová, J Kadlečíková, and J Lajčáková, *Migranti – Nový Pohľad na Staré Problémy: Multikulturalizmus a Kultúrna Integrácia Migrantov na Slovensku* (CVEK 2009) 122.

⁷² J Androvičová, ‘Securitization of Migrants in Slovakia – Discourse Analysis’ (2015) 47(4) Sociológia 319, 330.

⁷³ Government of the Slovak Republic, ‘Resolution No. 574 of 31 August 2011 approving the Migration Policy of the Slovak Republic: Perspective until the Year 2020’.

⁷⁴ Migration Policy of the Slovak Republic (n 73) 6.

⁷⁵ Migration Policy of the Slovak Republic (n 73) 9.

⁷⁶ Androvičová (n 72).

Even though it can be observed that the Slovak and English approaches and definitions of integration are leaning towards assimilation, they remain different, which has an impact on what is meant by (successful) integration.⁷⁷ Therefore, as the aim of this thesis is to analyse to what extent ICTs and their families have integrated in Slovakia and England, it is necessary to embrace a “neutral” understanding of integration, namely that of Ager and Strang⁷⁸, as presented in section 1.8. of chapter 1.

According to Ager and Strang integration occurs, when all members of the society, including migrants, enjoy equality or near-equality. This level of integration is achievable by EU nationals or permanently resident third-country nationals because of their privileged status under the EU law compared to other third-country nationals. This “ideal” level of integration can contribute to the social cohesion and diminishing social distances.⁷⁹ What is the level of integration of third-country national ICTs who are often temporary migrants tied to one employer? The next section will deal with the measuring of the level of their socio-economic, social and cultural integration in Slovakia and England using the ICTs’ Indicators of Integration devised for that purpose.

2.2.3. ICTs’ Indicators of Integration

It is necessary to develop a specific model of ICTs’ Indicators of Integration for two reasons. Firstly, so that their integration could be measured more accurately. The Ager and Strang’s definition and related indicators of integration serve well as a starting point, because they constitute the “ideal” level of integration, which is achievable by EU nationals and which is also sought for ICTs in this thesis.⁸⁰ However, because sometimes ICTs’ stay is either limited under temporary migration programmes, or inherently temporary, this “ideal” level of integration may not be suitable or achievable by some of them. Thus, it is important to adapt the Ager and Strang’s model to obtain a more realistic picture of ICTs’ level of integration, as temporary migrants. Secondly, the Ager and Strang model constitutes the “traditional” perception about the integration process as

⁷⁷ CoE, *Measurement and Indicators of Integration* (n 44) 9.

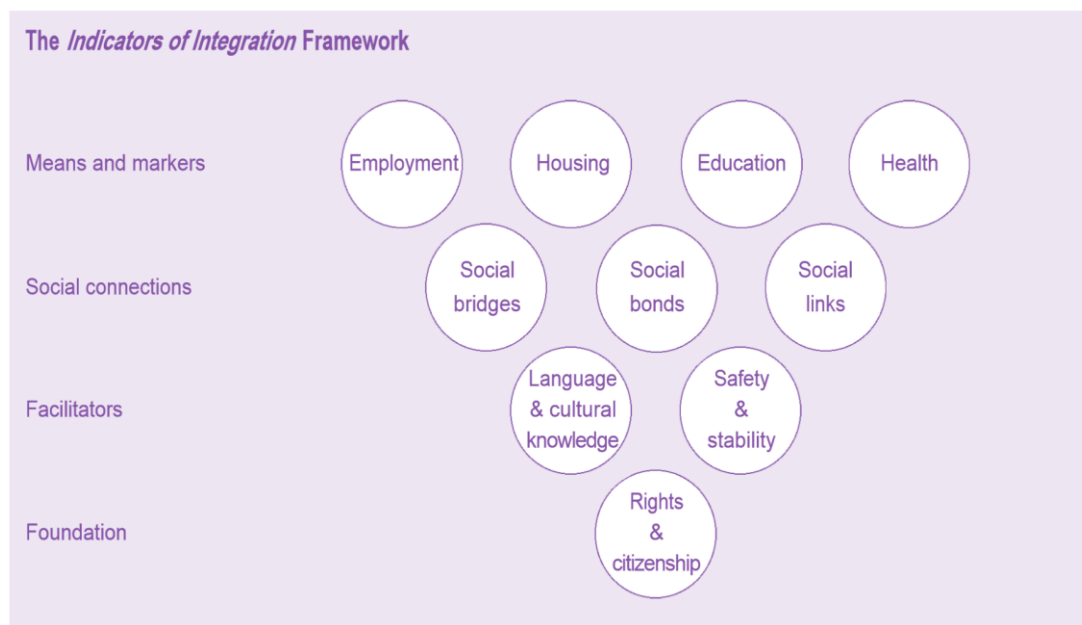
⁷⁸ Ager and Strang, *Indicators of Integration: Final Report* (UK Home Office Development and Practice Report No. 28, 2004) 5.

⁷⁹ A Lima, ‘Transnationalism: A New Mode of Immigrant Integration’ (University of Massachusetts, The Mauricio Gastón Institute for Latino Community Development and Public Policy, 17 September 2010) 8 <<http://www.bostonplans.org/getattachment/b5ea6e3a-e94e-451b-af08-ca9fcc3a1b5b/>> accessed on 6 July 2016.

⁸⁰ Ager and Strang (n 78). The Ager and Strang’s definition of integration and indicators of integration are well-known and widely used and are adopted in this thesis uncritically. There are other frameworks of indicators of integration which are quite similar to the Ager and Strang’s framework. See, for example, the Zaragoza Indicators in Huddleston and others (n 39) 9; or CoE, *Measurement and Indicators of Integration* (n 44).

relating to the territory of the host country. However, the way ICTs experience their integration is different due to the nature of the intra-corporate transfer.⁸¹ This means that the integration of ICTs and their families spans beyond the borders of the host country, to the time before and after the transfer. It is “borderless”.⁸² The Ager and Strang model (Figure 1) is briefly introduced below, which is followed by an outline and explanation of the rationale for formulating a specific model of indicators of integration for ICTs.

Figure 1 – Ager and Strang Indicators of Integration⁸³



There is a mixture of indicators and facilitators, organised in four layers in a kind of inverted pyramid, which can be read in two ways: from top to bottom or from bottom to top. Each indicator can be understood as a means of further integration, and facilitators, such as the knowledge of the host countries’ language, are also indicators of integration. The first layer consists of “*means and markers*”. This layer contains four indicators of integration, namely “*employment*”, “*housing*”, “*education*” and “*health*”. They are “*markers*”, because they constitute the “*public face*” of integration, where progress is a clear indication of positive integration outcomes, and they are also “*means*” because success in these areas is mutually reinforcing and helps the wider integration process. Whilst the four indicators outlined above could be considered as the “*public face*” of integration, they do not fully explain integration as experienced by migrants in their

⁸¹ Being repetitive type of migration between two or more countries, whether countries of origin or destination, and occurring within an organisation setting.

⁸² This will be further discussed, in more detail, later in this section.

⁸³ Ager and Strang (n 78) 3.

everyday lives. Thus, “*social connections*” stress the importance of personal relationships in the integration process and are composed of “*social bonds*”, “*bridges*” and “*links*”.⁸⁴ “*Social bonds*” are connections within the ethnic, migrant or refugee community, while “*social bridges*” are relations developed with the mainstream host society and with other communities in it, and “*social links*” are the evolving connections with institutions, such as local and central government services, and NGOs etc.

“*Facilitators*”, intrinsic to the process of integration, are two in number. “*Language and cultural knowledge*” and “*safety and stability*”. Firstly, “*language*” is identified by Ager and Strang as a key competence for integration and is combined with broader “*cultural knowledge*”, reflecting the principle that “*to know a language is to know a culture*”.⁸⁵ Secondly, “*safety and stability*” relate to fear of crime and experiences of racial harassment and discrimination, and to fostering a sense of continuity and permanence, seen as important in developing relationships with people and institutions in the host society.

“*Foundation*” is the domain of rights and citizenship and represents the legal and human rights platform on which all other domains are based. The rights are “*the foundation of integration policy, to which governments are accountable*”.⁸⁶ Ager and Strand argued that equal rights (with nationals) are fundamental for integration.⁸⁷ This argument is also promoted in this thesis, even in relation to temporary migrants, such as ICTs.

For the purposes of this thesis, most of the aspects of the Ager and Strang model are retained in the model of ICTs’ Indicators of Integration (*Figure 2*), while others added to create a model capable of measuring the level of ICTs’ integration and better reflecting it as a process. What is borrowed from Ager and Strang are the indicators of “*employment*”, “*education*” and “*health*”, because these are repeatedly considered, in integration literature, as vital and fundamental for integrating migrants into a new society.⁸⁸ The indicator of “*housing*” is left out, as it is not relevant to higher earning ICTs. The layer of “*social connections*” is kept too. The “*foundation of rights and citizenship*” does not appear in the model to reflect the fact that intra-corporate transfers are often temporary type of migration, and thus some ICTs, under current temporary migration programmes,

⁸⁴ This aspect of the framework draws explicitly on the terminology of social capital. See M Woolcock, ‘Social Capital and Economic Development: Towards a Theoretical Synthesis and Policy Framework’ (1998) 27(2) *Theory and Society* 151. See also RD Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000).

⁸⁵ Ager and Strang (n 78) 4.

⁸⁶ Ager and Strang (n 32) 175.

⁸⁷ Ager and Strang (n 32) 176.

⁸⁸ Ager and Strang (n 32) 173. See also Huddleston and others (n 39) 9.

may not achieve rights on equal footing with nationals or obtain citizenship. Five new aspects are added to the Ager and Strang model, namely the *pre-departure training and assistance, permit application procedure for ICTs, conditions for family reunification, and future prospects and repatriation* of ICTs and their families.

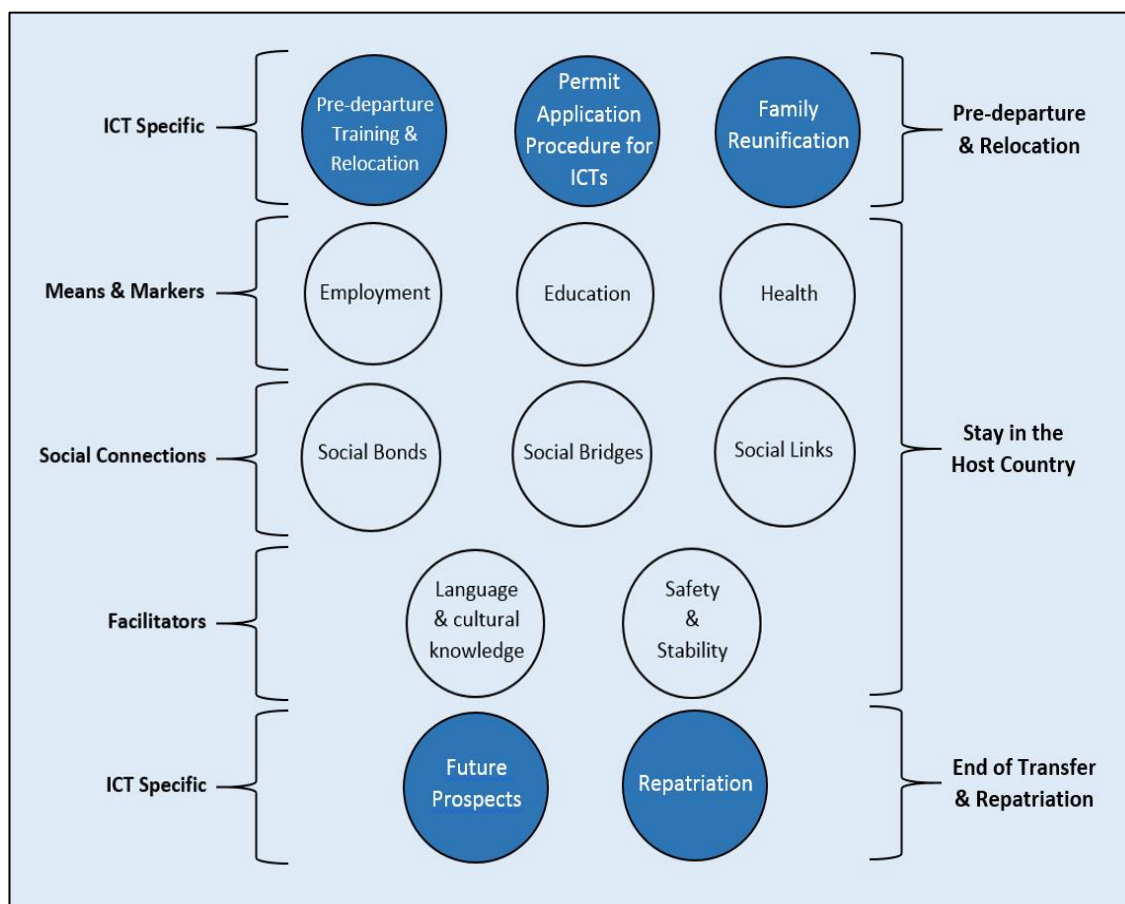
The indicators/facilitators are organised in five layers, and also according to the main three stages in the intra-corporate transfer, namely the pre-departure and relocation, stay in the host country, and end of the intra-corporate transfer and repatriation. Traditionally, integration efforts concentrated on the stay in the host country only, which suits migrants with more long-term prospects of residence, but not for ICTs, who are often temporary migrants moving within a company structure. To ensure a more accurate measurement and better understanding of integration of ICTs and their families, integration needs to be seen in a bigger context – beyond the borders of the host country. Thus, it spreads to the pre-departure and relocation and the end of the transfer stages. This constitutes a new way of thinking about integration – viewed as a whole at all stages of the migration process – as “borderless”.

In addition to the idea of ICTs’ integration process being “borderless”, it will be recalled from chapter 1, that apart from States and ICTs there is another important actor that has a significant influence on ICTs’ and their families’ integration – employers – creating a triangular notion of integration. States and employers can contribute to the integration of ICTs and their families in different capacities during the various stages of the intra-corporate transfer.⁸⁹

The ICT’s Indicators of Integration will be used to scrutinise the Slovak and English laws and policies, and MNCs’ policies and actions throughout the different stages of the intra-corporate transfer. This will aid in gaining the true picture of ICTs’ level of integration in comparison with EU nationals, who enjoy the “ideal” level of equality with nationals of the host country, which in turn will facilitate identifying strengths, weaknesses and best practices (chapters 5 and 6). This will then enable the formulation of a new legal and policy framework for rights protection and integration of ICTs and their families, as well as the establishment of a fresh understanding of integration as a “borderless” and triangular concept (chapter 7).

⁸⁹ Companies can contribute as sending (mother) companies or as host companies. States can have an impact on ICTs’ and their families’ integration as sending countries (countries of origin) or as host countries.

Figure 2 – ICTs’ Indicators of Integration



The first layer of integration corresponds to the pre-departure and relocation stage and includes three indicators/facilitators of integration: the *pre-departure training and relocation*, *permit application procedure for ICTs*, and *conditions for family reunification*. This layer is added to the Ager and Strang model, because the integration process of ICTs, as temporary migrants, can be considered to be different from the process of integration of classical job-seeking migrants, who may have a better prospect of attaining secure residence status in a host country, and for whom true integration starts upon arrival. However, ICTs and their families’ integration should start before the actual arrival in the host country, due to temporary nature of their stay, and be exemplified through the availability of pre-departure training in a host country’s language and culture⁹⁰, and the company’s assistance during the relocation process⁹¹. Their availability

⁹⁰ P Caligiuri and I Tarique, ‘International Assignee Selection and Cross-Cultural Training and Development’, in GK Stahl, I Björkman, and S Morris (eds.), *Handbook of Research in International Human Resource Management* (Edward Elgar 2006) 302-322.

⁹¹ Moulik and Mazumdar (n 30) 70.

will be an indicator of integration, because training in the language and culture of the host country and assistance during the relocation will facilitate integration.

In addition, ICTs are subject to immigration control, in the sense that they must apply for relevant permits, unlike EU nationals. This process is lengthy and requires compliance with several conditions. Some EU Member States have created specific schemes targeting ICTs, such as the Tier 2 ICT route of the Points Based System in England. Other countries, such as Slovakia, apply the same requirements to most third-country nationals.⁹² Depending on how favourable the permits application procedures and conditions are, this could either facilitate or hinder the ICTs' access to the territory and labour market. Availability of simplified admission procedures will signal a potential for easier arrival and integration in the host country.

Moreover, family reunification is a crucial factor not only for attracting highly-skilled migrants, but also for their integration in a host country.⁹³ Those ICTs, who have families, need to be able to easily bring them to the destination country, because they can move a lot and at short notice. To be able to bring their family with them is important, because many ICTs can be mid-career professionals with small children.⁹⁴ Therefore, favourable conditions for family reunification could be critical for their easier integration.

The next three layers of indicators/facilitators relate to the stay in the host country stage. Within this stage, the integration of ICTs and their families happens in the socio-economic, social and cultural dimensions of integration. Free access to *employment* constitutes perhaps the most researched area of integration⁹⁵, and is often cited as one of the main indicators of integration⁹⁶. Moreover, employment has consistently been identified as a factor influencing many relevant issues, including promoting economic independence, planning for the future, meeting members of the host society, providing the opportunity to develop language skills, restoring self-esteem and encouraging self-

⁹² On 11 January 2017, the EU Intra-Corporate Transfer Directive came into force in Slovakia. After that date, ICTs can also apply for a single ICT permit.

⁹³ See the proposal to amend the EU Blue Card Directive - Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment COM(2016) 378 final, Strasbourg, 7.6.2016.

⁹⁴ M Blažek, S Andrášová, and N Paulenová, *Skúsenosti Migrantov a Migrantiek na Slovensku s Násilím* (IOM 2013) 44-45.

⁹⁵ Castles and others (n 33).

⁹⁶ See, for example, OECD/EU, *Indicators of Immigrant Integration 2015: Settling In* (OECD 2015) 79-126.

reliance.⁹⁷ ICTs could be considered as partially economically integrated, because they are coming to fill in a specific highly-skilled job. Thus, they are unlikely to suffer from unemployment, over-qualification for the job in question, or perhaps not even from non-recognition of qualifications. However, as they are tied to one employer, they cannot freely seek employment. Furthermore, intra-corporate transfer could generate a lot of costs for ICTs, for example, supporting family in case their spouse does not have access to the labour market, school fees for children, or commercial health insurance for spouses and children. In addition, access to social security benefits can be limited for temporary migrants, or they can often incur double contributions.

ICTs and their families do not always have access to free state *healthcare* depending on the national law or the type of contract ICTs have. Generally, access to free state compulsory *education* is granted to migrants' children. However, the lack of the host country's language skills can constitute a significant barrier in having access to free education and healthcare along with the cost for private education and commercial health insurance.

ICTs' and their families' social and cultural integration constitutes another – deeper – level of integration in the host country. As ICTs could be considered at least partially socio-economically integrated, it is within the area of social and cultural integration, where the more realistic picture of their overall integration level could be obtained. In line with the Ager and Strang's *social connections*, this work seeks to uncover, whether ICTs' and their families' social interactions in the host country move beyond *social bonds* to *social bridges*. In relation to *social bridges*, the aim is to establish, whether there is tolerance/acceptance without a conflict on the side of the domestic population or whether there are more active interactions (i.e. greater friendliness).⁹⁸ The presence of *social links* would mean that ICTs have connections to the State structures, such as government services, for instance, access to an interpreter, or participating in NGOs.

Facilitators of social and cultural integration are the *knowledge of the host country's language and culture* and the feeling of *stability and safety*. Do ICTs have the knowledge of the language upon arrival? What are their opportunities and support to learn the language after arrival? It has been argued that attaining the knowledge of the host country's language differs depending on the migrants' length of stay, and that migrants,

⁹⁷ A Bloch, 'Refugees in the Job Market: A Case of Unused Skills in the British Economy', in A Bloch and C Levy (eds.), *Refugees, Citizenship and Social Policy in Europe* (Palgrave Macmillan 1999), 187-210; F Tomlinson and S Egan, 'From Marginalization to (Dis)empowerment: Organizing Training and Employment Services for Refugees' (2002) 55(8) *Human Relations* 1019.

⁹⁸ Ager and Strang (n 32) 180.

who expect to spend a short time in the destination country are less likely to invest efforts in learning the host country's language, since this investment would be lost once they left.⁹⁹ Accordingly, studies have shown that temporary migrants tend to invest in skills, which could be utilised internationally or not to invest in country-specific skills at all.¹⁰⁰ This leads to the question: If ICTs do not acquire the knowledge of the host country's language, how do they navigate in their everyday lives? What is their knowledge of the host country's culture? Do they join any organisations? Do they encounter any discrimination?

Another layer of indicators/facilitators of integration corresponds to the end of intra-corporate transfer and repatriation stage. This stage consists of two elements, namely the *future prospects* of ICTs and their families and the process of *repatriation*. It is important to explore this area as the end of the transfer and repatriation could have impact not only on the quality of their life in the host country, but also on their live overall. Issues in point would be the ICTs' and their families' future career, schooling and their reintegration into the country of origin and sending company.¹⁰¹ This is relevant for temporary migrants, who can move between different destinations and the company's branches more than once.

To conclude, the first part of this chapter has dealt with the theoretical framework underpinning this thesis, which is the concept of integration for ICT. The following sections will focus on the research design of this study and the processes and methods adopted for collecting and analysing the qualitative data from Slovakia and England.

2.3. Methodology

A key aim of this thesis is to explore to what extent third-country national ICTs enjoy equality, non-discrimination and rights protection in comparison with EU nationals, who

⁹⁹ BR Chiswick, 'Are Immigrants Favorably Self-Selected?: An Economic Analysis' (Institute for the Study of Labour (IZA), Discussion Paper No. 131, 2000) 9 <<ftp://ftp.iza.org/SSRN/pdf/dp131.pdf>> accessed on 17 July 2016. See also van Tubergen (n 38) 16.

¹⁰⁰ Chiswick (n 99).

¹⁰¹ SA Rahim, 'Repatriation Issues Relating to Expatriate Managers: A Critical Review' (2010) 4(2) ASA University Review 210-222 <<http://www.asaub.edu.bd/data/asaubreview/v4n2s118.pdf>> accessed on 17 September 2016; See also GK Stahl, CH Chua, P Caligiuri, J-L Cerdin, and M Taniguchi, 'Predictors of Turnover Intentions in Learning-Driven and Demand-Driven International Assignments: The Role of Repatriation Concerns, Satisfaction with Company Support, and Perceived Career Advancement Opportunities' (2009) 48(1) Human Resources Management 89.

are granted equality of treatment on almost equal level with nationals. Another aim is to analyse how these levels of equality, non-discrimination and rights protection affect ICTs' integration in Slovakia and England. What is the difference in rights protection in law and practice, and what are the strengths, weaknesses and best practices in the Slovak and English national laws and policies, as well as in the ICTD, in areas of rights protection and integration of ICTs? Answering these main research questions will lead to the formulation of a new legal and policy framework regarding rights protection and integration of ICTs and their families.

A socio-legal approach is chosen for this thesis combining the theoretical analysis of international, European, and national laws and policies, with the empirical study of ICTs' experiences. This is an inter-disciplinary work, combining an analysis of the relevant rules and policies, and how these are implemented by the national authorities in practice, with a sociological study through which the ICTs' experiences in their everyday life in Slovakia and England are explored. The aim is to better understand the impact of the national legal and policy frameworks on the ICTs' and their families' life.¹⁰²

The methods used in the research design were threefold: the literature review, small-scale qualitative study of ICTs, combined with a comparative desk-based research exercise, which brings together the Slovak and English laws and policies, and provisions of the ICTD, relating to the rights protection and regulation of ICTs.

2.3.1. A Desk-Based Research Stage

In addition to the literature review on integration and rights protection of temporary and highly-skilled migrants as described above¹⁰³, and, before starting the empirical work, an examination of the existing legal and policy frameworks concerning the rights protection of regular migrant workers at international, European and national levels was conducted. These two stages of the desk-based research assisted in laying the background and the foundations of this thesis.

2.3.2. Empirical Stage

The empirical element of this study is comprised of in-depth semi-structured interviews with ICTs and their employers. The responses indicated how the ICTs and their families

¹⁰² See section 2.3.2.

¹⁰³ See section 2.2.1.

navigated in their lives within the national legal and policy frameworks, and how these impacted on the practical enjoyment of their rights and equality, and thus on their integration. This contributes to filling the existing gaps in the literature and research on ICTs, as highly-skilled temporary migrants. Interviews with employers provide an insight into how the national law and policy affected lives of ICTs too. The data assist in the understanding of the extent of (non)involvement of employers in the lives of ICTs, which may either facilitate or hinder their integration at the various stages of the intra-corporate transfer. The data obtained facilitate the comparison of the Slovak, English and EU schemes and the identification of the strengths, weaknesses, and best practices. The aim is to use the results of this analysis for formulating the new legal and policy framework for rights protection and integration of ICTs and their families, and for developing recommendations to policy makers and legislators at both European and national levels and to employers on how to improve rights protection and integration of ICTs.

2.3.2.1. Research Setting

The comparison of the Slovak and the English legal frameworks is unique. To be comparable, entities should have shared and non-shared attributes.¹⁰⁴ The shared attributes between Slovakia and England include the fact that both countries are Member States of the EU and the CoE, with common values of human rights protection, democracy and the rule of law, and they both host ICTs populations. The non-shared attributes are discussed in the following paragraphs. Firstly, England, as a part of the UK, is an old EU Member State, which voted to leave the EU in the national referendum on 23 June 2016, while Slovakia joined the EU in 2004.

Secondly, the UK managed to negotiate with the EU a special protocol, which allows it to opt out of the EU legislation in the area of justice and home affairs, including regular labour migration of third-country nationals.¹⁰⁵ This means that the UK is not required to transpose the EU legislation in that area, including the ICTD. Due to this opt-out, England maintained its domestic legislation and policy regarding ICTs. In contrast, Slovakia is obliged to transpose all EU secondary legislation in the area of labour migration. Accordingly, the ICTD had to be transposed and came into force in January 2017.

¹⁰⁴ G Sartori, 'Comparing and Miscomparing' (1991) 3(3) *Journal of Theoretical Politics* 243, 246.

¹⁰⁵ See chapter 1, section 1.4.

Thirdly, both countries apply different approaches to international law. The UK use the dualist approach and Slovakia the monist approach. The dualist approach means that international law is not directly applicable domestically. It must first be transposed into national legislation by legal acts, before it can be applied by the national courts. The monist approach means that the act of ratifying an international treaty immediately incorporates international rules into domestic legal system.

Fourthly, Slovakia is a civil law country with a written constitution and a constitutional court interpreting it, whereas the UK is a common law country with uncodified constitution¹⁰⁶ and no *per se* constitutional court¹⁰⁷. Although common law systems make extensive use of statutes, judicial cases are still regarded as important sources of law, which gives judges a bit more active role in developing rules.¹⁰⁸ To ensure consistency, courts abide by precedents set by higher courts examining the same issue. In civil law systems, by contrast, codes and statutes are designed to cover all eventualities and judges have a more limited role of applying the law. Past judgments are no more than loose guides.

Finally, there is a different situation regarding migration in each country. The UK is a culturally and ethnically more diverse country with a long history of immigration, whereas Slovakia is more ethnically homogenous country, with very little experience in immigration-related issues.

2.3.2.2. *Participants*

Full anonymised and coded list of participants is presented in Appendix I. The participants worked for 22 MNCs and were 38 in total: 26 ICTs (9 in Slovakia and 17 in England) and 12 employers (8 in Slovakia and 4 in England). Out of the 26 ICTs, 23 were third-country nationals and 3 were EU nationals. Interviews with EU nationals provided interesting data, illustrating many similarities in the experience of EU nationals transferred to third countries and third-country nationals sent to the EU. Their ages ranged from 25 to 60+, and included singletons, as well as individuals with families. They occupied a wide variety of positions from trainee employees to a president of the company. They all had university degrees ranging from bachelor's degree to

¹⁰⁶ The constitution cannot be found in one written document (codified) but parts of it are written (in statutes, for example).

¹⁰⁷ The UK Supreme Court adjudicates on cases of immense constitutional importance, for instance, *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

¹⁰⁸ However, the supremacy of the UK Parliament would trump jurisprudence.

postgraduate qualifications. In addition, they came from many different countries: 3 from Western Europe, 3 from Eastern Europe, 3 from Northern America, 1 from Central and Latin America, 6 from South-East Asia and Oceania, 2 from Southern Asia, and 8 from Eastern Asia. ICTs arrived in Slovakia and England between 2005 and 2014.

2.3.2.3. *Sampling and Recruitment Procedures*

The sampling procedures employed in this thesis include predominantly a purposive sampling¹⁰⁹ and snowball sampling¹¹⁰. Participants were recruited through MNCs employing ICTs. In Slovakia, a general internet search revealed that ICTs were employed mainly in the automotive, IT and electro industries, and that these companies were located all over Slovakia. To expand the search to the whole of Slovakia was necessary due to a smaller number of companies employing ICTs. In England, it was easier to identify companies employing ICTs, as there is available a public register of companies that sponsor ICTs.¹¹¹ For economic and convenience reasons, companies in Oxfordshire and London area were identified.

Around 150 companies were contacted in each country by email. If there was no response, a phone call followed to establish a name of a person to whom a Gatekeeper Letter (Appendix II) could be forwarded. Having done so, more responses were received. There were fewer positive responses in Slovakia than in the UK. For this reason, exploratory emails were sent to Trade Unions, Chambers of Commerce, migrant associations, their church, etc. The Recruitment Poster (Appendix III) was also posted on Facebook pages of interest to foreigners living in Slovakia, after page administrator's permission and affirming correct netiquette with them. There was no response. The assistance of friends/acquaintances, who either worked in the companies employing ICTs, or knew someone who did, was sought, which generated more participants.

A person in a company or friend/acquaintance acted as gatekeepers. An email was sent to them with the Recruitment Poster and an Information Sheet for ICTs (Appendix IV) and employers (Appendix V), which they forwarded onto prospective participants, who were

¹⁰⁹ P Foster, 'Observational Research', in R Sapsford and V Jupp (eds.) *Data Collection and Analysis* (SAGE 1996) 79.

¹¹⁰ See, for example, LS Abrams, 'Sampling 'Hard to Reach' Populations in Qualitative Research' (2010) 9(4) *Qualitative Social Work* 536.

¹¹¹ Home Office, Register of Sponsors (Tiers 2 & 5 and Sub Tiers Only) <<https://www.gov.uk/government/publications/register-of-licensed-sponsors-workers>>.

then to contact the researcher directly, should they wish to participate. This was to ensure their voluntary participation.¹¹²

In England 20 participants out of the total of 21 participants were recruited by approaching a company and only one participant (ICT) through an acquaintance. In Slovakia 12 participants were recruited by approaching a company and 5 participants through friends/acquaintances.

Only 3 out of the total of 38 participants were recruited through snowball sampling. A snowball sample can sometimes limit findings to the opinions of one particular network of friends and acquaintances (lack of representativeness)¹¹³, though as only three participants were recruited in this way, it is unlikely to significantly affect the findings from this group¹¹⁴. In addition, the impact of any possible biases was also minimised, because the three participants were recruited by two unrelated sources.¹¹⁵ Although small, the samples are representative, because they include ICTs from different countries, companies, and at different career and life stages.

2.3.2.4. Interviews

Semi-structured interviews were chosen as an interviewing technique, because they offer an opportunity to conduct in-depth inquiry, which “*is meant to be a personal and intimate encounter in which open, direct, verbal questions are used to elicit detailed narratives and stories.*”¹¹⁶ The aim is to obtain narratives from the participants. Narratives are “*interpretive devices through which people represent themselves, both to themselves and to others.*”¹¹⁷ Moreover, they contain “*performative aspects*”.¹¹⁸ Thus, semi-structured interviews can produce rich and detailed data sets, which are reliable and comparable, and this serves well for the purpose of the present study in order to gain a

¹¹² Further discussion of ethical considerations can be found in section 2.3.2.6.

¹¹³ P Griffiths, M Gossop, B Powis, and J Strang, ‘Reaching Hidden Populations of Drug Users by Privileged Access Interviewers: Methodological and Practical Issues’ (1993) 88 *Addiction* 1617.

¹¹⁴ Foster (n 109) 80-81.

¹¹⁵ P Blanken, VM Hendricks, and NFP Adriaans, ‘Snowball Sampling—Methodological Analysis?’, in VM Hendricks, P Blanken, NFP Adriaans (eds.), *Snowball Sampling—A pilot Study on Cocaine Use: Rotterdam* (IVO 1992) 83-100.

¹¹⁶ B DiCicco-Bloom and BF Crabtree ‘The Qualitative Research Interview’ (2006) 40(4) *Medical Education* 314, 317.

¹¹⁷ S Lawler, ‘Narrative in Social Research’, in T May (ed.) *Qualitative Research in Action* (SAGE 2002) 246.

¹¹⁸ C Kohler Riessman, ‘Analysis of Personal Narratives’, in JF Gubrium and JA Holstein (eds.), *Handbook of Interview Research: Context & Method* (SAGE 2002) 701.

deep understanding of ICTs' experiences with the legal and policy frameworks, and with the national contexts that shape their lives, access to rights and integration.¹¹⁹

An interview template was used only as a point of reference or a "*prompt*" and to check that all the points were covered and that the interview was on track.¹²⁰ It was important to keep the questions open-ended, so that the participants were encouraged to reflect on their identity and true feelings.¹²¹ Semi-structured interviews with open questions allow respondents the freedom to express their views in their own terms, which encourages the naturalistic and a conversation-like flow during the interview and offers balance in "*power and positionality*" between interviewer and interviewee.¹²²

Interview templates contain questions organised in themes, which were compiled after the literature review, especially on the rights protection and integration of migrant workers and on indicators of integration. Two separate templates were prepared: one for ICTs (Appendices VI) and one for employers (Appendix VII). All interviews were conducted either in Slovak language (with Slovak employers) or in English with ICTs in Slovakia and ICTs and employers in England. There was no need to use interpreters.

The interviews in Slovakia were conducted in August-September 2014 and one in December 2015. A total of 14 interviews were conducted (7 with ICTs and 7 with employers). Data were obtained from 3 other respondents (2 ICTs and 1 employer), who agreed to complete the interview template and answer any subsequent questions, because they could not be interviewed. Most of the interviews in England were conducted in October 2014 and one in April 2015. A total of 19 interviews (17 with ICTs and 2 with employers) were conducted. Two further employers, who did not have the time for an interview, agreed to complete the interview template and answer any subsequent questions.

Interviews in person, or at least over the phone, would have been better as it would be possible to immediately ask questions, and see the body language/hear the tone of the

¹¹⁹ C Seale, *The Quality of Qualitative Research* (SAGE 1999).

¹²⁰ BL Leech, 'Asking Questions: Techniques for Semistructured Interviews' (2002) 35(4) *Political Science and Politics* 665, 667-668.

¹²¹ JM Johnson, 'In-Depth Interviewing' in Gubrium and Holstein (n 118) 106.

¹²² R Edwards and J Holland, 'What Are the Power and Emotional Dynamics of Qualitative Interviews?', in G Crow (ed.), *What is Qualitative Interviewing?* (Bloomsbury 2013) 77-78 <http://eprints.ncrm.ac.uk/3276/1/complete_proofs.pdf> accessed on 28 July 2016.

voice of the participants.¹²³ The opportunity to ask further questions or questions to avoid ambiguity and misinterpretations by email afterwards somewhat compensated for this. Indeed, this approach of a kind of an “*online interview*” removed time constraints from participants, allowing for more thoughtful and detailed responses.¹²⁴ Hence, it enabled obtaining further invaluable and useful data, which was crucial, given the difficulties in recruiting participants. In addition, the data collected using this method was obtained only from five participants, thus the quality of the data overall was not affected.

2.3.2.5. *Data Analysis*

The data analysis in this thesis was informed by the grounded theory, which investigates the actualities in the real world and analyses the data with no preconceived ideas or hypothesis.¹²⁵ In other words, the grounded theory suggests that theory emerges inductively from the data.¹²⁶ It is used to formulate hypotheses or theories based on existing phenomena, or to discover the participants’ main concern and how they continually try to resolve it¹²⁷, which fits well with the intention of this study to learn how ICTs navigated in their lives in the context of existing legal and policy frameworks that affected them. Moreover, the grounded theory presupposes “*no preconceived ideas or hypothesis*”, which is useful regarding conducting legal research into an area – integration of ICTs and their families, where little previous research exists. Thus, a new theory could be discovered from “*data systematically obtained through research.*”¹²⁸ The grounded theory requires that, as the data is collected and reviewed, and repeated ideas, concepts or elements become apparent, they should be tagged with codes, which have been extracted from the data. As more data is collected and re-reviewed, codes can be grouped into concepts, and then into categories. These categories may become the basis for the new theory. Thus, the use of this analytical framework could serve well the

¹²³ R Opdenakker ‘Advantages and Disadvantages of Four Interview Techniques in Qualitative Research’ (2006) 7(4) Article 11 Forum: Qualitative Social Research <<http://www.qualitative-research.net/index.php/fqs/article/view/175/391>> accessed on 28 July 2016.

¹²⁴ K Tates, M Zwaanswijk, R Otten, S van Dulmen, PM Hoogerhugge, WA Kamps, and JM Bensing, ‘Online Focus Groups as a Tool to Collect Data in Hard-to-Include Populations: Examples from Paediatric Oncology’ (2009) 9(15) BMC Medical Research Methodology <<http://bmcmedresmethodol.biomedcentral.com/articles/10.1186/1471-2288-9-15>> accessed on 28 July 2016.

¹²⁵ BG Glaser and AL Straus, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine Transaction, 2012 reprint, first published in 1967) 3.

¹²⁶ JW Chesebro and DJ Borisoff, ‘What Makes Qualitative Research Qualitative?’ (2007) 8(1) Qualitative Research Reports in Communication 3.

¹²⁷ Glaser and Straus (n 125).

¹²⁸ Glaser and Straus (n 125) 2.

purpose of the study of an under-researched phenomenon, such as the integration and rights protection of ICTs.

The use of NVIVO¹²⁹ enabled the coding of the recurring themes as well as their organisation and grouping into concepts, and then into categories. Based on the recurring answers, the data was initially divided into the following themes: *experience with the law, experience with the company, integration, future, migration history*. Further data collection and deeper data analysis required adding new themes (for instance, *ICTs packages and access to social goods*) and creating subthemes within the existing themes (for example, the integration theme was divided into three subthemes: *ICTs at work, ICTs outside work and family members*). This coding method helped in organising, analysing and finding insights in unstructured and qualitative data faster and efficiently.

2.3.2.6. Ethical Considerations

Ethical approval was sought by the Oxford Brookes University Research Ethics Committee in March 2014, receiving final approval in May 2014. The following paragraphs discuss the ethical issues, which arose during the fieldwork, including those identified as a concern by the Committee.

2.3.2.6.1. Informed Consent

To ensure “*freely given informed consent*”¹³⁰ of the participants, several processes, both during recruitment and at the interview stage, were adopted. All potential interview participants were provided with an Information Sheet as a first step. This step was repeated before the start of each interview. They were also told about the research and were given an opportunity to ask questions. After that and before the interview commenced, all participants completed a Consent Form (Appendix VIII), which covered consent to being recorded, how their contribution would be used and their rights to opt out at any time, even after the interview.

¹²⁹ NVivo is a qualitative data analysis computer software. It has been designed for qualitative researchers working with very rich text-based and/or multimedia information, where deep levels of analysis on small or large volumes of data are required. More information can be found at <<http://www.qsrinternational.com/what-is-nvivo>>.

¹³⁰ Economic and Social Research Council <<http://www.esrc.ac.uk/funding/guidance-for-applicants/research-ethics/frequently-raised-questions/what-is-freely-given-informed-consent/>> accessed on 26 July 2016.

2.3.2.6.2. Gatekeepers

To avoid gatekeepers' involvement in the recruitment process and ensure that the participation in interviews was voluntary, they were carefully reminded that they only needed to forward the Recruitment Poster and Information Sheet to the potential participants, who were then to contact the researcher directly. This was important as sometimes both ICTs and employers' representatives came from the same company and some of the gatekeepers became participants as employers' representatives. Despite this reiteration, one such gatekeeper proceeded to arrange interviews with 2 ICTs. As it could not be guaranteed that there was no coaxing or cajoling of these ICTs to take part¹³¹, and to ensure that these respondents voluntarily participated, before proceeding to interview, it was repeated to them that their participation was voluntary and that they could withdraw at any time, even after giving the interview, which both participants understood.

2.3.2.6.3. Illegal Employment

Illegal employment was disclosed in interviews by two employers, but this was not reported to the national authorities. Working illegally for a period was also disclosed by two ICTs (not related to companies mentioned in the previous sentence). In their interest, this was not taken up with their employers or reported to the national authorities.

2.3.2.6.4. Confidentiality and Anonymity

All the participants were reassured that their input was strictly anonymous and confidential and that their names and the names of their companies would not be reported in the thesis. In addition, no combination of personal attributes was reported during the write up to prevent identification of respondents, which was crucial as personal experiences were discussed.¹³² All participants had an opportunity to review their interview transcripts and were assured that both the transcripts and audio-recording were always stored on a laptop secured with a password.

¹³¹ T Miller, M Birch, M Mauthner, and J Jessop (eds.), *Ethics in Qualitative Research* (2nd ed., SAGE 2012) 11.

¹³² A Clark, 'Anonymising Research Data' (ESRC National Centre for Research Methods, Working Paper Series 7/06, 2006) 3 <http://eprints.ncrm.ac.uk/480/1/0706_anonymising_research_data.pdf> accessed on 28 July 2016.

2.3.2.6.5. Limitations of the Research

A qualitative study, as relied on in this thesis, has disadvantages. It can be criticised for depending too heavily on the researcher's views, creating studies that cannot be repeated, and presenting findings that cannot be generalised.¹³³ In order to be able to enhance the generalisability of the qualitative data, “rich” or “thick” description or data¹³⁴ are vital, as they show “*that the researcher was immersed in the setting and [give] the reader enough detail to “make sense” of the situation.*”¹³⁵

It was attempted to obtain from the participants “thick” and “rich” datasets regarding their personal, as well as more general feelings, views and experiences. The generalisability of the findings is supported by the similarities in the experience of third-country national ICTs in Slovakia and England, as well as from the experience of ICTs, who were EU nationals.

It may not be possible for all the study observations to be generalised for all temporary or highly-skilled third-country nationals, but perhaps some specific observations relevant either to temporary or highly-skilled migrants could be generalised.

The findings about the way the rights of ICTs are protected in theory and in practice in England and in Slovakia may not be transferable to other contexts. However, in relation to ICTs, even in different contexts (England, Slovakia or third countries) they shared many comparable experiences, because of similarities in the life style and life conditions typical to ICTs, which could be generalizable to all ICTs, and potentially transferred to other settings too. Even results of a small-scale qualitative study can be generalizable¹³⁶, and thus could inform and give rise to a policy change.

In addition, there were no previous studies dealing with the rights protection and integration of ICTs and their families for the present research to draw upon. Similarly, there existed a gap in the literature regarding integration and rights protection of temporary highly-skilled migrants in general. Therefore, there is a scope for further research on integration and rights protection of these different under-researched groups of migrant workers.

¹³³ A Bryman, *Social Research Methods* (3rd ed., OUP 2008) 391; RK Yin, *Case Study Research: Design and Methods* (4th ed., SAGE 2009) 15.

¹³⁴ J Ward Schofield, ‘Generalizability of Qualitative Research’, in M Hammersley (ed.), *Social Research: Philosophy, Politics and Practice* (SAGE/Open University 1993) 200-225.

¹³⁵ WA Firestone, ‘Meaning in Method: The Rhetoric of Quantitative and Qualitative Research’ (1987) 16(7) *Educational Researcher* 16, 16.

¹³⁶ I Falk and J Guenther, ‘Generalising from Qualitative Research: Case Studies from VET in Contexts’ (University of Charles Darwin) 8 <<https://avetra.org.au/documents/10-Guenther.pdf>> accessed on 29 July 2016. See also Seale (n 119).

2.4. Comparative Exercise

The type of comparative study undertaken in this thesis of the Slovak and English laws and policies and the ICTD allows an analysis of the solutions offered by these different schemes.¹³⁷ It is widely accepted that there is not a single established methodology for comparative law¹³⁸, but the basic methodological principle of comparative law is usually taken as that of functionality¹³⁹, as illustrated by the following quote: “...*in law the only things which are comparable are those which fulfil the same function.*”¹⁴⁰ Therefore, this research identifies the functions carried out by particular legal rules, institutions and systems to aid the comparison.¹⁴¹ The idea behind the functional method is to look at the way practical problems of solving conflicts of interest are dealt with in different societies under different legal systems, but is not concerned with the means employed to solve them (the law and institutions).

However, it is not possible to know how these legal rules, institutions and systems collectively function without situating them within their legal, economic and cultural context.¹⁴² Hence the functional method is complemented by the law-in-context method. Contextualisation is an important methodological characteristic of comparative legal analysis as it transcends the understanding of law as a body of rules “*to include the dynamic institutional processes and practices which produce and reproduce the normative structures of legal systems.*”¹⁴³ This requires a consideration of the differences between the two systems, which will be found in their diverse nature, constitutional frameworks, and the functions, objectives and missions of the administering institutions in the two countries.¹⁴⁴ Apart from the national contexts, another context to be taken into account is the liberal economic world view underlying the EU.

The comparative exercise enabled the identification of the gaps, strengths and weaknesses in legal and policy instruments, which in turn facilitated the development of recommendations to legislators and policymakers to ensure a better rights protection and integration of ICTs.

¹³⁷ P De Cruz, *Comparative Law in a Changing World* (Cavendish 1995) 6.

¹³⁸ MA Glendon, PG Carozza, and CB Picker, *Comparative Legal Traditions in a Nutshell* (2nd ed., West Academic Publishing 1999) 8-9.

¹³⁹ K Zweigert and H Kötz, *Introduction to Comparative Law* (3rd ed., Clarendon Press 1998); B Markesinis, *Foreign Law and Comparative Methodology* (Hart 1997).

¹⁴⁰ De Cruz (n 137) 228-229.

¹⁴¹ Glendon and others (n 138) 9.

¹⁴² Glendon and others (n 138) 9.

¹⁴³ R Cotterrell, ‘Is it so Bad to be Different’, in E Özücü and D Nelken (eds.), *Comparative Law: A Handbook* (Hart 2007) 134.

¹⁴⁴ P Glenn, ‘Comparing’, in Özücü and Nelken (n 143) 92.

2.5. Conclusion

The aim of this chapter was to lay down the theoretical and methodological groundwork, which underpinned the analysis in the rest of the thesis. The next step is to scrutinise the international and European legal and policy instruments regarding the rights protection and integration of regular migrant workers that were applicable in Slovakia and England during the period of this research. This will assist in appreciating how rights are protected in these legal frameworks and whether the protection provided is sufficient to ensure effective integration of ICTs and their families in Slovakia and England.

In this respect, chapter 3 will deal with international instruments, namely general and migrant-specific human rights conventions adopted within the UN, and with labour standards elaborated by the tripartite of the ILO, as well as with conventions concluded within the CoE. Chapter 4 will cover instruments adopted within the EU, primarily the ICTD.

In chapter 3, it is necessary to map out the international and CoE legal instruments relating to rights protection of regular migrant workers, because they were in force in Slovakia and England during the period of this research, prior to the implementation of the ICTD. Regarding Slovakia, although the Directive came into force in January 2017, these instruments now protect ICTs in Slovakia alongside the EU Directive. Regarding the UK, as the ICTD was not implemented due to the opt-out, it is these two legal frameworks that did and continue to govern rights protection of ICTs alongside the domestic legislation.

3. MIGRANT WORKERS IN INTERNATIONAL AND COUNCIL OF EUROPE INSTRUMENTS

3.1. Introduction

The aim of this chapter is to highlight deficiencies in the international and Council of Europe (CoE), legal frameworks *vis-à-vis* protection of rights of migrant workers in general, and temporary migrant workers, such as ICTs, in particular, as opposed to permanently resident migrants. This supports the need for an effective EU legal instrument – the 2014 EU Intra-Corporate Transfer Directive (ICTD), which will be examined from the perspective of equality and integration in chapter 4. The research for this thesis started by looking at international and CoE instruments as they formed the law applicable to ICTs before the introduction of the ICTD in Slovakia, and to a certain extent, still apply to the UK, because of its opt out from the ICTD, and the interviews were conducted at the time when the applicable law was international and CoE law.

At the international level, rights protection of migrants is derived from the United Nations (UN) human rights instruments and the labour standards of the International Labour Organisation (ILO). Both frameworks contain two groups of instruments: migrant-specific and general human rights instruments. Section 3.2. considers the migrant-specific instruments, while section 3.3. examines the general instruments and labour standards. Both sections are divided into two sub-sections, firstly analysing the global instruments, adopted within the ILO and UN, and then those adopted within CoE. Section 3.4., drawing on chapter 1, further considers the current relationship between existing human rights instruments and the multinational corporations (MNC). National implementation of the international and CoE instruments in Slovakia and England, and some factors influencing it, are outlined in section 3.5.

The reasons for deficiencies regarding the protection of migrant workers in general and temporary migrants in particular are manifold. Firstly, gaps in the protection of migrant workers are caused by States not ratifying international and CoE instruments. *Figure 1* outlines which instruments, under review in this chapter, bind or not Slovakia and England.

Figure 1 – Overview of the Ratification of Instruments in Slovakia and England¹

Organisation	Type of Instrument	Instrument	Slovakia	England
UN	General	ICESCR ²	Ratified	Ratified
	Migrant-Specific	ICRMW ³	Not Ratified	Not Ratified
ILO	General	C-111 ⁴	Ratified	Ratified
	Migrant-Specific	C-97 ⁵	Not Ratified	Ratified (partly)
		C-143 ⁶	Not Ratified	Not Ratified
		C-118 ⁷	Not Ratified	Not Ratified
	C-157 ⁸	Not Ratified	Not Ratified	
CoE	General	ECHR ⁹	Ratified	Ratified (and incorporated)
		Charter ¹⁰	Ratified the 1961 Charter and 1996 Charter (Revised)	Ratified the 1961 Charter
	Migrant-Specific	ECSMA ¹¹	Not Ratified	Ratified
		ECE ¹²	Not Ratified	Ratified
		ECSS ¹³	Not Ratified	Not Ratified
	ECMW ¹⁴	Not Ratified	Not Ratified	

¹ In the table, the blue colour is for general human rights instruments and green colour for migrant-specific instruments.

² International Convention on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force on 3 January 1976) 993 UNTS 3 (UN ICESCR).

³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted on 18 December 1990, entered into force on 1 July 2003) 2220 UNTS 3 (ICRMW).

⁴ Convention No. 111 – Discrimination (Employment and Occupation) (adopted 25 June 1958, entered into force on 15 June 1960) 362 UNTS 31 (Convention No. 111).

⁵ Convention No. 97 – Migration for Employment Convention (Revised) (adopted on 1 July 1949, entered into force 22 January 1952) 120 UNTS 71 (Convention No. 97).

⁶ Convention No. 143 – Migrant Workers (Supplementary Provisions) (adopted on 24 June 1975, entered into force on 9 December 1978) 1120 UNTS 323 (ILO Convention No. 143).

⁷ Convention No. 118 – Equality of Treatment (Social Security) (adopted on 28 June 1962, entered into force on 25 April 1964) 494 UNTS 272 (ILO Convention No. 118).

⁸ Convention No. 157 – Maintenance of Social Security Rights (adopted on 21 June 1982, entered into force on 11 September 1986) 1932 UNTS 30 (ILO Convention No. 157).

⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights, as amended by Protocols Nos. 11 and 14, and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13) (adopted on 4 November 1950, entered into force 3 September 1953) ETS No. 005) (ECHR).

¹⁰ European Social Charter is composed of the 1961 European Social Charter and the 1996 European Social Charter (Revised). In this chapter, terms the “Charter” means the 1996 Charter (Revised), unless otherwise indicated. European Social Charter (adopted on 18 October 1961, entered into force on 26 February 1965) CETS No. 035; European Social Charter (Revised) (adopted on 3 May 1996, entered into force on 1 July 1999) CETS No. 163.

¹¹ European Convention on Social and Medical Assistance (adopted on 11 December 1953, entered into force on 7 June 1954) CETS No. 014 (ECSMA).

¹² European Convention on Establishment (adopted on 13 December 1955, entered into force on 23 February 1965) CETS No. 019 (ECE).

¹³ European Convention on Social Security (adopted on 14 December 1972, entered into force on 1 March 1974) CETS No. 078 (ECSS).

¹⁴ European Convention on Legal Status of Migrant Workers (adopted on 24 November 1977, entered into force on 1 May 1983) CETS No. 093 (ECMW).

Non-ratification of migrant-specific instruments by Slovakia and the UK could be interpreted as a sign of unwillingness to extend to migrants the protection of certain rights that is provided to their own nationals or permanent migrants. Due to this limitation, it is necessary to also consider the potential contribution of general human rights and labour standards.

Secondly, even if a certain instrument has been ratified, it could expressly exclude or limit temporary migrants from having access to rights, typically economic and social rights.

Thirdly, the international and CoE instruments often lack robust enforcement mechanism in the form of a court with sanctioning powers. These instruments are often “enforced” by committees, which can only adopt non-binding recommendations addressed to States. In addition, there is a lack of significant enforcement in international law with respect to economic and social rights as opposed to civil and political rights.¹⁵

Fourthly, the enforceability of rights granted under international law at national level can be influenced by any given State’s approach to international law: monism or dualism.¹⁶ Monism postulates that “*national and international law form one single legal order*”¹⁷, and maintains “*the primacy of international law*”¹⁸. Yet, dualism “*stresses that the rules of the system of international and municipal law exist separately and cannot purport to have effect on, or overrule, the other*”.¹⁹ Despite these different approaches, States must, in general, observe and comply with their obligations under the international human rights law.²⁰

Fifthly, different value has been attributed by different States to political and civil rights on the one hand, and to economic, social and cultural rights on the other hand. Hence, there are two International Covenants, the International Covenant on Civil and Political Rights (ICCPR)²¹ and the ICESCR, and two CoE instruments, the ECHR and Charter. In consequence, a perception exists that some of these rights are more important than others, creating a kind of “*hierarchy of rights*”.²² It follows that, when the economic and

¹⁵ M Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (2nd ed., Hart 2016) 319.

¹⁶ This is discussed in more detail in section 3.5.

¹⁷ J Crawford, *Brownlie’s Principles of Public International Law* (8th ed., OUP 2012) 48.

¹⁸ A Cassese, *International Law* (OUP 2001) 162.

¹⁹ M Shaw, *International Law* (7th ed., Cambridge University Press 2014) 93.

²⁰ HRCmt, General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc CCPR/CC/21/Rev.1/Add.13 (2004) [4].

²¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (UN ICCPR).

²² A Eide, ‘Economic and Social Rights’, in A Eide, C Krause and A Rosas (eds.), *Economic Social and Cultural Rights: A Textbook* (Martinus Nijhoff 1995).

social rights are considered less important than political and civil rights, extending them to migrant workers becomes (conveniently) less of a priority for States.

Finally, there is a lack of binding international legal instruments *directly* obliging MNCs, as non-State actors (NSAs), to protect and respect human rights and prevent human rights abuses.

In the rest of this chapter, these gaps are discussed in more detail in relation to the instruments in *Figure 1* to identify where the gaps are and thus what needs to be done to ensure better protection and integration of temporary migrants, such as ICTs and their families.

3.2. Migrant-Specific Instruments

International migrant-specific instruments usually advocate for equality of treatment for all migrants, *unless otherwise stated*²³. Thus, a major deficiency of the migrant-specific instruments, apart from the lack of ratification by States, is that they exclude certain types of migrants from their scope or from access to rights as will be demonstrated below.

3.2.1. International Instruments

3.2.1.1. International Labour Organisation

In the post-1945 era, the main standards protecting migrant workers came from the UN agency devoted to labour issues, the ILO. The ILO instruments, legally binding conventions and non-binding recommendations²⁴, are elaborated and adopted within the ILO tripartite structure. ILO is the only tripartite UN agency with government, employer, and worker representatives, which makes it a unique forum in which these three actors can freely and openly debate and elaborate labour standards and policies on the protection of workers. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) is the body which examines State reports on compliance with ILO instruments as a whole. However, the views of the CEACR are not

²³ ILC, 'Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration' (92nd Session, Geneva 2004), Principle 9(a).

²⁴ ILO, Conventions and Recommendations <<http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>> accessed on 1 April 2017.

enforceable or legally binding²⁵, which contributes to the enforceability gap of labour rights at international level.

Out of the many ILO labour standards, only a small number of legally binding instruments relates specifically to migrant workers, for instance the 1949 Convention No. 97 concerning Migration for Employment and the 1975 Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. Both are complemented by non-binding recommendations.²⁶ These two Conventions potentially apply to everyone who is a “migrant for employment”, basically anyone who “migrates from one country to another with a view to being employed otherwise than on his own account.”²⁷ These Conventions do not distinguish between permanent and temporary migrants.²⁸

The protection of the Convention No. 97 is limited to regular migrants in relation to remuneration, hours of work, pay for overtime, union membership, social security, employment taxes and access to justice.²⁹ Self-employed, seaman, frontier workers and short-term entry of members of the liberal professions and artists are excluded.³⁰ Thus, as the list would appear to be exhaustive, the ICTs would fall within its scope. However, this Convention was not ratified by Slovakia, and was only partially ratified by the UK.

The Convention No. 143 permits States to make the free choice of employment conditional upon a two-year period of residence for the purposes of employment, or, in cases of fixed-term contracts of less than two years, conditional upon the completion of the first work contract.³¹ Trainees and employees sent on temporary assignments by their employers are expressly excluded from the equal treatment part.³² Trainees and temporary assignees resemble the definitions of ICTs contained in the ICTD. Thus, ICTs would not be able to benefit from the protection of this Convention, even if it was ratified

²⁵ ILC, ‘Record of Proceedings’ (77th Session, Geneva 1990) 27/7.

²⁶ ILC, Recommendation No. 86 – Migration for Employment (Revised) (32nd Session, Geneva 1949), and Recommendation No. 151 – Migrant Workers (60th Session, Geneva 1975), respectively.

²⁷ Art 11 in each ILO Convention No. 97 and No. 143. Article 11 in Convention No. 143 covers only Part II of the Convention, which concerns rights of equal treatment.

²⁸ B Ryan and V Mantouvalou, ‘The Labour and Social Rights of Migrants in International Law’, in R Rubio-Marín (ed.), *Human Rights and Immigration* (OUP 2014) 10 <<https://ira.le.ac.uk/handle/2381/28899>> accessed on 30 May 2017.

²⁹ ILO Convention No. 97, Art 6.

³⁰ ILO Convention No. 97, Art 11.

³¹ ILO Convention No. 143, Art 14.

³² ILO Convention No. 143, Arts 11(2)(d) and (e).

by Slovakia and the UK. This justifies the need to adopt an instrument at EU level, such as the ICTD.

In addition, ILO Conventions No. 97 and 143 as labour rights instruments, understandably, do not address other migrant-specific issues, such as family reunification and security of residence, although Convention No. 143 stresses the importance of States facilitating family reunification for regular migrant workers.³³

Of special interest to migrant workers could also be the fact that the ILO recognised the importance of social security rights for migrant workers. In its study, it was found that

[...] it is of particular importance for migrant workers (1) to have the same access to coverage and entitlement to benefits as native workers, (2) to maintain acquired rights when leaving the destination country, including the right to export the benefits they have earned, and (3) to benefit from the accumulation of rights acquired in different countries.³⁴

This is particularly important for migrants, such as ICTs, who can move frequently. To address these concerns, the ILO adopted two migrant-specific Conventions in the area of social security: the 1962 Equality of Treatment (Social Security) Convention No. 118, and the 1982 Maintenance of Social Security Rights Convention No. 157. Each provides for equal treatment of migrant workers and the country's nationals based on reciprocity.³⁵ Convention No. 118 covers nine areas of social security: medical care, sickness benefit, maternity benefit, invalidity benefit, survivors' benefit, employment injury benefit, unemployment benefit, old-age benefit and family benefit. Convention No. 157 provides for a system that guarantees that workers who change their residence from one country to another keep acquired social security benefits. Benefits acquired abroad should be maintained when migrants return to their home country. However, ICTs working in Slovakia or the UK would not benefit from these instruments, as both countries did not ratify them.

3.2.1.2. United Nations

In 1990 the UN, in cooperation with the ILO, adopted a migrant workers-specific Convention - the International Convention on the Protection of the Rights of All Migrant

³³ ILO Convention No. 143, Art 13(1).

³⁴ ILO, *International Labour Migration: A Rights-Based Approach* (ILO 2010) 125.

³⁵ This means that migrant workers are able to fully benefit from these Conventions only when a country of destination of a migrant worker and his/her country of origin are both parties to any given convention.

Workers and Members of their Families (ICRMW). Before this Convention, the protection of rights of migrant workers was scattered across a number of UN and ILO instruments. ICRMW is advocating for human rights protection for all migrant workers in a comprehensive way due to its wide personal³⁶ and material scope. Similarly, as with the ILO migrant-specific instruments, not many States in the world in general³⁷, and the EU in particular³⁸, including Slovakia and the UK, ratified (or have the intention to ratify) this Convention. It has also been argued that “*the Convention has little to say on integration matters and is therefore not perceived as an answer to such pressing questions.*”³⁹ Moreover, differences exist in the treatment between permanent and temporary migrants regarding access to economic and social rights. For instance, Article 52 provides for the free choice of employment after a maximum of five years, which is less generous than the two-year maximum set out in Article 14 of ILO Convention No. 143. It also limits access by project-tied workers⁴⁰ and specific employment workers⁴¹ to some socio-economic rights⁴², whose definitions in the ICRMW closely resemble the definition of ICTs in the ICTD. In addition, the ICRMW expressly excludes from its scope trainees⁴³, who fall under the ICTD definition of ICTs. This again supports the need for adoption of the ICTD.

3.2.2. Regional Instruments within the Council of Europe

To date, the CoE has adopted four instruments on the labour and social rights of foreign nationals: the 1953 European Convention on Social and Medical Assistance (ECSMA), the 1955 European Convention on Establishment (ECE), the 1972 European Convention on Social Security (ECSS), and the 1977 European Convention on the Legal Status of Migrant Workers (ECMW). Ryan and Mantouvalou found that these Conventions provide for “*extensive provision*” for migrants’ labour and social rights, but are limited

³⁶ ICRMW, Art 2. See R Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Clarendon Press 1997) 149-152.

³⁷ P de Guchteneire, A Pécoud, and R Cholewinski (eds.), *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights* (Cambridge University Press 2009).

³⁸ M d’Auchamp, ‘Migrant Workers’ Rights in Europe’ (Study Migrant Workers 02, Office of the UNHCHR 2011) <http://europe.ohchr.org/Documents/Publications/Migrant_Workers.pdf> accessed on 24 July 2016.

³⁹ de Guchteneire and others (n 36) 20; for a discussion, see W Kälin, ‘Human Rights and the Integration of Migrants’, in TA Aleinikoff and V Chetail (eds.), *Migration and International Legal Norms* (TMC Asser Press 2003) 271-287.

⁴⁰ ICRMW, Art 2(2)(f).

⁴¹ ICRMW, Art 2(2)(g).

⁴² ICRMW, Arts 61 and 62, respectively.

⁴³ ICRMW, Art 3(e).

in such protection by reciprocity rules.⁴⁴ This means that only a very small number of ICTs could benefit from their protection: those coming from a CoE Member State, which is a State Party to a given convention, and who is coming to work in another State Party to that convention. Thus, most of the ICTs, coming from countries outside Europe, which are not Member States of the CoE, as well as Parties to a given convention, would be unable to benefit from the CoE migrant-specific instruments. To the contrary, the EU instruments guarantee fewer labour and social rights for defined categories of migrant workers, but without the reciprocity condition.⁴⁵ Besides the reciprocity condition, these instruments, same as the international ones, suffer from low ratification. For instance, Slovakia did not ratify any of these four Conventions, while the UK only ratified two: ECSMA and ECE.

3.3. General Instruments

As a consequence of the limited coverage of the rights protection under the migrant-specific legal instruments (whether the ILO, UN or CoE) in Slovakia and in England, it is necessary to consider the potential contribution of general human rights instruments. As before, the discussion firstly considers global instruments adopted by the ILO and UN, and then those adopted at the regional level within the CoE.

3.3.1. International Instruments

3.3.1.1. *International Labour Organisation*

In addition to the ILO instruments concerning migrant workers discussed above, general ILO conventions, which apply to everyone, may be of particular importance for migrant workers, such as the fundamental ILO conventions covering one of the binding ILO principles, for example, that of the elimination of discrimination in employment.⁴⁶ The principle of non-discrimination is exemplified in the 1958 Discrimination (Employment and Occupation) Convention No. 111, which was ratified by Slovakia and the UK. It prohibits discrimination in employment on the grounds of “*race, colour, sex, religion,*

⁴⁴ Ryan and Mantouvalou (n 28) 17.

⁴⁵ Ryan and Mantouvalou (n 28) 17 and 25. This is further discussed in chapter 4.

⁴⁶ H Kellerson, ‘The ILO Declaration of 1998 on Fundamental Principles and Rights: A Challenge for the Future’ (1998) 137 *International Labour Review* 223.

*political opinion, national extraction or social origin.*⁴⁷ The non-discrimination grounds of nationality and immigration status are not included in the Convention.⁴⁸ Therefore, the Convention No. 111 will be useful to protect migrant workers, including ICTs, but only to the extent of the non-discrimination grounds covered by it, thus not for discrimination based on the nationality or immigration status.⁴⁹ This has been considered to be detrimental to the protection of rights of migrant workers.⁵⁰ In addition, even if the Convention No. 111 could provide some protection to ICTs, there is an issue of enforcement. A major criticism of the ILO regime is that it lacks a direct means of enforcement of its conventions, and can only rely on consensus and persuasion to encourage compliance.⁵¹

Another criticism of the ILO is its tripartite structure, which can lead to the adoption of very broad standards compromising and jeopardising the protection of rights of migrant workers.⁵² It has also been contended that

[a]s trade union membership weakens in most countries, as dominant corporations [...] actively oppose unionization, and as more and more workers find themselves outside labour relations frameworks which might once have protected them, it seems a tad optimistic to argue that the future of labour rights lies in tripartism.⁵³

Naturally, there is a tension between these three actors, because each has different interests. However, an effective social dialogue and tripartism are the most adequate tools to address social injustice and inequality⁵⁴, arguably more prevalent in times of economic stagnation and migration crisis. Effective cooperation, as equal participation as possible, voice given to all interested parties, including workers⁵⁵, whether national or migrant, and trust among parties⁵⁶, can bring benefits for each one of them.⁵⁷

⁴⁷ ILO Convention No. 111, Art 1(1)(a).

⁴⁸ ILO Labour Legislation Guidelines, 'Chapter VII on the Substantive Provisions of Labour Legislation: The Elimination of Discrimination in Respect of Employment and Occupation' <<http://www.ilo.org/legacy/english/dialogue/ifpdial/ilg/noframes/ch7.htm>> accessed on 2 September 2016.

⁴⁹ CEACR, Individual Observation of the CEACR concerning Convention No. 111, (Australia) (ILC, 89th Session, Geneva 2001).

⁵⁰ Ryan and Mantouvalou (n 28) 28.

⁵¹ S Simpson, 'Enforcement of Human Rights through ILO Machinery' (1995) 3(1) Human Rights Brief 23.

⁵² For more details on the ILO Tripartite structure see <<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/tripartite-consultation/lang--en/index.htm>>.

⁵³ P Alston, 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda' (2005) 16(3) EJIL 467, 475 <<http://ejil.oxfordjournals.org/content/16/3/467.full.pdf>> accessed on 5 September 2016.

⁵⁴ ILC, *ILO Declaration on Social Justice for a Fair Globalization* (99th Session, Geneva 2008).

⁵⁵ R Cox, 'ILO: A Limited Monarchy', in RW Cox and HK Jacobson (eds.), *Anatomy of Influence: Decision Making in International Organization* (Yale University Press 1973) 102, cited in L Helfer,

3.3.1.2. *United Nations*

In the absence of ratification of the UN ICRMW in Slovakia and England, it is the International Covenant on Economic, Social and Cultural Rights (ICESCR) that grants rights protection to migrant workers, including ICTs, at domestic level, as it was ratified by both Slovakia and the UK. The ICESCR is the global instrument with the greatest significance for the economic and social rights of migrants. It is the responsibility of the Committee on the Economic, Social and Cultural Rights (CESCR) to interpret the ICESCR rights by adopting General Comments.

Under Article 2(2) ICESCR, the contracting States guarantee that Covenant rights “*will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” The relevance of the Covenant to migrants flows from the CESCR’s interpretation of the concept of “*other status*” to include both nationality and immigration status.⁵⁸ Thus, it is clear that under the ICESCR nationality and immigration status are prohibited grounds of discrimination in the enjoyment of all economic, social and cultural rights, including rights to work and other employment-related rights.⁵⁹ Article 4 only permits certain legitimate limitations “*solely for the purpose of promoting the general welfare in a democratic society.*”

The CESCR considers that long-term resident foreign nationals benefit fully from the right to work under Article 6.⁶⁰ The CESCR has not to date expressly pronounced itself on the situation of temporary migrant workers. The Committee has criticised State policies, which do not give workers, whose right to stay is linked to a specific employment, sufficient opportunity to find a new employer when the initial employment comes to an end.⁶¹ However, certain limitations on access to employment by migrants in

‘Understanding Change in International Organizations: Globalization and Innovation in the ILO’ (2006) 59(3) *Vanderbilt Law Review* 649, 679.

⁵⁶ R Hyman, ‘Social Dialogue and Industrial Relations during the Economic Crisis: Innovative Practices or Business as Usual?’ (Working Paper No. 11, ILO Industrial and Employment Relations Department 2010).

⁵⁷ This is discussed in more detail in chapter 7.

⁵⁸ CESCR, General Comment No. 20, Non-discrimination in Economic, Social and Cultural Rights (2009) [30].

⁵⁹ Ssenyonjo (n 15) 135.

⁶⁰ Ryan and Mantouvalou (n 28) 34.

⁶¹ CESCR, Concluding Observations on China (2001) [15], and (2005) [78] and [95]; and South Korea (2009) [21].

order to protect the domestic labour market could be justified.⁶² Any restrictions invoked by the State party would need to be applied in such a manner as not to invalidate the rights recognised in the ICESCR.⁶³ In the context of the economic crisis, the CESCR has indicated that all austerity measures should be temporary, necessary, proportionate and non-discriminatory and they must ensure the protection of the minimum core content of all economic and social rights at all times.⁶⁴

The ICESCR also guarantees to every worker the right to fair terms and conditions of employment, such as minimum remuneration, equal opportunities for promotion, safe and healthy working conditions and rest, leisure and reasonable limitation of working hours (Article 7). In this respect, the CESCR has expressed concerns regarding the insufficient labour market enforcement activity on the part of State authorities, where migrant workers face exploitative treatment.⁶⁵ It should be noted that ICTs' contracts contain these "core" terms and conditions of employment (labour rights), but also many other perquisites, such as assistance with relocation or access to healthcare and assistance with schooling of ICTs' children. These "other terms of employment" are not regulated by law. It would indeed be difficult regulate them.⁶⁶

In relation to social rights, the CESCR's strongest denunciation of all discrimination on grounds of nationality or immigration status has been in relation to the right to education (Article 13).⁶⁷ In General Comment No. 13, both nationality and lack of legal status were ruled out as reasons to deny education to "*persons of school age residing in the territory of a State party*".⁶⁸ Accordingly, the CESCR has criticised States for excluding the children of migrant workers from compulsory education or for discriminating against them in relation to fees.⁶⁹

⁶² N Baruah and R Cholewinski, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (OSCE/IOM/ILO 2006) 135 [VII.1.1.2] <<http://www.osce.org/eea/19242?download=true>> accessed on 13 November 2013.

⁶³ CESCR, Factsheet No. 16 (Rev. 1) 7.

⁶⁴ See AG Pillay, 'Letter from CESCR Chairperson to States Parties in the Context of the Economic and Financial Crisis' (16 May 2012) <<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>> accessed on 16 March 2017.

⁶⁵ CESCR, Concluding Observations on Kuwait (2004) [16]; Cyprus (2009) [14]; South Korea (2009) [18] and [21]; and the United Kingdom (2009) [22].

⁶⁶ This is further addressed in chapters 5, 6 and 7.

⁶⁷ Ryan and Virginia (n 28) 31.

⁶⁸ CESCR, General Comment No. 13: The Right to Education (1999) UN Doc E/C.12/1999/10 [34].

⁶⁹ CESCR, Concluding Observations on Kuwait (2004) [26] and [46]; and on China (2005) [89], [101], [116] and [126].

Regarding the right to health (Article 12), the CESCR clarified that States should refrain from “[...] *denying or limiting equal access for all persons [...] to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy [...]*.”⁷⁰ This means access to health care by all, including migrants irrespective of their length of residence or immigration status.⁷¹

The Committee has frequently criticised States for restricting or delaying migrant workers’ access to social security schemes.⁷² With respect to social security the CESCR has noted that “[w]here non-nationals, including migrant workers, have contributed to a social security scheme, they should be able to benefit from that contribution or retrieve their contributions if they leave the country.”⁷³ It further stated that “non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family support.”⁷⁴

There are several limitations to the Covenant. Firstly, the Covenant, as a general human rights instrument, fails to address migrant-specific issues, such as family reunification or security of residence. Secondly, the rights contained in it are worded in very general and vague terms⁷⁵, which can leave them open to interpretation. For example, regarding social security rights, it has been argued that none of the formulations adopted in the ICESCR deal with matters in the same detail as in the ILO instruments, which are more specific.⁷⁶ Thirdly, the protection of rights in the ICESCR cannot potentially be guaranteed at national level due to no real enforcement mechanism at international level.⁷⁷ The CESCR is not a judicial body. Instead there is a Reporting Procedure, during which States are required to submit a report on the domestic implementation of the

⁷⁰ CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000) UN Doc E/C.12/2000/4 [34].

⁷¹ V Chetail and G Giacca, ‘Who Cares?: The Right to Health of Migrants’, in A Clapham and M Robinson (eds.), *Realising the Right to Health* (Rueffer 2009).

⁷² CESCR Observations on Australia (2000) [32]; Jordan (2000) [19]; Kuwait (2004) [20] and [40]; China (2005) [84], [96], [114] and [124] (in relation to Hong Kong and Macao); Monaco (2006) [10] and [18]; and San Marino (2008) [13] and [25].

⁷³ CESCR, General Comment No. 19: The Right to Social Security (art. 9) (2008) UN Doc E/C.12/GC/19 [36].

⁷⁴ CESCR (n 73) [37].

⁷⁵ DJ Whelan, ‘The Two Covenants and the Evolution of Human Rights’, in A Mihr and M Gibney (eds.), *The Sage Handbook of Human Rights* (Vol. 1, SAGE 2014) 124; M Langford, ‘Closing the Gap? – An Introduction to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights’ (2009) 27(1) *Nordic Journal of Human Rights* 1, 10.

⁷⁶ L Sibbel, ‘ILO Conventions and the Covenant on Economic, Social and Cultural Rights: One Goal, Two Systems’ (Friedrich-Ebert-Stiftung, Dialogue and Cooperation 1/2001) 54 <<http://library.fes.de/pdf-files/iez/global/02078.pdf>> accessed on 14 October 2016.

⁷⁷ T Hillier, *Sourcebook on Public International Law* (Cavendish 1998) 729.

ICESCR every five years.⁷⁸ Cooperation of States with the CESCR is on a voluntary basis while its Concluding Observations and General Comments are non-binding, which makes their weight questionable.⁷⁹ The inadequacy of protection provided by the ICESCR to migrant workers is evident. Thus, in practice many States, including Slovakia and England, limit access of non-nationals, particularly those residing on temporary basis, to the economic and social rights granted in the ICESCR, as will be seen in the chapters dealing with the national legislation and policy.⁸⁰

3.3.2. Regional Instruments within the Council of Europe

It was established earlier that the CoE migrant-specific instruments were of limited use regarding protection of migrant workers on account of the principle of reciprocity. In this section, it will be seen that the general CoE instruments remedy this deficit but not to a satisfactory degree. There are two general CoE human rights instruments: the 1950 European Convention of Human Rights (ECHR), which primarily covers civil and political rights, and the European Social Charter (Charter), which complements the ECHR, by covering the economic and social rights of all, including migrants.

3.3.2.1. *European Social Charter*

The role of the Charter in protecting economic and social rights at regional level has been praised by the UN General Assembly.⁸¹ In many ways, there is an overlap in the rights protection between the Charter, UN ICESCR and the ILO Conventions, especially regarding employment-related rights. The Charter goes further than the UN ICESCR, which is more general and vague, as it defines the substance of the rights in greater extent. Yet, the Charter adds little protection to, and thus aid in integration of, most third-country national ICTs in Europe. Although it covers economic and social rights, and provides for an assistance and protection to migrant workers and their families in a relatively inclusive manner⁸², similarly as the CoE migrant-specific conventions, it

⁷⁸ CESCR, Resolution 1988/4 (24 May 1988) UN Doc S/RES/1988/4.

⁷⁹ CESCR, Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12) (2000) UN Doc. E/C.12/2000/4; or General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art 15(1a)) (2009) UN Doc. E/C.12/GC/21.

⁸⁰ Chapter 5 on Slovakia and chapter 6 on England.

⁸¹ UN General Assembly, Resolution 65/130 (13 December 2010) Cooperation between the United Nations and the Council of Europe.

⁸² For instance, regarding the security of residence, migrant worker's family members, who joined him or her through family reunion, could not be expelled as a consequence of his or her own expulsion, since

functions based on the principle of reciprocity. Moreover, it allows contracting States discretion as to the rights by which they will be bound, except for seven core provisions, of which five must be ratified. Some of these core provisions are applicable to migrants.⁸³ This “*à la carte system*” affects the Charter’s effectiveness to protect rights of migrant workers, as the undertakings by the Contracting Parties are uneven.⁸⁴ Slovakia and the UK have ratified different versions of the Charter, as well as different Articles within it.⁸⁵

3.3.2.2. *European Convention of Human Rights*

The ECHR, as interpreted by the European Court of Human Rights (ECtHR), has the broadest application of all CoE instruments in that it applies to *all* persons within the jurisdiction of its Member States.⁸⁶ The principle of equality, which prohibits discrimination on various grounds, is exemplified in the right to freedom from discrimination guaranteed under Article 14.⁸⁷ The ECtHR held that nationality constitutes a non-discrimination ground under the heading of “*other status*”, which means that *all* non-nationals, regardless of their nationality, need to be treated on equal footing with nationals.⁸⁸ It ruled that discrimination based on nationality leading to a differential treatment between nationals and non-national violates Article 14 ECHR, only if it is objectively and reasonably justified.⁸⁹ Moreover, very “*weighty reasons*” have to

these family members acquired an independent right to stay in the territory (see ECSR, Conclusions XVI-1, Netherlands, pp. 460-461). See the Digest of the Case Law of the European Committee of Social Rights (CoE 2008) 135.

⁸³ The core provisions are Art 1 (right to work), Art 5 (right to organise), Art 6 (right to bargain collectively), Art 12 (right to social security), Art 13 (right to social and medical assistance), Art 16 (right of the family to social, legal and economic protection) and Art 19 (right of migrant workers to protection and assistance).

⁸⁴ O De Schutter, ‘The European Social Charter in the Context of Implementation of the EU Charter of Fundamental Rights’ (Study commissioned by the AFCO Committee of the European Parliament 2016) <[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU\(2016\)536488_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf)> accessed on 6 September 2016.

⁸⁵ For instance, the UK ratified the 1961 Charter, accepting 60 of its 72 paragraphs, but it has not ratified the 1996 revised Charter or the Additional Protocol on the Collective Complaints. In contrast, Slovakia ratified the 1961, as well as the 1996 revised Charter, accepting 88 of its 98 paragraphs, but not the Additional Protocol.

⁸⁶ ECHR, Art 1.

⁸⁷ Art 14 includes a number of non-discrimination grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁸⁸ Y Ktistakis, *Protecting Migrants under the European Convention on Human Rights and European Social Charter* (CoE 2013) 14-15.

⁸⁹ ECtHR, *C v Belgium* (Appl. No. 21794/93) Judgment of 7 August 1996 [37-38].

be provided by the States before the Court for it to decide that a difference in treatment, based solely on the ground of nationality, would be compatible with the ECHR.⁹⁰

It is important to note that the ECHR approach to discrimination based on nationality is different than the one under EU law, which allows for discrimination between EU nationals and non-EU nationals (third-country nationals), but not between EU nationals and nationals of the host Member State. This means that EU nationals enjoy equality with nationals, whereas third-country nationals do not.⁹¹ This differential treatment between nationals, EU nationals and third-country nationals was also considered by the ECtHR and will be further discussed below.

Temporary migrant workers, such as ICTs, cannot really benefit from the non-discrimination protections of the ECHR for a number of reasons. Firstly, the same “weighty reasons test” required for discrimination based on nationality to be justified would not be required in relation to discrimination based on immigration status, as confirmed by the ECtHR in the case of *Bah v United Kingdom*.⁹²

Secondly, the ECHR protects primarily civil and political rights. Even though the ECHR does not contain economic and social rights, the ECtHR stated early on in its case law that there is no watertight division between the Convention and the area of socio-economic rights.⁹³ The ECtHR adopted an “*integrated approach*”⁹⁴ to interpreting the ECHR, which in essence means that economic and social rights are read into the rights contained in the ECHR.⁹⁵ However, it has not resulted in any comprehensive protection of economic rights.⁹⁶

Thirdly, most of the protection under the ECHR is granted to migrant workers who reside in the host State on permanent basis as opposed to temporary migrants. This is mostly evident in the case law regarding access to social security benefits. The ECtHR has held that permanently resident third-country nationals must be treated on equal footing with nationals and EU nationals in access to such benefits.⁹⁷ Thus, under the ECHR

⁹⁰ ECtHR, *Gaygusuz v Austria* (Appl. No. 17371/90) Judgment of 16 September 1996 [42].

⁹¹ This is discussed in detail in chapter 4.

⁹² ECtHR, *Bah v United Kingdom* (Appl. No. 56328/07) Judgment of 27 September 2011 [41-42].

⁹³ ECtHR, *Airey v Ireland* (Appl. No. 6289/73) Judgment of 9 October 1979.

⁹⁴ M Scheinin, ‘Economic and Social Rights as Legal Rights’, in Eide (n 22) 32. V Mantouvalou, ‘Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation’ (2013) 13(3) Human Rights Law Review 529.

⁹⁵ See ECtHR, *Sidabras and Dziautas v Lithuania* (Appl. Nos. 55480/00 and 59330/00) Judgment of 27 July 2004. For analysis, see V Mantouvalou, ‘Work and Private Life: *Sidabras and Dziautas v Lithuania*’ (2005) 30 European Law Review 573.

⁹⁶ See ECtHR, *Bigaeva v Greece* (Appl. No. 26713/05) Judgment of 28 May 2009, where the Court dealt with an access by a non-national to a liberal profession.

⁹⁷ See for family benefits in *Dhabhi v Italy* (Appl. No. 17120/09) Judgment of 8 April 2014; for emergency advance on pension in *Gaygusuz v Austria* (Appl. No. 17371/90) Judgment of 16 September 1996; for

differential treatment between permanent and temporary migrant is allowed *vis-à-vis* access to social security rights.

In the case of *Ponomaryovi v Bulgaria* concerning the very important right of access to education, the ECtHR was not so tolerant of the discrimination, between the EU nationals and third-country nationals by the EU Member States.⁹⁸ However, in the same judgment the ECtHR also noted that States may restrict access of immigrants to “*resource-hungry public services – such as welfare programmes, public benefits and health care by short-term and illegal immigrants, who, as a rule, do not contribute to their funding [emphasis added].*”⁹⁹ Moreover, the Court also held that regarding such “*resource-hungry*” benefits the differential treatment between EU nationals and non-EU nationals maybe justified on account of EU citizenship.¹⁰⁰

Fourthly, regarding migrant-specific issues, such as the issue of facilitating family reunification, the ECHR can be useful to ICTs, but only in a limited way. The ECtHR clarified that Article 8 (right to private and family life) does not oblige States to “*respect choice of matrimonial residence or authorise family reunification in their territory*”.¹⁰¹ Moreover, unreasonable conditions imposed on family reunification could constitute an Article 8 violation, but it also held that the requirement “*of sufficient regular income and therefore the capacity to provide for basic needs and costs of subsistence of family was not unreasonable*”.¹⁰² Finally, the ECtHR elaborated a broad and modern definition of family, which includes married couples, cohabiting (not married) couples and even broken families.¹⁰³

Regarding another migrant-specific issue, namely the security of residence, the ECtHR afforded protection, in very limited circumstances through Article 8, to long-term resident third-country nationals, who faced expulsion on public order grounds¹⁰⁴ or in

farmers’ social security fund in *Luczak v Poland* (Appl. No. 77782/01) Judgment of 27 November 2007; for allowance for disabled adults in *Koua Poirrez v France* (Appl. No. 40892/98) Judgment of 30 September 2003; and for calculation of pension benefits for periods spent working abroad in *Andrejeva v Latvia* (Grand Chamber) (Appl. No. 55707/00) Judgment 18 February 2009.

⁹⁸ ECtHR, *Ponomaryovi v Bulgaria* (Appl. No. 5335/05) Judgment of 21 June 2011.

⁹⁹ ECtHR, *Ponomaryovi* (n 98) [54].

¹⁰⁰ ECtHR, *Ponomaryovi* (n 98) [54].

¹⁰¹ ECtHR, *Gül v Switzerland* (Appl. No. 23218/94) Judgment of 19 February 1996 [38]; *Tuquabo-Tekle and Other v the Netherlands* (Appl. No. 60665/00) Judgment of 1 December 2005 [42].

¹⁰² ECtHR, *Haydarie and Others v the Netherlands* (Appl. No. 8876/04) Decision of 20 October 2005.

¹⁰³ ECtHR, *Onur v the United Kingdom* (Appl. No. 27319/07) Judgment of 27 February 2009 [43-44]. Also, the same sex couples in *Schalk and Kopf v Austria* (Appl. No. 30141/04) Judgment of 24 June 2010.

¹⁰⁴ ECtHR, *Boutif v Switzerland* (Appl. No. 54273/00) Judgment of 2 November 2001; *Sen v the Netherlands* (Appl. No. 31465/96) Judgment of 21 December 2001.

order to protect “*the economic well-being of the State*”¹⁰⁵, and confirmed the special protection from expulsion granted to EU nationals¹⁰⁶.

From the above-mentioned ECtHR judgments, it could be concluded that the employment-related rights of migrants, such as access to work and social security, are not well protected under the ECHR due to its main objective to protect civil and political rights, and the rights of permanent residents. In addition, the right to private and family life by facilitating family reunification would be protected only under limited circumstances. Moreover, the ECtHR accepts the preferential treatment of EU nationals over non-EU nationals, depending on the context and the right involved. Thus, in areas such as protection from expulsion and access to State-funded benefits (in certain circumstance), the differential treatment would be allowed. However, it would not be tolerated in the context of very important rights, such as access to education by children (where States have narrow margin of appreciation), and in the case of lawfully and permanently resident non-EU nationals, who would enjoy equality of treatment with nationals.¹⁰⁷ Hence, the rights of temporary non-EU national migrant workers, such as ICTs, would not be well protected by the ECHR.

3.4. Human Rights Obligations of Multinational Corporations

Another gap in the rights protection of ICTs has its roots in the fact that there is a lot of confusion whether businesses, including MNCs, do in fact have obligations in relation to human rights under international law and the existing human rights instruments discussed above, such as the UN ICESCR. Some authors contend that they have such obligations¹⁰⁸, whilst others still resist this assertion¹⁰⁹. This confusion arises, because traditionally international human rights law has focussed on the protection of individuals against the abuse of powers by States. Since then there was not enough attention paid to

¹⁰⁵ ECtHR, *Berrehab v the Netherlands* (Appl. No. 10730/84) Judgment of 21 June 1988.

¹⁰⁶ ECtHR, *Moustaquim v Belgium* (Appl. No. 12313/83) Judgment of 18 February 1991.

¹⁰⁷ E Brouwer and K de Vries, ‘Third-Country Nationals and Discrimination on the Ground of Nationality: Article 18 TFEU in the Context of Article 14 ECHR and EU Migration Law: Time for a New Approach’, in M van den Brink, S Burri, and J Goldschmidt (eds.), *Equality and Human Rights: Nothing but Trouble?* (SIM Special 38, Netherlands Institute of Human Rights 2015) 130.

¹⁰⁸ For example, D Bilchitz ‘A Chasm between ‘Is’ and ‘Ought’?: A Critique of the Normative Foundations of the SRSG’s Framework and Guiding Principles, in S Deva and D Bilchitz, *Human Rights Obligation of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013) 111-114.

¹⁰⁹ See, for instance, Commission on Human Rights, ‘Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises’ UN Doc E/CN.4/2006/97 (22 February 2006) [60] (by J Ruggie).

the protection of individuals from actions and policies of NSAs¹¹⁰, which includes MNCs¹¹¹. However, since the first international human rights treaties were adopted, it became more and more a common ground that NSAs can have an impact on all human rights, including economic and social rights. This is because neoliberal globalisation calls on States to deregulate, at national and international level, production, trade and investment, and to privatise as much as possible State functions.¹¹²

In international human rights treaties, such as under Article 2(1) ICESCR, the general obligations “*are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law*”.¹¹³ This means that they take effect as between NSAs only under domestic law. Provisions under the ILO’s conventions operate in the same manner, even though corporations are intended as one of their main addressees.¹¹⁴ Therefore, the current position of NSAs, including MNCs, is that they

[...] are only indirectly accountable through states, while the states will be directly liable for human rights violations committed by NSAs within the respective jurisdiction. Non-state actors are thus, by definition, placed at the margins of the international human rights legal regime.¹¹⁵

Although international human rights treaties do not directly impose obligations on NSAs, they contain provisions¹¹⁶, which serve as guidelines and the human rights obligations in these instruments were interpreted as being applicable to, and having legal implications for, the NSAs’ policies and activities.¹¹⁷ Therefore, NSAs, including MNCs, have duties to respect and protect human rights and refrain from breaching them. Currently it is the States’ duty to prevent NSAs from breaching the right to non-discrimination by adopting

¹¹⁰ See generally A Clapham (ed.), *Human Rights and Non-State Actors* (Edward Elgar 2013).

¹¹¹ Other non-State actors include, for instance, international organisations, non-governmental organisations (NGOs), civil society groups, as well as government opposition armed groups and terrorist groups.

¹¹² See L Phillis, ‘Taxing the Market Citizen: Fiscal Policy and Inequality in the Age of Privatisation’ (2000) 63(4) *Law and Contemporary Problems* 111, 115.

¹¹³ HRCmt, General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant (2004) UN Doc CCPR/CC/21/Rev.1/Add.13 [4].

¹¹⁴ J Ruggie, ‘Business and Human Rights: The Evolving International Agenda’ (2007) 101 *American Journal of International Law* 819, 20 <https://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf> accessed on 1 April 2017.

¹¹⁵ Ssenyonjo (n 15) 160.

¹¹⁶ For example, Art 5(1) UN ICESCR stating that “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.”

¹¹⁷ CESCR, General Comment No. 18: The Right to Work (Art. 6 of the Covenant) (2006) UN Doc E/C.12/GC/18 [52].

legislation, policy, programmes, establishing public institutions to monitor, enforce and remedy breaches.¹¹⁸ However, this arrangement has several shortfalls. Firstly, nothing prevents States from imposing international legal responsibilities regarding human rights directly on MNCs. However, there is no evidence that they have done so to any appreciable extent.¹¹⁹ Secondly, States have been weakened (and MNCs strengthened) by the extensive privatisation of State functions, especially since the fall of the Iron Curtain.¹²⁰ Thirdly, NSAs, including MNCs, based in Western countries, concerned primarily with the protection of civil and political rights rather than economic and social rights, pay little attention to the protection of these rights¹²¹, which means that many of them are able to violate economic and social rights without being questioned¹²². One reason for this is partly that some countries, such as the UK, view economic and social rights as non-binding “*principles and programmatic objectives rather than legal obligations that are justiciable*”.¹²³ If the objective of fulfilment of human rights is to be accomplished, States and MNCs need to take their human rights obligation more seriously.¹²⁴

The major arguments against the direct application of human rights obligations to NSAs are twofold. Firstly, it has been stressed that it would carry the risk that States might defer their responsibility for human rights protection to these actors, which might even more diminish existing State obligations and accountability.¹²⁵ Secondly, it has been contended that, where governance is already weak, shifting human rights obligations onto NSAs would further undermine domestic political incentives to make governments more responsive and responsible for their own citizenry, which is stated to be the most

¹¹⁸ CESCR, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant) (2005) UN Doc E/C.12/2005/4 [19-20].

¹¹⁹ Ruggie (n 114).

¹²⁰ See generally K de Feyter and F Gomez Isa (eds.), *Privatisation and Human Rights in the Age of Globalisation* (Intersentia 2005).

¹²¹ Ssenyonjo (n 15) 183.

¹²² C Jochnick, ‘Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights’ (1999) 21(1) *Human Rights Quarterly* 56.

¹²³ CESCR, Concluding Observation: United Kingdom of Great Britain and Northern Ireland, UN Doc E/C.12/1/Add.79 (5 June 2002) [11]; and UN Doc E/C.12/1/Add.19 (12 December 1997) [10].

¹²⁴ S Ruxton and R Karim, *Beyond Civil Rights: Developing Economic, Social, and Cultural Rights in the UK* (Oxfam 2001) 1–49; C Puta-Chekwe and N Flood, ‘From Division to Integration: Economic, Social, and Cultural Rights as Basic Human Rights’, in I Merali and V Oostrerveld (eds), *Giving Meaning to Economic, Social, and Cultural Rights* (University of Pennsylvania Press 2001) 39.

¹²⁵ See K Koufa, *Final Report of the Special Rapporteur on Terrorism and Human Rights*, UN Doc E/CN.4/Sub.2/2004/40 (25 June 2004) [55]; JH Knox, ‘Horizontal Human Rights Law’ (2008) 102 *American Journal of International Law* 1.

effective way to realise human rights.¹²⁶ When existing international human rights treaties were adopted, there was not so much temporary migration and not so many MNCs either. Since then the numbers of temporary migrants as well as MNCs grew exponentially. In addition, MNCs became extremely influential, often more than States. These developments need to be reflected in new legislative endeavours to adequately protect migrant workers employed and transferred on temporary basis by MNCs. Therefore, there should be an international treaty directly obliging MNCs to protect human rights. As such a treaty is likely to be very general, such as the ICESCR, and it should thus be supplemented at regional level by further frameworks addressing issues regarding the various MNCs' specific spheres of influence, such as intra-corporate transfers. Such a legal and policy framework regarding rights protection and integration of ICTs will be introduced in chapter 7.

3.5. Implementation of International and Council of Europe Instruments in Slovakia and England

In addition to the abovementioned shortcomings in the international and CoE frameworks, there is another aspect that does, although should not, play a role in how these frameworks affect rights protection and integration of migrants at national level – the domestic approach to the implementation of international law. Given the lack of ratification by Slovakia and the UK of the UN and ILO migrant-specific instruments, ICTs should be able to rely on the general human rights instruments and labour standards, such as the ILO Convention No. 111, but primarily on the UN ICESCR. Can they do so in practice?

3.5.1. Slovakia

Article 11 of the Slovak Constitution provides for the direct applicability of international (human rights) treaties, stipulating that these treaties have primacy over national legislation (monism). Accordingly, no domestic legislation is necessary to give legal effect to the rights contained in such instruments. From the instruments discussed earlier, Slovakia ratified the UN ICESCR, the ILO Convention No. 111, the ECHR and the Charter, but none of the migrant-specific instruments. The act of ratification alone made these general instruments directly applicable in the domestic legal order and available to

¹²⁶ Ruggie (n 114) 11.

migrant workers to rely on before national courts. Chapter 5, dealing with the national dimension in Slovakia, will consider the extent of rights protection granted to migrant workers in Slovakia in the light of non-ratification of the migrant-specific legal instruments. It will analyse the theoretical and practical implications thereof, and whether the rights gaps identified are somehow remedied through domestic legislation.

3.5.2. England

The UK is a country with uncodified constitution and applies dualism as an approach to international law, which requires domestic legislation to be passed by the Parliament for the rights contained in an international treaty to have a direct effect at national level and in courts (justiciability of rights).¹²⁷ If there is no such domestic legislation, the non-incorporated international treaties would be only relied on in order to assist courts in interpreting ambiguous national legislation for that legislation to be in line with such treaties.¹²⁸ The UK ratified the ICESCR, but it has not been, and is not going to be, incorporated at national level.¹²⁹ The same has happened with the European Social Charter and the ILO Convention No. 111. Thus, the situation in the UK is that many international human rights treaties, particularly those concerning economic and social rights have been ratified by the UK, but not incorporated into the domestic legislation.¹³⁰

Therefore, in the absence of a comprehensive British Bill of Rights and codified constitution, the main sources of constitutional rights in the UK are acts of Parliament and case law.¹³¹ The UK authorities claim that, although the ICESCR has not been incorporated in national law, the UK's obligations under the ICESCR are given effect in specific laws, policies and practices.¹³² So far, the UK has not enumerated what these specific laws, policies and programmes are that give effect to the ICESCR rights in the UK.¹³³

¹²⁷ Court of Appeal, *Maclaine Watson and Co Ltd v Department of Trade and Industry* [1990] 2 AC 418.

¹²⁸ Court of Appeal, *Garland v British Rail Engineering* [1983] 2 AC 751 [771].

¹²⁹ See CESCR, Implementation of the International Covenant on Economic, Social and Cultural Rights: 5th periodic reports submitted by States parties under articles 16 and 17 of the Covenant: United Kingdom of Great Britain and Northern Ireland UN Doc. E/C.12/GBR/5 (31 January 2008) [51].

¹³⁰ Court of Appeal, *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116 [143-144].

¹³¹ AW Bradley and KD Ewing, *Constitutional and Administrative Law* (16th ed., Longman 2015) 11-19.

¹³² See CESCR, UN Committee on Economic, Social and Cultural Rights: Addendum to the Fourth Periodic Reports Submitted by States Parties, United Kingdom of Great Britain and Northern Ireland UN Doc E/C.12/4/Add.8 (28 February 2001) [2.01].

¹³³ Ssenyonjo (n 15) 262.

The position of the UK towards economic and social rights contained in the ICESCR is that, (with minor exceptions), they only constitute “*programmative objectives*” and “*aspirational goals*”¹³⁴, rather than being considered human rights on equal footing with rights such as civil rights. In 1997, the CESCR found this position of the UK to be “*disturbing*” and suggested that the UK incorporate the ICESCR rights, so that they could be invoked before national courts.¹³⁵ Since then the UK has not changed its position on the status of the ICESCR rights. Reiterating “*the principle of the interdependence and indivisibility of all human rights*”, the ICESCR noted that a domestic approach to implementation of international law is not a justification for non-implementation of rights into the domestic legal system, because “*following ratification [...] the State party is under an obligation to comply with it and to give it full effect in the domestic legal order.*”¹³⁶ It will be examined in chapter 6 to what extent this is true in England.

The ECHR has been expressly incorporated into the UK domestic legal system, not in its entirety, via the 1998 Human Rights Act (HRA), which means that the ECHR rights can be directly invoked before the UK courts. As noted above, the ECHR primarily covers civil and political rights, but less so economic and social rights or more indirectly through the rights contained in the ECHR, such as Article 8 (right to private and family life).¹³⁷ Although some of the ECHR Articles could provide some protection of economic and social rights in the UK indirectly via the 1998 HRA¹³⁸, this has not been fully explored¹³⁹. In any case the current situation, where individuals cannot invoke the ICESCR directly, or only indirectly through the ECHR in some limited circumstances,

¹³⁴ See, for instance, CESCR, State Party Report: United Kingdom of Great Britain and Northern Ireland UN Doc E/1994/104/Add.11 (17 June 1996) [9]; Joint Committee on Human Rights, International Treaties: ICESCR (nineteenth report 2005) <<https://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/112/11202.htm>> accessed on 26 March 2017.

¹³⁵ CESCR, Concluding Observations: United Kingdom of Great Britain and Northern Ireland UN Doc E/C.12/1/Add.19 (4 December 1997) [10] and [21].

¹³⁶ CESCR, Concluding Observations: United Kingdom of Great Britain and Northern Ireland – Dependent Territories, UN Doc E/C.12/1/Add.79 (5 June 2002) [24].

¹³⁷ See, for example, High Court, *R (Bernard) v Enfield London Borough Council* [2002] EWHC 2282 (Admin) (25 October 2002); See also Court of Appeal, *R v Secretary of State for Social Security, ex parte B and Joint Council for the Welfare of Immigrants* QBCOF 96/0462/D, QBCOF 96/0461 and 0462/D (21 June 1996).

¹³⁸ A Mowbray, *The Development of Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights* (Hart 2004); E Brems, ‘Indirect Protection of Social Rights by the European Court of Human Rights’, in D Barak-Erez and AM Gross (eds.), *Exploring Social Rights: Between Theory and Practice* (Hart 2007) 135.

¹³⁹ See generally E Palmer, ‘The Role of Courts in the Domestic Protection of Socio-Economic Rights: The Unwritten Constitution of the UK’, in F Coomans (ed.), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Intersentia 2006) 129.

creates a potential rights vacuum in the UK.¹⁴⁰ In addition, in 2014 the Government introduced proposals for scrapping the 1998 HRA and replacing it with the British Bill of Rights.¹⁴¹ Although the calls for scrapping the HRA have quieten down, they have not been entirely or officially abandoned. The British government have been urged that any British Bill of Rights should ensure “*strengthening the status of international human rights, including [economic and social] rights and provide for effective protection of those rights [...]*.”¹⁴²

Against this background, it will be examined in chapter 6 on the national dimension in England whether the specific domestic laws, policies and programmes correspond to the rights protection guaranteed under the international and CoE general human rights instruments, or whether the protection granted to third-country national ICTs at national level falls foul of, or goes beyond, these standards of protection.

3.6. Conclusion

Despite the comprehensive nature of the migrant-specific international instruments, such as the ILO Conventions No. 97 and 143 and UN ICRMW, they provide inadequate protection to migrant workers in general and to temporary migrant workers, such as ICTs in particular. This is because they exclude them from their scope or limit their access to a number of economic and social rights. Since these conventions were adopted, there are more temporary migrants than ever before and the private sector, including MNCs, plays a significant role in many aspects of their employees’ lives.¹⁴³ Another major obstacle is the chronic reluctance of States, including Slovakia and the UK, to agree to legally binding, multilateral instruments that regulate international labour migration and protect the rights of migrant workers. Furthermore, times and opinions about the value of economic and social rights would appear to be shifting, as demonstrated by the fact that the newer international legal instruments contain all rights: civil, cultural, economic,

¹⁴⁰ Ssenyonjo (n 15) 265.

¹⁴¹ The proposal for scrapping the 1998 HRA was published in the Guardian: ‘Protecting Human Rights in the UK—The Conservatives’ Proposals for Changing Britain’s Human Rights Laws’ *Guardian* (3 October 2014) <<https://www.theguardian.com/politics/interactive/2014/oct/03/conservatives-human-rights-act-full-document>> accessed on 26 March 2017.

¹⁴² Ssenyonjo (n 15) 263-264.

¹⁴³ R Cholewinski, ‘Protecting Migrant Workers in a Globalized World’ (Migration Policy Institute Feature, 1 March 2005) <<http://www.migrationpolicy.org/article/protecting-migrant-workers-globalized-world>> accessed on 27 March 2017.

political and social.¹⁴⁴ However, the legacy of the post-WWII era is still present in the two separate Covenants, and the ECHR and Charter.

In the last two decades, there have been several attempts to promote the strengthening of the protection of existing economic and social rights¹⁴⁵, and protection of rights of migrant workers¹⁴⁶ at international level. So far, these attempts have not yielded a lot of success due to the lack of consensus among the international community on the content of economic and social rights and the degree to which migrants should be able to enjoy them. There is an impasse in protection of rights of migrants at international level, because migration is a politically sensitive area for States and they wish to retain competence in this area to protect national interests. In the EU, the uncontrolled migration of EU nationals has led some States, such as the UK, to consider/introduce a heightened control over migration of third-country nationals.

The failure of States to promote rights protection and integration of migrant workers through legally binding migrant-specific conventions or general human rights instruments has forced the international organisations to resort to soft law instruments in order to facilitate access to rights and better integration of migrants. Within the ILO, the 2006 ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration was issued.¹⁴⁷ Within the CoE, several recommendations regarding migrants' integration were also adopted.¹⁴⁸ Respect for human rights by MNCs is also currently sought through adherence to non-binding guidelines and codes of conduct. It is questionable whether these initiatives are the right way forward in relation to such important issues, especially in the light of the realities of global economic downturn and migration crisis.

¹⁴⁴ Convention on the Rights of the Child (adopted on 20 November 1989, entered into force on 2 September 1990) 1577 UNTS 3 (CRC); and Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3 (CRPD).

¹⁴⁵ For example, there were initiatives to promote ratification of the Optional Protocol to the UN ICESCR, which introduced the individual and group petitions. See MJ Dennis and DP Stewart, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?' (2004) 98 AJIL 462 <<https://www.escr-net.org/resources/justiciability-economic-social-and-cultural-rights-should-there-be-international>.> accessed on 16 September 2016.

¹⁴⁶ There were attempts to raise ratification level of the UN ICRMW. See, for example, E MacDonald and R Cholewinski, *The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: EU/EEA Perspectives* (UNESCO 2007).

¹⁴⁷ ILC, Multilateral Framework on Labour Migration (n 23).

¹⁴⁸ See, for example, Committee of Ministers, Recommendation CM/Rec(2011)1, on interaction between migrants and receiving societies (adopted on 19 January 2011 at the 1103rd meeting of the Ministers' Deputies); Recommendation CM/Rec(2011)2, on validating migrants' skills (adopted on 19 January 2011 at the 1103rd meeting of the Ministers' Deputies).

In the meantime, restrictions on the access of temporary workers to important rights, such as family reunion, vocational training and certain social security benefits (especially non-contributory benefits) are increasingly justified on the basis of their length of stay in the country of employment.¹⁴⁹ These are reflected in the temporary migrations programmes, which constitute the current favourite policy choices of States. The idea behind temporary migration programmes is that they are a triple win situation: they are supposed to be advantageous for States, whether countries of origin or destination, and for migrants.¹⁵⁰ However, the positive triple win effect of these programmes has been found to be exaggerated and not supported by evidence.¹⁵¹

The truth is that temporary migration programmes are mostly in the interest of countries of destination, as they often compel migrants to leave the territory after a certain period (once they served their purpose). In addition, and in consequence, the temporariness of migrants' stay is a justification for these countries not to grant migrants access to certain rights, such as freedom to choose employment, access to social security rights and healthcare or family reunification.

These programmes may benefit some employers, for instance MNCs transferring ICTs, because they tie ICTs to the company and prevent them from leaving the employment whilst in the host country. However, they are not necessarily advantageous for all employers under all circumstances, as employers, including MNCs, may need to employ or transfer migrants for longer periods than permitted under the domestic legislation.

The argument that temporary migration programmes are good for migrants is the least convincing. In this respect, Ruhs identified a phenomenon of “*rights trade-off*”, which at least gives a large number of low-skilled migrants access to the territory of the host country and access to a smaller number of rights, while a smaller number of migrants (typically highly-skilled) are granted access to more rights.¹⁵² Despite the fact that this may be a pragmatic and feasible option in the short term, due to being politically and economically most attractive for destination countries, in the long run it could endanger migrants integration prospects and cohesion of the host society by prolonging

¹⁴⁹ R Cholewinski, ‘Protection of the Human Rights of Migrant Workers and Members of their Families under the UN Migrant Workers Convention as a Tool to Enhance Development in the Country of Employment’ (Paper presented during the Day of General Discussion at the 3rd Session of the Migrant Workers Committee (Geneva, 15 December 2005)) 10 <<http://www2.ohchr.org/english/bodies/cmw/docs/cholewinski.doc>> accessed on 27 March 2017.

¹⁵⁰ S Castles and D Ozkul, ‘Circular Migration: Triple Win, or a New Label for Temporary Migration?’, in G Battistella (ed.), *Global and Asian Perspectives on International Migration* (Vol. 4, Springer 2014).

¹⁵¹ P Wickramasekara, ‘Circular Migration: A Triple Win or a Dead End’ (Global Union Research Network Discussion Paper No. 15, 2011) <<https://ssrn.com/abstract=1834762>> accessed on 10 April 2017.

¹⁵² M Ruhs and P Martin, ‘Numbers vs. Rights: Trade-Offs and Guest Worker Programs’ (2008) 42(1) *International Migration Review* 249.

inequalities and creating second class citizens.¹⁵³ The failure of the temporary guest worker programmes is well-known.¹⁵⁴ This approach is also more consistent with seeing migrants as tools to achieve the aims of States and MNCs rather than as human beings.

It was only in 2016 that the global economic decline and migration crisis finally prompted migration issues to be placed on the agenda of the UN General Assembly for the very first time. Pledges were made by governments to ensure, among others, rights protection and integration of migrants.¹⁵⁵ The international community realised that action at international level is crucial to address migration issues and ensure protection of migrants. In addition, exploratory work regarding the feasibility of a treaty on business and human rights is being undertaken. This suggests a change in attitude and offers a momentum for addressing issues regarding rights protection and integration of migrants through international instruments.

In the following chapter 4, the ICTD will be examined from the perspective of equality and integration, along a number of selected EU secondary legislation on labour migration of EU and third-country nationals. The aim of this analysis is to demonstrate the fragmentation of the EU law regarding protection of migrant workers, caused by “political hijacking”, which can have negative impact on integration of migrants. Furthermore, it will be shown that the ICTD cannot provide the missing link in the protection of rights of ICTs in Europe, as it could only partially address some of the rights gaps identified in this chapter (as well as other issues arising from international transfers outlined in the national dimension chapters). Therefore, there is a strong need for formulating a new legal and policy framework that would provide a better protection of rights of temporary migrant workers, such as ICTs, which will be elaborated in chapter 7.

¹⁵³ A Wiener, ‘The Embedded *Acquis Communautaire*: Transmission Belt and Prism of New Governance’, in K Neunreither and A Wiener (eds.), *European Integration after Amsterdam: Institutional Dynamics and Prospects for Democracy* (OUP 2003) 335.

¹⁵⁴ F Heckmann, E Hönekopp, and E Currell, ‘Guest Worker Programs and Circular Migration: What Works?’ (Immigration Paper Series 09, The German Marshall Fund of the United States 2009).

¹⁵⁵ UN General Assembly, New York Declaration for Refugees and Migrants UN Doc A/71/L.1, 13 September 2016.

4. EU LAW AND POLICY ON LABOUR MIGRATION AND INTEGRATION

4.1. Introduction

It was illustrated in chapter 3 that the principle of equality and non-discrimination is encompassed in many international and CoE legal instruments. Yet in this regulatory system many deficiencies remain, which means that the issue of the precarious work endured by many temporary migrants goes unaddressed.¹ Thus, despite the acceptance of the principle of equality “*in the abstract*”, achieving a consensus on its practical attainment and implementation for temporary migrant workers remains elusive and controversial.² The issue is that States withhold access to more secure status and citizenship from temporary migrants. On the other hand, it would be wrong to say that every temporary migrant has a desire to settle or obtain citizenship. In practice, this situation contributes to substantial inequality between the different types of migrant workers. There is no better example of this fragmentation of migrants’ legal statuses than the EU. Migrants are treated differently on the basis of their nationality, namely EU nationals versus third-country nationals, but also based on whether they are permanent or temporary migrants or highly- or low-skilled workers.

The main aim of this chapter is to explore whether the gaps in the international and CoE frameworks, identified in chapter 3³, regarding the protection of the temporary migrants in general, and ICTs in particular, can be ameliorated in Europe through the EU legal and policy framework on labour migration, principally through the 2014 Intra-Corporate Transfers Directive (ICTD)⁴, which covers transfers of third-country nationals from

¹ See, for example, LF Vosko, ‘Out of the Shadows?: The Non-Binding Multilateral Framework on Migration (2006) and Prospects for Using International Labour Regulation to Forge Global Labour Market Membership’, in G Davidov and B Langille (eds.), *The Idea of Labour Law* (OUP 2011).

² S Olney and R Cholewinski, ‘Migrant Workers and the Right to Non-discrimination and Equality’, in C Costello and M Freedland (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law* (OUP 2014).

³ International and CoE regimes primarily concentrate on the protection of rights of permanent workers. At the international level, ICTs are excluded from ILO Conventions No. 97 and 143, some of them from the UN ICRMW too. In addition, the UN ICRMW significantly limits ICTs’ access to certain economic and social rights (Arts 61 and 62). The UN ICESCR does not cover migrant-specific issues such as security of residence and family reunification. Within the CoE, the ECHR does not cover economic and social rights and the Charter functions on the basis of reciprocity.

⁴ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [2014] OJ L157/1 (ICTD).

companies based in third countries to the EU. The ICTD constitutes another step in the EU's efforts to create a comprehensive policy in the area of legal labour migration of third-country nationals.⁵ It was introduced by the Commission on 13 July 2010 and adopted after lengthy negotiations by the Council on 13 May 2014.⁶ This Directive applies to 25 out of 28 EU Member States. It does not apply to the UK and Ireland⁷ and Denmark⁸, as they opted out, but it came into force in Slovakia in January 2017.⁹

The aims of the ICTD are threefold. Firstly, it should make it easier and quicker for multinational corporations (MNCs) to temporarily assign highly-skilled workers to their subsidiaries situated in the EU. Secondly, it should facilitate ICTs' mobility between Member States during their transfer. Thus, the utilitarian approach to labour migration in the EU resonates throughout this Directive (in order for the proposal to pass through the Council¹⁰). Thirdly, it lays down a common set of rights for ICTs and their families, when working and residing in the EU to avoid their exploitation and distortion of competition.¹¹ The claims that the ICTD will avoid exploitation of ICTs in the EU and support fair competition are challenged in this thesis.¹²

To understand the rationale for introducing this Directive it is important to contextualise it within the current EU legal and policy framework on legal labour migration. Thus, a brief overview of the development of the law and policy in the area of labour migration is provided in section 4.2. In addition, in section 4.3., the ICTD is scrutinised from the perspective of equality and integration.¹³ In this respect a comparison with EU nationals, who enjoy rights protection on equal footing with nationals is conducted.¹⁴ Moreover, the comparison of ICTs with other selected groups of migrants in the EU will assist in a better understanding of the fragmented approach to rights protection of migrant workers,

⁵ European Commission, 'Proposal for a Directive of the European Parliament and the Council on Conditions of Entry and Residence for Third-Country Nationals in the Framework of an Intra-Corporate Transfer' COM (2010)378 final, Brussels 13.7.2010, 1.

⁶ Main issues in dispute were the existence of concurrent national ICT schemes, the equality of rights and intra-EU mobility rights. See A Maricuț, 'The Institutional Development of the EU's Area of Freedom, Security and Justice: Roles, Behaviors, and The Logic of Justification' (DPhil Thesis, School of Political Science, Public Policy and International Relations, Central European University Budapest, Hungary 2016) 226 <<https://pds.ceu.edu/sites/pds.ceu.hu/files/attachment/basicpage/478/phdthesismaricutadina.pdf>> accessed on 13 June 2016.

⁷ ICTD, Recital 28.

⁸ ICTD, Recital 29.

⁹ The ICTD came into force in Slovakia in January 2017, after the period of the research for this thesis has ended.

¹⁰ Maricuț (n 6) 224.

¹¹ ICTD, Recital 15.

¹² See section 4.3. below.

¹³ See chapter 1, section 1.5. for the definition of "equality", and section 1.8. for the definition of "integration".

¹⁴ See chapter 1, section 1.5. for arguments regarding the comparability of the third-country national ICTs with EU national ICTs.

and where precisely on the EU scale of equality ICTs are compared to EU nationals other third-country nationals.

The reasons for this fragmentation are several, but the main one is that two distinct legal and policy frameworks operate side-by-side within the EU: one regarding EU nationals¹⁵ and one concerning third-country nationals¹⁶. This disparity is rooted in the EU treaties, as the free movement provisions include access to employment for EU nationals, whereas the same does not apply to third-country nationals. Their rights and status are covered by the EU secondary legislation (Directives), not the EU primary law (Treaties). The legal rules applicable to third-country nationals can be further divided into legislation covering those, who are long-term residents, whose rights have been approximated to those of EU nationals, and other more temporary migrants.

ICTs belong to one of these groups of temporary migrants. In the absence of adequate protection of temporary migrants under international and CoE instruments, many temporary migration programmes proliferated at domestic and EU level, such as the ICTD. Temporary migration is notoriously difficult to define and regulate, and the temporary migration programmes can create conditions for exploitation for several reasons. Firstly, when State policy and regulation are focused primarily on economic issues, there is a risk that their damaging social effects, encapsulated by the precarity of temporary migrant labour, are ignored.¹⁷ Secondly, they often create an “*unfree labour*”, which is a situation, where migrant workers are constrained from freely circulating in the labour markets of receiving countries.¹⁸ Such is the situation with ICTs. As Howe and Owen put it “[c]ontemporary labour migration, with its emblematic features of worker precarity and temporality, has proven the perfect fodder for capital’s interests, and the law regulating work has struggled to respond.”¹⁹ In addition, temporary migrants are usually willing to accept worse conditions than a local work force, because their country

¹⁵ EU national is anyone, who has a citizenship of one of the (still) 28 EU Member States. Similar treatment is granted to nationals of countries, which belong to the EEA, which includes the EU Member States plus Norway, Liechtenstein and Iceland. In addition, nationals of Switzerland, which is not an EU or EEA country, also enjoy similar treatment as EU nationals.

¹⁶ Third-country national is anyone, who is not a national of the EU, EEA or Switzerland.

¹⁷ J Howe and R Owens, ‘Temporary Labour Migration in the Global Era: The Regulatory Challenges’, in J Howe and R Owens (eds.), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart 2016) 8.

¹⁸ See, for example, R Miles, *Capitalism and Unfree Labor: Anomaly or Necessity* (Tavistock 1987); T Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (McGill-Queens University Press 2002).

¹⁹ Howe and Owens, ‘Temporary Labour Migration in the Global Era: The Regulatory Challenges’, in Howe and Owens (n 17) 2.

of origin, typically a developing country, is their frame of reference²⁰, and because there is a chance to recoup cost of immigration and even send money home. They can be especially motivated to be compliant, when there is the possibility of securing permanent residence.²¹ This can lead to their vulnerability and proneness to exploitation, especially in case of third-country nationals as opposed to EU nationals.

Despite the need to provide a clear overview of EU law and policy applicable to third-country nationals, the main focus of this chapter is the ICTD, although other Directives are mentioned with view to provide the context for the ICTD. These include the Citizenship Directive (CD)²², the Posted Workers Directive (PWD)²³, the Long-Term Residence Directive (LTRD)²⁴, the Family Reunification Directive (FRD)²⁵, the Blue Card Directive (BCD)²⁶, the Single Permit Directive (SPD)²⁷ and the Seasonal Workers Directive (SWD)²⁸. Some of these Directives are analysed in more depth in section 4.3. from the perspective of equality and integration. In this respect, apart from EU workers, ICTs are compared to posted workers because the EU legislator made an analogy between ICTs and posted workers in that provisions in the PWD are directly applicable to ICTs via the ICTD.²⁹ The treatment of ICTs is also contrasted to that of Blue Card holders, because both groups of migrants are highly-skilled workers. The comparison of ICTs and seasonal workers is justified, because they both constitute EU temporary migration programmes. The rationale behind this comparison is to see how far is the

²⁰ JM Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge University Press 1979).

²¹ Interview with E17.

²² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77 (Citizenship Directive (CD)).

²³ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L018/1 (Posted Workers Directive (PWD)).

²⁴ Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents [2004] OJ L16/44 (Long-Term Residence Directive (LTRD)).

²⁵ Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification [2003] OJ L251/12 (Family Reunification Directive (FRD)).

²⁶ Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment [2009] OJ L155/17 (Blue Card Directive (BCD)).

²⁷ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State [2011] OJ L343/1 (Single Permit Directive (SPD)).

²⁸ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers [2014] OJ L94/375 (Seasonal Workers Directive (SWD)).

²⁹ ICTD, Recital 15.

rights protection of ICTs from that of EU workers and to which other type of worker (posted, highly-skilled or temporary) it is mostly approximated. This will help in assessing the level of rights protection granted to ICTs and in appreciating of the reasons for this particular level of protection.

The analysis of the ICTD (and other Directives) in section 4.3. concerns access to rights, where the difference in treatment between EU nationals and third-country nationals is most visible, namely access to territory, secure residence, labour, social and intra-EU mobility rights. In this chapter, the focus of analyses is on the interplay between migration³⁰, integration and equality. The access to these rights corresponds to the ICTs' Indicators of Integration developed in chapter 2 and to the idea that the more equality with EU nationals is granted to ICTs and their families the better chance they have to integrate in the EU. Thus, the link between integration and equality is in the role played by equality in the process of integration: equality can contribute to better integration of migrants.

Under EU law equality and integration are a prerogative for EU nationals and long-term resident third-country nationals. Integration of EU nationals plays a key role in the EU migration policy. One of the main rationales of the European (economic) integration is the realisation of the European Single Market.³¹ In this context, migrants' integration is understood by the EU policymakers as a process of facilitating intra-EU mobility of EU nationals, throughout which they enjoy equality, non-discrimination, family reunification and secure legal status in the same way as nationals.³² Therefore, there is a close nexus between the law on EU citizenship and migration and the integration and equality perspective. The link between migration and integration is reflected in the process by which the social integration was introduced into the EU Directives on labour migration, discussed in the following section.

³⁰ There is no official definition of migration in the EU, but the term describes the process of persons moving across borders to live and work and generally implies non-EU nationals moving into or within the EU.

³¹ C Barnard and J Scott (eds.), *The Law of the Single European Market: Unpacking the Premises* (Hart 2002); P Craig and G de Búrca, *EU Law: Text, Cases and Materials* (6th ed., OUP 2007).

³² K Groenendijk, 'Integration Policy and Community Law', in S Carrera (ed.), *The Nexus between Immigration, Integration and Citizenship in the EU* (Collective Conference Volume, Centre for European Policy Studies 2006) 9–11; CA Groenendijk, 'Access of Third-Country Nationals to Employment under the New EC Migration Law', in F Julien-Laferriere, H Labaye, and O Edström (eds.), *The European Immigration and Asylum Policy: Critical Assessment Five Years after the Amsterdam Treaty* (Bruylant 2005).

4.2. Development of the EU Migration and Integration Law and Policy

The EU has a competence regarding labour migration and integration of migrants scattered in different chapters of the EU treaties depending on whether the focus is on EU nationals or third-country nationals. In short, regarding EU nationals, the introduction of labour migration regulation and integration measures is the EU competence endowed to the EU by the EU treaties. Regarding third-country nationals, the EU has competence to adopt secondary legislation in the area of labour migration, but the competence to introduce integration measures is left to the Member States. This is a source of tension and fragmentation of statutes dealing with the different groups of migrant workers in the EU, as evidenced by the various Directives discussed in this chapter.

4.2.1. EU Migrant Workers

When the European Community (EC) was founded in 1957, one of its missions was to ensure freedom of movement of persons, goods, services and capital.³³ The free movement was available only to EU nationals as opposed to non-EU nationals. Initially, the right to free movement was conditioned on carrying out an economic activity. The breakthrough came much later, when the need for economic activity was de-alienated from the right to free movement. The 1992 Treaty of Maastricht on the European Union (TEU)³⁴ represents a new stage of European integration, since it paved the way towards political integration, created the EU³⁵ and introduced the concept of European citizenship. The latter meant that the right to move freely within the Union was extended to all EU nationals. Any person holding nationality of an EU Member State is automatically also an EU citizen, but it is still for each EU country to lay down the conditions for the acquisition and loss of nationality. EU citizenship is conferred directly on every EU citizen under Article 20 of the Treaty on the Functioning of the European Union (TFEU)³⁶ and gives EU nationals (and their family members regardless of their nationality) certain freedoms and rights on par with nationals of the host EU Member State.

³³ When the EC was founded the main mission was to ensure peace in the continent after two world wars.

³⁴ Treaty on the European Union [1992] OJ C191/1 (Treaty of Maastricht).

³⁵ Consisting of three pillars: The European Communities (EC), Common Foreign and Security Policy (CFSP), and police and judicial cooperation in criminal matters.

³⁶ Treaty on the Functioning of the European Union (Consolidated Version) [2012] OJ C326/47 (TFEU).

This principle of equal treatment of EU nationals with nationals of the host Member States is closely linked with another principle of EU law – non-discrimination based on nationality embedded in Article 18 TFEU, which prohibits discrimination based on nationality between EU nationals and nationals within the scope of EU treaties. With regards to EU nationals, Article 18 is inclusive as it guarantees equal treatment to them in other Member States and plays a crucial role in facilitating the free movement and giving substance to EU citizenship. The CJEU held that Article 18 does not apply to a possible difference in the treatment between nationals and non-nationals of Member States³⁷, which has been interpreted as implying the exclusion of EU migration law on non-EU nationals from the scope of Article 18.³⁸ This difference in the treatment between EU and non-EU nationals based on Article 18 is exemplified at national level by granting migrants from EU Member States a more privileged status compared to non-EU nationals. Thus, under EU law discrimination based on nationality is allowed between EU and non-EU nationals in the name of the EU integration, meaning that the non-EU nationals are not included in the realisation of the EU integration project.³⁹

In contrast, EU nationals, as part of the EU integration project, benefit from one of the four freedoms, on which the EU is founded – the freedom of movement of workers (Article 45 TFEU). It is also laid down in the Citizenship Directive (CD) and the CJEU case law. It entails the abolition of any discrimination based on nationality between workers of the Member States in relation to the entry into the territory, stay, employment, remuneration and other conditions of work and employment. When residing in a Member State other than their own, EU nationals, and their family members regardless of their nationality, have a strong and secure legal status compared to non-EU nationals, which facilitates their integration. Up to five years the EU national's residence is subject to certain conditions.⁴⁰ After five years of continuous residence, EU nationals are considered to be integrated sufficiently enough to gain access to almost all rights, including social assistance, with the exception of certain rights, such as voting and standing in national elections.

³⁷ CJEU, Joined Cases C-22/08 *Vatsouras* and C-23/08 *Koupatantze* [2009] ECR I-4585 [52].

³⁸ E Muir, 'Enhancing the Protection of Third-Country Nationals Against Discrimination: Putting EU Anti-Discrimination Law to the Test' (2011) 18 *Maastricht Journal of European and Comparative Law* 136, 144.

³⁹ This kind of differential treatment between EU and third-country nationals was also accepted by the ECtHR, in certain circumstances, on account of special nature of the EU legal order. See chapter 3, section 3.3.2.2. See also S Morano-Foadi S and M Malena (eds.), *Integration for Third-Country Nationals in the European Union: The Equality Challenge* (Edward Elgar 2012); S Morano-Foadi, 'Migration and Human Rights: The European Approach', in S Morano-Foadi and L Vickers (eds.), *Fundamental Rights in Europe: A Matter for Two Courts* (Hart 2015).

⁴⁰ These are discussed in chapter 1, section 1.5.

4.2.2. Posted Workers

The privileges applicable to EU workers do not apply to posted workers under the 1996 Posted Workers Directive (PWD).⁴¹ Reference is made of the PWD, because, according to the EU legislator, posted workers are similar to third-country national ICTs.⁴² Posted worker is an employee, either an EU national or third-country national, who is sent by their employer established in one EU Member State to carry out a service in another EU Member State on a temporary basis⁴³, while ICTs are transferred on temporary basis too, but from a third country to the EU, primarily to further the investment activities of their companies. As a result of this analogy, by virtue of Article 18(1) of the ICTD, Article 3 of the PWD covering “core” terms and conditions of employment is directly applicable to ICTs. This means that ICTs are granted equality with posted workers rather than with the EU workers.

To understand the extent of the differential treatment between EU workers and posted workers, and thus by analogy ICTs, it is necessary to explain the different rationale behind the migration of EU workers and posted workers. EU workers exercise free movement rights to fill the employers’ demands for labour in other EU Member States.⁴⁴ Posted workers’ movement occurs as a by-product to, and facilitation of, their employers’ activity – trade in services.⁴⁵ The PWD was introduced to *facilitate* easier posting of workers within the EU to aid trade in services, but also to *provide some protection* to posted workers.

In the global era, the relationship between labour law (protecting the interests of workers) and economic or trade law (protecting the interests of the capital) has often been portrayed as a conflictual one, and in need of reconciling for regulatory cohesion.⁴⁶ In this respect, what can be observed is that many temporary migration programmes place a strong emphasis on the interests of the capital and that these programmes become tools to achieve “*the entrepreneurial potential and profit-maximising capabilities of capital.*”⁴⁷ This means less regulation in the name of easing trade, provision of services, and

⁴¹ The Directive was adopted in December 1996, still under the Maastricht Treaty regime, when the area of immigration was in the third pillar of the EU three pillar structure, where the EU had no competence to legislate. Matters in the EU third pillar, including immigration, were in exclusive competence of Member States and subject to international law rules, rather than EU supranational law.

⁴² ICTD, Recital 15.

⁴³ PWD, Art 1(3).

⁴⁴ TFEU, Art 45.

⁴⁵ TFEU, Art 56.

⁴⁶ See, for example, C Kaufmann, *Globalisation and Labour Rights: The Conflict between Core Labour Rights and International Economic Law* (Hart 2007).

⁴⁷ Howe and Owens, ‘Temporary Labour Migration in the Global Era’, in Howe and Owens (n 17) 2.

economic integration, such as in the EU. There is a deference to this “*Global Inc*”⁴⁸ in many temporary migration programmes: “*The single-minded pursuit of economic efficiency in regulating temporary labour migration is most apparent in the growing importance of the global trade in services [for instance, during posting of workers]*”⁴⁹, or in MNCs’ investment activities during the intra-corporate transfers⁵⁰.

Thus, the legislator’s decision to put more emphasis on the interests of capital rather than on the interests of workers is a matter of conceptualisation.⁵¹ Under the PWD, as interpreted by the CJEU, these workers do not seek access to the local labour market of the country where they work. The delivery of a service by a migrant worker is equated to a delivery of goods⁵², which means that “*the economic and social dimensions of global trade remain separated, with the latter tending to be erased as the advantages of the former are expounded.*”⁵³ This conceptualisation allows service workers (such as posted workers) and “investment workers” (such as ICTs) to be granted different statuses (compared to EU workers), where their worker status is kept outside of the reach of national regulatory regime.⁵⁴ This is because posted workers and ICTs retain employment contracts with their employer in the country of origin and are subject to foreign labour laws, which are then imported to the host country where the work is carried out. Such foreign labour laws can be difficult to police and enforce in the host country. The resultant exploitation of posted workers in the EU is a well-known phenomenon, as well as the issues in relation to the enforcement of the Posted Workers Directive.⁵⁵ It is for this reason that a new Posted Workers Directive was proposed, in hope that it will strengthen rights of posted workers granted under the original Directive.⁵⁶

⁴⁸ This term is borrowed from C Costello and M Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17) 2.

⁴⁹ Howe and Owens, ‘Temporary Labour Migration in the Global Era’, in Howe and Owens (n 17) 5.

⁵⁰ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17).

⁵¹ Howe and Owens, ‘Temporary Labour Migration in the Global Era’, in Howe and Owens (n 17) 5 and 7.

⁵² See, for example, LA Winters, ‘The Temporary Movement of Workers to Provide Services (GATS Mode 4)’, in A Mattoo, RM Stern, and G Zanini (eds.), *A Handbook of International Trade in Services* (OUP 2008); LA Winters, TL Walmsley, ZK Wang, and R Grynberg, ‘Liberalising Temporary Movement of Natural Persons: An Agenda for the Development Round’ (2003) 26(8) *World Economy* 1137.

⁵³ Howe and Owens, ‘Temporary Labour Migration in the Global Era’, in Howe and Owens (n 17) 5.

⁵⁴ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17) 25.

⁵⁵ European Parliament, ‘Posting of Workers Directive: Current Situation and Challenges’ (study commissioned by the Policy Department for Economic and Scientific Policy, upon request of the Committee on Employment and Social Affairs, IP/A/EMPL/2016-07, June 2016).

⁵⁶ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of

The original PWD defined a set of mandatory rules regarding “core” terms and conditions of employment to be applied to posted workers to guarantee that they are protected throughout the EU, and to avoid “social dumping”, where foreign service providers could undercut local service providers, because their labour standards were lower. These “core” terms and conditions are contained in Article 3 and include minimum rates of pay, maximum work periods and minimum rest periods, minimum paid annual leave, the conditions of hiring out workers through temporary work agencies, health, safety and hygiene at work, and equal treatment between men and women. Article 3 establishes that, even though workers posted to another Member State are still employed by the sending company, and therefore subject to the law of that Member State, they are entitled to a set of core labour rights in force in the host Member State.⁵⁷ However, instead of providing the intended protection in line with the CJEU’s interpretation of Article 3 as a “maximum” standard⁵⁸, in the sense that the Member States could not provide more protection than the minimum guaranteed under the PWD, the Directive only reinforced the exploitation of posted workers.

Thus, the main critique of trade in services law is that it strips workers of their humanness and that they are treated as commodities.⁵⁹ This conceptualisation of service workers, as not being fully part of the host country’s labour market and thus ineligible to be protected under the host country’s laws, has social and personal consequences for these workers. It has been argued that to claim that posted workers do not participate in the host country’s labour market is a “*legal fiction*”.⁶⁰ Service workers, such as posted workers, should be involved in the European social model⁶¹, and thus enjoy equality with nationals regarding their labour rights. By analogy, “investment workers”, such as ICTs, should also be granted equality of treatment with nationals.

services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System [2014] OJ L159/11 (Posted Workers Enforcement Directive (PWED)).

⁵⁷ This means that the laws of the country of origin could apply in the host Member State, as long as they correspond to the minimum core rights in the destination country.

⁵⁸ See, for instance, CJEU, Case C-341/05 *Laval un Partneri* [2007] ECR I-11.

⁵⁹ PL Martin, *GATS, Migration, and Labour Standards* (Discussion Paper DP/165/2006, International Institute for Labour Studies 2006) 20-21.

⁶⁰ L Hayes and T Novitz, ‘Workers without Footprints: The Legal Fiction of Migrant Workers as Posted Workers’, in B Ryan (ed.), *Labour Migration in Hard Times: Reforming Labour Market Regulation* (Institute for Employment Rights 2013).

⁶¹ G Biffel and I Skrivaneck, ‘The Distinction Between Temporary Labour Migration’, in Howe and Owens (n 17).

4.2.3. Third-Country National Workers

The EU's responsibility for the integration of third-country nationals, as expressed by Article 79(4) TFEU, lies in the simple coordination and exchange of information and good practices on integration policies among the EU Member States. All EU instruments on integration are only soft law.⁶² If the EU had competence, then the CJEU would have jurisdiction and a sanction action could have been taken at EU level against the non-complaint Member State, which would be the best way forward in such an important field as migrants' integration.⁶³ Instead, integration of third-country nationals is left to Member States. However, any integration measures adopted by States must comply with the EU Charter of Fundamental Rights⁶⁴, which means in practice they should not hinder access to rights, and thus prevent social integration. In absence of EU competence, similarly as at international level, integration is facilitated primarily through equality provisions found in different EU Directives. This provides the abovementioned nexus between integration and migration.

From its inception, the EU did not have competence to introduce secondary legislation on labour migration of third-country nationals. This changed with the Treaty of Amsterdam⁶⁵, which empowered the EU to legislate in that area, in a shared capacity though with Member States. Consequently, third-country nationals' migration was regarded as an area, in which the EU secondary legislation could be adopted in relation to entry, stay and certain rights. Member States retained control over the volume of admitted third-country nationals.

At the Tampere Council in 1999, it was pronounced that "*a more vigorous integration policy should aim at granting legally resident third-country nationals' rights and obligations comparable to those of EU nationals*".⁶⁶ This was intended to strongly promote, as an integration tool for third-country nationals, the link between the secure residence status and the equality of treatment. As with EU nationals, the length of residence was considered by the EU policymakers to be the key in the integration process of third-country nationals. Thus, since the late 1990's, the integration efforts

⁶² For instance, Justice and Home Affairs Council Meeting, 'Common Basic Principles on Integration' (2618th) Doc. 14615/04, Brussels 19.11.2004, 18-19.

⁶³ S Morano-Foadi, 'The Missing Piece in the Lisbon Jigsaw: Is the Open Method of Coordination Effective in Relation to the European Research Area?' (2008) 14(5) European Law Journal 635, 646.

⁶⁴ Charter of Fundamental Rights of the European Union [2012] OJ C326/391 (EU Charter).

⁶⁵ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (1997) OJ C340/1 (Amsterdam Treaty).

⁶⁶ European Council, Tampere European Council 15 and 16 October 1999: Presidency Conclusions.

concentrated on long-term residents.⁶⁷ The longer they lawfully resided in the EU, the better they were integrated, the more entitled they were to enjoy greater protection of rights.⁶⁸ Security of tenure plays a crucial role in integration, because it “*permits with greater security of residence encourage immigrants to invest more heavily into their own integration in society and working life.*”⁶⁹ However, the idea that only permanent migrants are worthy of protection and efforts to integrate them is challenged in this thesis in an attempt to reconceptualise the whole integration process, and give voice to temporary migrants as well in the context of the ongoing debate on integration. Temporary migrants, such as ICTs, also invest efforts in their integration in the host country (with a differencing success).⁷⁰

Since the EU been given competence to legislate in the area of labour migration of third-country nationals, the Commission’s efforts to harmonise this area and so to promote integration via secondary legislation, were hampered by the EU Member States for fear of losing control over a politically charged topic – labour migration. For instance, in 2001, the Commission put forward the idea of a common framework for admitting third-country nationals for all employed and self-employed activities.⁷¹ This Proposal gained support in the European Parliament (representing the interests of the citizens and inhabitants of the EU), but not in the Council (representing interests of the States).⁷²

As this holistic (rights-based) approach to migration in the EU stalled, the Commission came up with two new proposals for Directives: one on the rights of long-term residents in the Long-Term Residence Directive (LTRD), and one covering a right of family reunification in the Family Reunification Directive (FRD). These two proposals still

⁶⁷ European Council, Resolution on the status of third-country nationals residing on a long-term basis in the territory of the Member States [1996] OJ C080/2.

⁶⁸ LTRD, Recital 6. See also J Niessen, ‘Immigration, Citizenship and the Benchmarking of Integration in the EU’, in S Carrera (ed.), *The Nexus between Immigration, Integration and Citizenship in the EU* (Collective Conference Volume, Centre for European Policy Studies 2006) 33; K Groenendijk, ‘Legal Concepts of Integration of EU Migration Law’ (2004) 6(2) *European Journal of Migration Law* 111; T Gross, ‘Integration of Immigrants: The Perspective of European Community Law’ (2005) 7 *European Journal of Migration Law* 145.

⁶⁹ European Commission, *Handbook on Integration for Policy-Makers and Practitioners* (2nd ed., European Commission 2007) 51.

⁷⁰ Interviews with S5, E8, E4, E15, E11, or E12.

⁷¹ European Commission, ‘Proposal for a Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purpose of Paid Employment and Self-Employed Economic Activities’ COM(2001) 386 final.

⁷² See, for example, European Commission, ‘Proposal for a Council Directive on the Conditions for Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment: Summary of the Impact Assessment’ SEC(2007)1403, Brussels 23.10.2007, 3.

reflected the Tampere Council commitments of providing non-EU nationals with fair treatment and rights comparable to those enjoyed by EU nationals.⁷³ Nevertheless, during the negotiations of these two Directives, some Member States insisted on including loosely worded integration conditions provisions, which would allow Member States to use them for excluding third-country nationals from their territory as well as from obtaining better rights protection and secure legal status, instead of promoting their integration.⁷⁴ This development must be seen in the context of the post 9/11 mentality and the then upcoming 2004 EU enlargement. The traditional EU Member States had security concerns⁷⁵, and were worried that they would be flooded with the EU immigrants, potentially leading to undercutting of domestic wages and increased cultural diversity, which was reflected in the Member States' attitude towards the immigration and integration of non-EU nationals.⁷⁶

This climate, combined with the continued unanimity in the decision-making process in the Council regarding regular labour migration⁷⁷, made any attempts to approve new legislative proposals almost impossible. Therefore, the EU legislator “changed its tactics” and, instead of a horizontal approach, several Directives dealing with different types of workers were introduced. These proposals were wrapped up not in rights protection rhetoric, but in economic terms to make them more appealing to Member States (utilitarian approach). This was backed up by evidence of labour shortages⁷⁸, and the need to enhance the competitiveness of the EU economy⁷⁹. Thus, in December 2005 the Commission presented a compromise solution to adopt five different Directives.⁸⁰

⁷³ European Council, Tampere Conclusions (n 66).

⁷⁴ E Guild, K Groenendijk, and S Carrera, ‘Understanding the Contest of Community: Illiberal Practices in the EU?’, in E Guild, K Groenendijk, and S Carrera (eds.), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009), 17.

⁷⁵ See, for example, Recital 14 of the FRD, which states that family reunification can be refused, if the family member, who is seeking to be reunited with the family member in a host Member State, has been associated with terrorism, extremism or poses threat to public security.

⁷⁶ L Cerna, ‘The EU Blue Card: Preferences, Policies, and Negotiations between Member States’ (2014) 2(1) *Migration Studies* 73, 78.

⁷⁷ European Commission, ‘Communication on the Area of Freedom, Security and Justice: Assessment of the Tampere Program and Future Orientations’ COM(2004)401 final, Brussels 2.6.2004, 4; Council Decision (EC) 2004/927 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Art. 251 of that Treaty of 22 December 2004 [2004] OJ L396/45.

⁷⁸ European Commission, ‘Proposal for a Council Directive on the Conditions for Entry and Residence of Third-country Nationals for the Purposes of Highly Qualified Employment’ COM(2007)637 final, Brussels 23.10.2007.

⁷⁹ European Commission, ‘Green Paper on the EU Approach to Managing Economic Migration’ COM(2004)811 final, Brussels 11.1.2005.

⁸⁰ European Commission, ‘Communication on a Policy Plan on Legal Migration’ COM(2005)669 final, Brussels 21.12.2005.

The only general EU Directive in the area of labour migration of third-country nationals is the 2011 Single Permit Directive (SPD). It established a single permit procedure (work and residence permit combined) and a common set of rights for all workers in the EU who are not covered by any of the other Directives. As the EU Member States were disinclined to commit to any form of general regulation for labour migration at EU level, it is unsurprising that the Directive became a rather limited instrument⁸¹, and its equal treatment guarantee was termed an “*empty shell*”⁸². The other EU Directives, complimenting the SPD, include a Directive on highly-skilled migrants, namely the 2009 Blue Card Directive (BCD), and two Directives on temporary migration, specifically the 2014 Intra-Corporate Transfer Directive (ICTD) and Seasonal Workers Directive (SWD).⁸³ The adoption of the two latter Directives was criticised by the European Trade Union Confederation (ETUC), which argued that ICTs should be covered by the BCD or SPD.⁸⁴ ETUC in essence challenged the proliferation of statuses within the EU in the name of ensuring equality between local and migrant workers, in particular respect for the principle *lex loci laboris*, whereby the law of the place where the work is carried out should apply to that activity.⁸⁵ The EU’s regime regarding posted workers and ICTs in fact undermines that principle.

The 2009 Stockholm Programme reiterated the utilitarian approach to labour migration⁸⁶, which has to be seen in the context of the 2008 economic crisis.⁸⁷ Many EU countries, such as the UK, tightened their immigration rules. Politically, the EU labour market observed a cautious approach with stronger emphasis on the Union preference.⁸⁸ With

⁸¹ S McLoughlin and Y Pascouau, ‘EU Single Permit Directive: A Small Step Forward in EU Migration Policy’ (European Policy Centre 2012) 2.

⁸² A Beduschi, ‘An Empty Shell?: The Protection of Social Rights of Third-Country Workers in the EU after the Single Permit Directive’ (2015) 17 *European Journal of Migration and Law* 210.

⁸³ The fifth proposal is a Directive of the European Parliament and of the Council of 11 May 2016 on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Research, Studies, Pupil Exchange, Remunerated and Unremunerated Training, Voluntary Service and Au Pairing [2016] OJ L132/21. It is to be transposed into domestic law by 23 May 2018.

⁸⁴ ETUC, ‘Agenda Item 9: Seasonal Work and Intra-Corporate Transfers’ (ETUC Executive Committee, EC/189/EN/9, 13-14 October 2010) 2 <<http://online.cisl.it/dept.int/I0DB3F2B8.9/09-EN-Seasonal-work-intra-corporate-transfers.pdf>> accessed on 19 October 2016.

⁸⁵ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17) 27.

⁸⁶ European Council, Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens [2010] OJ C115/1 [6.1.3].

⁸⁷ J Koehler, F Laczko, C Aghazarm, and J Schad, *Migration and the Economic Crisis in the European Union: Implications for Policy* (IOM 2010) 3.

⁸⁸ The principle of Union preference was explained in the Green Paper on the EU Approach to Managing Economic Migration (n 79) as “*Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and*

the entry into force of the Lisbon Treaty on 1 December 2009⁸⁹, the legislative competences of the EU in the areas labour migration and integration were not fundamentally extended. The most significant development was the change in the legislative procedure to ordinary (co-decision procedure with qualified majority voting), affecting all types of immigration policies, including labour immigration. This was intended to make it easier for the EU to pass legislation. However, in practice most of the abovementioned Directives took a long time to be negotiated, including the ICTD, for intra-institutional and intra-State quarrels, which also contributes to the fragmentation of rights protection among the different types of migrants in the EU.⁹⁰

In the following section, through analysing the ICTD, third-country national ICTs are compared with EU nationals and other third-country nationals. This will assist in understanding what rights protections were granted to these other workers and whether ICTs enjoy the same protection. The purpose of this enquiry is to determine whether third-country nationals with similar characteristics enjoy similar protection under EU law. Differential treatment based on the type of worker challenges the principle of equality. Blue Card holders, as highly-skilled workers, enjoy many rights comparable to EU nationals. Do ICTs enjoy similar favourable treatment because they are also highly-skilled? Or do ICT enjoy less protection in some areas because they are temporary workers like seasonal workers? The consequences of equating ICTs to posted workers have been set out above, but are further explored below.

4.3. Time to Protect Rights of ICTs in the EU

In this section, the 2014 ICTD is reviewed from the perspective of equality and integration. This Directive (as well as the SWD), is an example of the temporary migration programme at EU level. Both, the ICTD and SWD, were negotiated at the same time and they both cover temporary migrants, yet they provide considerably different protection of rights. The 2009 BCD, although not strictly speaking a temporary migration programme, also covers another group of temporary migrant workers in the

Community manpower or by non-Community manpower resident on a permanent basis in that Member State and already forming part of that Member State's regular labour market" [2.2.1].

⁸⁹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01 (Lisbon Treaty).

⁹⁰ Regarding protracted negotiations of the Blue Card Directive see Cerna (n 76); regarding Single Permit Directive see McLoughlin and Pascouau (n 81); and regarding the Intra-Corporate Transfer Directive see A Lazarowicz, 'The Intra-Corporate Transferees Directive: Time to Break the Deadlock' (European Centre Policy 2013).

EU, namely highly-skilled ones. This Directive grants them rights protection in a distinct way to that offered by the ICTD, although both types of workers are highly-skilled. Reference is made, where relevant, of the PWD too. Although in this thesis the main comparator for third-country national ICTs are EU nationals⁹¹, a comparison with these other groups of migrants assists in an appreciation of where exactly, on the scale of equality, ICTs are placed.

The ICTD is another EU instrument, which epitomises the EU piecemeal approach to labour migration that results in creating several distinct legal statuses within the EU. The ICTD is not a human rights instrument based on rights-oriented approach to migration, as for example, advocated by the UN and ILO.⁹² The ICTD, apart from being a “*Capital’s Handmaiden*”⁹³, it is also about economic efficiency (matching the demand for labour with supply⁹⁴) same as the BCD and SWD. Yet the Directive grants certain rights to ICTs, which can have a positive or negative impact on their integration in the EU.

4.3.1. Personal Scope

The ICTD fills the gap in international law regarding ICTs, as they are excluded from the scope of international migrant-specific instruments or their access to rights is restrained in these instruments.⁹⁵ They are also excluded from all the other EU Directives on labour migration of third-country nationals. The Directive only covers third-country nationals, who habitually reside outside the EU⁹⁶, and apply to be admitted as managers⁹⁷, specialists⁹⁸ or trainee employees⁹⁹. These definitions were considered to be broad so that many different kinds of employees are likely to be covered by them.¹⁰⁰ The criteria for admission contain mainly “shall” clauses and some “may” clauses, and there is a long list of admission conditions to be complied with by the ICTs.¹⁰¹ Unlike other Directives,

⁹¹ See chapter 1, section 1.5. for more detail.

⁹² See chapter 3.

⁹³ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17).

⁹⁴ ICTD, Recital 3.

⁹⁵ For example, ILO Conventions No. 97 and No. 143, and the UN ICRMW. See chapter 3 for more details.

⁹⁶ ICTD, Art 2(1).

⁹⁷ ICTD, Art 3(e).

⁹⁸ ICTD, Art 3(f).

⁹⁹ ICTD, Art 3(g).

¹⁰⁰ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17) 31.

¹⁰¹ ICTD, Art 5.

such as LTRD, FRD, BCD, there is no requirement of a minimum pay, the labour market test¹⁰² is not applicable to ICT¹⁰³, and the condition of having sufficient financial resources is optional¹⁰⁴.

The facilitation of intra-corporate transfers is supported by a simplified application procedure, where ICT permit encompasses both work and residence permits to be issued as soon as possible, but no later than 90 days.¹⁰⁵ Moreover, it is possible for States to introduce even faster and administratively less burdensome procedures for entities recognised for that purpose.¹⁰⁶ These simplified procedures will certainly have a positive effect on the integration of ICTs and their families in host Member States. Member States are precluded from introducing other permits, particularly work permits.¹⁰⁷ In addition, unlike in the case of the BCD¹⁰⁸, this scheme replaces any existing national schemes, which is important for the harmonisation of the intra-corporate transfers at EU level.

4.3.2. Intra-EU Mobility Rights

Migrants mobility to other States is not possible under domestic or international law. Under international law, everyone has a right to leave their country of nationality or residence.¹⁰⁹ No equivalent right to enter another country exists. Free mobility across borders is a privilege of EU nationals and a bedrock of EU economic integration. Intra-EU mobility rights are not typically envisaged for third-country nationals. They can obtain such rights upon naturalisation (which confers EU citizenship), or after five years of permanent residence. However, a permanent residence status is subject to many conditions and poorly implemented in practice.¹¹⁰ Similarly, highly-skilled workers enjoy

¹⁰² If national employers wish to employ third-country nationals they must first demonstrate that the vacancy cannot be filled by nationals by EU or EEA nationals.

¹⁰³ ICTD, Recital 21.

¹⁰⁴ ICTD, Art 5(5).

¹⁰⁵ ICTD, Art 11.

¹⁰⁶ ICTD, Art 11(6).

¹⁰⁷ ICTD, Art 13(5).

¹⁰⁸ European Commission, 'Proposal for a Directive of the European Parliament and of the Council on the Conditions of Entry and Residence of Third-Country Nationals for the purposes of Highly Skilled Employment' COM(2016)378 final, Strasbourg, 7.6.2016 (BCD Recast). The Proposal suggests scrapping the national schemes, widen the personal scope of the Directive, relax the minimum salary admission condition, limit use of labour market test, increase access to labour market, grant access to permanent residence after three years, and less strict intra-EU mobility rights (for example, after 12 months (instead of 18) of residence in the first Member State).

¹⁰⁹ See UDHR, Art 13(2); UN ICCPR, Art 12(2); or Protocol No. 4 to the ECHR, Art 2(2).

¹¹⁰ European Commission, Report on the Application of the Directive 2003/109/EC Concerning the Status of Third-Country Nationals Who Are Long-Term Residents COM(2011) 585.

conditional intra-EU mobility rights, after 18 months of permanent residence. Such rights are not conferred on seasonal workers. ICTs' mobility rights were probably the most fraught issue during the four years of negotiations.¹¹¹ As a result, ICTs can only enjoy conditional short-term and long-term intra-EU mobility, the rules for which are very complicated to say the least. To illustrate this point, procedures for short- and long-term mobility are briefly described.

Short-term mobility means that ICTs, holding a valid ICT permit, issued by the first Member State, are entitled to stay in any second Member State and work for their company's subsidiary for a period of up to 90 days in any 180-day period per Member State, subject to certain conditions.¹¹² The second Member State may require the host entity in the first Member State to notify the authorities of the first and second Member State of the mobility. It may also require the notification to include the transmission of the certain documents and information, in the language of that State.¹¹³ The notification takes place either at the time of the application for the permit in the first Member State, if mobility to the second Member State is already known then, or any time after, if known later.¹¹⁴ This is important, because if the notification is required by the second Member State, the right to intra-EU mobility can only be exercised after the notification¹¹⁵, and only if the second Member State has not objected to such mobility within 20 days of the notification¹¹⁶. The grounds for objection to mobility are numerous.¹¹⁷ Where the second Member State objects and the mobility has not yet taken place, the ICT shall not be allowed to work in the second Member State.¹¹⁸ Where the mobility has already taken place, in certain circumstances the ICT may be requested to seize work and leave the territory.¹¹⁹ If such circumstances arise, the first Member State shall, upon request of the second Member State, allow re-entry of the ICT (and their family), without formalities and delay.¹²⁰ Thus, regarding short-term mobility, the second Member State is obliged to

¹¹¹ European Council, 'Proposal for a Directive of the European Parliament and of the Council on the Conditions of Entry and Residence of Third-Country Nationals in the Framework of the Intra-Corporate Transfer' (8303/13). See also Lazarowicz (n 90).

¹¹² ICTD, Art 21(1).

¹¹³ ICTD, Art 21(3).

¹¹⁴ ICTD, Art 21(2).

¹¹⁵ ICTD, Arts 21(4) and (5).

¹¹⁶ ICTD, Art 21(6).

¹¹⁷ ICTD, Art 21(6)(a).

¹¹⁸ ICTD, Art 21(7).

¹¹⁹ ICTD, Art 23(4).

¹²⁰ That shall also apply if the ICT permit issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State (ICTD, Art 23(5)).

admit ICTs just based on the ICT permit obtained in the first Member State, but may apply the requirement of notification of the mobility.

Member States have two options to choose from in implementing the procedure for long-term mobility (more than 90 days): either they apply the same procedure as for the short-term mobility, or a specific procedure for long-term mobility – application for long-term mobility permit submitted to the second Member State.¹²¹ Second Member State may also ask ICTs to transmit certain documents, in the language of that State, have sickness insurance, and even provide an address in the second Member State.¹²² Application will be decided upon within 90 days and the ICT can stay and work there, under certain conditions¹²³, until the decision has been taken, without being subject to visa. Application for long-term mobility may not be submitted at the same time as a notification for short-term mobility.¹²⁴ This is to prevent the circumvention of the distinction between short and long-term mobility.¹²⁵ The second Member State may reject the application for a number of reasons.¹²⁶ Where there is a positive decision, ICTs shall be issued, by the authorities in the second Member State, with a permit for long-term mobility allowing ICT to stay and work there.¹²⁷

These intra-EU mobility rights are unprecedented in the EU law on labour migration of third-country nationals. Clearly it is not a free movement right, though ICTs' mobility rights are more favourable than those of other third-country nationals, especially because no minimum period of residence in the first Member State is required (18 months for Blue Card holders and five years for long-term residents). Nevertheless, it must be said that the intra-EU mobility provisions were much simpler in the Commission's Proposal than in the final text, but the Member States in the Council refused to grant relaxed mobility rights to ICTs, which then resulted in a very complicated scheme.¹²⁸ This means that the second Member State "*can check the intention of those using the mobility rights*", which seems to go against the Directive's purpose of facilitating movement of ICTs within the EU, as it imposes "*serious constraints on the right to free movement of*

¹²¹ ICTD, Art 22(1).

¹²² ICTD, Art 22(2)(a).

¹²³ ICTD, Art 22(2)(d).

¹²⁴ ICTD, Art 22(2)(e).

¹²⁵ See ICTD, Recital 25.

¹²⁶ ICTD, Art 22(3).

¹²⁷ ICTD, Art 22(4).

¹²⁸ Maricuț (n 6) 227.

intra-corporate transferees.”¹²⁹ In addition, the various procedures for short- and long-term mobility are optional, which means that Member States can choose, which scheme to apply to which mobility. Therefore, these complex mobility rules with numerous “may” clauses can result in different schemes being applied in different States differently. This can lead to unfair competition, as States, which choose to implement these rules restrictively to control migration, will be at a disadvantage compared to States with more open attitude to migration. Member States with less strict mobility schemes will be more attractive to MNCs transferring ICTs. This may endanger the harmonisation of the mobility scheme, and thus hinder the movement of ICTs within the EU.

4.3.3. Access to Secure Residence Status

Another important factor in favour of migrants’ integration is secure residence status, which allows migrant access to all (or most) rights on equal footing with nationals. Again, EU national migrant workers enjoy access to secure residence status, but not third-country nationals, who require relevant permits. Apart from EU nationals this secure residence status is enjoyed by third-country nationals after five years of residence in one country, and by Blue Card holders, who can make the five years up by residence in two or more Member States. In contrast, the SWD explicitly states that its aim is to prevent overstaying and seasonal work turning into permanent residence.¹³⁰

Likewise, it is one of the main aims of the ICTD to keep intra-corporate transfers only temporary¹³¹, which can be one of the principal sticking points preventing ICTs’ integration in the EU. ICTs, who comply with the numerous and rather restrictive admission criteria and for whom the authorities have taken a positive decision must be granted an ICT permit¹³², for at least one year¹³³. However, the national authorities are only allowed to extend it for up to a maximum period of residence, which is three years for managers and specialists and one year for trainee employees¹³⁴. Moreover, upon reaching the maximum period allowed in the EU (which includes combined residence in several States) they must leave for a third country, unless they can stay in the EU under

¹²⁹ D Kochenov and M van den Brink, ‘Pretending There Is No Union: Non-Derivative Quasi-Citizenship Rights of Third-Country Nationals in the EU’ (European University Institute, Working Paper LAW 2015/07, 2015) 16 <<http://ssrn.com/abstract=2587661>> accessed on 13 June 2016.

¹³⁰ SWD, Recital 7.

¹³¹ ICTD, Recitals 17 and 18.

¹³² ICTD, Art 13.

¹³³ Or the duration of the transfer if shorter.

¹³⁴ ICTD, Art 13(2).

some kind of other EU or national permits. In addition, Member States can apply a cooling off period of up to six months.¹³⁵ The instinctive choices to stay in the EU would be either under the Blue Card or a single permit. However, this is not possible as both Directives explicitly exclude ICTs from their scope. In addition, ICTD replaces national ICT schemes. Thus, the best option for ICTs would be to stay on some other national permit, which would result in them losing the advantages offered by the ICTD. Therefore, achieving the required residence of five years to be granted the secure residence status would be very difficult for ICTs, if not impossible. Thus, the gap identified in international law *vis-à-vis* security of residence for temporary migrants has clearly not been alleviated by the ICTD, if anything, it has been expressly reiterated.

4.3.4. Access to Labour Market of the Host Country

ICTs could be considered to be vulnerable, because they are in an “*unfree labour*” due to being tied to one employer. Once the ICT permit is granted, and for the duration of the permit, ICTs can exercise the specific employment activity authorised under the permit, including at the clients’ sites¹³⁶, in the first Member State¹³⁷, and even in any second Member State, if certain conditions are met¹³⁸. After the transfer is over, they have to return to their country of origin. They, unlike EU nationals, are prevented from changing employer or becoming a job-seeker¹³⁹, whereas seasonal workers are allowed to be employed by different employers and stay (within the maximum period of stay of nine months) to look for another employment. Blue Card holders are free to search for highly-skilled employment after an initial period of two years being tied to one employer. They can also be in receipt of an unemployment benefit for a period of three months to search for employment. Being tied to one employer traps ICTs and makes them dependent on their employer, which exposes them to exploitation. Therefore, the ICTD does not particularly improve ICTs’ situation concerning labour rights protection from that provided under international law.

¹³⁵ ICTD, Art 12(2).

¹³⁶ ICTD, Recital 36.

¹³⁷ ICTD, Arts 17(a), (b) and (c).

¹³⁸ See the last sentence of Arts 17 and 20 of the ICTD.

¹³⁹ ICTs do not have access to employment services (ICTD, Art 18(2)(e)).

4.3.5. Terms and Conditions of Employment

ICTs could be regarded as having a migration status that makes them vulnerable in their work relations, which means that they may accept terms and conditions of employment that undercut domestic labour standards.¹⁴⁰ This is due to the approach taken by the ICTD towards labour rights, which is different in comparison to other EU Directives, such as on EU workers, Blue Card holders or even seasonal workers.¹⁴¹ Blue Card holders and seasonal workers enjoy some significant labour rights protections on equal footing with EU nationals¹⁴² and the SWD acknowledges the vulnerability of temporary seasonal workers¹⁴³. In contrast, ICTs' protection is equalised to local workers only regarding remuneration, but otherwise ICTs are assimilated to posted workers. These disparities between seasonal workers and ICTs are the result of "*the different ways in which these two kinds of workers are regarded, valued and treated by the globalised capital corporations [...]*".¹⁴⁴ Unlike EU nationals, Blue Card holders or seasonal workers, posted workers and ICTs are not truly considered to be a part of the labour market in the host country, which may make enforcement of their foreign terms and conditions of employment harder in the host country.

The ICTD offers a "mixed" set of equality rights regarding labour rights. On the one hand, Member States must request, as a ground for admission, that the remuneration granted to the ICTs is not less favourable than the remuneration granted to nationals occupying comparable positions.¹⁴⁵ Interestingly, the remuneration appears in Article 5 (Criteria for Admission)¹⁴⁶, rather than in Article 18 (Right to Equal Treatment). The reason for this is that during negotiations, the Council, backed by the Commission, wanted ICTs to be treated equally with posted workers, as granting ICTs equality of treatment with EU nationals would cause "*legal hurdles related to pension and health benefits*" (convenience reasons), whereas Parliament firmly opposed, arguing for equal

¹⁴⁰ Costello and Freedland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in Howe and Owens (n 17) 20.

¹⁴¹ Costello and Freedland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in Howe and Owens (n 17) 27-28.

¹⁴² J Fudge and P Herzfeld Olsson, 'The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights' (2014) 16(4) European Journal of Migration and Law 439.

¹⁴³ See SWD, Recital 43. See also Costello and Freedland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in Howe and Owens (n 17) 33.

¹⁴⁴ Costello and Freedland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in Howe and Owens (n 17) 21.

¹⁴⁵ ICTD, Art 5(4)(b).

¹⁴⁶ ICTD, Art 5(4)(b).

treatment with nationals.¹⁴⁷ Finally, a compromise was achieved, where ICTs would be given equality of treatment with EU nationals regarding salary by putting this as an admission criterion not to “*intervene to the article on equal treatment*”.¹⁴⁸ On the other hand, according to Article 18(1), in respect of terms and conditions of employment, other than the salary, ICTs are entitled to protection *at least* on equal footing with posted workers, in accordance with Article 3 of the PWD, in the Member State, where the work is carried out. The words “at least” suggest that Member States could potentially choose to provide better conditions to ICTs, for example, on equal footing with EU nationals. This seems unlikely though due to their insistence on having the provision on equality with posted workers in the ICTD in the first place.

However, equalising ICTs to posted workers can lead to less protection for ICTs because of the posted workers’ less secure legal status compared to EU workers.¹⁴⁹ Their less secure status is a direct result of the limited extent, constrained by the EU law¹⁵⁰ and the CJEU case law¹⁵¹, to which they are subject to the labour law of the host country. Therefore, treating ICTs on par with posted workers could potentially result in undercutting local labour by the employers wishing to exploit the possibility of offering lower standards. This would reinforce the perception that it is the migrant workers, who undercut local labour rights and take local jobs. However, the real problem lies in the enforcement of labour rights of migrant workers in general, and posted workers in particular. Making it possible for migrant workers to enforce their employment rights may be as important for national workers too. In addition, providing equal and better labour rights for all would counter any exploitation. The rationale for treating ICTs on equal footing with EU nationals regarding salary and on equal footing with posted workers regarding other working conditions is “*to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage*”.¹⁵² This analogy between ICTs and

¹⁴⁷ Maricuț (n 6) 226.

¹⁴⁸ Maricuț (n 6) 229.

¹⁴⁹ S Currie, ‘Men on the Sidelines: The Reconciliation of Work and Family Life Agenda in the Context of Cross-Border Posting’ (2013) 35(3) *Journal of Social Welfare and Family Law* 389.

¹⁵⁰ See Posted Workers Directive, as supplemented by Posted Workers Enforcement Directive.

¹⁵¹ See CJEU, Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet* [2007] ECR I-11767; Case C-343/06 *Dirk Ruffert v Land Niedersachsen* [2008] ECR I-1989; and Case C-319/06 *Commission v Luxembourg* [2008] ECR I-4323.

¹⁵² ICTD, Recital 15.

posted workers was questioned.¹⁵³ It has been argued that a simple solution to the “*unjustified inequality*” between ICTs and nationals, would be to introduce a provision in the ICTD guaranteeing equal treatment between ICTs and nationals regarding terms and conditions of employment, rather than between ICTs and posted workers.¹⁵⁴

In the original Proposal for the ICTD, the Commission suggested equality of treatment with posted workers regarding all working conditions, including salary, which was supported by the Council throughout negotiations. However, due to the perseverance of the European Parliament, the Council agreed that at least regarding salary ICTs should be granted rights equal to EU nationals rather than posted workers.¹⁵⁵ The Parliament was also criticised that, under the pressure of the Council, it failed to ensure full equality of treatment for ICTs.¹⁵⁶ The Parliament “*prioritized the adoption of the instrument even in a weakened form—because it provided an EU-level scheme in which intra-EU mobility rules were for the first time regulated.*”¹⁵⁷ Equality of treatment in one area was sacrificed for obtaining intra-EU mobility rights, as it was the first time that intra-EU mobility rights were to be regulated *vis-à-vis* non-EU national workers at EU level. Thus, the principle of equality was compromised for the sake of furthering EU harmonisation in the area of labour migration.

The ICTD claims respect for the fundamental rights and observance of the EU Charter.¹⁵⁸ Nevertheless, on the above analysis, Article 18(1), it could be argued, would appear to be in conflict with Article 15(3) of the EU Charter, which reads that “[n]ationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.”¹⁵⁹

¹⁵³ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17) 34-36.

¹⁵⁴ S Peers, E Guild, D Acosta Arcarazo, K Groenendijk, and V Moreno-Lax (eds.), *EU Immigration and Asylum Law: Text and Commentary* (2nd revised ed., Vol. 2, Martinus Nijhoff 2012) 110.

¹⁵⁵ For the European Parliament amendments see the European Parliament, ‘Legislative Resolution on the on the Proposal for a Directive of the European Parliament and of the Council on Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer’ COM(2010)0378 – C7-0179/2010 – 2010/0209(COD), Brussels 12.3.2014.

¹⁵⁶ ETUC, ‘The ETUC Asks to Stop the Intra Corporate Transfer Directive: Posting of Workers from Third-Countries Is Unacceptable without Full Equal Treatment of Migrants’ (2 February 2014) <<https://www.etuc.org/press/etuc-asks-stop-intra-corporate-transfer-directive-posting-workers-third-countries-unacceptable#.V0S1cuQ7-Wg>> accessed on 24 May 2016.

¹⁵⁷ Maricuț (n 6) 228.

¹⁵⁸ ICTD, Recital 45.

¹⁵⁹ Costello and Freedland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in Howe and Owens (n 17) 29.

4.3.6. Other Labour-Related Rights

Apart from remuneration, ICTs are also entitled to equality of treatment with EU workers in other areas, such as freedom of association and affiliation¹⁶⁰, recognition of diplomas and professional qualifications¹⁶¹, social security¹⁶² (though access to family benefits can be excluded for transfers not exceeding nine months¹⁶³), pensions¹⁶⁴, access to goods and services available to public, except public housing and services afforded by public employment offices¹⁶⁵. Unemployment benefit is not mentioned in the Directive and ICTs are excluded from access to services relating to finding employment, most likely on the assumption that they would never become unemployed in the host country.

Arguably, equality with nationals and EU workers regarding contributory social security benefits, provided for in the ICTD, can lead to inequality for temporary migrant workers, such as ICTs. Although they make contributions to the relevant schemes, they may never be able to benefit from them on account of the temporariness of their stay.¹⁶⁶

4.3.7. Facilitation of Family Reunification

Being able to bring a family to a host country also plays a very important part in migrants' integration. In this respect, the ICTD fills the gap in international law regarding facilitation of family reunification of migrant workers. Most of the third-country nationals in the EU, including ICTs, derive their family reunification rights from the FRD. ICTs' family members unlike EU nationals' family members, need a permit. ICTs, similarly as Blue Card holders, but unlike seasonal workers, at least enjoy some favourable conditions for family reunification. This is primarily to facilitate intra-corporate transfers to the EU, and thus contribute to the EU's economic competitiveness¹⁶⁷. Family reunification is one area, where the ICTD excels. Accordingly, ICTs' and their families' right to family reunification is covered by the FRD, subject to the derogations from it set out in the ICTD.¹⁶⁸

¹⁶⁰ ICTD, Art 18(2)(a).

¹⁶¹ ICTD, Art 18(2)(b).

¹⁶² ICTD, Art 18(2)(c).

¹⁶³ ICTD, Art 18(3).

¹⁶⁴ ICTD, Art 18(2)(d).

¹⁶⁵ ICTD, Art 18(2)(e).

¹⁶⁶ This point is further explored in chapter 5 on Slovakia, chapter 6 on England, and chapter 7.

¹⁶⁷ ICTD, Recital 40.

¹⁶⁸ ICTD, Art 19(1).

These favourable conditions are numerous. Firstly, ICTs do not need to have a reasonable prospect of obtaining the right to permanent residence and have a proscribed minimum period of residence to be able to bring family with them.¹⁶⁹ Secondly, the integration measures referred to in the FRD, such as the language and civic tests (or courses) may be applied by the first Member State only after the family reunification was granted.¹⁷⁰ The FRD does not make this explicit, which led some States to introducing pre-entry compliance with such measures in order to be granted the family reunification permit.¹⁷¹ The CJEU held that such pre-entry integration measures have the potential to breach the right to family reunification.¹⁷² Using integration in this way, as a means to prevent family reunification, was heavily criticised.¹⁷³ Therefore, these provisions would appear to be rather exclusionary and potentially hinder integration.¹⁷⁴ The express stipulation in the ICTD that only post-entry integration measures may be introduced is in line with the right of family reunification and could facilitate rather than hinder integration.

Thirdly, the first Member State must grant residence permits to family members within three months, as opposed to nine months in the FRD, or six months in the BCD, from the date of the application (provided all the conditions were complied with)¹⁷⁵, and for a period corresponding with that of the ICT¹⁷⁶.

Lastly, and very importantly, spouses enjoy immediate access to labour market in the host Member State¹⁷⁷, owing to the European Parliament fighting, during the negotiations of the ICTD, for better rights for family members. The right of immediate access to the labour market was not included in the Commission's Proposal.

To sum up, what will have the most profound impact on the integration of ICTs are the maximum periods they can be transferred within the EU: up to three years for managers and specialists and up to one year for graduate trainees.¹⁷⁸ Due to these maximum

¹⁶⁹ ICTD, Art 19(2).

¹⁷⁰ ICTD, Art 19(3).

¹⁷¹ European Commission, 'Report on the Application of Directive 2003/86/EC on the Right to Family Reunification' COM(2008)610 final, Brussels, 8.10.2008.

¹⁷² Case C-540/03 *European Parliament v Council* [2006] ECR I-5769; and Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2010] ECR I-01839.

¹⁷³ E Guild, *The Legal Elements of the European Identity: EU Citizenship and Migration Law* (Kluwer Law International, European Law Library 2004) 123.

¹⁷⁴ C Murphy, 'Immigration, Integration and Citizenship in European Union Law: The Position of Third-Country Nationals' (2009) 8(1) *Hibernian Law Journal* 101, 113.

¹⁷⁵ ICTD, Art 19(4).

¹⁷⁶ ICTD, Art 19(5).

¹⁷⁷ ICTD, Art 19(6).

¹⁷⁸ ICTD, Art 12(1).

periods, ICTs may never be able to gain the privileged secure long-term residence status¹⁷⁹, to which a bundle of rights is attached, which are very close to those enjoyed by EU nationals. The ICTs' ability and willingness to integrate may be influenced by the temporary nature of their stay and the mandatory return to their country of origin at the end of their assignment, unless they can obtain some other EU or national permit.

Apart from the insecurity of residence, ICTs' ability to integrate in an EU Member State may be diminished by other factors as well. For instance, it is not possible to talk about equality of ICTs with EU nationals in a number of crucial areas, namely free access to employment and intra-EU mobility rights. In addition, the equality with posted workers, and not with EU nationals, regarding core working conditions, other than salary, is highly questionable as it can lead to their exploitation and exclusion from the society. This is because, firstly, the CJEU interpreted the provisions of the PWD as the "maximum" standard. Secondly, as it was stressed by the European Parliament, there were difficulties with the enforcement of the core mandatory terms of employment in the PWD.¹⁸⁰ Although the ICTD does not preclude Member States to provide more favourable treatment to ICTs in relation to terms and conditions of employment¹⁸¹, this is unlikely to happen due to the insistence by the Member States in the Council to equalise ICTs' rights with posted workers in order to "*avoid legal difficulties*" and for being a "*Capital's Handmaiden*". Surely these are not good enough reasons to jeopardise protection of rights of this group of third-country nationals. Thus, the treatment granted to ICTs under the ICTD in many areas falls far below the near-equality with EU nationals called for in the Tampere Conclusions. More favourable treatment granted to ICTs in areas, such as family reunification, compared to other third-country nationals also contributes to fragmentation of rights protection and equality among third-country nationals in the EU, similarly to the BCD.

4.4. Conclusion

Where initially, in the 1999-2003 period, the purpose of the equal treatment principle in the EU Directives was connected to the protection of human rights of third-country nationals, since 2005 onwards, the EU legislator utilised the right to equal treatment

¹⁷⁹ Peers and others (n 154) 102.

¹⁸⁰ European Commission, 'Proposal for a Directive of the European Parliament and the Council on Conditions of Entry and Residence for Third-Country Nationals in the Framework of an Intra-Corporate Transfer' COM(2010)378 final, Brussels 13.7.2010, 24-25.

¹⁸¹ ICTD, Art 4(2).

more as a tool to attract EU highly-skilled workers, thus changing the goal of strengthening the position of those “*within*” the EU into the goal of attracting a selected group of migrants from “*outside*” the EU.¹⁸² This utilitarian approach led to the introduction of several EU Directives on third-country nationals, each containing unequally generous equality provisions and diverse levels of rights protection. This approach created a fragmented framework regarding the right to equality of third-country nationals, negatively impacting on their integration and inclusion, and thus contributing to the distortion of social cohesion in the EU.

There are several challenges to harmonisation of EU migration, and consequently integration, policy, in the absence of an EU competence in the area of integration. Firstly, Member States keep resisting to give up control over labour migration – economically and politically a very sensitive issue. Maricuț, who studied interactions among the EU institutions during negotiations of EU instruments in the area of freedom, security and justice (AFSJ), reported the reactions of one national official (Justice and Home Affairs Counsellor) on the proposal for the ICTD as follows:

There is a lot of reluctance among member states with regard to legal migration; they don't like Europe to impose rules, so there is a big struggle to find the right compromise—there is a natural reflex from member states not to give competence to the EU. This reluctance is both political (as a choice) and administrative (resistance to change), in particular with regard to legal migration. When they see another directive on the subject, they say ‘oh, no’ and the same goes with implementation. (AM0216, 4 November 2014).¹⁸³

Secondly, there is a lack of unanimity among Member States about migration and who controls it. The debate about the role of inclusion and integration of migrants gets rather hijacked as a result of political ends, therefore integration measures are used to make migration more difficult, as in the case of the LTRD and FRD. Instead of achieving social inclusion and equal treatment of third-country nationals, integration has become a policy tool for Member States to better manage, who enters their territory. This is closely connected to their desire to keep control over this area, since migration is now within the EU areas of competence. This desire is sometimes realised through the integration dimension, where the EU has the role of coordinator only, when equality of treatment

¹⁸² E Brouwer and K de Vries, ‘Third-Country Nationals and Discrimination on the Ground of Nationality: Article 18 TFEU in the Context of Article 14 ECHR and EU Migration Law: Time for a New Approach’, in M van den Brink, S Burri, and J Goldschmidt (eds.), *Equality and Human Rights: Nothing but Trouble?* (SIM Special 38, Netherlands Institute of Human Rights 2015) 136.

¹⁸³ Maricuț (n 6) 225.

and rights protection for third-country nationals are not seen as objectives to be achieved for the facilitation of the integration of migrants, but they are rather used as means of achieving other objectives. For Member States, it is about the protection of national labour markets and security, while for the EU it is to attract the desired groups of non-EU nationals.

Another challenge constitutes the inter-institutional quarrels between the Commission, the Council and the Parliament, which can be demonstrated on the ICTD. The institutions' respective views were so divided on certain issues (on existence of parallel national schemes, equality of ICTs with posted workers and mobility rights), that they almost endangered the adoption of an agreed text of the ICTD.¹⁸⁴ The negotiations for the ICTD were full of clashes inside the institutions themselves too. For instance, two European Parliament Committees (LIBE and EMPL) were divided on the issue of equality of ICTs with posted workers – an issue which persisted until the very end of negotiations.¹⁸⁵ Due to these problems the negotiations took four years to complete.

These various obstacles prevent the creation of a common EU policy on labour migration. Instead there are different levels of equality in the treatment of third-country national migrant workers in the EU. Long-term residents and their family members have the best chance to integrate, as they enjoy the highest level of rights protection, because they are granted equality of treatment very close to that enjoyed by the EU nationals. They are followed by other groups of non-EU nationals, who enjoy less or more favourable rights and equality, depending on how desirable they are for the EU. For example, the Blue Card holders and ICTs enjoy more favourable rights than single permit holders or seasonal workers. However, the differential treatment between EU Blue Card holders and ICTs, particularly regarding access to secure permanent residence is less logical, as both groups are desirable highly-skilled workers.

Many third-country nationals in the EU, including ICTs, are treated only as “economic units”, rather than as human beings deserving protection. Meeting the Tampere Council objective of integration of third-country nationals by protecting their rights once they are inside the EU could help to achieve the goal of EU social integration and contribute to social cohesion. For that to happen their rights have to be approximated to those of EU

¹⁸⁴ Maricuț (n 6) 226.

¹⁸⁵ Maricuț (n 6) 229.

nationals. This would precisely mean to grant ICTs and other third-country nationals more favourable rights and protections, currently only possessed by the long-term residents and partly by Blue Card holders. This is crucial in times of economic stagnation, social inequality, and increasing cultural diversity throughout the EU, threatening social cohesion and European unity.

5. THE CASE OF SLOVAKIA

5.1. Introduction

The review of international and CoE instruments in chapter 3 has revealed gaps in rights protection of temporary migrant workers, such as ICTs¹, and in Slovakia's commitments to these instruments, as it did not ratify any of the ILO or UN migrant-specific conventions². The primary source of the protection of rights of ICTs in Slovakia, at the time of this research, was the UN ICESCR. Although it prohibits discrimination based on nationality and immigration status, it is a general human rights instrument with vaguely worded rights, allowing limitations to the protection of economic and social rights (in certain circumstances), and failing to address migrant-specific issues, such as security of residence and family reunification. In January 2017, the ICTD came into force in Slovakia, which was after the research period for this thesis.³ Thus, the Slovak legislation, as influenced by the UN ICESCR, is analysed in this chapter. It is compared to the provisions of the ICTD, but the national implementation thereof is outside the scope of this thesis.

The aim of this chapter is two-fold: firstly, to measure ICTs' integration through access to rights, which is easier to regulate in law, and secondly, to measure ICTs' social integration, which is much harder to control through legislation. Regarding the first aim, a review of the national law governing ICTs' access to rights, such as entry to the territory and security of residence, employment, terms and conditions of employment, healthcare, social security, education, and family reunification, is conducted in the light of ICTs' experience with this regulatory framework. The level of ICTs' access to these rights is compared to that enjoyed by EU nationals from the perspective of equality and integration. Access to each right corresponds to one of the ICTs' Indicators of Integration through which ICTs' level of integration is measured in this chapter.⁴ The "ideal" level of integration is enjoyed by EU nationals, and long-term resident third-country nationals,

¹ These regimes concentrate on the protection of permanent workers. ICTs are excluded from ILO Conventions No. 97 and 143 and the UN ICRMW. In addition, the UN ICRMW significantly limits ICTs' access to certain economic and social rights. The UN ICESCR does not cover migrant-specific issues, such as security of residence and family reunification. The ECHR does not cover economic and social rights and the Charter functions on the basis of reciprocity.

² See Figure 1 in chapter 3.

³ The analysis in this chapter relates to the Slovak legislation in force at the time of the interviews in August-September 2014.

⁴ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

but not always by ICTs.⁵ Thus, the goal is to determine how close is the treatment of ICTs under Slovak law to that enjoyed by EU nationals, and what differences in treatment there are between permanent and temporary migrants.

Regarding the second aim, the level of ICTs' (and their families') social integration is examined at work and outside work, using the ICTs' Indicators of Integration⁶, bearing in mind the nationals' attitudes towards migrants and migrants' own perceptions of integration.

This rest of this chapter is divided into six sections. Section 5.2. briefly outlines the background to the Slovak migration and integration policy and attitudes of nationals towards migrants. Section 5.3. sets out the pre-departure situation of ICTs and their families. In section 5.4., the domestic law governing access to individual rights is outlined, which is immediately followed by a discussion of ICTs' and their families' experiences with these laws, policies and authorities' practices. Section 5.5. covers social integration of ICTs (and their families) at work and within the host society. Section 5.6. provides some insights on another stage of the integration of ICTs and their families – at the end of the transfer.

5.2. Background to the Slovak Migration and Integration Law and Policy

Slovakia, a small country in central Europe, is not one of the traditional destination countries for migrants. Culturally it is a more homogeneous country than the UK, because it was not affected by any dramatic increase in immigration during the twentieth century. It was the accession to the EU that caused more significant changes.⁷ Today all regular migrants make up 1.72 percent (93,247)⁸ of population. The number of migrant workers has increased more than ten times since 2004, including 11,036 third-country nationals in 2016.⁹ Evidence suggests that the number of labour immigrants will increase in the future.¹⁰ The public debate on migration was non-existent until the migration

⁵ See chapter 1, section 1.8. for the definition of the “ideal” integration.

⁶ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

⁷ T Domonkos, M Páleník, and M Radvanský, *Satisfying Labour Demand through Migration in the SR. National Study for the European Migration Network* (IOM 2010).

⁸ Presidium of the Police Force, ‘Statistical Overview of Legal and Illegal Migration in the Slovak Republic in 2016’ <http://www.minv.sk/swift_data/source/policia/uhcp/rocnky/rok_2016/2016-rocenka-UHCP-SK.pdf> accessed on 6 June 2017.

⁹ IOM, ‘Migration in Slovakia: Facts and Figures on Migration in Slovakia’ <<http://www.iom.sk/en/about-migration/migration-in-slovakia>> accessed on 6 June 2017.

¹⁰ Z Bargerová and B Divinský, *Integrácia Migrantov v Slovenskej Republike – Výzvy a Odporúčania pre Tvorcov Politík* (IOM 2008).

crisis.¹¹ The small number of migrants and the fact that Slovakia was until recently only a transit country¹² are probably behind the government's inaction in creating appropriate migration and integration policies.¹³ Migration and integration are viewed as a "problem" by authorities, but because so far migrants have not caused many issues, they are tolerated, they are "*present and (in)visible*".¹⁴ Yet more anti-immigrant sentiment was reported in Slovakia than on average in the EU¹⁵, and opinions on labour migration are "*rather negative and stereotypical*".¹⁶

Two strategic policy documents include the 2011 Migration Policy of the Slovak Republic with the Perspective until 2020 (Migration Policy)¹⁷ and in the first 2014 Integration Policy of the Slovak Republic (Integration Policy)¹⁸. In these documents, Slovakia declared its interest in attracting and subsequently integrating highly-skilled migrants by simplifying administrative processes in relation to obtaining residence and work permits.¹⁹ Even though the 2014 Integration Policy declares that integration is understood as a "*two-way process*"²⁰, other policy documents, legislative reforms and political and public discourse suggest that the actual approach to integration is assimilation.²¹ The 2014 Integration Policy formulates various integration measures²², focussing on vulnerable and long-term migrants. Temporary migrants, such as ICTs,

¹¹ As a result of the conflict in Syria (since March 2011), but also in the parts of the Middle East, and North Africa, Europe had seen huge influx of refugees. See BBC News Online, 'Syria: The Story of the Conflict' (11 March 2016) <<http://www.bbc.co.uk/news/world-middle-east-26116868>> accessed on 24 March 2015.

¹² See B Divinský, *Labour Market – Migration Nexus in Slovakia: Time to Act in a Comprehensive Way* (IOM 2007); I Potočková, *Annual Report on Migration and Asylum Policies: Slovak Republic 2010* (IOM 2011).

¹³ R Minarechová, 'Slovakia Lacks Appropriate Policy' (4 May 2015) *The Slovak Spectator* <<http://spectator.sme.sk/c/20057135/slovakia-lacks-appropriate-policy.html>> accessed on 21 February 2016.

¹⁴ M Hlinčíková, A Chudžíková, E Gallová Kriglerová, and M Sekulová, *Migranti v Meste: Prítomní a (Ne)viditeľní* (IVO 2014).

¹⁵ Migrant Integration Policy Index (MIPEX) 2015 Study on Slovakia <<http://www.mipex.eu/slovakia>> accessed on 21 February 2016.

¹⁶ M Vašečka, *Postoje Verejnosti k Cudzincom a Zahraničnej Migrácii v Slovenskej Republike* (IOM 2009) 70. See also M Blažek, S Andrášová, and N Paulenová, *Skúsenosti Migrantov a Migrantiek na Slovensku s Násilím* (IOM 2013) 93.

¹⁷ Government of the Slovak Republic, 'Resolution No. 574 of 31 August 2011 approving the Migration Policy of the Slovak Republic: Perspective until the Year 2020'.

¹⁸ Government of the Slovak Republic, 'Resolution No. 45 of 29 January 2014 approving the Integration Policy of the Slovak Republic'.

¹⁹ Ministry of Labour, Social Affairs and Family, 'Action Plan of the Migration Policy for Years 2014-2016' [2.6.1]; I Bachtíková and S Oboňová, *Annual Report on Migration and Asylum Policies: Slovak Republic 2014* (IOM 2015) 21.

²⁰ Integration Policy (n 18) 3.

²¹ E Gallová Kriglerová, J Kadlečíková, and J Lajčáková, *Migranti – Nový Pohľad na Staré Problémy: Multikulturalizmus a Kultúrna Integrácia Migrantov na Slovensku* (CVEK 2009) 122.

²² Regarding housing, culture and society, citizenship, education, employment and social protection, health care, regional government and care of unaccompanied minors.

seem to be of little or no concern to policy makers.²³ This reflects the paradox, and the current trend at EU level in the policy *vis-à-vis* highly-skilled temporary migrants, such as ICTs: to attract them, States are willing to grant them certain favourable rights, but have no concern for their integration once they are in.

On the ground, the Migration Information Centre (MIC) of the International Organisation for Migration (IOM) is the first and remains the only information centre, which since 2006 provides third-country nationals with legal advice and other assistance, for instance regarding their inclusion in the labour market and support regarding community life.²⁴ In 2015 Slovakia was on the 34th place out of 38 countries in the Migrant Integration Policy Index (MIPEX), which compares integration policies of 38 countries.²⁵ The following review demonstrates what this means in terms of individual pieces of legislation, policies and practices. Before that, the ICTs' pre-departure situation is briefly discussed.

5.3. ICTs during the Pre-Departure Stage

For many it was their first transfer, which made them more vulnerable. Some ICTs spoke about their worries before coming to Slovakia in terms of not knowing the language and culture.²⁶ The lack of information in the English language was also highlighted.²⁷ The reasons to move to Slovakia included mainly career progression²⁸, family²⁹, or opportunity to travel³⁰. Some were offered a job, which they accepted.³¹ Others were “ordered” to go to Slovakia by their companies.³² In this respect one respondent reported: “*I was told I was going to go to Slovakia. I did not have much choice about it*”.³³ Another ICT stated that “*[i]n order to extend the business here my company forced me to work here.*”³⁴ These circumstances surrounding selection and transfer are important, because they are directly connected to the bargaining power of ICTs regarding their contract and ICT package. For instance, someone who actively seeks transfer for reasons other than

²³ Migration Policy (n 17) 16.

²⁴ MIC provides legal advice, labour and social affairs advice, One Stop Shop advice days, education and requalification courses (including funding thereof), open courses of Slovak language and social and cultural orientation courses, etc.

²⁵ MIPEX 2015 (n 15).

²⁶ Interview with S3.

²⁷ Interview with S2.

²⁸ Interviews with S1, S4, S6 and S9.

²⁹ Interviews with S2, S5 and S8.

³⁰ Interview with S4.

³¹ Interviews with S1, S4, S5, S6, S8 and S9.

³² Interviews with S4 and S7.

³³ Interview with S7.

³⁴ Interview with S3.

business expansion can end up with a less favourable package.³⁵ In other cases, it will be the cultural background, as in some Asian countries, where challenging a company order is simply not acceptable.³⁶ These considerations are important given that intra-corporate transfers are a rather unregulated area.

5.4. Law and Policy regarding Third-Country National Workers

In this section, the national legislation and policy governing access by third-country nationals to individual rights is analysed in the light of ICTs' practical experiences with such legislation and policy. Prior to this, basic contours of the principles of equality and non-discrimination as applied in the domestic legislation are outlined, as they inform the access to individual rights by third-country nationals.

5.4.1. Principle of Equality and Non-discrimination

According to the 1992 Constitution of the Slovak Republic, all human beings are free and equal in dignity and rights.³⁷ Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible and irreversible. No one shall be aggrieved, discriminated against or favoured based on certain grounds, including nationality.³⁸ The main piece of legislation outlawing discrimination is the 2004 Anti-Discrimination Act³⁹, which transposed into Slovak legislation the EU anti-discrimination Directives.⁴⁰ Pursuant to §2(1), the observance of the principle of equal treatment is based on the ban of discrimination on a number of grounds, including nationality. The Act does not regulate the principle of equal treatment in all areas of social life, but only in areas enshrined in the Act, such as social security, healthcare, provision of goods and services, education⁴¹, and employment and similar legal relations, which are explicitly regulated in special

³⁵ Interview with S8.

³⁶ Interview with SG.

³⁷ §12(1).

³⁸ §12(2).

³⁹ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and Supplementing Certain Other Laws (Antidiscrimination Act).

⁴⁰ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23; the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373/37.

⁴¹ Anti-Discrimination Act, §5.

legal regulations⁴². The Act does not apply to the different treatment resulting from the conditions of entry and stay of foreigners in the territory of Slovakia regulated in specific regulations.⁴³ Accordingly, the Act allows the differential treatment of third-country nationals under certain circumstances.

5.4.2. Rights of Entry and Residence

The right of entry and residence of foreigners in Slovakia is regulated under the 2011 Foreigners Act, which came into force on 1 January 2012.⁴⁴ It transposed all the relevant EU Directives in the field of labour migration of EU and third-country nationals⁴⁵ and contains national rules, where the EU has not yet legislated. Under this Act, EU nationals have free access to the Slovak territory.⁴⁶ In contrast, when third-country nationals wish to enter and reside, they must obtain a residence permit and have a reason for it, such as a job offer or family reunification. Then, they obtain temporary residence only, never permanent residence, for that purpose.⁴⁷ The issuance of residence permits is in the competence of the Foreigners Police.⁴⁸ Until the end of 2013 the Foreigners Police issued migrant workers with temporary residence permits only after they obtained a work permit from their local Labour Office first (two-stage procedure).⁴⁹ Most of the respondents applied for their permits following this procedure. The remainder applied for permanent residence as a spouse of a Slovak national.⁵⁰ After coming into force of the SPD on 1 January 2014⁵¹, and pending the transposition of the ICTD, the Foreigners Police issued single permits to ICTs in one in procedure (though still in cooperation with the relevant Labour Office)⁵², until the coming into force of the ICTD, after which ICTs can apply for an ICT permit through a single administrative procedure.

⁴² Anti-Discrimination Act, §6.

⁴³ Anti-Discrimination Act, §4(1).

⁴⁴ Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts (Foreigners Act).

⁴⁵ See chapter 4, section 4.1.

⁴⁶ Foreigners Act, §§7(2) and 11(1).

⁴⁷ Foreigners Act, §§23 and 27, respectively. This permit enables them to enter, stay, leave and re-enter Slovakia during the period the temporary residence permit is granted for Foreigners Act, (§20(1)).

⁴⁸ Bureau of Border and Foreigners Police (Foreigners Police) is part of the Ministry of Interior.

⁴⁹ Foreigners Act, §23(2); and §22 of the Act 5/2004 of 4 December 2003 on Employment Services and on Amendment of Certain Laws (Act on Employment Services).

⁵⁰ Foreigners Act, §43(1)(a).

⁵¹ Act No. 495/2013 amended the relevant parts of the Foreigners Act and Act on Employment Services.

⁵² Foreigners Act, §23(2). Labour Office (LO) carry out what is called a labour market test. LO check against the national register of jobseekers whether a vacancy could be filled by a Slovak, EU or EEA national. If the LO confirm that the vacancy cannot be filled, and there is no reason to refuse, the temporary residence for the purpose of employment will be granted.

The Foreigners Police have a wide discretion to issue the temporary residence permit for employment up to five years.⁵³ An application for temporary residence could be submitted in person at the Slovak consular office in a third country⁵⁴, or at the relevant Foreigners Police office in Slovakia, if the third-country national was already legally residing in Slovakia⁵⁵ (this is not allowed under the ICTD⁵⁶). The application would need to be accompanied by two photographs showing the current appearance, and by several documents, many of which could not be older than 90 days (proving the purpose of stay, no criminal convictions, sufficient financial means, and secured accommodation).⁵⁷ Family members of ICTs are also required to submit evidence of health insurance within 30 days of receipt of the residence permit.⁵⁸ Moreover, migrants, who obtain temporary residence either for the purpose of employment or family reunification, are obliged to provide a medical report, not older than 30 days, confirming that they do not suffer from an illness endangering public health.⁵⁹ If they fail to do so, the Foreigners Police would cancel their temporary residence permit.⁶⁰ This is not required from third-country nationals with a recognised long-term residence status in another EU Member State.⁶¹ There are many grounds on which the Foreigners Police could either refuse to grant a permit⁶², or cancel it, for example if the vacancy can be filled by a Slovak or EU national⁶³. The decision on temporary residence should be made within 90 days⁶⁴ (this also applies for renewals⁶⁵). If third-country nationals are seeking a change in the type or purpose of the residence permit, the temporary residence is considered legal until a decision on the new application is taken.⁶⁶ Temporary residence could be renewed multiple times without any maximum periods.⁶⁷ In contrast, the ICTD allows renewals of

⁵³ Foreigners Act, §23(3).

⁵⁴ Foreigners Act, §31(1).

⁵⁵ Foreigners Act, §31(3).

⁵⁶ Only application made from outside the EU will be allowed for the initial application (ICTD, Art 2(1)).

⁵⁷ Foreigners Act, §32(2).

⁵⁸ Foreigners Act, §32(9).

⁵⁹ Foreigners Act, §32(10).

⁶⁰ Foreigners Act, §36(1)(c).

⁶¹ Foreigners Act, §32(10).

⁶² Foreigners Act, §33(6).

⁶³ Foreigners Act, §36(1).

⁶⁴ Foreigners Act, §33(8).

⁶⁵ Foreigners Act, §34(14).

⁶⁶ Foreigners Act, §33(11).

⁶⁷ For a maximum of three years, if the predicted duration of stay is at least three years or for a maximum of five years, if their predicted residence is at least five years (Foreigners Act, §34(1)(b) and (c), respectively).

residence only up to the maximum period prescribed⁶⁸, which gives less favourable residence rights than the Slovak legislation.

What follows is a discussion of ICTs' experience with this framework, which is dependent on the route applied under, as well as whether their company was involved in the permit application process and relocation. Some companies provided full support to ICTs and their family, others full support to ICT only, and some only minimal support to ICTs. ICTs, receiving support from their company, reported that they had not experienced any major difficulties⁶⁹, and that without the help of the company they would struggle to obtain the permit⁷⁰. The assistance included: completing relevant forms, what documents to provide, obtaining translations of documents, visits to the Foreigners Police, medical appointments, paying for obtaining initial medical reports, arranging and paying for apostilles⁷¹ or super-legalisation⁷² of documents. Much of the empirical data came from employers, who dealt with the permit application process on behalf of ICTs.

The two respondents, who applied for permanent residence as a spouse of a Slovak national, reported mixed experiences, encountering several issues. None of them received much help from their companies, which could suggest that when employees request transfers for personal reasons they obtain less assistance, and thus less exclusive ICT package.

Regarding the permit application process, the main areas of concern include its bureaucracy (including documents and dealing with authorities), residence permits for the family members and language barrier. Each of these issues is examined in turn below. Bureaucracy is manifested in two ways. Firstly, there was a bureaucracy as a system of government in which many of the important decisions were taken by the State officials rather than by elected representatives, due the wide discretion given to them under the Slovak legislation, namely the 2011 Foreigners Act and the 2004 Act on Employment

⁶⁸ Three years for managers and specialists and one year for trainee employees.

⁶⁹ Interviews with S3, S4, S6, S7 and S9.

⁷⁰ Interviews with S1, S3, S4 and S7.

⁷¹ The 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public specifies the modalities through which a document issued in one of the signatory States can be certified for legal purposes in all the other signatory States. An apostille is an international certification comparable to a notarisation in domestic law, and normally supplements a local notarisation of the document.

⁷² If a country is not a party to the Hague Convention, then its public documents need to be super-legalised by the host country's foreign mission (FM) servicing the country of the origin of the document. Super-legalisation of public documents means certification of the authenticity of signatures and official seals or stamps which they bear against the specimens available to an FM issued by the Foreign Affairs Ministry of the country of origin of the respective document.

Services⁷³. Secondly, the bureaucracy existed due to complicated administrative procedures.

5.4.2.1. *Bureaucracy of the Permit Application Procedure for ICTs*

Overall, the process was described as “*very complicated*”, “*cumbersome*”, “*lengthy*”, and “*not transparent*”.⁷⁴ The procedure for renewal was also very complicated, demanding almost the same documents, time and effort as the initial application.⁷⁵ One employer stated that “*we do not employ third-country nationals, unless they are ICTs from our mother company or transferred EU nationals. We had interest to employ third-country nationals, but the advantage of bringing them is outweighed by the complicated legislation.*”⁷⁶ He further explained that to bring ICTs was easier, because “*you have the support from colleagues on the other side in the third country. We can communicate with them through consular offices, they provide support with the preparation of documents*”.⁷⁷ Thus, it was not the national legislation, which made it easier to apply for permits, but the fact that they were already an employee of the company.

There seemed to be a practice by the authorities where, even though the work permit could be granted for a maximum of two years each time⁷⁸ (and residence permit should correspond to it), they granted the permit for shorter periods than the actual length of the employment:

*“What would help us would be longer periods the temporary residence permits are granted for. Initially it is only for one year, then for two years. Because our managers come here usually for 3 or more years. They very rarely come here for one year. These are usually some specialists who come here, sort something out and leave. [...] So, after the initial first year we have to repeat the whole process again. It would be simpler for us, if the period the temporary residence permit would be granted for was longer.”*⁷⁹

⁷³ Act 5/2004 of 4 December 2003 on Employment Services and on Amendment of Certain Laws (Act on Employment Services).

⁷⁴ Interviews with S1, S4, SC and SD, respectively.

⁷⁵ Interview with SG.

⁷⁶ Interview SB.

⁷⁷ Interview SB.

⁷⁸ Act on Employment Services, §23(3).

⁷⁹ Interview with SD and S4.

This practice by the Slovak authorities demonstrates how their employees can vary the extent to which they enforce the rules and laws assigned to them.⁸⁰ In this case, their wide discretion allows them to restrict the residence of migrants. The Foreigners Act and Act on Employment Services allow wide discretion, which can hinder legal certainty. This can be counterproductive for migrants' integration, employers as well as for authorities, as it creates additional administrative burdens.

Moreover, the number of documents required to support the application and their specificities⁸¹, such as the rules on validation of documents, constituted another issue. Stricter requirements were introduced in response to the abuse of the system by a few migrants, which “*made life harder*” for majority of those who did not cheat.⁸² One example of such government's response to abuses of immigration law was the 2014 amendment of the Act on Employment Services, which extended the requirement to provide apostille or super-legalisation to the documents proving the attained level of education.⁸³ This change impacted all, including ICTs applying for a renewal of their permit and where previously their education certificate was accepted without an apostille.⁸⁴ This requirement was seen as unfair, strict and difficult to accomplish for ICTs, who were already in Slovakia.⁸⁵

Apostille or super-legalisation of documents caused many issues and delays for other ICTs, for example, when a document that was required to be apostilled or super-legalised was unavailable in a third country:

“[...] the problem is often with documents from India. The problem there is that the birth certificate does not exist for people born before certain year. After certain year, it is no longer a problem [...]. Slovak authorities are not able to comprehend this. And we cannot progress further with the application process. Indian nationals also need a proof of no criminal record for the purpose of the work permit, but they need the birth certificate to obtain that proof. But these documents simply did not exist in country with

⁸⁰ M Lipsky, ‘Toward a Theory of Street-Level Bureaucracy’ (paper presented at the Annual Meeting of the American Political Science Association, Hotel Commodore, New York, 2-6 September 1969) 45 <<http://www.irp.wisc.edu/publications/dps/pdfs/dp4869.pdf>> accessed on 16 February 2016.

⁸¹ Interview with SB.

⁸² Interview with SG.

⁸³ Employment Services, §22(2)(b). See Annual Report on Migration and Asylum Policies: Slovak Republic 2014 (n 19) 68.

⁸⁴ Interview with S3.

⁸⁵ Interview with SD.

such population as India [...]. The support has to be there and it takes a lot of personal capacity and effort, for these people to be brought here, so that they feel some kind of comfort and that our efforts overcome the hurdles that are there, personal and legislative hurdles, so that they could start working here with comfort.”⁸⁶

From the point of view of ICTs and their families, to put all these various documents together for everyone and make sure they are all originals (or notarised copies), and apostilled or super-legalised, translated into the Slovak language by a court sworn translator, and not older than 90 days, seems extremely difficult to achieve and could be costly too. Only ICTs who received help from their companies obtained their permits relatively easily, and not because the national legislation would provide for an efficient administrative procedure.

To run their business operations smoothly, employers applying for permits on behalf of ICTs were forced to come up with different coping strategies, sometimes even against the law, to overcome the hurdles created by the Foreigners Act and Act on Employment Services:

“Sometimes we tried to solve this situation, when our project was urgent and we knew that we will not be able to quickly obtain all the permits in time. We applied for Schengen visa for main migrants, who participate on the project, but on Schengen visa nobody can work. So, we told them that when Labour Inspectorate come they cannot mention work. Although they are here to work on the project, they would mention that they are providing here training or are here for transfer of know-how or opinions. It is not correct, but the application process is so complicated, lengthy, slow and badly set and we needed those experts here. So, we had to look for different solutions in order to help ourselves [...].”⁸⁷

Burdensome permit application procedures forced employers to resort to illegally employing ICTs, which can make them prone to exploitation. Such a strict legislation, which was supposed to prevent abuses, reinforced illegality. This should be a lesson for legislators. Providing for less burdensome entry procedures would protect ICTs. In addition, it would ensure more attractive conditions for companies transferring ICTs.

⁸⁶ Interview with SA, but also SB and SC.

⁸⁷ Interview with SA, but also SF.

Therefore, simplifying this procedure for ICTs is vital for attracting their employers to invest in Slovakia.

The simplified procedure under the ICTD could be jeopardised by the way in which the ICTD will be implemented into the Slovak national legislation. To illustrate, the simplification of the procedure, envisaged because of the transposition of the SPD, has not materialised, but resulted in more complications:

“Now because the process is simplifying, everything is dealt with by the Foreigners Police, but the Foreigners Police have everything so complicated, they have so many issues with it. So, it is more complicated. For us it was easier to go to Foreigners Police with a piece of paper⁸⁸. The cooperation between Foreigners Police and Labour Office is required now anyway. [...] when we applied for work permit at the Labour Office, we knew exactly what to do and we communicated with the officer directly there. But now when we deal with the Foreigners Police, they do not know all the details that we know and we could solve with the officer from the Labour Office.”⁸⁹

The SPD was implemented using the existing institutional framework and seemingly without sufficient training and resources provided to the Foreigners Police to deal with this additional agenda (work permit). This put a strain on the procedure, instead of alleviating it. This also demonstrates the unwillingness of the State to change their national procedures, because the SPD created procedural burdens, as there was no equivalent process in Slovakia before.

5.4.2.2. Dealing with Authorities

One major setback in dealing with the Foreigners Police was their inability to speak any foreign language, such as English.⁹⁰ One interviewee reported that there was a campaign by the Presidium of the Foreigners Police to recruit officers to learn English through intense courses abroad, but only five signed up.⁹¹ While it is reasonable that all the permit application forms need to be completed in the Slovak language, it is less

⁸⁸ The respondent means a work permit granted by the Labour Office.

⁸⁹ Interview with SB, but also SC and SD.

⁹⁰ Interviews with SB, SF and SG.

⁹¹ Interview with SB.

understandable why in the time of evident immigration growth into Slovakia, authorities dealing with migrants are not required to have knowledge of some foreign language, at least English. Thus, ICTs were dependent on the help of someone, who spoke Slovak.⁹² The Summary Report on the Fulfilment of the Tasks, Goals and Objectives of the Migration Policy for 2014 (Summary Report)⁹³ included an undertaking of improving language skills of the Foreigners Police, the implementation of which seems to be “ongoing”.

Professionalism and impartiality in following policies and procedures is what is expected by national authorities, when providing a public service. Instead, the respondents met with the prevalence of personal attitudes and unprofessionalism:

“[...] information varies or conflicts depending on who provides the information. This applies to information provided over the phone, as well as in person. If something is sufficient with one employee of Foreigners Police, for another not and the applicant for the residence permit needs to come back in case he did not have all the documents correctly.”⁹⁴

In this respect, for instance, the Foreigners Police required from one ICT documents, which he was not obliged to provide:

“[...] Because I am from [a third country], they asked me to go through health check for exotic diseases, even though I was coming from the [EU Member State]. I went to the Foreigners Police. I explained this to them, they told me I had to do it. So, I did my own investigation and learned that as I am married to an EU national and I was living 16 years in [EU Member State], I should not be forced to do that. And at the end I did not have to do that. At the beginning, they were like those are the rules you have to do that. It was my own investigation so that I avoided doing that. Spending time and money on something I did not have to do.”⁹⁵

⁹² HR manager, agent from the relocation agency or a spouse.

⁹³ Government of the Slovak Republic, ‘Summary Report 2014’ [2.2.1.1] <<http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=24517>> accessed on 16 February 2016.

⁹⁴ Interview with SA, but also SC.

⁹⁵ Interview with S8.

This ICT did not have to have this medical report⁹⁶, because he was a third-country national with a recognised long-term residence status in another EU Member State.⁹⁷ Such report would be required from most other third-country nationals with a temporary residence permit, including ICTs and their families.⁹⁸ It is realistic to assume that employees of the Foreigners Police should be aware of this, especially if their decision could have not only financial implications, but more importantly implications for human dignity due to invasive health tests.

If the Foreigners Police had not previously dealt with applications from certain third countries, the process could be very complex.⁹⁹ One ICT had to fly back to his country of origin at least three times for the interview with the Slovak embassy and the national police, because the Foreigners Police were unsure what documents he should supply in support of his application. His company covered the cost of these flights. On the one hand, it cannot be expected that the Foreigners Police should be aware of the documentation in all the countries. On the other hand, which documents were needed could perhaps be ascertained through directly liaising with the Slovak embassy in the third country.

If the respondents knew someone at the Foreigners Police, it was much easier to deal with them and get everything sorted.¹⁰⁰ In fact, one respondent could bypass the legal requirements of providing original documents, when these were lost in the post, because his mother-in-law had “*a friend of a friend*” at the relevant Foreigners Police office. Thus, he could obtain a permit based on the copies rather than original documents.¹⁰¹

Other public authorities, such as the Labour Inspectorate¹⁰² or Labour Offices¹⁰³ also seemed to “suffer” from similar “deficiencies”. Few ICTs reported that the police stopped them a few times to check their permits and driving licences, which they put down to being foreign.¹⁰⁴ One respondent filed a complaint against two police officers, who mistreated him on account of his nationality, when he became a victim of crime and

⁹⁶ Proving that a third country national did not suffer from a disease endangering public health.

⁹⁷ Foreigners Act, §§30 and 32(10).

⁹⁸ Foreigners Act, §§28 and 29.

⁹⁹ Interview with S1.

¹⁰⁰ Interviews with SA and SF.

¹⁰¹ Interview with S2.

¹⁰² Interviews with S8.

¹⁰³ Interview with SA and SC.

¹⁰⁴ Interviews with S4 and SG.

resisted.¹⁰⁵ It took more than one month for the police to arrange an appointment with a translator, so he could officially file his report and complaint. At the end, he was not very hopeful that it would go anywhere. However, migrants feeling of *safety* and *security* is an important facilitator of their integration.¹⁰⁶

5.4.2.3. *Residence Permits for Family Members*

Family members of EU nationals (regardless of their nationality) are not obliged to apply for any permit to enter and reside in Slovakia¹⁰⁷, whereas the families of ICTs need temporary residence permit for the purpose of family reunification.¹⁰⁸

Difficulties in obtaining this permit were disclosed in relation to certain nationalities, whereas the process for others was smooth.¹⁰⁹ This could suggest a preferential treatment of nationals from certain “privileged” third countries. It is not clear whether there are any official lists of “privileged” or the “other” countries. From the evidence, it seems to come down to prejudices and suspicions regarding certain nationalities, which then influence the officials’ behaviour in terms of how they dealt with applicants.¹¹⁰ The inability of the “other” migrants to bring their family to Slovakia had negative impact on the quality of their life, as well as on the success of the transfer:

“[...] We have here only such individuals, who are already of certain age, and it is not so important for them to be with their families [...] We have more problems with young people. These say we will come with our families or not at all. And if it is not possible from our side to support the family, they then refuse to come. We had here some young men. They lasted 10-11 months, we tried to support their family in the application process, but it was too complicated. Behind it is a lot of paperwork and administration and we were not able to communicate to them, what everything we need from them. So, we managed to get them at least Schengen visa to come for certain period. And when the families left, they could not imagine that they will be here alone again. So, they decided to finish. [...] Not being able to bring their family here was a catalyst for their decision to leave [...].”¹¹¹

¹⁰⁵ Interview with S2. At the time of the interview the complaint was pending.

¹⁰⁶ See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

¹⁰⁷ A family member needs a valid travel document, if travelling with an EU national (Foreigners Act, §7).

¹⁰⁸ Foreigners Act, §27.

¹⁰⁹ Interviews with S4, S7, SF and SG.

¹¹⁰ Interview with SC and SF.

¹¹¹ Interview with SA.

There is a need for favourable conditions for family reunification in the Slovak legislation to protect ICTs' right to family reunification, which would also attract their companies to Slovakia. In addition, companies should provide support to the families, if they wish to ensure the success of the transfer.¹¹² Once the ICTD is in force in Slovakia, it could ensure favourable conditions for family reunification by way of derogations from certain requirements of the FRD¹¹³ and providing for fast-track admission procedures¹¹⁴.

5.4.3. Permanent Residence

Access to secure residence status is limited in Slovakia for third-country nationals, whereas EU workers achieve this status without any formalities after five years of residence. Most ICTs would need to firstly apply for a temporary residence granted for up to five years.¹¹⁵ Then after five years of continuous residence, they could apply for a long-term residence for an indefinite period.¹¹⁶ However, in practice this five-year period of residence could be hard to achieve. Firstly, as observed, the temporary residence permits were granted by national authorities initially for one year and then for two years (for renewals), which was in itself a highly burdensome procedure.¹¹⁷ Secondly, the process of applying for long-term residence was considered to be “*relatively restrictive and discretionary procedure*” too.¹¹⁸ In addition, even if ICTs manage to obtain such status, retaining it is subject to many conditions and authoritative discretion.¹¹⁹ A more straightforward avenue to apply for permanent residence was only open to migrants, who were a spouse of a Slovak national.¹²⁰

5.4.4. Access to Employment for ICTs and their Spouses

Access to the Slovak labour market is regulated by the 2004 Act on Employment Services. Free access to it is granted to EU nationals¹²¹, while most third-country national

¹¹² N Cole and K Nesbeth, ‘Why Do International Assignments Fail?: The Expatriate Families Speak’ (2014) 44(3) *International Studies of Management and Organization* 66.

¹¹³ ICTD, Art 19.

¹¹⁴ ICTD, Art 11(6).

¹¹⁵ Foreigners Act, §34.

¹¹⁶ Foreigners Act, §52(1)(a).

¹¹⁷ Interviews with S4 and SD.

¹¹⁸ MIPEX 2015 (n 15).

¹¹⁹ Foreigners Act, §§55 and 56.

¹²⁰ Foreigners Act, §43(1)(a).

¹²¹ Act on Employment Services, §2(3).

ICTs need to meet certain conditions, for example, obtaining temporary residence permit for employment or family reunification. In addition, a labour market test was carried out¹²², and they were tied to one employer. The ICTD is intended to slightly alleviate this by removing the requirement of the labour market test¹²³, and by providing for supposedly easier intra-EU mobility rights¹²⁴.

Respondents, applying for a permanent residence as a spouse of a Slovak national (initially granted for 5 years)¹²⁵, were entitled to access the labour market without work permit or labour market test¹²⁶. Therefore, they enjoyed more favourable conditions in accessing the labour market than the other ICTs, who had to apply for a work and residence permit through the two-stage procedure.

This two-stage procedure could last at least 19 weeks, which significantly delayed ICTs' access to labour market. Thus, adopting the optional fast-track application procedure under the ICTD is necessary to protect ICTs and attract foreign investors.

It has been affirmed that free access to the labour market for family members of highly-skilled migrants straight after settling in a host country acts as a motivation factor for these migrants when choosing the destination.¹²⁷ However, ICTs often do not make such choice. Thus, ICTs can be transferred to countries, where spouses have no free access to labour market, as in the case of Slovakia, which could have a negative impact on the financial situation of the family and social integration of spouses. Spouses of ICTs needed a temporary residence permit¹²⁸ and a work permit for the first 12 months of legal residence¹²⁹. Only thereafter they could enjoy free access to labour market.¹³⁰ In contrast, family members of EU nationals enjoy free access to the labour market immediately.

The respondents' spouses did not work in Slovakia and were at home with children. Primarily, there was no need for them to work, as their husbands occupied highly-paid positions (President and Vice-President). Another factor could be that they came from countries, where it was customary for wives to stay at home. Nevertheless, interviews with employers revealed that spouses tended to stay at home, regardless of their country of origin because of several barriers in access to the labour market. Firstly, these were

¹²² Act on Employment Services, §22(1) and 21(6). See (n 52) for a discussion about labour market test.

¹²³ See ICTD, Recital 21.

¹²⁴ See ICTD, Arts 21, 22 and 23, and chapter 4, section 4.3.2.

¹²⁵ Foreigners Act, §43(1)(a).

¹²⁶ Act on Employment Services, §§21(1)(f) and 23a(1)(a).

¹²⁷ Annual Report on Migration and Asylum Policies: Slovak Republic 2014 (n 19) 24.

¹²⁸ Foreigners Act, §27.

¹²⁹ Act on Employment Services, §22(6)(c).

¹³⁰ Act on Employment Services, §23a(1)(c)(1).

legislative barriers (a work permit). Secondly, a language barrier existed. Lastly, there were social barriers due to a high unemployment in Slovakia. Access to employment for spouses could be crucial for ICTs with lower earnings, such as specialists and trainee employees, particularly if they had school-age children. Not all companies supported education, which in Slovakia took place in expensive international schools.¹³¹ With the transposition of the ICTD, at least the legislative barriers would be lifted as the Directive provides for direct access to labour market for spouses, but the language and social barriers would remain.

5.4.5. ICTs' Contracts and Packages

The situation with ICTs' contracts and packages is very complex, because they contain terms and conditions of employment, which can be governed either by the law of the country of origin or destination or partly by both. This can make their enforceability in the host country problematic. In addition, they contain other terms (perquisites), which are not regulated by any law and are based on the company policy. ICTs' negotiating power depends on their "value" for the company. Empirical evidence revealed three kinds of contracts/packages: "localised", "mother company" and "mixed". The "localised" contract meant that respondents signed a contract with the Slovak branch ("active" contract), but also had a contract with the mother company, which was suspended while in Slovakia. Sometimes localised contract could become local, if the transfer was more permanent, meaning that the contract with the mother company would be severed. In a "mixed" contract, for instance, part of the salary was paid by the Slovak branch and part by the mother company, but the terms of employment of the mother company were apparently similar to the Slovak terms, plus there could be some extras.¹³² Only few ICTs, such as chief executives, retained pure mother company contracts.¹³³ In fact, employers confirmed that most of the ICTs in their companies tended to be on "localised" contracts.¹³⁴

What is the advantage of the localised contract and the mother company contract, and for whom? If the ICT has a contract with the mother company based in a third country, presumably the law of that country applies to the contract (if that law is the law of choice). Thus, the mother company could have even more control over the terms of the

¹³¹ See section 5.4.8 below for further details.

¹³² Interview with SB.

¹³³ Interview with SB and SF.

¹³⁴ Interview with SG.

contract. In the EU, the law of the country of origin would apply to the extent of the host country's mandatory laws that may take precedence over any terms in the contract.¹³⁵ Then, such an ICT would be treated as per these mandatory local laws, but the other terms in the contract could be governed either by the law of the country of origin, or by no law at all, just the company corporate policy. However, when ICTs sign localised contracts it seems that, in general, the local terms and conditions of employment apply.¹³⁶ From the point of view of the company, the cost of the relocation could be a concern, especially for small companies. The fact that most ICTs in Slovakia seemed to have a localised contract may suggest that companies found it worthwhile, because it was a cheaper option in comparison to the mother company contract, especially in a country like Slovakia with lower living standards. For the host companies, it was advantageous when ICTs were on localised contracts, as they mandatorily contributed to the national health insurance, which means that the Slovak branch did not have to take out expensive commercial health insurance.¹³⁷

From the point of view of ICTs, to be on a localised contract can be advantageous, as equality with nationals is guaranteed, which can be particularly attractive for ICTs coming from developing countries with lower living standards.¹³⁸ However, being on a localised contract could lead to double or lost social insurance contributions.¹³⁹

5.4.6. Terms and Conditions of Employment

Slovak law does not distinguish in the treatment between EU and non-EU nationals. The Slovak Constitution guarantees equal treatment regarding working conditions.¹⁴⁰ In addition, the 2004 Anti-Discrimination Act provides for a general prohibition of discrimination in “*labour relationships*” and “*relationships connected with labour law relationships*”.¹⁴¹ Prohibition of direct or indirect discrimination *vis-à-vis* working

¹³⁵ Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations [2008] OJ L177/6 (Rome I). According to this instrument, if the employment contract sets out which law applies, the law chosen by the parties regulates the employment relationship (the Slovak law, third country law, or even both), except if it results in depriving the employee of the protection afforded to him by the mandatory rules of law of the host country, which would be applicable in the absence of choice of law (Rome I, Art 8).

¹³⁶ Interview with SB.

¹³⁷ Interview with SC.

¹³⁸ Interview with SB.

¹³⁹ This is discussed in more detail in section 5.4.7. below.

¹⁴⁰ Slovak Constitution, §36(b).

¹⁴¹ The terms “labour relationships” and “relationships connected with labour law relationships” are interpreted very broadly and cover all relationships and all areas of the employment of an employee. See P

conditions based on nationality is also part of the Slovak Labour Code¹⁴², in particular Article 1 of the Basic Principles.¹⁴³ Employers are responsible to ensure that the terms and conditions of employment in the Slovak Labour Code and the Act on Health and Safety at Work¹⁴⁴ are enjoyed by workers with local contracts, as well as those, who retain a contract with the foreign employer¹⁴⁵, unless private international law provides otherwise¹⁴⁶.

As far as respondents were aware, they enjoyed terms and conditions of employment at least on an equal footing with nationals or better. However, this equality of treatment could be an issue for employees from third countries with higher standard of living: “[...] the pay is my major issue. Pay here is much lower than in the US, or all the countries I have been to [...].”¹⁴⁷ This seems unfair, but it is not illegal for a company to decide to equalise, thus potentially lower, the salary to the level with nationals of the host country. Although a few respondents pointed out the lower salary in Slovakia and that they had to adjust their spending, overall, they seemed satisfied with their salary, contracts and packages.¹⁴⁸ Some companies, however, took into account this difference in the living standards between Slovakia and a third country, so that ICTs would not lose out:

*“In the terms of pay, we match salary levels to those they would earn if they would perform the same job in the country of their origin. Additionally, we pay extra for their transfer and accommodation. So, they are not disadvantaged, when they come here. After the return, their salary is reconsidered. Thus, the transfer is certainly not a negative.”*¹⁴⁹

This demonstrates that the terms of employment could be very different for each respondent. It would also appear that terms and conditions of employment were guaranteed to ICTs at least on par with EU nationals. However, after the transposition of

Varga and M Škamla, ‘Report on the Free Movement of Workers in Slovakia in 2011-2012’ (November 2012) <www.ru.nl/publish/pages/608499/slovakia_2011-12_def.pdf> accessed on 18 February 2016.

¹⁴² Act No. 311/2001 Coll. on the Slovak Labour Code, as amended (Slovak Labour Code).

¹⁴³ Slovakia is thus fulfilling its obligations under international and CoE legal instrument (see chapter 3) and under EU law (see chapter 4).

¹⁴⁴ Act No. 124/2006 on Health and Safety at Work and on Amendments to Certain Acts, as amended.

¹⁴⁵ Act of Employment Services, §23(b)(5).

¹⁴⁶ Slovak Labour Code, §5(1). In the EU, the rules on private international law are provided for in the Rome I Regulation (n 135).

¹⁴⁷ Interview with S2.

¹⁴⁸ For instance, interview with S5.

¹⁴⁹ Interview with SD, but also with SG.

the ICTD, this could remain the case only regarding salary. In relation to other terms and conditions of employment¹⁵⁰, ICTs could “enjoy” equal treatment with posted workers, who have less secure status under EU law than EU nationals.¹⁵¹ Under the ICTD, States are obliged to guarantee terms and conditions of employment to ICTs *at least* on equal footing with posted workers, thus are allowed to lower the protection compared to Slovak legislation in force at the time of research. The words “at least” would suggest that, unlike in the PWD, there is an option to provide better protection.

5.4.7. Access to Social Security Benefits

The importance of access of third-country nationals to social security benefits, contributory and non-contributory, for their integration in the host country has been acknowledged.¹⁵² Slovakia does not make entitlement to healthcare, social insurance benefits, State support benefits and social assistance benefits conditional on the minimum duration of residence. Subject to the legal conditions, third-country nationals are entitled to social security benefits from the date of their temporary or permanent residence permit in Slovakia. An exception applies to certain social insurance benefits the claiming of which depends on the duration of insurance specified in law, which can only be reached after obtaining the residence permit in Slovakia. Access to family benefits is dependent on the type of residence obtained.

5.4.7.1. Healthcare

The right of protection of health for everyone is embedded in the §40 of the Slovak Constitution. In addition, according to the 2004 Act on Healthcare everyone has a right to a provision of healthcare¹⁵³, in line with the principle of equal treatment¹⁵⁴. Differences occur regarding payment for healthcare. Every natural person with permanent residence in Slovakia is mandatorily involved in the public health insurance system. For third-country nationals with temporary residence, such as ICTs, Slovakia ties participation in the public health insurance scheme to the performance of gainful activity. They are

¹⁵⁰ PWD, Art 3, and ICTD Art 18(1).

¹⁵¹ See chapter 4, section 4.3.5.

¹⁵² S Sciarra and W Chiarromonte, ‘Migration Status in Social and Security Law: Between Inclusion and Exclusion in Italy’, in C Costello and M Freedland (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law* (OUP 2014) 128.

¹⁵³ Act No 576/2004 Coll. on Healthcare, Healthcare-Related Services and on the Amendment and Supplementing of Certain Acts, §11.

¹⁵⁴ Anti-Discrimination Act, §5.

subject to the same conditions as Slovak or EU nationals, as they are not required to prove any minimum period of residence. Family members with temporary residence fall under the mandatory public health insurance, if they conduct gainful activity in Slovakia. If they fail to meet this condition, and because they cannot contribute on a voluntary basis, they are required to have commercial health insurance.¹⁵⁵ Similarly, economically inactive family members of EU nationals would be required to have a comprehensive insurance not to become a burden on the social security system.¹⁵⁶

In practice, access to free healthcare was ensured for ICTs, because as workers they automatically contributed to the public health insurance. If the ICT did not have a localised contract, the Slovak branch provided commercial health insurance for them. Some companies extended the provision of commercial healthcare insurance to the family of ICTs too, but others did not. Paying for commercial healthcare insurance for family members could become an obstacle for ICTs, as it could be very costly. Therefore, it helped ICTs when the company covered this yet another expense on their list.¹⁵⁷ One of the companies which did not provide this benefit admitted that:

*“[...] We have no way how to insure them, because it is non-tax profit. And nobody here would agree that we would support them from the company’s profit. This is such a disadvantage for them from our side, which is not yet overcome. The health insurance for family members is a cost, which we have to work on.”*¹⁵⁸

Indeed, if companies wish to boost mobility of their employees, it is crucial to support their families. One way could be by providing commercial health insurance to ensure their access to free healthcare, when this is not possible under national legislation.¹⁵⁹ It was observed, however, that access to healthcare based on a comprehensive commercial health insurance could be problematic in Slovakia:

“[...] Now I am in a precarious situation. I have one [third country name] lady here pregnant. She had comprehensive commercial health insurance. But the doctors here are

¹⁵⁵ P Drozd, *Migrant Access to Social Security and Healthcare in the Slovak Republic: Policies and Practice* (IOM 2013) 94-95.

¹⁵⁶ Citizenship Directive, Art 7(1)(d).

¹⁵⁷ Interview with S3 and S7.

¹⁵⁸ Interview with SA.

¹⁵⁹ Interview with S7.

unwilling to treat her, which surprises me. But because she is a foreigner and does not have standard contract insurance with the doctor (as Slovak national would have), despite the fact that she has comprehensive expensive insurance, she always has to pay cash for the treatment, and only then subsequently the money is refunded to her from her insurance company. This is absolutely illogical, because she has expensive insurance and yet has to pay for treatment first, which Slovak national receives for free. Then they ask me how is it possible. The health system is not accommodating to foreigners at all.»¹⁶⁰

This happened probably because the Slovak doctors do not trust this system of commercial health insurance, as they fear that they would not get their money from the insurance company. This then impacts those, who take out the commercial insurance, so that they would not have to pay from their own pocket.

Another issue was the language barrier. In particular, when ICTs lived outside Bratislava, it was very difficult to find a doctor nearby, who spoke English.¹⁶¹ This meant that ICTs and their family needed someone with them, who spoke Slovak. This raised some privacy issues, for example, when the HR manager was going to assist as a translator during a birth of a baby of one ICT and his spouse.¹⁶²

5.4.7.2. Maternity and Unemployment Benefits

As far as these social insurance benefits are concerned, it is necessary to distinguish between the right to enter the system, and the right to individual benefits, as benefits can be available to everyone, who contributed towards the insurance, provided they meet certain other conditions. Although the social insurance system can be entered in principle by all third-country nationals, some may not be able to access certain benefits, if they have not contributed long enough. This means that the contributions they have made could be lost. This can be the case with temporary migrants, such as ICTs. For instance, the condition for applying for maternity benefit is having contributed to sickness insurance for at least 270 days during the last two years before childbirth.¹⁶³ The spouse

¹⁶⁰ Interview with SC.

¹⁶¹ Interview with S1.

¹⁶² Interview with SC.

¹⁶³ Act No 461/2003 Coll. on Social Insurance, as amended, §48(1) (Social Insurance Act).

of one ICT was on maternity leave at the time of interviews.¹⁶⁴ She was also an ICT in the same company as her husband and worked there long enough to be eligible for the maternity benefit. In practice, this would not be available to female ICTs, who did not contribute for the required period. Therefore, for ICTs motherhood can require planning and some stability by way of at least a two-year period of work and residence in Slovakia. Maternity benefits are exportable to third countries, even including countries with which Slovakia has not concluded bilateral social security agreements.¹⁶⁵

Access to unemployment benefit is in principle also open to all migrant workers, as the mandatory unemployment insurance refers to every worker. The drawing of the unemployment benefit is conditional on a minimum period of contribution, which is the same for all applicants for unemployment benefit.¹⁶⁶ In practical terms, however, although third-country nationals with temporary residence could be entitled to unemployment benefits, if they fail to find a job within 30 days, their temporary residence permit would be cancelled.¹⁶⁷ Unlike EU nationals or third-country nationals with permanent residence, ICTs could receive unemployment benefits only for one month, since they are not exportable. The EU Blue Card holders is the only exception amongst temporary migrants as their protective period is 90 days.¹⁶⁸ In contrast, unemployment is not addressed in the ICTD, perhaps because it was considered irrelevant in the context of temporary intra-corporate transfer and compulsory return, or to dissuade ICTs from searching for other employment in the EU, which must be certainly welcome by host countries and MNCs.

5.4.7.3. ICTs' Pension Rights

Many respondents were worried about their pension situation, were not sure what the impact of the transfer would be on their eligibility for pension in their country of origin, and were misinformed about their eligibility for pension in Slovakia. Indeed, ICTs' pension situation can become very complicated.

¹⁶⁴ Interview with S1.

¹⁶⁵ Drozd (n 155) 62.

¹⁶⁶ Drozd (n 155) 57.

¹⁶⁷ Foreigners Act §36(3)(a).

¹⁶⁸ Foreigners Act, §37(2).

The first issue is their eligibility for State pension in Slovakia.¹⁶⁹ Although pension benefits are exportable to third countries, even to those with which Slovakia has not concluded bilateral social security agreements¹⁷⁰, most likely ICTs would not meet the eligibility criteria due to the temporariness of their stay. The two conditions for the Slovak State pension are reaching the retirement age (62 years both for women and men) and a long enough period of participation in the pension insurance scheme, which is 15 years at present.¹⁷¹

The second issue is the double contributions and eligibility for pension in their country of origin. While ICTs are employees in Slovakia, they need to contribute to the Slovak social security system, unless they are exempted by a bilateral agreement on social security. Moreover, they may also need to contribute to their social security in the country of origin in order not to lose their eligibility for the pension benefit there due to the missed periods of necessary contributions.

In the absence of ratification of the ILO migrants-specific conventions on social security¹⁷², Slovakia concluded a small number of bilateral agreements¹⁷³. Few of these agreements allow certain categories of employees, such as ICTs, to stay attached to the social security system of their country of origin while working in Slovakia¹⁷⁴, for up to five years¹⁷⁵. This means that they do not have to contribute in Slovakia too, for a specified period. After the expiration of this period, they would have to start contributing, but at least the years that they contribute, could count towards their eligibility for a benefit in their third country. The positive effects of these existing bilateral agreements were revealed:

*“In the terms of pension scheme, we do not contribute towards it in Slovakia as they remain insured in country of their origin. [...] as in the home country it is more beneficial for them.”*¹⁷⁶

¹⁶⁹ The conditions of entry to the Slovak pension insurance system and access to pension insurance benefits are laid down in several acts, for example, the Social Insurance Act or Act No. 43/2004 Coll. on Old-Age Pension Savings and on Changes and Amendments to Some Acts, as amended.

¹⁷⁰ Drozd (n 155) 62.

¹⁷¹ Social Insurance Agency, ‘Pension Age’ <<http://www.socpoist.sk/slovník-pojmov/11s?&prm1=610>> accessed on 3 February 2016.

¹⁷² See Figure 1 in chapter 3.

¹⁷³ Slovakia concluded bilateral agreements on social security with 11 third countries: Australia, Israel, Federative Republic of Yugoslavia, Canada, Republic of Korea, Union of Soviet Socialist Republics, Serbia, Ukraine, Turkey, Quebec, and USA. See Drozd (n 155) 70.

¹⁷⁴ Drozd (n 155) 71-72.

¹⁷⁵ Periods vary depending on the agreement.

¹⁷⁶ Interview with SD.

*“[...] The contributions related to their future in Korea, the mother company pay for them during their transfer. In here he provides a special document, which allows him to be exempt from these contributions in Slovakia. So, he is still sort of in Korea in relation to this. He is not losing anything.”*¹⁷⁷

Where such bilateral agreements were not concluded, ICTs had to contribute to the Slovak State pension scheme (and such contributions were irrecoverable), as well as in their country not to lose eligibility there, because the period of contributing in Slovakia would not count towards their eligibility there.¹⁷⁸ In this respect it has been noted that: *“[d]efinitely, that is an impact. I have to adjust my spending to upkeep my retirement plan.”*¹⁷⁹

5.4.7.4. Family Benefits

By contrast to employment-related social insurance benefits, the access by temporary migrants to non-contributory benefits, such as family benefits, is limited in Slovakia, in law and in practice. Unlike most social insurance benefits, family benefits are not exportable. They are paid irrespective of the amount of income and are granted in the same amount to all eligible persons, but access to many of them is subject to having permanent residence.¹⁸⁰ This permanent residence requirement applies equally to nationals, EU nationals or non-EU nationals. Some family benefits are available to temporary residents too, regardless of the activity they perform and their nationality. Thus, ICTs would be eligible to receive, for instance child allowance, if they provided care for a dependent child¹⁸¹, parental benefit¹⁸², for ensuring care for children under 3 or 6 years of age¹⁸³, or childcare allowance to cover the cost of care for children up to 3 or 6 years of age¹⁸⁴.

It was not possible to assess the impact of the respondents' access to these benefits, as nobody received them. In fact, they were unaware that such schemes existed or that they

¹⁷⁷ Interview with SG.

¹⁷⁸ Interviews S1 and S2.

¹⁷⁹ Interview with S6.

¹⁸⁰ For example, the childbirth allowance or parent's allowance. See Drozd (n 155) 49-56.

¹⁸¹ §3 of the Act No. 600/2003 Coll. on Child Allowance and on Changes and Amendments to Social Insurance Act. As at 28 February 2016 the benefit was €23.52 per month.

¹⁸² It is granted under the Act No. 571/2009 Coll. on Parental Benefit and on Changes and Amendments to Some Acts, as amended. As at 28 February 2016 it was €203.20 per month.

¹⁸³ The parental benefit is paid until 6 years in the case of a child with a long-term adverse health condition (§3(2)).

¹⁸⁴ With a long-term adverse health condition.

may be eligible. ICTs or their spouse could apply for childcare allowance to pay for the nursery, if the spouse decided to work or study full-time. As not all companies would cover the cost of the expensive nursery¹⁸⁵, it would have to be covered by ICTs. At the time of writing the childcare allowance was up to €280 per month.¹⁸⁶ This amount would probably not cover the full cost, which is maybe why spouses would rather choose to stay at home, also given the barriers faced by them in accessing the labour market. However, staying at home could have a negative impact on their integration, as they would have no opportunity to interact with other migrants or members of the host society.

There is a differential treatment in Slovakia in access to family benefits between long-term and temporary residents, leading to inequality, which may be reinforced by the ICTD. It allows States to exclude from access to family benefits those ICTs who would reside in their territory for less than nine months.

5.4.8. Education for Children

The right to education for everyone is guaranteed in the Slovak Constitution.¹⁸⁷ The 2008 School Act covers education of foreigners too.¹⁸⁸ It states that children of third-country nationals with granted residence permit are eligible for education, accommodation and meals in schools on equal footing with Slovak nationals, meaning free education in state primary and secondary schools, but not private schools. In state schools, basic and more extended courses in the Slovak language can be organised. It is possible to establish schools other than state schools and provide education in other languages for payment. Children of ICTs interviewed for this project had access to free state primary and secondary schools. This is in compliance with Slovakia's obligations under the UN ICESCR. However, none of them attended state schools because of the language barrier and/or the temporariness of their stay. Instead they attended international schools with a foreign language of instruction (German or English). In these schools, the cost of the secondary education could range from €7000¹⁸⁹, to €12500¹⁹⁰, and even to €20000¹⁹¹ per year.

¹⁸⁵ Costs can span in a range of €500-1000 per month. See section 5.4.8.

¹⁸⁶ §5(1)(a) of the Act No. 561/2008 Coll. on Child Care Benefit and on Changes and Amendments to Some Acts, as amended.

¹⁸⁷ §42.

¹⁸⁸ §146 of the Act 245/2008 Coll. on the Education and Training and on Amendment of Certain Acts (School Act).

¹⁸⁹ Deutsche Schule <<http://www.deutscheschule.sk/de/04-schulgeld.html>> accessed on 1 February 2016.

¹⁹⁰ Cambridge International School <<http://www.cambridgeschool.eu/en/study-at-cambridge/school-fees/>> accessed on 1 February 2016.

Not placing children staying in Slovakia for longer periods or young children in state schools, where an additional assistance in learning the Slovak language is available, could be counterproductive to their and their families' integration. They would not lose out as the learning of the English language is compulsory in the state schools from year one. Moreover, teaching of other foreign languages is available.¹⁹² If the stay is shorter or when children are older than it is perhaps more understandable that parents decide to place their children in one of the international schools. If children are placed in an international school, then it would not be unreasonable to expect the company to cover or contribute towards fees within their financial ability. The reason for this is that it is often the company, which requires the transfer of ICTs and the school fees can be high, in particular for those ICTs earning less, such as specialist or trainee employees. In addition, the fact that ICTs would have to fully cover the school fees could dissuade them from accepting an offer of an international assignment. Some companies did not cover school fees at all.¹⁹³ Others covered them at full or at least to a certain extent. Should parents wish their child to go to a more expensive school, then they should cover the difference between the reasonable fee offered by the company and the school fee.¹⁹⁴

Another issue was that international schools were based in the capital city, Bratislava, but ICTs were located in other towns across Slovakia, where such schools were scarce. This could hinder not only the children's access to education, but the unity of their family too:

*"[...] This is also one of the difficulties here in Slovakia, as you do not have so many foreigners. There is an international school in Bratislava, but that is too far. I have already checked, in this region there is none."*¹⁹⁵

*"When the families have small children, they live here in Žilina. When the children are of a school age, they live in Bratislava, because they go to the International British School. Then managers join them for the weekend in Bratislava."*¹⁹⁶

¹⁹¹ International British School <<http://www.nordangliaeducation.com/our-schools/bratislava/admissions/our-fees>> accessed on 1 February 2016.

¹⁹² For example, German, French, Spanish or Russian.

¹⁹³ Interview with SE. The company at least had a family friendly policy, which meant, when the child was sick, parent could work from home.

¹⁹⁴ Interview with SA.

¹⁹⁵ Interview with S1.

¹⁹⁶ Interview with SG.

This would be an issue especially for the ICTs staying for shorter periods and with older children, as placing them in the Slovak state schools could be damaging to their progress. For now, this remains an obstacle as numbers of migrants are low outside Bratislava. Once more migrants arrive, as predicted, more educational providers will be attracted to other parts of Slovakia.

5.5. ICTs' and their Families' Social Integration

All the above sections relate to ICTs' integration facilitated by access to rights, which is easier to regulate in legislation and measure too. Social integration is influenced by the behaviour of the people with certain personal characteristics, which is harder to regulate by law and to measure. Regarding ICTs' integration, it is important to differentiate between their integration at work and outside work, including integration of their families. This is because ICTs encountered fewer difficulties with integrating at work than outside work.

5.5.1. ICTs' Integration at Work

The reported level of “on the job” integration was high in all cases. All the companies had “on the job” integration plans and many of them provided extra support to ICTs.¹⁹⁷ The majority of ICTs' personal relationships developed through work, which means they interacted not only with their own nationals and other foreigners (*social bonds*), but also developed friendships with colleagues, who were Slovak nationals (*social bridges*).¹⁹⁸ This was because many companies, although they did not have any specific policies on migrants' social integration, organised various common events, which resulted in good relationships. Slovak employees were willing to help and in most cases understood the cultural differences, which in turn assisted ICTs to integrate. As almost everyone in these MNCs spoke at least English, communication was not an issue. Barriers occurred, when

¹⁹⁷ MNCs provided administrative assistance with the permits application process and covered the costs thereof, they paid for the relocation, accommodation, language courses, schools for children, and had specific integration programmes in place. They accompanied ICTs and their families to hospital appointments, at the bank when opening accounts, at the health and social insurance agencies. This was usually done by someone from human resources or specifically appointed “mentor” or “buddy” from among the Slovak colleagues. Some companies also held seminars on “how to survive” in Slovakia.

¹⁹⁸ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

ICTs could not speak English.¹⁹⁹ Then communication was aided by an assistant, who spoke the language of the management, as well as English and some Slovak.²⁰⁰

Even though not all companies had anti-discrimination policies in place, there were no incidents of discrimination reported. Occasionally cultural differences caused frictions at work and other times relationships stayed rather formal due to the specific role performed by ICTs:

*“Anti-discrimination policy is covered in basic documents, such as Code of Conduct at Work. We never had any incident of discrimination of third-country nationals. But because there is a different culture and specificities, it was possible to observe tensions, which it created between colleagues. It has never escalated to real conflict or unmanageable situation.”*²⁰¹

*“You know when somebody is transferred here to make cuts, he will not be your best friend with whom you will go for a beer, when he came to tell you how to do things and what you are doing wrong. At the same time, there were no problems. The employees understand that they transfer here some manager to make changes and he does not socialise here. But there were never any complaints from ICTs that they would be discriminated, disadvantaged or attacked. Never nothing like this happened.”*²⁰²

Only in one instance relationships at work were described as seriously problematic:

*“They are very complicated here at our work place. [...] Overall the cultural differences are quite big there. It is not easy with them. Everything must be flexible, they change their opinion very quickly, now yes, now no, now yes, now no again. It is hard with them. When Slovak says, it will be this way, it will be that way. When Korean says something, you can expect that in 2 hours it will be different.”*²⁰³

This employer’s perception of the integration process and what was expected of migrants seemed to be as a one-way process:

¹⁹⁹ Interviews with SC, SG and SH.

²⁰⁰ Interview with S9.

²⁰¹ Interview with SA.

²⁰² Interview with SB.

²⁰³ Interview with SF.

“[...] We have trained them this way, and the way you train them, the way you have them. Every foreigner is like “tabula rasa”. On him the surrounding, he is in, is mirrored. I cannot tell my chief executive that yes yes I will do it, because that way, I would find myself in his country. He has to find himself in my country. I will explain to him the way it works here and I want him to adapt. I will not adapt to him, because he is here for 5 years and then he goes home, but I stay. And simply I do not want to lose my identity, that I will become somebody, who I am not. [...]”²⁰⁴

This perhaps demonstrates a need for stepping up the Slovak Government’s efforts to support the opening up of the Slovak society towards different cultures, and the need for cross-cultural training to be provided by companies, not only to ICTs²⁰⁵, but also to their Slovak employees. Yet, in a different company employing ICTs from the same third country it was a completely opposite situation:

“Regarding relationships here at work place, they are great. [...] we mutually respect each other. For example, when we have visitors from Korea - the Asian culture and paying of respect is very different to ours - we know that when the Korean visit comes we have to pay them respect as Koreans or employees of a Korean company. But when we are in everyday contact, we behave to each other as Europeans. Korean ICTs respect this and we respect that when the visit comes from Korean Headquarters, everything has to be very clean.”²⁰⁶

This can lead to positive cultural exchanges and learning from each other’s good practices.²⁰⁷ The fact that there were third-country nationals of the same nationality in two different companies and in one there were issues and in the other not could suggest that sometimes the problems at work are not so much about cultural differences, but rather issues stemming from the human character.

²⁰⁴ Interview with SF.

²⁰⁵ See for example R Bennett, A Aston, and T Colquhoun, ‘Cross-Cultural Training: A Critical Step in Ensuring the Success of International Assignments’ (2000) 39(2-3) *Human Resource Management* 239; P Caligiuri, J Phillips, M Lazarova, I Tarique and P Bürgi, ‘The Theory of Met Expectations Applied to Expatriate Adjustment: The Role of Cross-Cultural Training’ (2001) 12(3) *International Journal of Human Resource Management* 357.

²⁰⁶ Interview with SG.

²⁰⁷ Interview with SG.

5.5.2. ICTs' Integration outside Work

ICTs thought that life in Slovakia was good and they were satisfied with their life, but even some of those, who lived there longer, did not feel integrated in the host society outside work, due to several reasons, even when they made efforts to integrate. The number one issue was the language barrier, which is an important facilitator of integration.²⁰⁸ Slovak legislation does not require knowledge of the Slovak language to work or reside in Slovakia, only for the citizenship. The provision of free language and orientation courses for adult migrants has been predicted in the 2014 Integration Policy, but thus far remains unaccomplished. The only international (non-governmental) organisation offering free courses of Slovak language was the IOM Migration Information Centre. It also runs socio-cultural orientation courses and employment counselling in Bratislava. Otherwise it is possible to learn the Slovak language mainly on a private basis. The ICTD does not oblige Slovakia to provide integration measures as migrants' integration is a national competence. However, it prevents Slovakia from using integration measures, such as the knowledge of the Slovak language or passing a civic test, as pre-entry requirements to control migration.

Some employers provided free Slovak language courses to ICTs and in case of one company also in-country orientation courses, which was very useful for ICTs²⁰⁹. One of the employers, however, noted that they stopped providing Slovak language course, because it was not attended.²¹⁰ This lack of motivation was influenced by several factors. ICTs did not need to know the Slovak language for their job, as the language of communication was English. Other reasons included the lack of time due to working long hours and the difficulty to learn Slovak language due to cultural distances.²¹¹ However, several ICTs acknowledged importance of knowing the Slovak language for life outside work, when interacting with the Slovak authorities and institutions (*social links*) and with nationals (*social bridges*):

²⁰⁸ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

²⁰⁹ Interviews with SG and SA.

²¹⁰ Interview with SG.

²¹¹ Interview with S7. By “cultural distance” between languages is meant the proximity of languages based on their similarity. For instance, it is easier for a migrant from Ukraine or Russia to learn the Slovak language due to all these languages being Slavic, rather than for a migrant from an Asian country, such as South Korea.

*“First thing is the language, even though we can speak in English and we can communicate with them in English. I think it is at the very low level. So, if I could speak the Slovak language, it would be better to enjoy life in here in general.”*²¹²

*“I have learned some Slovak, it’s not perfect, but just enough to go around with everyday life, I’m able to call anywhere and make appointments, and principally do not encounter any problems. [...] Language knowledge is very important in Slovakia. Before it was quite difficult, as people not always speak English in local supermarkets, hair salons, insurance companies, any other services.”*²¹³

Due to cultural differences and their small numbers, ICTs stuck together, had friends mainly from among their own nationals or other foreign nationals, for example through children going to the same international school.²¹⁴ Many ICTs, due to not knowing the Slovak language, were unable to find friends among Slovaks outside work and interact with institutions and organisations.

*“I have two American friends. There is one guy from Romania. Slovak friends are my colleagues; we go out for drinks together. It is not like I have a Slovak friend that is somebody that does not know my wife or people from work. It is very difficult to randomly meet Slovak people. This is what I miss here, because in the US people are very open, people I do not know. [...] And here if you start to talk to people, they are like, what are you doing. We went back to the US in June and July for 3.5-week trip. Wherever we went, I was having conversations with strangers. My wife was shocked and said I never see this part of you anymore. I said yes because people in Slovakia do not do that.”*²¹⁵

Negative attitudes of the Slovak nationals towards foreigners may have contributed to the lack of the *social bridges* between ICTs and Slovak nationals:

*“I have been yelled at by people on the bus, like “speak Slovak”. Just when I have a conversation with my wife or a friend in English. I reply in Slovak “I do speak Slovak”. They usually give me weird look. These are small things, but it’s obvious.”*²¹⁶

²¹² Interview with S3.

²¹³ Interview with S5.

²¹⁴ Interview with S3.

²¹⁵ Interviews with S2 and S8.

²¹⁶ Interview with S2.

However, how migrants were perceived by Slovaks depended on where in Slovakia they were based. In the capital, Bratislava, it was different compared to the rest of Slovakia:

“When the ICT is in Bratislava people look at him differently. Here in Trenčín, people still notice a Chinese or black person. Here the people still have tendency to differentiate little bit. [...] This is so difficult for them that Slovaks are so specific in that, they do not like very much to let foreigners amongst themselves, especially in these smaller cities. I do not want to say that we make them feel they are foreigners here, but Slovaks mostly say to themselves you are a foreigner, what do I have to do with you. It is sad, but I think that with time this will improve, but it will take a lot of time.”²¹⁷

Indeed, some of the ICTs, who lived in Slovakia longer, have observed a positive change in the Slovak society over years:

“The country itself is not yet international. The number of the foreigners here is low in comparison with the other countries I have been to. I can also compare when I was here first time in 2003, it has changed so much. People are becoming more open.”²¹⁸

Another major feature in the lives of ICTs and their families is their company. Sometimes ICTs have a little choice and say regarding the transfer. In this respect, how much choice is given to ICTs, as to whether or not they wish to transfer and under what conditions, seems to also depend on the culture of the country of the mother company:

“[...] Managerial structure in companies is similar to army structure. So, when the company sends ICT, he does not have much say in it. In theory, he has a choice to leave the company, if he disagrees. But it is not about sitting down together and discussing what his opinion about it is. They have a very strict regime in this. The Koreans live in it from childhood, they know it works like that. They are taught respect from childhood and refusal happens only in rare serious circumstances.”²¹⁹

²¹⁷ Interview with SC.

²¹⁸ Interview with S1.

²¹⁹ Interview with SG.

ICTs are expected to be very flexible and resourceful. Yet with the number of transfers growing in recent years²²⁰, many ICTs are first-time transferees and find the “*transfer culture*” and the high demands on them difficult to adjust to²²¹, especially if they have little choice:

*“Unfortunately, I was ordered by my company to leave Slovakia and establish a new branch of our company in [name of a country] at the beginning of the next year. I was very disappointed. My wife too. We got used to living here and now we have to move again.”*²²²

Several ICTs made efforts to integrate. For example, they tried to learn the Slovak language, even when staying for a shorter period, with differing success typically due to cultural distances.²²³ Few ICTs had poor knowledge of Slovak even after a long period of time.²²⁴ Some of them were put off by the negative attitudes of Slovak nationals.²²⁵ A small number of ICTs did not feel the need to integrate or it was not an issue that they did not feel integrated.²²⁶ This does not mean there should be no integration efforts on the side of the government. To the contrary, access to rights and welcoming society are the best ingredients for migrants to want to integrate.²²⁷

Several other ICTs commented that they wished they had more time to have the opportunity to integrate.²²⁸ Temporary migrants tend to work very long hours compared to long-term migrants.²²⁹ Then if ICTs had a family, it was their priority to spend quality time with them.²³⁰ This diminished their opportunities to interact with the host society, which in turn prevented their chances to integrate. Another related issue was that some ICTs were separated from the rest of the Slovak society. This was either because their

²²⁰ OECD, *The Global Competition for Talent: Mobility of the Highly Skilled* (OECD 2008).

²²¹ B Pokharel, ‘Triumph over Failure of Expatriate in an International Assignment from the International Human Resource Management Perspective’ (2016) 11(5) *International Journal of Business and Management* 310, 311.

²²² Interview with S7.

²²³ Interviews with S1, S2, S5 and S7.

²²⁴ Interviews with S1 and S2.

²²⁵ Interviews with S2 and S8.

²²⁶ Interviews with S6 and S8.

²²⁷ T Huddleston, *Time for Europe to Get the Migrant Integration Right* (CoE 2016).

²²⁸ Interviews with S3, S4 and S9.

²²⁹ T Torresi and V Ottonelli, ‘Taking Migrants’ Projects Seriously: Temporary Migration, Integration, and Exit Options’ (CARIM Analytic and Synthetic Notes AS 2011/34, European University Institute 2011). Arguably, it can be either because of the type of job they have, and/or also the fact that they wish to capitalise on their investment into migration.

²³⁰ Interview with S3.

employer rented a whole building to house the expat community, or because most of them lived in certain part of the city, due to the existence of international schools²³¹, or because the Slovak government built luxurious villas in a village, where only nationals from this one particular country lived²³². On the one hand, the support of the employer made ICTs' life easier by enabling their smooth transfer, or ensuring access of children to free education and of family members to healthcare, and thus contributed to their better integration. On the other hand, this employer-organised pattern of migration prevented ICTs' interaction with the society and kept them separated, which reinforced their exclusion and marginalisation in the host society.²³³

5.6. Future of ICTs and their Families

The end of the intra-corporate transfer constitutes another stage in ICTs' and their families' migration and integration process. Their future can be uncertain, which can contribute to their vulnerability in the host country. For example, their departure from a host country can be very abrupt due to companies change of plans²³⁴, or when the permit is unexpectedly not renewed²³⁵. Some other issues could include future career prospects, children's education, or re-adjustments to the life in the country of origin.²³⁶

Many ICTs saw their transfer positively as a catalyst for their future career development.²³⁷ Some of them had it covered in their contract with the mother company that they could return to their previous job, provided the job was still available, and if not, the company would try to find them a similar position.²³⁸ If the position was not available immediately, ICTs had to take into account that in the meantime they would be without an income.²³⁹

However, the transfer could slow down or even stop the career progression, as there is the management need in the host country, but the mother companies need to function

²³¹ Interviews with SC and S3.

²³² Interview with SG.

²³³ E Caro, L Berntsen, N Lillie, and I Wagner, 'Posted Migration and Segregation in the European Construction Sector' (2015) 41(10) *Journal of Ethnic and Migration Studies* 1600.

²³⁴ Interview with S7.

²³⁵ Interview with SA.

²³⁶ AS Hyder and M Lövblad, 'The Repatriation Process – A Realistic Approach' (2007) 12(3) *Career Development International* 264.

²³⁷ Interview with SB.

²³⁸ Interviews with SA and SC.

²³⁹ Interview with SC.

even without the ICTs.²⁴⁰ It could happen that the ICT would have no job to return to, even though the place was guaranteed in the contract and the company should be looking for other jobs for them.²⁴¹ Transfer could result in losing seniority too.²⁴²

The children of ICTs after the return to their country usually continued education without any issues, after the Slovak Ministry of Education provided confirmation about them attending education in Slovakia. However, sometimes there could be a problem with children, who were educated from a very young age in English, but not in their native language.²⁴³

5.7. Conclusion

Third-country national ICTs and their family members were not fully socio-economically integrated in Slovakia. The situation at domestic level mirrored the gaps in international and CoE instruments.²⁴⁴ There were several reasons for this. For example, the Slovak integration policy did not target temporary migrants and the approach to integration was an assimilation rather than mutual accommodating of each other by migrants and the host society, which was rather indifferent and even hostile towards ICTs.

In addition, being a temporary third-country national meant acquiring a lesser legal status compared to EU nationals in a similar situation, because better inclusion was not formally or practically available. This condition of inequality made ICTs' and their families' integration problematic. Firstly, extremely burdensome and lengthy permit application procedure to access the territory hindered ICTs' access to the Slovak labour market and their ability to bring their family.

Secondly, ICTs did not enjoy security of residence, which would be crucial for their better integration. Formally, ICTs were not excluded from access to permanent residence, but obtaining it in practice would not be straightforward due to restrictive and discretionary procedures.

Thirdly, ICTs were less economically integrated than EU nationals, because of the requirements of work and residence permits, labour market tests and being tied to only one employer. However, ICTs spouses were not integrated in the Slovak labour market at all, facing several barriers, which made them entirely dependent on ICTs.

²⁴⁰ A Webb, 'The Expatriate Experience: Implications for Career Success' (1996) 1(5) Career Development International 38.

²⁴¹ Interview with SA.

²⁴² Interview with S8.

²⁴³ Interview with SC.

²⁴⁴ See (n 1) and (n 2).

Fourthly, ICTs enjoyed social security rights on paper, but not in practice. Formal access to social insurance benefits, such as maternity, unemployment and State pension, meant that ICTs, as workers, had to contribute towards the insurance, but their access to, or enjoyment of, these benefits could be prevented by the temporariness of their stay. ICTs therefore became net payers of contributions to mandatory insurance, without the possibility to draw benefits. ICTs' limited right of access to family benefits was not exercised as they were unaware, they had such a right.

Fifthly, regarding family reunification, policies in Slovakia were “*a mix of EU minimum standards and little national attention, but the EU standards were largely behind Slovakia's few areas of strength in integration policy.*”²⁴⁵ However, this “area of strength” on family reunification on paper did not demonstrate the government's willingness to act on integration. According to the 2015 MIPEX results, the legal framework in Slovakia was “*halfway favourable*” for the reunification and integration of third-country national families. Although Slovakia did not apply any integration requirements, other obstacles to family integration emerged: limited access to employment, education and social benefits.²⁴⁶

There were non-legal obstacles too. For ICTs and their families, the main barrier in enjoying access to certain rights (employment, education, healthcare), and to interaction with the host society, was the language. This meant very little socio-cultural integration outside work for ICTs. Their spouse's circumstances were even worse, when they lacked the Slovak and even English language skills. Better socio-cultural integration was observed in respondents whose culture and language were closer to that of the Slovak culture and language, or in those who had prospect of longer residence in Slovakia. Others, even when making efforts, struggled to integrate. For instance, to learn the Slovak language was very difficult due to cultural distance, working long hours and having a family. Therefore, they remained “outside” the host society, which they regretted.

Finally, ICTs' integration was also negatively influenced by the employer-arranged pattern of migration mainly in two ways. Sometimes the ICTs' freedom of choice to accept international assignment was questionable, which added to their vulnerability.

²⁴⁵ T Huddleston, ‘Briefing 2: Family Reunion Policies in Central Europe’ (Migration to the Centre, 17 May 2013) <<http://migrationtothecentre.migrationonline.cz/en/briefing-2-family-reunion-policies-in-central-europe>> accessed on 30 March 2016.

²⁴⁶ MIPEX 2015 (n 15).

Dependence on employers could lead to isolation from, and almost no interaction with, the host society outside work which, along with the language barrier, prevented any further socio-cultural integration.

The findings in this chapter provide basis for a comparative exercise of the Slovak and English domestic legislation, policies and practices with the provisions of the EU ICTD, to be conducted in chapter 7.

6. THE CASE OF ENGLAND

6.1. Introduction

The review of international and CoE instruments in chapter 3 revealed gaps in rights protection of temporary migrant workers, such as ICTs¹, and in the UK's commitments to these instruments². The UK did not ratify most of the ILO and UN migrant-specific instruments, but ratified general human rights instruments, such as the UN ICESCR. However, the fact that the UK applies dualism to the implementation of international law and the UK official position on the socio-economic rights in the UN ICESCR need to be borne in mind.³ One of the few international or CoE human rights instruments given (partly) direct effect in national law is the ECHR via the 1998 HRA. In addition, unlike Slovakia, the UK is not required to transpose EU secondary legislation on labour migration of third-country nationals due to the opt-out option.⁴ The UK has thus far opted out of all the EU directives on labour migration of third-country nationals, including the ICTD.⁵ Thus, during the period of this research, for most part ICTs' rights in the UK derived and continue to derive, from the national law, policy and practices, namely from the Tier 2 ICT route of the Points Based System (PBS)⁶, and other laws.

The aim of this chapter is twofold: to measure ICTs' integration through access to rights, which is easier to regulate through law, and to measure ICTs' social integration, which is harder to regulate by legislation. Regarding the first aim, a review of the national law governing ICTs' access to rights, such as entry to the territory and security of residence, employment, terms and conditions of employment, healthcare, social security, education, and family reunification, is conducted in the light of ICTs' practical experiences with this domestic law, policy and practice. The level of ICTs' access to these rights is compared to that enjoyed by EU nationals from the perspective of equality and integration. Access

¹ These regimes concentrate on the protection of permanent workers. ICTs are excluded from ILO Conventions No. 97 and 143 and the UN ICRMW. In addition, the UN ICRMW significantly limits ICTs' access to certain economic and social rights. The UN ICESCR does not cover migrant-specific issues, such as security of residence and family reunification. The ECHR does not cover economic and social rights and the Charter functions on the basis of reciprocity.

² See Figure 1 in chapter 3.

³ In summary, the UK considers the UN ICESCR rights as non-justiciable at the domestic level, but sees them as some sort of aspirations and goals rather than rights. See chapter 3, section 3.5.2.

⁴ See chapter 1, section 1.4.

⁵ For the list of UK's opt-outs regarding the EU law in asylum and migration matters see <<http://www.publications.parliament.uk/pa/ld201213/ldselect/lddeucom/91/9116.htm>> accessed on 25 April 2016.

⁶ As in force in England and Wales at the time of the interviews in October 2014, unless otherwise stated.

to each right corresponds to one of the ICTs' Indicators of Integration through which ICTs' level of integration is measured in this chapter.⁷ The "ideal" level of integration in the EU is enjoyed by EU nationals, and long-term resident third-country nationals, but not always by ICTs.⁸ Thus, the goal is to see how close the treatment of ICTs under English legislation is to that enjoyed by EU nationals, and what differences in treatment there are between permanent and temporary migrants.

Regarding the second aim, the level of ICTs' (and their families') social integration is examined at work and outside work, using indicators of social integration⁹, bearing in mind the nationals' attitudes towards migrants and migrants own perceptions of integration.

The rest of this chapter is divided into six sections. Section 6.2. briefly outlines the background to the UK migration and integration law and policy and attitudes of nationals towards migrants. Section 6.3. sets out the pre-departure situation of ICTs and their families. In section 6.4., the domestic law governing access to individual rights is outlined, which is immediately followed by a discussion of ICTs' and their families' experience with such laws, policies or practices. Section 6.5. covers social integration of ICTs and their families at work and within the host society. Section 6.6. provides some insights into another stage in the integration of ICTs and their families – at the end of the transfer.

6.2. Background to the UK Migration and Integration Law and Policy

The UK was a country of immigration since 1950s. The 1948 UK Citizenship Act spurred an influx of immigrants from the Commonwealth countries. Since then the immigration grew. To tackle the issue of discrimination and growing cultural diversity, the UK government adopted multiculturalism and the 1976 Race Relations Act as an integration policy. The 1997 Labour Government made strong commitments to multiculturalism too.¹⁰ However, riots¹¹ and terrorist attacks¹² undermined the UK multicultural ideals.¹³ There was some shift from multiculturalism to the idea of

⁷ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

⁸ See chapter 1, section 1.8. for the definition of the "ideal" integration.

⁹ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

¹⁰ L Back, M Keith, A Khan, K Shukra, and J Solomos, 'New Labour's White Heart: Politics, Multiculturalism and the Return of Assimilation' (2002) 73(4) *The Political Quarterly* 445.

¹¹ In 2001 riots in Northern towns of Bradford, Harehills and Oldham; in 2005 riots in Birmingham.

¹² In London on 7.7.2005, 22.3. 2017 and 3.6.2017, and in Manchester on 22.5.2017.

¹³ C Bertossi, 'French and British Models of Integration: Public Philosophies, Policies and State Institutions' (University of Oxford, ESRC Centre on Migration, Policy and Society, Working Paper No. 46,

community cohesion and civic integration¹⁴, to address the worries that multiculturalism brought about social divides and destroyed community cohesion. In 2011, the then Prime Minister David Cameron even declared that “*state multiculturalism has failed*”.¹⁵ The society’s views on migration were mixed. Any anti-immigration sentiments need to also be seen in the light of the aftermath of the 2008 economic and social crisis and recent refugee crisis.

Since 2000, the UK government has sponsored an approach to managed migration which has been developed as a Points Based System (PBS) for those coming to work and study to the UK from outside the EU.¹⁶ Since 2010, it pursued a policy of decreasing immigration of third-country nationals¹⁷, as the immigration from the EU could not be controlled. How this affected ICTs is discussed below.¹⁸

National comprehensive policy on migrants’ integration is non-existent¹⁹, though there are integration policies relating to specific categories of migrants such as refugees²⁰, or those applying for settlement and citizenship²¹. Policies exist that have included migrants within their remit: on discrimination²² and on community cohesion²³. There is also an important area of service provision (English language tuition (ESOL), healthcare and education), where some targeted provision has been made to meet migrants’ particular

2007) 4 <https://www.compas.ox.ac.uk/media/WP-2007-046-Bertossi_French_British_Integration.pdf> accessed on 12 July 2016.

¹⁴ S Mullally, ‘Retreat from Multiculturalism: Community Cohesion, Civic Integration and the Disciplinary Politics of Gender’ (2013) 9(3) (Special Issue) *International Journal of Law in Context* 411.

¹⁵ BBC News Online, “State multiculturalism has failed, says David Cameron” (5 February 2011) <<http://www.bbc.co.uk/news/uk-politics-12371994>> accessed on 16 February 2016.

¹⁶ E Kofman, S Lukes, A D’Angelo, and N Montagna, *The Equality Implications of Being a Migrant in Britain* (Equality and Human Rights Commission Research Report 19, 2009).

¹⁷ Full Fact, ‘UK Migration Policy since the 2010 General Election’ (28 April 2015) <<https://fullfact.org/immigration/uk-migration-policy-2010-general-election/>> accessed on 25 April 2017.

¹⁸ The Government commissioned the Migration Advisory Committee (MAC) to review the Tier 2 with a view to find ways how to decrease a number of Tier 2 migrants and streamline this route. MAC published its Recommendations in December 2015. See MAC, ‘Review of Tier 2: Balancing Migrant Selectivity, Investment in Skills and Impacts on UK Productivity and Competitiveness’ (MAC 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf> accessed on 15 March 2016.

¹⁹ S Spencer, ‘Policy Primer: Integration’ (University of Oxford, The Migration Observatory 2011) 3 <<http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/PolicyPrimer-Integration.pdf>> accessed on 15 March 2016; S Saggat and W Somerville, *Building a British Model of Integration in an Era of Immigration: Policy Lessons for Government* (Migration Policy Institute 2012).

²⁰ Home Office. ‘Integration Matters: A National Strategy for Refugee Integration’ (Home Office 2005).

²¹ B Ryan, ‘Integration Rules in Immigration and Nationality Law: The Case of the United Kingdom’ (Report for the EIF project ‘Integration and Naturalisation Tests: The New Way to European Citizenship’, Centre for Migration Law 2010).

²² The Equality Act 2010.

²³ Home Office, ‘Community Cohesion: A Report of the Independent Review Team Chaired by Ted Cattle’ (Home Office 2001); ‘Building Cohesive Communities: Report of the Ministerial Group on Public Order and Community Cohesion (Home Office 2001).

needs, such as interpreting services.²⁴ These positive steps towards improving integration, instead of being stepped up, have rather been threatened by the spending cuts.²⁵ Furthermore, integration measures targeting new-coming or temporary migrants are missing.²⁶

Recently, the UK fell five places in the Migrant Integration Policy Index (MIPEX) from 10th place in 2010 to 15th place in 2015.²⁷ The 2015 MIPEX concluded that, although the UK was still performing well in the areas of migrant integration in the workplace and schools, concerns were raised about cuts on language support for employed migrants (ESOL) and funding for schools with children that do not speak English as a first language. MIPEX was also concerned about the introduction of the immigration health surcharge (IHS) to be payable by the third-country nationals, who are not permanent residents. The following review demonstrates what this means in terms of individual pieces of legislation, policies and practices. Before that, the ICTs' situation during pre-departure is briefly outlined.

6.3. ICTs during the Pre-Departure Stage

ICTs worried how their spouse²⁸ or the children²⁹ would cope with the new environment. Not knowing what to expect they struggled upon arrival in England.³⁰ Many ICTs voluntarily accepted the transfer offer and numerous companies engaged in negotiations with ICTs about whether they wished to transfer and conditions of the transfer.³¹ However, not all ICTs had the same bargaining power. For illustration, one ICT described experience of her friend on the same graduate training programme:

“They told her, if you want to go to the UK, you have to accept our conditions, where you will be working, even though she could cover another department. But they told her that was their condition, otherwise we are not taking you. She had lot of problems. [...] she was afraid to ask for anything else because it was for visa, because they gave her this

²⁴ Spencer (n 19) 2.

²⁵ S Katwala, J Rutter, and S Ballinger, ‘What Next after Brexit?: Immigration and Integration in Post-Referendum Britain’ (British Future 2016) 47 <<http://www.barrowcadbury.org.uk/wp-content/uploads/2016/08/British-Future-August-2016.pdf>> accessed on 16 September 2016.

²⁶ Spencer (n 19) 5.

²⁷ Migrant Integration Policy Index (MIPEX) 2015 Study on the United Kingdom <<http://www.mipex.eu/united-kingdom>> accessed on 14 March 2016.

²⁸ Interview with E4.

²⁹ Interview with E17.

³⁰ Interviews with E12 and E1.

³¹ Interview with ED and EC.

*amazing opportunity, been so kind to her to send her to the UK, so she thought she has to do whatever they say. Then it was resolved. [...] But there was this fear. I personally did not feel it, but on her I could see she feared that if she will not do whatever they say they would revoke the visa. You could definitely see she was scared.”*³²

This demonstrates how some companies can use their power, in this unregulated sector, to achieve their own economic objectives without having due regard for the well-being of their employees. One employer described her previous experiences in other companies. For instance, American companies offered transfers on company’s terms, not negotiable, but ICTs could refuse without any consequences. Other (especially Asian) companies “ordered” the transfer, and employees obeyed because it was not in their culture to oppose. If in an unlikely event ICTs refused international assignment, there could be consequences, for example, they would see themselves “*falling from the top into lower level*”, which the respondent considered as an “*indirect forcing*”.³³ Whether it is the companies’ culture or not, or whether employees are used to such practices, pressuring employees in this way is not acceptable, because it goes directly against their human dignity.

6.4. Law and Policy regarding Third-Country National ICTs

In this section, legislation governing access by third-country nationals to the individual rights is analysed in the light of ICTs’ practical experiences with such legislation. Prior to this, basic contours of the principles of equality and non-discrimination as applied in the domestic legislation are outlined, as they inform the access to individual rights by third-country nationals.

6.4.1. Principle of Equality and Non-discrimination

In the absence of a UK codified constitution, the principles of equality and non-discrimination are set out in the primary legislation, namely the 2010 Equality Act (EA), which affects all aspects of life in the UK. This Act is an implementation of the EU non-discrimination directives. The following characteristics are protected under the EA: age, disability; gender reassignment; marriage and civil partnership; pregnancy and maternity;

³² Interview with E5.

³³ Interview with ED.

race; religion or belief; sex; and sexual orientation. Race includes colour, nationality and ethnic or national origins. Immigration status is not one of the protected characteristic or included within the heading “nationality”.³⁴ Hence the Act permits discrimination between nationals and non-nationals in relation to access to rights. EU nationals are an exception under EU law. It has been observed that there has been lack of satisfactory Equality Impact Assessment³⁵ of the different Tiers of the PBS, covering skilled and temporary migrants, in respect of these protected characteristics.³⁶ The following sections outline the impact of the Tier 2 on equality of treatment and rights protection of ICTs in comparison with EU nationals, who for now enjoy equality of treatment with the UK nationals.

6.4.2. Right of Entry and Residence

Tier 2 ICT route enables MNCs to transfer their existing employees from outside the EU and EEA to their UK branch for training purposes or to fill a specific vacancy that cannot be filled by a British or EEA worker.³⁷ If third-country nationals wish to come to England as ICTs, they must have a licensed sponsor (a company)³⁸, who assigned them a certificate of sponsorship, before they can apply to enter and reside in England, and pass a labour market test unless one of the exceptions applies.³⁹ In contrast, EU nationals have free access to the territory. At the time of research, the Tier 2 ICT route was composed of four sub-categories: Long-Term Staff, Short-Term Staff, Graduate Trainees and Skills Transfer.⁴⁰ To be able to qualify for the permit, ICTs must have met all requirements set out in the Immigration Rules, including scoring 60 points⁴¹: 30 points for certificate of sponsorship, 20 for appropriate salary and allowances⁴², and 10 for having adequate maintenance funds in the amount of £945. The latter is necessary, because ICTs do not have access to public funds.⁴³ ICTs needed to provide evidence of either having the relevant amount in personal savings, or the sponsor could confirm that they would

³⁴ UKSC, *Taiwo v Olaigbe (and another) and Onu v Akwivu (and another)* [2016] UKSC 31.

³⁵ An Equality Impact Assessment is a process designed to ensure that a policy, project or scheme does not discriminate against any disadvantaged or vulnerable people. In relation to immigration policy such assessment would be conducted either by the Home Office or the UK Visa and Immigration.

³⁶ Kofman and others (n 16), viii.

³⁷ Immigration Rules, Paragraph 245G.

³⁸ All employers, who want to act as a sponsor need to obtain a licence.

³⁹ For example, their position appears in a Shortage Occupation list.

⁴⁰ Immigration Rules, Paragraph 245G(i)-(iv), respectively.

⁴¹ Immigration Rules, Paragraph 245GB.

⁴² For example, appropriate salary and allowances for the Long-Term Staff were at least £41, 000, and for Short-Term Staff, Graduate Trainee and Skills Transfer at least £24, 500.

⁴³ Immigration Rules, Paragraph 245GC(d)(i).

maintain and accommodate ICT to that amount until the end of first month of employment.⁴⁴ No proof of English language skills was required from ICTs and their families.⁴⁵ Applications from abroad could be submitted online, unless such facility was not available in their third country⁴⁶, or from inside the country in limited cases⁴⁷. Permits would be typically issued within three weeks, but this could differ from country to country.⁴⁸ ICTs from certain third countries would need to pass a tuberculosis test.⁴⁹ Part of the permit application procedure would also be enrolling ICTs' and their families' fingerprints, facial image and signature (biometric information) with the UK Visa and Immigration (UKVI), which would then be stored on their biometric residence permit. Fees for permits could range from several hundreds to thousands of pounds per person.⁵⁰

The main complaints raised by the ICTs and their employers regarding their arrival in the England included the complexity and strictness of the Immigration Rules, and costs related to the permit application process and family reunification. Documents and dealing with national authorities constituted less of an issue compared to Slovakia.

6.4.2.1. Complexity, Strictness and Costs of the Permits Application Procedure

The fact that Immigration Rules change constantly to restrict immigration, results in a very complex PBS.⁵¹ This complexity was also condemned by the Court of Appeal in several judgments.⁵² In this respect, the experiences of ICTs and their employers with obtaining sponsor licence and ICT permits varied depending on whether or not they

⁴⁴ UKVI, 'Tier 2 of the Points Based System – Policy Guidance' (Version 11/15) 41-44 <<https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-2-worker>> accessed on 3 March 2016.

⁴⁵ Immigration Rules, Appendix B, Paragraph 1(iii). See also Tier 2 Policy Guidance (Version 11/15) (n 44) 34.

⁴⁶ UKVI, 'Guide to Supporting Documents: Tier 2 (Intra Company Transfer)' (Version 11/2014) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371116/Supporting_Document_T2_ICT.pdf> accessed on 3 March 2016.

⁴⁷ When extending existing Tier 2 (ICT) permit or switching into the Tier 2 (ICT Long-Term Staff) permit.

⁴⁸ Third-country nationals can check the guide processing times to find out how long getting a visa might take in their country at <<https://www.gov.uk/visa-processing-times>>.

⁴⁹ For a full list of countries see <<https://www.gov.uk/tb-test-visa/countries-where-you-need-a-tb-test-to-enter-the-uk>> accessed on 3 March 2016.

⁵⁰ For a full range of fees see <<https://www.gov.uk/tier-2-intracompany-transfer-worker-visa>> accessed on 9 March 2016.

⁵¹ A Murray, *Britain's Points Based Migration System* (CentreForum 2011).

⁵² C Yeo, 'Court of Appeal Condemns the Complexity of Points Based System' (Free Movement blog, 16 March 2015) <<https://www.freemovement.org.uk/court-of-appeal-condemns-complexity-of-points-based-system/>> accessed on 25 April 2016.

enlisted help of lawyers. Where lawyers were engaged, no major issues were reported by ICTs:

*“Company helped a lot to apply for visa. It was not difficult to obtain visa. The whole process was fine. There were no problems, all my documents were ok and recognised. The process took about 1 month. I have sent the application to the embassy and it took 1 week to receive the visa.”*⁵³

However, where lawyers were not involved, the permit application process was described as *“a lengthy and complicated process both for the company and the individual seeking the visa”*⁵⁴ or as a process that was *“clear to understand, but certainly not easy to follow”*⁵⁵. In this respect, it was reported that:

*“Besides the quantity of paperwork (really too much) and consequentially ticking all boxes, no difficulty in following the application process [...] The most difficult part is to keep up to date with the regulations changes.”*⁵⁶

This demanded the use of lawyers, which, added to cost of the whole process, which could constitute a challenge for some smaller companies, who also wished to benefit from talent coming from abroad:

*“[...] we did not use third party. In the end, we thought it would have been better, but you know they are expensive and we like to do things and learn ourselves. To get the licence in place took about 4-5 months.”*⁵⁷

Other companies initially attempted to apply for sponsor licence and permits themselves, but gave up:

“It is really complex. Prohibitively complex. We very quickly realised that it was going to save a lot of time and money to get a good immigration lawyer. So, he oversaw that process. It cost a couple of thousands of pounds. But it was still worth it. I mean I have a

⁵³ Interview with E1.

⁵⁴ Interview with EB.

⁵⁵ Interview with EA.

⁵⁶ Interview with EA.

⁵⁷ Interview with E12.

*law degree, and I still could not understand half of this stuff. The process was smooth from that point, although there were delays.*⁵⁸

These delays were caused due to the time it took for the company to obtain the sponsor licence, which on average took around 6 months, which was considered “*too long*”⁵⁹. Only then the company could apply for the Tier 2 ICT permits. In the meantime, ICTs were on business visa, which prohibited them from working, but these ICTs were working – doing business and setting up a company.⁶⁰ In addition, ICTs on a business visa were obliged to go back to their country of origin⁶¹ to apply for Tier 2 ICT permit, which added to the costs and delays.⁶²

On average, if there were no issues, it took around one month to receive the ICT permit, which was determined to be “*reasonable*” or even “*fast*”.⁶³ The ICT permit could be issued even quicker, where a costly fast-track options was used, available only to those already present in England. This fast-track option was welcomed, because the transfer was only for a limited period (1-5 years), thus it was “*reasonable*” for the companies to pay more.⁶⁴

Nevertheless, the process could take a long time and be more difficult in case of a company, which did not have a sponsor licence, and where the ICT had to do most of the work himself.⁶⁵ In such an instance, the main complaint was that to understand what was required to successfully apply for a sponsor licence and ICT permit, one had to read an abundance of guidance. In addition, the government website (gov.uk) was less helpful than a simple google search.⁶⁶

Despite these initial obstacles, it was reported, that once the system was set up within the company, it was “*easy*” to obtain subsequent permits, for example, for the ICTs’ spouse.⁶⁷ In addition, if the company successfully applied for permits the first few times,

⁵⁸ Interview with E11.

⁵⁹ Interviews with E11 and E12.

⁶⁰ Interview with ED and E11.

⁶¹ For instance, Australia or Republic of South Korea.

⁶² Interviews with E2 and E11.

⁶³ Interviews with E1, E5 and E8.

⁶⁴ Interviews with E2 and E9.

⁶⁵ Interviews with E12 and E4.

⁶⁶ Interviews with E4 and EB.

⁶⁷ Interview with E4.

then it was even easier to obtain more approvals in the future.⁶⁸ That said, the following quote aptly describes the complexity of the Immigration Rules that could lead to legal uncertainty and conflicting interpretations, and thus to weakening of the protection of ICTs:

*“What has been interesting with our lawyers was that they give conflicting advice sometimes. I think it is because the laws are not very clear. [...] Then from this perspective it was confusing. So, if the experts do not know, what then.”*⁶⁹

6.4.2.2. Documents

Regarding documents necessary to support the permit application, the main complaint was that *“a mass of detailed specific supporting original paperwork was required”*.⁷⁰ Only a small number of respondents complained of having issues with their documents, such as bank statements and payslips, which significantly delayed the transfer:

“It was a pain because one of the requirements for applying for visa is the bank statement, all my previous transactions in the bank. The problem was they needed to be in English. The bank I used to be with, the China Bank, they just had a statement in Chinese. I spent a long time talking to them until they issued me a proper statement in English. They could not change for me past statements, they could only do that with the new ones. I told them to do it and I waited until I accumulated 6 months of statements and only then I submitted the documents to the border agency. [...] My company is a big company, they did not have the payslips for me because it is not a normal thing for my company. So, I needed to ask a quite senior management to issue me with payslips. The process was that I did the payslips by myself and then they endorsed them. This was difficult, because if I remember correctly I needed to create payslips for 12 months. Also, my salary was different each month or they changed tax. So, I needed to work on it for each month. [...] So, the application went back and forth few times. So eventually I did it, but it was a pain, because, for example, they were not happy with the format of my payslips, so I needed to change them again. So, as I said 4-5 month the whole process.

⁶⁸ Interview with ED.

⁶⁹ Interview with EC.

⁷⁰ Interviews with E8 and EC.

Then I obtained visa for 3 years. So, I actually helped the company to set up the system, to do all this stuff.”⁷¹

This demonstrates how important it is for the company to provide support to ICTs to improve their experience during the permit application and relocation stage of the transfer. Leaving them on their own can delay their transfer and cause of lot of difficulties to ICTs.

6.4.2.3. Dealing with Institutions

As most companies used lawyers to apply for ICTs’ permits, only a handful of them had direct dealings with the authorities, such as the UKVI, and ICTs even less so. One employer described the handling of the situation by the UKVI, when one of their ICTs travelled to France on business and had her passport stolen and was not allowed to return to England:

“The [UK] authorities put her on temporary visa that she was not permitted to work. We had a visa on file that she was permitted to work. First of all, there is a mistake by the [UKVI] and the immigration that they gave her one that says you are not allowed to work and the one we have that we can sponsor her. When she returned to the UK we were not sure whether this superseded the other one and our lawyers did not know either. We sent her home because we did not want to do anything illegal. It took us 8 days to investigate whether she was able to come to work or not. No one knew whether the visa superseded the other. The outcome was that the original visa superseded the new one. I just think what a shame they made a mistake like that. I would expect that when they would check their system surely they would see that she is working for our company, but they did not.”⁷²

No negative experiences were reported, when ICTs or their families attended hospitals or when they dealt with the police. In fact, the opposite was experienced in England:

“[Third country] doctors and police treat minorities differently. But here I do not feel any different. [...] a very good thing is that these doctors treat everyone the same:

⁷¹ Interview with E4.

⁷² Interview with EC.

students, legal/illegal immigrants, which is a beauty of being in England. They do not discriminate others, which we as [third country nationality] have to learn. The police the same. Somebody was trying to break into our house. The window was pushed. I called the police to have a look. [...] they were very kind they checked my house and neighbours as well to inform them. They have seen my English is not as good as British, but they were patient with me, sit down, write with me. So, I am happy as you can see.”⁷³

Such positive experience could serve as examples of good practices for countries, which are new to immigration, such as Slovakia, where public authorities and institutions do not yet have processes in place to accommodate specific migrants’ needs.

6.4.2.4. Permit Application Process for Family Members

The ICT’s family members could apply to join the ICT permit holder, applying online for a permit from abroad as dependants.⁷⁴ They also have to obtain the Biometric Residence Permit and pass the labour market test. Moreover, they need to prove sufficient maintenance funds (£630 per dependant) that could be possessed either by ICTs or their dependants, because they could not have recourse to public funds.⁷⁵ There would be no requirement to comply with pre or post-entry integration conditions (such as the knowledge of English language or Life in the UK Test) for dependants of Tier 2 ICTs, unless they applied for indefinite leave to remain.⁷⁶ In comparison, family members of EU nationals would not need to obtain any permits.

Whether to accept the transfer offer or not was one of the most difficult decisions for many families to make, as spouses would have to abandon their own career or business in order to follow the ICT.⁷⁷ Being able to bring family was often the pre-requisite for accepting transfer:

“[...] looking at our finance manager it was a very big decision for him to bring all his family here and obviously, he would not have accepted, unless the whole family would

⁷³ Interview with E2, but also with E9.

⁷⁴ UKVI, ‘Points Based System (Dependant) – Policy Guidance’ (Version 11/2015) 5 <<https://www.gov.uk/government/publications/guidance-for-dependants-of-uk-visa-applicants-tiers-1-2-4-5>> accessed on 3 March 2016.

⁷⁵ Immigration Rules, Paragraph 319D(b)(i).

⁷⁶ Immigration Rules, Paragraph 319E(g).

⁷⁷ Interview with E1.

come along and that is why having a policy that support that is very important. It is their dependents you have to look after, it is simple as that [...].”⁷⁸

It was reported that the permit application process for family members was “*relatively smooth*”, especially where the companies’ support was received.⁷⁹ However, where the company would not cover the cost of the permits and relocation for family members, this could be very costly for ICTs and delay their family reunification too:

“[...] So far, the company supported me in that with the papers, but the cost of that - moving them over here - I am going to cover that and flights. There is a legal requirement that the company have to guarantee 1-month maintenance for them and the company provided the document that they guarantee they will.”⁸⁰

However, as this ICT was not married when his certificate of sponsorship was issued, his company would only support him. If he was married, the company would fully support his family too.⁸¹ For this ICT, this company policy meant that he had to work for over a year to save enough money to be able to bring his family, which delayed their family reunification. Moreover, his family had to pass the tuberculosis test:

“Right now, my family are not able to move to the next step because of the strict medical tests for TB. So, there is one medical clinic that was contracted and my wife and my little kids had to wait for 2 months to get that sorted out. I guess that’s the only stumbling block right now. I paid for the test myself.”⁸²

This demonstrates how the strict national legislation combined with this company’s family unfriendly policies could negatively impact the life and rights protection of ICTs and their families. Therefore, having favourable conditions for family reunification in the national legislation and family-oriented company policies in place could significantly improve their experience.⁸³

⁷⁸ Interview with ED.

⁷⁹ Interviews with E2 and E4.

⁸⁰ Interview with E15.

⁸¹ The of nature is this policy is further analysed in chapter 7.

⁸² Interview with E15.

⁸³ ILC, ‘Report III(1B): Migrant Workers’ (87th Session, Geneva 1999) [470] <<http://www.ilo.org/public/english/standards/realm/ilc/ilc87/r3-1b6.htm>>; CoE, Committee of Ministers Resolution RM/Res(78)33, on the reunion of families of migrant workers in Council of Europe member

6.4.3. Security of Residence

Under the Tier 2 ICT route most third-country national ICTs were treated as temporary workers, who did not qualify for permanent residence, whereas EU nationals could, for now, obtain permanent residence without any formalities. The maximum length of ICTs' stay was determined by the sub-category.⁸⁴ The possibility to extend residence varied depending on under which Immigration Rules the initial application was made. For instance, ICTs, who applied under the Rules in force until 5 April 2010, would be able to extend their stay beyond five years.⁸⁵ ICTs arriving under the Immigration Rules applicable until 5 April 2011 could apply for settlement after 10 years.⁸⁶ However, ICTs arriving on or after 6 April 2011 would not be allowed to apply for settlement at all. They could stay only for a maximum of five years. Moreover, 12 months cooling off period applies before a new application for an ICT permit can be submitted, with some limited exceptions.⁸⁷ The rules on switching between various ICT sub-categories or even tiers of the PBS are extremely complicated and restrictive. Immigration Rules are designed to curtail ICTs' ability to remain in England, either as ICTs or under some other permit, and thus obtain more secure residence status, more closely resembling that enjoyed by EU nationals. These rules are the result of the Government's efforts to limit the number of third-country nationals.

In this respect, the experience of one ICT demonstrates how difficult it was to satisfy the Immigration Rules to be able to stay in England.⁸⁸ She was in England as a student for many years. Then she was offered a place on a graduate training programme in a company in England, but because she could not stay under the Immigration Rules, she had to spend the first nine months of her training outside England. After spending some time abroad, she could re-apply to come back and finish her training. At the end of her training she found a position within the same branch in England. However, from the Tier

states (adopted on 8 June 1978 at the 289th meeting of the Ministers' Deputies) and Recommendation CM/Rec(2002)4, on the legal status of persons admitted for family reunification (adopted on 26 March 2000 at the 790th meeting of the Ministers' Deputies). See also R Cholewinski, 'Family Reunification and Conditions Placed on Family Members: Dismantling a Fundamental Human Right' (2002) 4(3) *European Journal of Migration and Law* 271.

⁸⁴ For example, for the Long-Term Staff the maximum period is 5 years. Immigration Rules, Paragraph 245GC(b)(iii).

⁸⁵ Immigration Rules, Paragraph 245GF(d)(i). See also <<https://www.gov.uk/settle-in-the-uk/y/you-have-a-work-visa/tier-2-intra-company-transfer-visa>> accessed on 6 June 2016.

⁸⁶ Immigration Rules, Paragraph 276B(i). See also <<https://www.gov.uk/long-residence/eligibility>> accessed on 6 June 2016.

⁸⁷ Tier 2 Policy Guidance (Version 11/15) (n 44) 11-12.

⁸⁸ Interview with E5.

2 ICT Graduate Trainee sub-category she was in, she could only switch into the Tier 2 ICT Long-Term Staff sub-category, which she did not qualify for, because the offered position and salary were below what was required by the Immigration Rules. Moreover, she could not submit a fresh application for the Tier 2 ICT Long-Term Staff permit on the basis that she worked for the company overseas for at least 12 months, as she worked for the company only for nine months prior to her engagement in the UK. Thus, yet again she had to leave.

The fact that some ICTs could not apply for settlement was thought of as a huge downside of the system⁸⁹, which negatively impacted on their quality of life:

“To be honest I do not feel integrated at all. I feel like I am just a passer-by. Because of the visa category we are in there is no way, no opportunity to be permanent. Even though you have proven yourself that you are contributing to the society, you are doing contribution to charities and that kind of stuff. You cannot feel integrated at all, because there is time when you will have to leave. That’s the limitation of the visa that we have. [...] at least I have few years of opportunity when I can save up. [...]”⁹⁰

“[...] I cannot get the job of the same nature later in Hong Kong. Because it is a financial centre, and we do not have the industry there. I love the R&D work here. I would like to settle here, but the ICT visa does not allow me to do that, which is a big problem for me.”⁹¹

However, those few lucky ones, who entered England before the Immigration Rules changed to limit the period of ICT’s stay to a maximum of five years, before 6 April 2011, would be able to apply for permanent residence under certain conditions:

“[...] I was planning to stay here for 5 years so I can have some international exposure, when I go back to India. But coming here I find life much more comfortable than what we have in India: life is not as fast, everything is easily available and reachable. So, we thought of staying a bit longer. [...]”⁹²

⁸⁹ Interviews with E2 and E15.

⁹⁰ Interview with E15.

⁹¹ Interview with E4.

⁹² Interview with E17.

Thus, in the UK there is a differential treatment regarding access to secure residence not only between the EU and third-country nationals, but also between third-country national ICTs, depending under which Immigration Rules they arrived.

6.4.4. Access to Labour Market for ICTs

ICTs do not enjoy free access to the labour market on equal footing with EU nationals, as they could only work in England, if they had a sponsor. The requirement of the labour market test may be applicable to them. One ICT described how the strict conditions in the Immigration Rules affected his ability to obtain permanent residence, and thus free access to the labour market, and how restrictive they could be on one's life:

“[...] I need to stay with the same company for 10 years. I would not say it is bad, but I have already spent working in this company almost 10 years and need to stay with them for 5 more years, if I want to obtain my permanent residence.”⁹³

In addition, unlike in Slovakia, it was expressly stated in the Immigration Rules that ICTs, under certain conditions, could have supplementary employment or carry out voluntary work without another certificate of sponsorship.⁹⁴ None of the respondents took advantage of this additional access to labour market right.

6.4.5. Access to Labour Market and Education for Spouses

ICTs' spouses access to labour market is subject to the labour market test and conditioned upon obtaining relevant permit. Family members of EU nationals need no such permission. ICTs' spouses enjoy relatively broad access to the labour market. They could work in all professions, except as a professional sportsman, or, in certain cases, as a doctor or dentist in training.⁹⁵

Some ICTs mistakenly believed that their wives were not allowed to work in England.⁹⁶ However, most spouses, who spoke English well, took advantage of the access to

⁹³ Interview with E17.

⁹⁴ Immigration Rules, Paragraph 245GC(d)(iii). See also Tier 2 Policy Guidance (Version 11/15) (n 44) 56-57.

⁹⁵ Immigration Rules, Paragraph 319D(b)(iii) and (v). See also Dependant Policy Guidance (n 74) 11.

⁹⁶ Interviews with E1 and E3.

employment and study. For example, one of them studied psychology at the university, whilst working in part-time jobs, such as in a nursery or as a waitress⁹⁷, and another worked in an outsourcing industry⁹⁸. Another one was unemployed, because there was no need for her to work, but was keen to take up voluntary work to integrate better in the society.⁹⁹

In the UK, the language constituted a barrier in access to employment only for a small minority of ICTs' spouses. There was a clear evidence that having access to employment contributed to socio-cultural integration of spouses:

*“My wife had some issues in terms of language. We both studied English at schools, but since I worked for international company I had exposure with Europe and experience with spoken English, but she struggled for a year or 2. Then she started working and now is much more comfortable with the language.”*¹⁰⁰

These examples show that the chances of integrating in a host society and having a better quality of life for third-country national spouses could be enhanced through access to rights, such as employment and education.

6.4.6. ICTs' Contracts and Packages

Similarly, as in Slovakia, ICTs had different types of contracts: “localised” and “mother” company contracts. In one company, what contracts ICTs had depended on whether they were on shorter or longer contracts. For example, in case of two-year transfers, ICTs retained the contract with the mother company, in case of longer assignments, they signed contract in England.¹⁰¹ Only three ICTs retained a “mother company” contract.¹⁰² The rest had “localised” contracts with the English branch.¹⁰³

ICT packages varied from company to company, and depended on the position of the ICT, and even their nationality¹⁰⁴. Some companies provided very generous packages,

⁹⁷ Interview with E4.

⁹⁸ Interview with E15.

⁹⁹ Interview with E12.

¹⁰⁰ Interview with E17.

¹⁰¹ Interview with EC.

¹⁰² Interviews with E1, E3 and E10.

¹⁰³ See chapter 5 for further discussion on the advantages of either the “localised contract” or “mother company contract”.

¹⁰⁴ Interview with E6.

others less generous. For some the main idea was “to localise ICT’s packages as much as they could, so it was all fair”¹⁰⁵. Yet this policy may not be as fair as it would first seem, as countries living standards vary considerably. Overall, most of the respondents were satisfied with their packages, even when they were not overly generous.

Empirical data also revealed “unofficial” components of the package, such as flights to go back home. This was because the company did not want to set a precedent to have to grant this advantage to other employees, mainly from the EU Member States:

“We did not put it in my contract because my company explained to me it is difficult as we have here many people from Spain, other European countries and they do not have this advantage (flight paid for by the company to go home let’s say once per year). So, I have the same situation with them on one side, but on the other side I am much further. So, I do not have that benefit in my contract, but what they can offer me is to unofficially go there, because we have a close relationship with our [third country] partner, we work closely together on certain projects. And what they did if they were very busy there, they could send me over there to work, so I can stay there for 1-2 weeks and work and have some time with my family. That is what they can offer. So, this happened, but after 1-2 times I did not like it, because when it is too busy and factory works 24/7, it was really busy and in 1 or 2 days I needed to work until 4am. So, I did not see my family that much. So, I do not like it and prefer to book flight by myself. Even they offered again, I prefer to buy the tickets myself, because there is too much work.”¹⁰⁶

While this unofficial arrangement was advantageous for the English branch and the partner company in a third country, it was not beneficial for this ICT, whose situation could not be compared to his EU colleagues, as he came from a country thousands of miles away. Such ICTs should ideally receive support from their company regarding flights.

6.4.7. Terms and Conditions of Employment

ICTs believed that they enjoyed at least the same terms and conditions of employment as national employees, thus being on equal footing with EU nationals¹⁰⁷ as required by the

¹⁰⁵ Interview with E12.

¹⁰⁶ Interview with E4.

¹⁰⁷ Interview with E12.

UK legislation.¹⁰⁸ Salaries were guaranteed to ICTs, according to what was required by the Immigration Rules in relation to the relevant route and position.¹⁰⁹ The salary levels were considered by most as “adequate”¹¹⁰, although it was welcomed, when the company provided extra daily allowance to compensate for the expensive standard of living in England.¹¹¹ However, in a few cases the salary was considered to be insufficient. Even where it was increased to account for the higher living expenses, it was far from enough to afford them with a life style, they were used to back at home.¹¹²

6.4.8. Access to Social Security Benefits

The social security and healthcare system consists of contributory benefits, non-contributory benefits (also called public funds), and the National Health Service (NHS).¹¹³ In this section access to healthcare is discussed first, it is then followed by discussing ICTs’ rights regarding access to contributory and non-contributory benefits, namely family benefits.

6.4.8.1. Healthcare

At the time of this research, access to the NHS was open to everyone regardless of their activity, provided they were “ordinarily resident” in the UK, meaning living there lawfully and settled for the time being.¹¹⁴ Access to the NHS is not subject to making contributions, as in the case of Slovakia. ICTs, who had mother company contracts and thus did not make any national insurance (NI) contributions, could still access the NHS, same as their economically inactive dependents. For some respondents and their family

¹⁰⁸ Primarily the Equality Act 2010. For a list of rights that all employees are entitled to see Gov.uk website <<https://www.gov.uk/employment-status/employee>> access on 25 April 2016.

¹⁰⁹ Interview with ED.

¹¹⁰ Interviews with E1, E2, E10 and E14.

¹¹¹ Interview with E10.

¹¹² Interview with E8 and ED.

¹¹³ Information on social security benefits in the UK has been taken from L Broomfield, ‘Migrant Access to Social Security: Policies and Practice in the United Kingdom’ (National Contribution to the European Migration Network Focused Study 2014).

¹¹⁴ *R v Barnet LBC ex parte Shah* [1983] 1 All ER 226. Ordinary residence can begin immediately on arrival to the UK and to be ordinarily resident a migrant does not have to intend to live in the UK permanently. See P Fitzpatrick, T Lawrence and C McCloskey, *Benefits for Migrants Handbook* (5th ed., Child Poverty Action Group 2011) 223-229.

companies provided access to private healthcare¹¹⁵, but this could depend on the position of the ICT¹¹⁶.

However, equality with EU nationals regarding access to the NHS is no more a reality for temporary migrants, including ICTs. The Immigration Health Surcharge (IHS) was introduced through the 2014 Immigration Act for those migrants who do not satisfy the permanent residence test.¹¹⁷ Thus, as of 6 April 2015 all third-country nationals staying for longer than six months are required to pay the IHS, regardless of whether they have commercial health insurance. This is supposed to ensure that those coming to work, study and join family make an appropriate financial contribution to the cost of the health services they *may* use. The surcharge was set at £200 per year, payable online upfront for the total period of their stay. Initially ICTs were excluded to make the conditions more attractive for them. However, it was later announced that ICTs and their dependants would be subject to the IHS too.¹¹⁸ This is only one of the government's measures to streamline the Tier 2, but also to restrict it.¹¹⁹ Arguably, this could amount to double contributions towards accessing healthcare in case of temporary migrant workers already contributing tax and NI or those having commercial insurance. This is illogical as evidence shows that migrants are no more likely to use health services than nationals.¹²⁰

Some ICTs found the health system too complicated and had difficulties registering with GPs.¹²¹ Others preferred to use services in their home country rather than deal with the bureaucracy in the UK.¹²² Only one ICT reported problems in accessing healthcare due to his limited English language ability.¹²³ Though he would have been able to benefit from the translation services offered by the NHS. Occasionally cultural differences could cause clashes between the way healthcare was provided in the UK and the migrants' expectations based on the approach to healthcare provision in their country of origin.¹²⁴

¹¹⁵ Interviews with E1 and E10.

¹¹⁶ Interview with ED.

¹¹⁷ Immigration Act 2014, Sec 38. This also includes those who have been granted refugee status or humanitarian protection. For more information on the IHS see the Gov.uk website <<https://www.gov.uk/government/news/uk-announces-health-surcharge>> accessed on 10 March 2016.

¹¹⁸ J Brokenshire (The Minister of State for Immigration), 'Tier 2 (Skilled Workers): Written Statement - HCWS660' (made on 24 March 2016) <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-24/HCWS660/>> accessed on 2 April 2016.

¹¹⁹ See Statement of J Brokenshire (n 118). See also MAC, 'Review of Tier 2' (n 18).

¹²⁰ J Wadsworth, 'Mustn't Grumble: Immigration, Health and Health Service Use in the UK and Germany' (2013) 34(1) Fiscal Studies 55.

¹²¹ Interview with E16.

¹²² Interview with E1.

¹²³ Interview with E3.

¹²⁴ Interview with E9.

6.4.8.2. *Maternity and Unemployment Benefits*

ICTs could have access to some contributory-based benefits, such as maternity, unemployment and pension. People earn entitlement to them through making all the necessary NI contributions. There are no migrant-specific conditions for accessing contributory benefits. For all contributory benefits, minimum contributions are required for all, EU nationals as well as third-country nationals. For instance, in relation to contribution-based job seekers allowance enough NI contributions in the two years prior to becoming a job seeker is required and individuals must demonstrate that they are actively seeking work. For maternity and paternity benefits, individuals have to be employed by the same employer for 26 weeks into the 15th week before the week the baby was due, and have earnings that average at least £109 a week.¹²⁵

Many ICTs would not be able to claim these benefits, due to the temporariness of their stay. In addition, unemployment benefits are not exportable to third-countries, whereas maternity/paternity benefits are only exportable under bilateral agreements on social security.

6.4.8.3. *ICTs' Pension Rights*

The issues surrounding ICTs' pension were explored in detail in chapter 5.¹²⁶ Regarding access to the UK basic State pension, all employed persons who have paid or been credited with sufficient NI contributions for a required period could qualify.¹²⁷ To be eligible for a portion of a State pension, the person would have to contribute for at least 10 years, and 35 years for a full State pension.¹²⁸ Accordingly, ICTs, whose residence was capped by the Immigration Rules to a maximum of five years, would never qualify. ICTs, who came to the UK under the Immigration Rules applicable before 6 April 2011, thus could remain in the UK beyond the five years, would have a better chance to qualify for some UK State pension. EU nationals would not face such obstacles, as (for now) they would not be obliged to leave the UK territory after a certain period. Those eligible

¹²⁵ See Broomfield (n 113) 31.

¹²⁶ In essence, they include eligibility for the benefit in a host country and country of origin, as well as potential double contributions.

¹²⁷ See Broomfield (n 113) 31.

¹²⁸ New State pension rules applicable in the UK as of 6 April 2016 would affect any ICTs retiring on or after that date. For more information see <<https://www.gov.uk/new-state-pension/how-its-calculated>> accessed on 31 March 2016.

could receive their pension in their country of origin, as the national legislation provides for the export of State pensions, anywhere in the world.¹²⁹

In the absence of ratification of the ILO conventions on social security, the UK, same as Slovakia, concluded a few bilateral agreements to avoid lost or double contributions.¹³⁰ Some contain provisions allowing ICTs to remain subject to the sending State's social security scheme for a certain period.¹³¹

Only few ICTs were able to benefit from such bilateral agreements.¹³² Many ICTs were required to pay NI contributions in the UK and also contributed to private pension schemes in their countries of origin, which amounted to double contributions. Although they were relatively well-paid it added to their expenses.¹³³ Other respondents did not really think about their pensions because of their young age¹³⁴, or did not know whether they would be eligible for any State pension from the UK¹³⁵, or mistakenly believed they would be eligible¹³⁶. Some of the English branches also offered ICTs to join the company pension scheme on the assurance they would be able to transfer their pension over to another branch in another country, but ICTs did not seem to trust such schemes.¹³⁷

ICTs believed it is very important for them to contribute to the host country. However, regarding contributory benefits specifically, some ICTs may feel that it is unfair that they must contribute but many benefits are not available to them in practice:

"[...] I feel that even though I am not the citizen of the country, I by all means should contribute to this economy, because it affects me individually, but there are certain aspects of that economy which do not affect me, for example, I can't claim various

¹²⁹ See Broomfield (n 113) 39.

¹³⁰ See agreements with Australia (1958, terminated by Australia and ended on 28 February 2001), Barbados (1992), Bermuda (1969), Canada (1959), Isle of Man (1948), Israel (1957), Jamaica (1972), Japan (2000), Jersey and Guernsey (Channel Islands) (1962), Mauritius (1981), New Zealand (1956), Philippines (1989), Republic of Korea (2000), Republics of the former Yugoslavia (i.e. applies to Croatia, Bosnia-Herzegovina, Serbia, and Montenegro), and the former Yugoslav Republic of Macedonia (1958), Switzerland (largely covered by EU regulations) (1954), Turkey (1961) and the USA (1969). See Broomfield (n 113) 38.

¹³¹ With Republic of Korea and Japan. Provisions also allow for the authorities in each country to reach agreement to extend this period in any particular person or category of person. See Broomfield (n 113) 39.

¹³² Interview with E1.

¹³³ Interviews with E1, E4 and E12.

¹³⁴ Interview with E10.

¹³⁵ Interview with E14.

¹³⁶ Interview with E12.

¹³⁷ Interviews with E17, E1, E2, E3, E4 and E9.

benefits from the system [...]. So, for all these benefits I will never be able to claim, I do not see why I should have to contribute.”¹³⁸

The point here is that equality with nationals regarding access to contributory benefits puts temporary migrants, such as ICTs, in an unequal situation compared to EU nationals, as it makes them net contributors, who cannot benefit due to their insecure legal status.

6.4.8.4. Family Benefits

All settled third-country nationals would be able to access family benefits.¹³⁹ Generally, anyone who is under immigration control cannot claim such public funds, including ICTs and their families. Hence, they must have sufficient maintenance funds to be able to support themselves. Alternatively, their sponsor could provide a written undertaking that, should it become necessary, they would maintain and accommodate the ICT and their family for a month.¹⁴⁰ At the time of interviews, an ICTs with a spouse and two children would be required to show that they had £2835: £945 for themselves and £630 for each dependent.

As mentioned above, one ICT had to work in England for over one year to save enough money to be able to bring his wife and two children, and to provide for them:

*“I think the salary should be still enough, but it would be better if we could get benefits. But we expected that when we move here no family government support will be available for us. I kind of prepared myself for that.”*¹⁴¹

His company at least provided an undertaking that they would sponsor his family for the first month. If not, he would have to show that he had almost £3000 of sufficient funds, which could be difficult for him, as he had to pay for their permits and relocation, which the company would not cover. This significantly delayed their reunification.

¹³⁸ Interview with E16.

¹³⁹ Most family benefits are not exportable under national rules, although Child Benefit may be exportable under a bilateral reciprocal agreement with the country in question. See Broomfield (n 113) 30.

¹⁴⁰ Dependant Policy Guidance (n 74) 11.

¹⁴¹ Interview with E15.

6.4.9. Education for Children

Immigration Rules do not prohibit access to state-funded education in the English language for dependent children of ICTs. In fact, many ICTs' children attended free state schools, on equal footing with children of EU nationals. All of them had a good knowledge of English acquired in their country of origin¹⁴², or because they started school in the UK from a young age, they picked it up quickly:

“I was more concerned about my son because he was 2.5, when we arrived here. Whether the weather will suit him, the language was a concern, whether he will be able to communicate, deal with culture change. He was completely fine. In fact, it took us longer to adjust because of the weather, culture, the language. For him it was easy. The good thing was he did not start school until a year later, it gave him time to adjust. Within a month of starting school, he started speaking English.”¹⁴³

Attending state schools helped children integrate better. In addition, it contributed to their parents' integration too, because they found friends among British nationals through their children¹⁴⁴ (*social bridges*)¹⁴⁵.

6.5. ICTs' and their Families' Social Integration

All the above sections related to ICTs' integration through access to rights, which is easier to regulate in legislation and measure too. However, social integration is influenced by the behaviour of people with certain personal characteristics, which is harder to regulate by law and to measure. Similarly, as in Slovakia, social integration at work did not pose many significant obstacles for ICTs, unlike integration outside work.

6.5.1. ICTs' Integration at Work

Most companies seemed to have quite elaborate general anti-discrimination policies. ICTs in all companies went through the same “on the job” integration process as other employees. Regarding social integration companies took a different approach, and

¹⁴² Interview with E1.

¹⁴³ Interview with E17.

¹⁴⁴ Interview with E2 and E17.

¹⁴⁵ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

although colleagues not always became friends, no issues were reported.¹⁴⁶ Some companies were informally involved in the integration of ICTs not only at work, but also outside work.¹⁴⁷ One company had no anti-discrimination policy or events designed to support ICTs' integration. This company believed that ICTs' integration outside work was "*none of their concern*", and there were never any problems raised.¹⁴⁸ Another company tailored their integration programme according to the needs of individual transferees, for example, they would provide cultural training in case of huge cultural differences.¹⁴⁹

ICTs struck friendships not only with their own nationals (*social bonds*), but also with other foreigners and British colleagues (*social bridges*), which was facilitated through ICTs' knowledge of the host countries language.¹⁵⁰ British colleagues helped ICTs in their first few weeks with things that needed sorting outside work. For example, one company let ICTs and British employees to take time off work to search for accommodation¹⁵¹, others organised social events for ICTs and British employees.

Although language was not an obstacle to ICTs' social integration at work, sometime not knowing the host countries' culture could be.¹⁵² Cultural differences in working styles caused frictions at work, but never any serious incidents. Getting used to the different working cultures was not easy and took time for some ICTs:

*"The working culture is so different here. I am still learning every day. [...] In Korea, the manager orders and all the colleagues, the line managers, have to do it, as asked. But here it is similar, but the individuals have their thoughts, and after quick questioning, challenging you, which was not easy at the beginning, but now I think it is much better."*¹⁵³

"One of the reasons is that the working culture is so different. I am from Hong Kong and Chinese people work very hard and in R&D as well. I am not saying that the British

¹⁴⁶ For example, interview with E1.

¹⁴⁷ Interview with EA.

¹⁴⁸ Interview with EA.

¹⁴⁹ Interview with EC.

¹⁵⁰ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

¹⁵¹ Interview with E16.

¹⁵² See Figure 2 – ICTs' Indicators of Integration in chapter 2.

¹⁵³ Interview with E2.

people are lazy. I see that every day they have a coffee 4-5 times, have a 10 minutes' break; every 2 hours go to the kitchen or canteen. And I cannot really do that. I want to talk to them, but I have too much work. I did not understand this culture still. So, this is the culture difference stopping me little bit to talk to them."¹⁵⁴

After some time, ICTs from countries, where employees routinely work very long hours, appreciated the difference in England, where people tried to have more work-life balance:

*"[...] So, I am trying to get the balance as well. I am learning from them. But I shall not learn to take a coffee break every 2 hours. It is not really my cup of tea, I would say."*¹⁵⁵

This ICT's choice of words not only illustrates positive cultural exchanges, but also a certain level of achieved social and cultural integration, as he picked up some of the English phrases and English humour.

On rare occasions, there were unpleasant experiences with customers that prevented better integration at work:

*"[...] there are some customers that I think ignore me. The reason being my English is not so good and I come from South Korea, Asia. I do not want to say it like this but the UK persons, or European, because they are more developed countries than Asian, I think they are still think that Asian persons are lower than European persons. That is why some of the customers behave like that and that is difficult. [...]"*¹⁵⁶

6.5.2. ICTs' Integration outside Work

As in Slovakia, ICTs made friends mostly among their colleagues, who were of the same nationality (*social bonds*).¹⁵⁷ Where, however, they had some interaction and activities with English friends (*social bridges*)¹⁵⁸, they saw the positives, for instance, learning

¹⁵⁴ Interview with E4.

¹⁵⁵ Interview with E4.

¹⁵⁶ Interview with E3.

¹⁵⁷ Interview with E17. See Figure 2 – ICTs' Indicators of Integration in chapter 2.

¹⁵⁸ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

about the British culture, which further facilitated deepening their social and cultural integration¹⁵⁹. Issues with social integration were comparable to those in Slovakia.¹⁶⁰

Some ICTs declared their positive experiences: *“so far everything was a very positive experience. There were no real issues in terms of language, culture or people.”*¹⁶¹

*“I have been living here for 9 years. We are very happy. We were struggling at the beginning because of different culture, probably you experienced this as well. But now we are a lot better, enjoying life.”*¹⁶²

Other times, national attitudes towards migrants hindered ICTs’ and their families’ better integration, because they could not develop relationships with nationals (*social bridges*)¹⁶³:

*“[...] It’s funny the suburbs, the area, where we live in, the neighbours are very reserved. When we have been out in the front garden, we tried to wave and catch their attention. They rush back in, especially the neighbours right beside us. We think they do everything to avoid us. So, we have not actually engaged too much just yet [...].”*¹⁶⁴

Another important facilitator of better integration is the migrants’ feeling of *safety* and *security*, which is closely connected with the attitudes of nationals toward migrants.¹⁶⁵

One ICT reported that he met some UK nationals and thought he made friends with them. He invited them to his house, as that is what he would do in his country. In the UK, however, he became a victim of robbery. The police later told him that he was targeted, because he was not local. Locals would not invite people to their home, if they did not know them very well.¹⁶⁶ Another ICT stated that one time, his wife was yelled at and verbally insulted by some English boys, when walking down the street.¹⁶⁷ Other times ICTs felt looked down at:

¹⁵⁹ Interview with E4.

¹⁶⁰ For example, interview with E2.

¹⁶¹ Interview with E17.

¹⁶² Interview with E2.

¹⁶³ See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

¹⁶⁴ Interview with E12.

¹⁶⁵ See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

¹⁶⁶ Interview with E14.

¹⁶⁷ Interview with E1.

*“I have kind of integrated because I have been living here for so many years, but the one reason why I do not want to stay here is, I would not call it a racism, but with what is now going on with Russia, the political situation, [...] people are talking and blaming Russia for everything, and I am not nationalist, but it kind of hurts. And when you work here you are always kind of a foreigner, seen as a foreigner, so I do not feel at home in here. [...]”*¹⁶⁸

One of the employers, who was a migrant (EU national), reported that she herself experienced inappropriate comments along the lines *“oh it did not take you long to come”*. She described what ICTs in their company experienced outside work:

*“[...] For example, for Philippine colleagues, some people will make really nasty jokes that they should not be here. That they should be doing something else like cleaning houses somewhere, so really nasty comments. You can have [a name] who is our finance manager and it is really hard that you have people just looking at him and judging him based on the way he looks. He is a guy with a lot of experience and making a lot more money than the people who are making comments. That is just the society we live in [...] Unfortunately a lot of the discriminatory comments are coming from British nationals and based on the fact that they are taking jobs that would have been British nationals’. Also, I want to make a point that we predominantly hire local people. We employ a lot of nationals who are currently unemployed, so we help the local community quite a lot. So, it is that more heart-breaking to hear that.”*¹⁶⁹

The nature of the transfer could have an enormous impact on how ICTs perceived that period in their life, which in turn had negative impact on their integration:

*“[...] It still feels like a business trip. I would expect it to change at some point, but maybe it is because I always had it on my mind I am going to go home, so to get through the time here and then I am going home. [...] Somebody asked me if I want to go with them to Portugal in October 2015. There is no way I can commit to that, because I do not really know, what I am going to do. So, is it real life? I do not think it is. I still think it is big longer business trip.”*¹⁷⁰

¹⁶⁸ Interview with E5.

¹⁶⁹ Interview with ED.

¹⁷⁰ Interview with E10.

Another obstacle to ICTs' better integration could be ICTs' personal attitudes towards integration:

*“We have not integrated too much just yet. [...] we only now feel quite comfortable [after 7 months being in the UK], from now on we start to engage and integrate more. It's really our responsibility to integrate. We can't expect people to come and integrate for us.”*¹⁷¹

Some ICTs actively participated in organisations, such as churches or charities, which constitutes the deepest level of social integration (*social links*).¹⁷² Those ICTs, who interacted with the host society in this way, appreciated the benefit for their life in the UK:

*“[...] I knew lots of people through church and got quickly integrated there. [name of ICT] would not. For a number of weeks, he would only know people I introduced to him. So, we have actually underestimated this that you have to actively integrate yourself into different areas [...]. Because then when you are starting up a business and you do not know any other people, you work from 7 till 10 at night, you go home, and you came back next day to do the same. We have worked here 13-hour days 6 days a week, because we had nothing else to do, so to socialise is huge.”*¹⁷³

However, sometimes personal and individual circumstances prevented ICTs from integrating more. For example, they worked long hours. After coming home, they would continue working for 2-3 hours because of the time difference between the UK and their country of origin.¹⁷⁴ Then their priority was to spend free time with the family.¹⁷⁵ Sometimes ICTs could not interact with the host society as much, because they had to help their spouse, who did not speak English.¹⁷⁶

¹⁷¹ Interview with E12.

¹⁷² Interviews with E11, E12, E1, and E14. See Figure 2 – ICTs' Indicators of Integration in chapter 2.

¹⁷³ Interview with E11.

¹⁷⁴ Interview with E2 and E17.

¹⁷⁵ Interviews with E17, E4, E1 and E3.

¹⁷⁶ Interview with E1.

Not knowing the British culture occasionally stood in the way to better interactions with the host society too¹⁷⁷:

*“[...] sometimes when we go out with colleagues to the pub, I cannot integrate because some of the topics I cannot contribute to [...] for example they talk about some of the English shows like Coronation Street, which I have never seen. I am not always odd man out, but sometimes it feels that way. That I am not part of this culture. [...]”*¹⁷⁸

The lack of knowledge of the English language, as a facilitator of integration¹⁷⁹, constituted a barrier to social and cultural integration only for two spouses, who did not speak any English. Thus, they were completely dependent on their husbands, and had only few friends of the same nationality:

*“First few months she has been very awkward and struggling because she does not have her friends and family here. But after the 6 months she met some Korean friends in Oxford, just hanging out with them. [...] then these friends went back to the USA and Korea, so again no more friends here for her.”*¹⁸⁰

Just one employer paid for English courses for some employees only, for instance, for engineers, but not for their spouses.¹⁸¹ Access to learning English would otherwise be available through the government ESOL courses for a fee. Nevertheless, most spouses spoke very good English and worked, volunteered or studied without any major difficulties.¹⁸²

However, it was also reported that the intra-corporate transfer could have a negative impact on personal and family relationships of ICTs:

“I am single at the moment, but I was not. I became single as result of moving over here. We were going out for 3 years and it was serious, but I had to start setting up this company, so I had to spend [...] 3.5-4 months of the year over here, which was strain on

¹⁷⁷ See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

¹⁷⁸ Interview with E17.

¹⁷⁹ See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

¹⁸⁰ Interview with E1.

¹⁸¹ Interview with E1.

¹⁸² Interviews with E2, E4, E12, E15 and E17.

*the relationship as it was [...] That was hard, that was probably the hardest thing about moving over here [...].*¹⁸³

Finally, the move to the UK, a country with high living costs, often seen as a positive move for migrants from many parts of the world, could have adverse effect on the standard of life of ICTs and their families:

*“[...] A lot of people think that when you move from India to a Western country they should be happy [...] This is a perception of Western people. But in reality, people who moved they were in very high well-paid positions and they could afford a lot more than they can afford over here. Back at home they could hire a person to help with children, here they cannot because the cost is so high. Sometimes their ability to save back home was greater than their ability to save here because of living here costs more [...].*¹⁸⁴

In this respect, some companies provided daily allowance to compensate ICTs for the high cost of living in the UK even on top of their UK salary¹⁸⁵, but most did do not.

6.6. Future of ICTs and their Families

The end of the intra-corporate transfer constitutes another stage in ICTs' and their families' immigration and integration process. In most cases, the transfer was viewed as beneficial for the career progress. In one company, more than 50 percent of transfers were promotions and it was guaranteed in the ICTs' contract that they could return to a similar or even better position.¹⁸⁶ Another UK branch negotiated contracts, guaranteeing jobs for ICTs, after the mother company was bought by a new company while ICTs were on assignments in the UK.¹⁸⁷ However, not all ICTs had a job guaranteed in their contract. They could only rely on informal assurances.¹⁸⁸ In one company it was not guaranteed that ICTs would have a place in the mother company, as they transferred ICTs to the UK on more permanent basis and *“the progress in the career of the migrants was transfer-neutral”*.¹⁸⁹

¹⁸³ Interview with E11, also E5.

¹⁸⁴ Interview with ED.

¹⁸⁵ Interview with E10.

¹⁸⁶ Interview with EC.

¹⁸⁷ Interview with ED.

¹⁸⁸ Interviews with E8 and E16.

¹⁸⁹ Interview with EA.

For few ICTs, the UK salary was a pay-rise¹⁹⁰, but there was no guarantee that this would be taken into account in the country of origin upon their return¹⁹¹. It was reported that “[...] if they go back, they may find out that their salaries drop a lot. Every country will have their own salary grades. They will fall within that salary grade.”¹⁹² In a different company it depended on whether the transfer was initiated by the company or the ICT.¹⁹³

Some ICTs had many concerns about the future of their families and had to face some tough decisions to ensure what was best for their family. The following quote summarizes many of their worries:

“[...] we are thinking to send our son back to India next year. The more he will stay here, the more difficult he will find it to go back, now he is year 2, will start year 3 this September. I have noticed there is a gap between education level in India and in the UK, because in India the education is much more rigorous than here. If my son goes to India and he is year 2 here, there he will have to start year 2 again. There is also a family reason. I am the only son in the family and my parents are alone. I want him to stay with them so they have someone. My wife will probably go back to India after 7 years. I can get permanent residence, if I stay for 10 years. So maybe I stay for the 10 years to obtain permanent residence and then go back to India as well. So, the purpose of obtaining it is, if my son is not registered in India, at least he can come back here based of my permanent residence.”¹⁹⁴

Clearly the transfer could have a wide impact not only on the immediate family of ICTs, such as the education of their children, but also on the unity of their own family and that of other family members left behind in third countries.

6.7. Conclusion

Gaps in the protection of rights of ICTs in international and CoE human rights instruments were not filled in England through domestic legislation, but were rather

¹⁹⁰ Interviews with E10 and E12.

¹⁹¹ Interviews with E10 and E14.

¹⁹² Interview with ED.

¹⁹³ Interview with EA.

¹⁹⁴ Interview with E17.

reinforced.¹⁹⁵ The British ideals of equality and embracing cultural diversity extended primarily to the EU nationals and settled third-country nationals, but not to temporary third-country nationals, such as ICTs and their families.

This was demonstrated by the strictness of the Immigration Rules to enter the territory and related high costs of obtaining permits, and limited access to rights once in the country, particularly no right of secure residence for many ICTs, and no recourse to public funds.

The increasingly restrictive changes, introduced regarding the Tier 2 ICT route since 2010 (and to be introduced in the future), were designed to make it harder for ICTs to come to the UK. However, this also prevented employers from being able to rely on the Tier 2 ICT route for highly-skilled work force.¹⁹⁶

In addition, spiralling costs of the permits application process could constitute an issue for smaller companies and for ICTs, when the company would not cover these fees. Due to the complexity and non-transparency of the Immigration Rules, companies need to hire expensive lawyers to obtain a sponsor licence and ICT permits. Other expenses include high permit application fees, the cost of the tuberculosis test, and the requirement of having sufficient maintenance funds. Adding it all up, many thousands of pounds need to be spent to relocate to the UK and fees continue rising. Therefore, it is questionable how the UK in its quest to limit immigration would also keep up with attracting the much needed highly-skilled work force, given that immigration control is gradually toughening up.

This was clearly noticeable on ICTs' access to the secure residence status. The analysis revealed that the Immigration Rules discriminated between ICTs and EU nationals, as well as between various groups of ICTs, depending on under which Immigration Rules they entered the country. For instance, the "old" ICTs would be able to apply for indefinite leave to remain after five years, later arrivals after ten years, but the most recent arrivals not at all. Clearly the aim of these legislative changes was to ensure that ICTs remain only temporary migrants without access to many rights.

As far as dependants were concerned, they enjoyed more favourable rights than ICTs. Upon obtaining relevant permit, spouses had free access to most of the employment positions, higher education, and free healthcare¹⁹⁷ on equal footing with EU nationals. This had a very positive impact on their integration, combined with language not

¹⁹⁵ See (n 1) and (n 2).

¹⁹⁶ Interview with EA.

¹⁹⁷ As of 6 April 2017, the Immigration Health Surcharge is payable by ICTs and their dependants.

constituting a barrier for most of them and their children. No access to family benefits could add to the financial insecurity of families of some ICTs and delay their right to family reunification. However, future legislative changes and streamlining of the Tier 2 ICT route could see them losing these rights, for instance free access to healthcare from 6 April 2017. This could endanger the level of integration currently enjoyed by them.

Social integration was aided by the ICTs and their families' knowledge of the English language. Yet it was hindered by the negative national attitudes or migrants' personal circumstances.

The findings in this chapter provide basis for a comparative exercise of the Slovak and English domestic legislation, policies and practices with the provisions of the EU ICTD, to be conducted in chapter 7.

7. RIGHTS PROTECTION AND INTEGRATION OF ICTs AND THEIR FAMILIES: A NEW VISION

7.1. Introduction

The aims of this chapter are twofold. Firstly, it compares the Slovak and UK national laws, policies and practices regarding rights protection and integration of third-country national ICTs and their families, and contrasts them with the provisions of the EU ICTD. This comparative exercise enables identifying strengths, weaknesses and best practices in each scheme. Then, the results of this comparative exercise inform the formulation of a new legal and policy framework for rights protection and integration of ICTs and their families. Secondly, this chapter presents a novel understanding of the notion of integration as a “borderless” triangular concept as opposed to the “traditional”¹ and “ideal” notion of integration of Ager and Strang embraced in this thesis.²

This “ideal” level of integration means equality or near-equality with nationals in access to rights and is achievable in the EU by the EU nationals and long-term resident third-country nationals, not temporary migrants, such as ICTs. It is measured through the corresponding Ager and Strang indicators of integration.³ They were firstly slightly adapted, for the purpose of this thesis, to better reflect the integration process, as it is experienced by temporary migrants subject to intra-corporate transfer – ICTs⁴, and then used to measure ICTs’ integration in Slovakia and England⁵.

The Ager and Strang indicators were used as a basis for ICTs’ Indicators of Integration, because it is argued in this thesis that ICTs should be granted access to more secure residence status and related rights, closer to those enjoyed by EU nationals, so that their exploitation is avoided, and labour standards are protected in the EU and ICTs can contribute to the cohesiveness of the society. That said, not all temporary migrations turn into permanent migrations. Temporary migration programmes can reinforce migrant workers’ vulnerability because access to rights is denied to them. They force ICTs to stay temporary migrants. However, life works differently, for instance, people can fall in love

¹ The term “traditional” is used to convey that the concept of integration is usually thought of as being related to a host country only. See chapter 2, section 2.2.3.

² See chapter 1, section 1.8.

³ See Figure 1 – Ager and Strang Indicators of Integration in chapter 2.

⁴ This is discussed in more detail below. See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

⁵ Chapters 5 and 6, respectively.

in the host country. Temporary migration programmes, as “*Capital’s Handmaidens*”⁶, so far paid too much attention to the interests of multinational companies (MNCs) and host countries. It is time to give a voice to ICTs as well. In this thesis, it is recognised that some ICTs may never achieve this “ideal” level of integration, because their migration may inherently be only temporary. That said, ICTs should not be denied the opportunity to stay, integrate and enjoy life in the EU.

Thus, this chapter develops a framework to cater for the rights protection and integration of those ICTs, who may wish to stay in the EU, but also those ICTs, who will remain temporary migrants, combining elements from the “ideal” notion of integration of Ager and Strang, while offering solutions, where their model falls short of providing sufficient protection to temporary migrants.⁷ To make recommendations for such a framework it is necessary to conduct a comparison of the three schemes under scrutiny in this thesis: the Slovak and the English domestic schemes and the ICTD.

Arguments could be put forward against the continued existence of ICTs as a special category of migrant workers to be protected by another instrument given the myriad of existing human and labour rights treaties – general and migrant-specific – discussed in chapter 3. However, with the globalisation and intensifying of the international trade, the number of ICTs will continue to grow. In addition, ICTs are a relatively new category of migrant workers – a category that was not so prominent at the time, when the existing human and labour rights instruments were elaborated in the aftermath of WW2. Since then the number of MNCs and their influence grew exponentially and with it the number of ICTs transferred around the world. Yet the existing international, regional and national legal instruments failed to keep up with this trend. Thus, this new legal and policy framework is introduced, because the general UN and CoE human rights instruments fail to address migrant-specific issues.⁸ Moreover, it is highly unlikely that Slovakia or the UK (or other European countries) will ratify either the UN or ILO migrant-specific conventions⁹, which are now out of date and do not sufficiently protect temporary migrants in general and ICTs in particular. This is due to the unique nature of intra-corporate transfers stemming from the heavy dominance of MNCs in decision-making and the lack of regulation. Furthermore, the EU ICTD only partially alleviates the gaps

⁶ C Costello and M Freeland, ‘Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?’, in J Howe and R Owens (eds.), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart 2016).

⁷ For instance, for temporary migrants’ equality with EU nationals regarding social security can in fact lead to inequality. See, for example, chapter 5, section 5.4.7.

⁸ For example, security of residence or family reunification. See chapter 3.

⁹ See Figure 1 in chapter 3.

identified in the international and CoE conventions.¹⁰ This framework is placed at regional level within the EU and it is to complement any future international treaty on human rights and business, specifically in the field of intra-corporate transfers. This framework consists of legal duties of States and the EU and non-binding recommendations addressed to MNCs. The basis of this framework is the ICTD, but several amendments are proposed to it. Amendments to the Slovak and UK national legislation are enumerated too. In addition, this framework contains several recommendations on best practices primarily targeting MNCs, but also EU, Slovak and UK policymakers. Proposed amendments and recommendations appear throughout this chapter.

In addition, this chapter offers a new understanding of the notion of integration for temporary migrant workers, such as ICTs, as a triangular concept where three different actors have a role to play, namely States, employers and migrants. The rationale for the involvement of States and migrants is more obvious than that of employers. Firstly, the primary responsibility for human rights protection lies with States, and the migrants' chances to integrate could also be influenced by the openness of the host society. Secondly, ICTs' and their families' own perceptions, experiences and skills shape their integration within the parameters of these States' laws, policies, practices and societies.

The role of employers is not so self-evident. In the case of ICTs, it is the employers, who often initiate and arrange temporary international transfers to enhance their business operations. They commonly have the main say as to the location, length and conditions of the transfer. As employers have substantial influence on their lives¹¹, they should be involved in their integration process for human rights reasons, but there is a definite business advantage for them too¹². This triangular model is not only in the interest of ICTs and their families for their rights protection and integration, but also for States to attract companies employing highly-skilled migrants, and even for the companies' business operations.

Moreover, these three actors have a role to play at different stages of the migration and integration process: pre-departure stage, stay in the host country stage and the end of the transfer and repatriation stage. The empirical data collected for this thesis confirmed that

¹⁰ The ICTD fills the gap in international law and CoE instruments regarding the right to family reunification, but fails to address other issues, such as regarding contributory social security benefits and security of residence. See chapter 4, section 4.3.

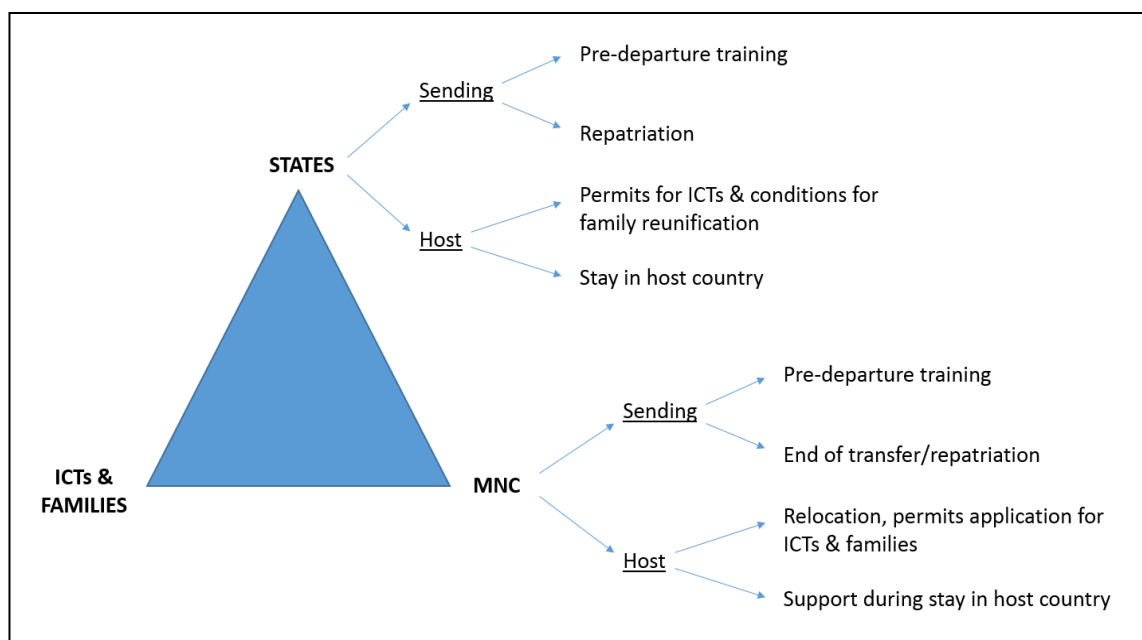
¹¹ As shown by the empirical evidence discussed in chapters 5 and 6.

¹² See chapter 1, section 1.7.

integration of ICTs is a kind of “borderless” process, as it starts before the arrival in the host country and continues beyond the period of stay in the host country. This “borderless” notion of integration challenges the traditional ideas about integration as occurring and being limited to the host countries’ territory. It requires considering new areas for integration: pre-departure and the end of the transfer/repatriation stages, and what role States and employers could (or should) have during these stages.

In addition, two of the actors, States and MNCs, can act in different capacities. For example, countries may have diverse roles to perform as sending countries and as host countries. Employers can be involved as sending (or mother) companies or as host companies. These ideas of different actors, having diverse functions in different capacities at various stages are reflected and visualised in *Figure 1* below:

Figure 1 – Borderless and Triangular Model of Integration for ICTs and their Families



These ideas were worked into the ICTs’ Indicators of Integration.¹³ Indicators are organised according to the spatial and temporal dimensions of integration. This means that different indicators are arranged according to their applicability to different stages of the intra-corporate transfer. The structure of this chapter follows a similar logic. Integration of ICTs and their families is discussed in three sections, from the perspective of the three actors in this borderless and triangular model of integration, namely States, ICTs and their families and MNCs.

¹³ See Figure 2 – ICTs’ Indicators of Integration in chapter 2.

7.2. The Role of States in the Integration of ICTs and their Families

States bear the primary responsibility for rights protection, which cannot and should not be delegated to others, for example to MNCs. That said, due to their influence and power, MNCs can positively contribute to the facilitation of rights protection and migrants' integration.¹⁴

7.2.1. Availability of Information during the Pre-Departure and Relocation

For ICTs and their families, the pre-departure and relocation stage is important, as often they may not have the luxury of staying in the host country for a long time, which would enable their more natural (passive) integration. In the case of ICTs, a more pro-active approach needs to be taken, already during the pre-departure stage, so that they have a better chance of integrating in the host country. Part of this process is to have sufficient information about the host country.

In this respect, several ICTs in Slovakia criticised the lack of up-to-date information in the English language regarding the permits application procedure and rights¹⁵. Many ICTs did not know about their rights, such as their eligibility for certain family benefits.¹⁶ In England, the main complaint was that there was a lot of complicated guidance¹⁷.

During this stage, all countries, whether countries of origin or host countries, need to ensure, as a matter of domestic law, that information is available to nationals and migrants about their rights, duties and on the relevant administrative procedures for obtaining permits. This is already regulated by Article 65 of the UN ICRMW, which was, however, not ratified by Slovakia and the UK.

7.2.2. Stay in the Host Country Stage

Countries can facilitate integration by giving migrants access to rights and having integration measures in place, such as the provision of language and orientation courses¹⁸. Rights entitlements do not automatically guarantee integration. However, a level of integration could be positively affected by the level of equality granted to

¹⁴ See chapter 1, section 1.7 for reasons why MNCs should be involved in rights protection and integration.

¹⁵ Interviews with S2 and S8.

¹⁶ Interview with S3.

¹⁷ Interview with E4.

¹⁸ C Oliver, 'The Impact of Restrictions and Entitlements on the Integration of Family Migrants: A Comparative Report' (University of Oxford, COMPAS October 2013) <https://www.compas.ox.ac.uk/media/PR-2013-IMPACIM_Comparative.pdf> accessed on 1 May 2017.

migrants, as more equality could mean a better opportunity to integrate. Although rights entitlements are often not enough to ensure integration as other barriers exist, such as the language, attitudes of the host society, social and economic conditions in the host country, and migrants' own perceptions of integration.¹⁹

In this section, three sets of legal rules are compared, namely the Slovak and English national law and the ICTD. Access to the following rights is examined: rights of entry, including conditions for family reunification, rights of residence, intra-EU mobility and employment-related rights.²⁰ This will assist in identifying weaknesses, strengths and best practices. The practical impact of these schemes on integration of ICTs and their families is analysed in section 7.3.

7.2.2.1. Rights of Entry of ICTs

The link between entry conditions and integration is that countries often deny access to rights as a condition to gain entry into their territory, which can negatively impact integration. Too restrictive entry conditions and burdensome administrative procedures for obtaining permits could constitute an obstacle, as they delay and complicate ICTs' arrival in the host country. This could result in employers trying to bypass such strict rules, to run their business smoothly, resulting in illegal employment of ICTs, which in turn could lead to their exploitation.²¹ Less restrictive conditions and simplified permit application procedures would contribute to protecting ICTs from potential abuses, facilitating family reunifications and protect MNCs' business interests.

7.2.2.1.1. Entry Conditions for ICTs

In Slovakia (prior to the implementation of the ICTD), ICTs, as most other third-country nationals, had to apply for a temporary residence permit for employment, whereas in England there was a specific scheme for ICTs – the Tier 2 ICT of the Points Based System (PBS). *Table 1* summarises the entry eligibility conditions for the Tier 2 ICT permit, the Slovak temporary residence permit and the EU ICT permit.

¹⁹ This is further discussed in the section 7.3.

²⁰ These correspond to the indicators/facilitators of integration in the model of ICTs' Indicators of Integration. See Figure 2 in chapter 2.

²¹ Interviews with SA and SF.

Table 1 – Entry Conditions for ICTs

	<i>England</i>	<i>Slovakia</i>	<i>ICTD</i>
Minimum level of pay	Yes	No	No
Employment contract	Yes	Yes	Yes
Labour market test	Yes ²²	Yes	No
Maintenance funds for ICTs and/or their Family	Yes	Yes	Option to require
Recourse to public funds	No	Yes, but requirement of sufficient funds, and residence permit can be withdrawn if applied for benefit in material need	Yes, but option to introduce requirement of sufficient funds
Language/civic tests	No	No	No

Regarding the entry conditions, the Tier 2 ICT permit provided for more exclusionary entry conditions than the Slovak permit, among others minimum level of pay, which was set very high and could exclude many ICTs. For instance, this salary requirement could be very difficult to be satisfied in some industries, such as the hospitality.²³ In addition, in the England there could be no recourse to public funds, while ICTs and their families also needed to prove possession of sufficient maintenance funds. The entry conditions in the ICTD are more inclusive than the Tier 2 ICT permit conditions, because there is no minimum pay requirement and there is recourse to public funds.²⁴ The lack of minimum pay requirement in the ICTD is a positive development. Such requirement in the Blue Card Directive (BCD) has been lowered in the proposal for its revision, as it was considered too restrictive, preventing access to the host countries' territory for many highly-skilled migrants.²⁵ The ICTD allows Member States to require having sufficient maintenance funds, which was already required for the Slovak temporary residence permit. Regarding Slovakia's implementation of the ICTD, it would be advisable to remove this condition for ICTs with view to create more attractive conditions for them. In respect of England, plans to streamline the Tier 2 ICT route²⁶ should be abandoned, because they may result in less rights for less ICTs.

²² Unless one of the exceptions apply such as the job being on the Shortage Occupation list <<https://www.gov.uk/uk-visa-sponsorship-employers/job-suitability>>.

²³ Interview with E5.

²⁴ Except access to family benefits, which could be limited for ICTs residing for less than nine months (ICTD, Art 18(3)).

²⁵ J-B Farcy, 'The New Blue Card Proposal: Will It Attract More Highly Skilled Workers to the EU?' (EU Law Analysis blog, 20 July 2016) <<http://eulawanalysis.blogspot.co.uk/2016/07/the-new-blue-card-proposal-will-it.html>> accessed on 19 September 2016.

²⁶ J Brokenshire (The Minister of State for Immigration), 'Tier 2 (Skilled Workers): Written Statement - HCWS660' (made on 24 March 2016) <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-24/HCWS660/>> accessed on 2 April 2016.

7.2.2.1.2. Permits Application Procedure for ICTs

Table 2 below details the administrative procedures and documentary evidence necessary for obtaining the Tier 2 ICT permit, the Slovak temporary residence permit for employment and the EU ICT permit.

Table 2 – Permits Application Procedure for ICTs

	<i>England</i>	<i>Slovakia</i>	<i>ICTD</i>
Single procedure	Yes	Yes, for single permit No, for work + residence permit	Yes
Availability of fast-track and/or simplified procedures	Fast-track for those already in the UK, very expensive	No	Option to introduce fast-track and simplified procedure
Deadline to issue permits	No but typically 1 month, if an employer already has a sponsor licence, if not around 7 months	18 weeks for single permit 19 weeks for work + residence permit	As soon as possible, but maximum 12 weeks
Costs	Very high	Low	Low (in Slovakia)

It can be concluded that neither the Slovak nor the English procedure was particularly favourable towards ICTs. Each procedure had its positives and negatives points. In Slovakia, ICTs could obtain temporary residence permit for employment within 19 weeks through two separate and consecutive procedures. In contrast, in England, ICT permits could be obtained within one month through one administrative procedure, which was very beneficial for ICTs and their employers²⁷, provided an employer already had a sponsor licence in place. If not, the process could take up to seven months, much longer than in Slovakia²⁸.

The main complaints in Slovakia related to the bureaucracy of the procedure, which was exemplified in several ways: the complexity of the evidentiary requirements, the unprofessionalism of the Slovak authorities, and their wide discretion in the decision-making²⁹. However, the costs involved in the application procedure were rather low.

In England, ICTs and employers took an issue primarily with the complexity of the often-changing Immigration Rules, the number of documents required to support the application, and the high cost of the application process. It was argued that these high

²⁷ Interviews with E1, E5 and E8.

²⁸ Interviews with E4, E11 and E12.

²⁹ This is discussed in more detail in this section below.

fees served as a deterrent, as they could not be affordable by many, especially those with families³⁰, and those coming from developing countries³¹.

When employers were involved in the permit application process, this made ICT's transfer smoother. The employers should provide ICTs and their families with support during the permit application procedure and cover the relevant costs, as far as this is possible and feasible.

In Slovakia, the Directive could make the permit application procedure simpler, more efficient and less administratively burdensome compared to the two-stage procedure for a work and residence permit, or the Tier 2 ICT route. Firstly, it will create a single administrative act to apply for an ICT permit. Moreover, there will be an option to introduce a simplified and fast-track admission procedure for eligible companies.³² The most significant benefit of this procedure is that ICTs would be exempt from producing some of the evidence normally required under the Directive³³, and be eligible for obtaining permits faster than normally allowed by the Directive (in 30 days rather than up to 90 days³⁴). It can also be argued that the ICTD will add more evidentiary burdens on ICTs, as it requires them to provide documents, which were not needed when applying for the Slovak temporary residence permit³⁵, unless Slovakia decides to adopt the fast-track and simplified procedure available under the ICTD.

Whether the ICTD will succeed in improving the ICT permit application procedure hinges on two things. Firstly, it depends on the way the Directive will be implemented by the legislature, as it contains many optional clauses, such as the one on the fast-track and simplified procedure. Secondly, it rests upon the way it will be applied in practice by the Slovak authorities, who enjoy a wide discretion in the decision-making.

In this respect, the empirical evidence collected in Slovakia provides an interesting insight into how the discretion given to State officials can impact the rights protection and integration of ICTs.³⁶ Under the 2011 Foreigners Act, the Foreigners Police has a

³⁰ C Yeo, 'Massive Increase in Family Immigration Fees for 2016-2017' (Free Movement blog, 2 March 2016) <<https://www.freemovement.org.uk/massive-increase-in-family-immigration-fees-for-2016-17/>> accessed on 11 May 2016.

³¹ Interview with E15.

³² ICTD, Arts 11(6) and (7).

³³ ICTD, Art 11(7)(a).

³⁴ ICTD, Arts 11(7)(b) and 11(8).

³⁵ These include evidence proving prior employment with the mother company, professional qualifications and experience as required by the host entity, and proving that the mother company and the host entity are part of the same undertaking (ICTD, Art 5(1)).

³⁶ See chapter 5, section 5.4.2. It was not possible to assess how the discretion given to the UKVI officers impacted on ICTs in England, because most of the respondents did not have any direct dealings with them due to employers hiring lawyers to apply for the relevant permits and sponsor licences. In addition, in

wide discretion in its decision-making function. The Slovak Supreme Court held that even if all the conditions set out in the Foreigners Act were satisfied, it did not follow that migrants would be granted temporary residence, as it was up to the administrative authority to decide.³⁷ It is the nature of the Slovak legislation, as a civil law system, that the legislation covers all the eventualities and judges have a more limited role in applying the law to each case they have in hand. Thus, if the statute grants broad discretion to national authorities, the courts are obliged to interpret the intention of the legislature accordingly.

This discretion of the Foreigners Police has been criticised for being very wide.³⁸ It allows the Foreigners Police to develop certain “*not formalised*” practices or conditions to be complied with, which can negatively impact the effectiveness of the permit application procedure, enhance legal uncertainty and create space for corruption.³⁹ One example of such “*not formalised*” practices was limiting the ICTs’ residence permit to one year, even though the contract of employment was for longer, and the statute allowed the authorities to issue permits for longer.⁴⁰ Employers and ICTs would appreciate if the permits were granted for the period of the actual employment, which was the case in England.⁴¹ This makes sense, because it alleviates burdens for all actors involved – the State authorities, employers and ICTs. Therefore, the practice of the Foreigners Police in Slovakia should be more formalised and subject to greater external scrutiny.⁴² Foreigners Police would also benefit from more effective training regarding the new legislative changes and administrative procedures and better financial and human resources.

England these processes are computerised, whilst in Slovakia applicants or employers often need to visit the local office of the Foreigners Police to apply for permits.

³⁷ Judgment of the Supreme Court of the Slovak Republic, *A v the Directorate of the Border and Alien Police*, Judgment of 9 March 2010, NS SR, sp. zn. 1Sža/10/2010 <http://www.supcourt.gov.sk/data/att/14451_subor.pdf> accessed on 6 June 2016.

³⁸ Z Bargerová and B Divinský, *Integrácia Migrantov v Slovenskej Republike – Výzvy a Odporúčania pre Tvorcov Politík* (IOM 2008).

³⁹ Similar conclusions about the presence of not formalised conditions to be satisfied by migrants were found in the research conducted by E Gallová Kriglerová, J Kadlečíková, and J Lajčáková, *Migranti – Nový Pohľad na Staré Problémy: Multikulturalizmus a Kultúrna Integrácia Migrantov na Slovensku* (CVEK 2009) 51-55. Interviews with S4 and S2.

⁴⁰ Interview with SD and S4.

⁴¹ Interviews with E5 and E8.

⁴² Control of the functioning of the Foreigners Police is conducted by the Control Department of the Police Presidium, rather than by an organ independent of the police force, see <<http://www.minv.sk/?ulohy-1>>.

7.2.2.1.3. Conditions for Family Reunification

The migrants' ability to bring their family to the host country has been recognised as one of the most important tools aiding migrants' integration⁴³, as well attracting them and their companies to a certain country⁴⁴. In addition, from the empirical data it was clear that ICTs were more likely to accept the transfer, if they could bring their family with them.⁴⁵ *Table 3* lists the conditions for family reunification in England, in Slovakia and under the ICTD.

Table 3 – Conditions for Family Reunification

	<i>England</i>	<i>Slovakia</i>	<i>ICTD</i>
Deadline to issue permit	No, but in practice within 1 month	90 days	90 days, option to introduce fast-track and simplified procedure
Waiting period before able to join ICTs	No	No	No
Integration conditions	No	No	Option to introduce only after arrival
Access to labour market for spouse	Yes, subject only to labour market test	Work permit for 12 months	Immediate free access
Access to family benefits	No	Yes, some family benefits available to temporary migrants	Yes, but option to limit for ICTs residing for less than 9 months
Access to free education by children	Yes, in law and in practice	Yes, but in practice attend paid schools	Not addressed
Access to free healthcare for spouse	Only until April 2017, since then need to pay immigration health surcharge (IHS)	Only if spouse works, otherwise commercial health insurance	Not addressed

Burdensome family reunification procedure under the Slovak rules prevented some ICTs from bringing their family, which negatively impacted on their integration, and even led to failures of international assignments because of early returns due to missing the family.⁴⁶ The Tier 2 ICT route and the ICTD contain more favourable conditions than the Slovak national legislation.⁴⁷ In fact, the family reunification schemes in the ICTD and the UK are similar in that both schemes allow for immediate family reunification and

⁴³ A John, 'Family Reunification for Migrants and Refugees: A Forgotten Human Right?' (MA Thesis, University of Coimbra, European Inter-University Centre for Human Rights and Democratisation 2003) <<http://www.fd.uc.pt/hrc/pdf/papers/arturojohn.pdf>> accessed on 9 June 2016. See also R Cholewinski, 'Family Reunification and Conditions Placed on Family Members: Dismantling a Fundamental Human Right' (2002) 4(3) European Journal of Migration and Law 271.

⁴⁴ European Migration Network 'Attracting Highly Qualified and Qualified Third-Country Nationals' (Synthesis report prepared by the EMN based on their 2013 Focused Study) <http://emn.ie/files/p_201311180323172013_attractinghqworkers_finalversion_23oct2013.pdf> accessed on 9 June 2016.

⁴⁵ Interview with ED.

⁴⁶ Interview with SA.

⁴⁷ Resulting from the transposition of the Family Reunification Directive. See the chapter 4, section 4.3.7.

spouses' access to employment. The ICTD, however, could ensure even more beneficial conditions in Slovakia than the Tier 2 ICT route, if the Slovak legislature adopts the favourable ICTD provisions and ignores the more restrictive ones. This means taking advantage of the simplified fast-track admission procedure, lifting the requirement of having sufficient maintenance funds and not limiting ICTs' access to family benefits. Then, on balance the Directive would offer in Slovakia more favourable conditions for family reunification and integration than the Tier 2 ICT route, which is becoming available to less and less ICTs.⁴⁸ Regarding the right to family reunification, the ICTD sealed the gap at EU level, arising from international law and CoE instruments.

7.2.2.2. *Initial Residence, Access to Permanent Residence and Intra-EU Mobility Rights*

Table 4 sets out legal rules relating to the length of initial residence, whether ICTs had access to more secure residence status and intra-EU mobility rights under the Tier 2 ICT route and Slovak legislation, and under the ICTD.

Table 4 – *Initial Residence, Access to Permanent Residence and Intra-EU Mobility*

	<i>England</i>	<i>Slovakia</i>	<i>ICTD</i>
Access to territory	Express entitlement, if conditions are met + no grounds for refusal	No legal entitlement, in practice seems to be granted, if all conditions are met + no grounds for refusal	Implied entitlement, if all conditions are met + no grounds for refusal
Initial validity of the permit	Maximum 5 years for the Long-Term Staff sub-category	Maximum 5 years	Maximum 3 years for managers/specialists, 1 year for trainee employees
Extension/renewal	Up to the maximum 5 years	Can be extended/repeatedly renewed for up to 5 years	Up to maximum period allowed
Possibility to switch to another permit	Yes	Yes	Yes
Requirements for permanent residence	5 years of residence before 6 April 2010, the same employer, minimum salary, sufficient funds, knowledge of the language and culture	Be a spouse of a Slovak national, sufficient funds, accommodation	Not possible to apply for permanent residence under the ICTD
Intra-EU Mobility	No	No	Conditional intra-EU mobility rights

⁴⁸ Due to more stringent entry eligibility requirements, such as the minimum level of pay, paying the IHS, and closing two out of the four Tier 2 ICT sub-categories. See Statement of J Brokenshire (n 26).

It is argued in this thesis that legal entitlement to rights can provide platform for better integration.⁴⁹ However, two of the three schemes, namely the Tier 2 ICT route and ICTD, curtailed ICTs' stay to a maximum number of years, obliged them to leave the host country and made it very difficult for them to obtain alternative permits, if they wanted to continue residing in the host country. Thus, the gap identified in international law *vis-à-vis* security of residence for temporary migrants has clearly not been alleviated in the ICTD. If anything, this gap has been expressly reiterated. The reiteration of this gap is supposedly beneficial for States and MNCs. Under the Slovak legislation, ICTs were not prevented from obtaining permanent residence, but possibilities for achieving it were extremely slim. Most migrant workers found themselves repeatedly renewing their temporary residence, being “*permanently temporary*”.⁵⁰

Regarding intra-EU mobility rights, the ICTD in contrast to the English and Slovak rules grants conditional intra-EU mobility rights to ICTs and their families via complex intra-EU mobility schemes.⁵¹

7.2.2.3. Socio-Economic Rights

Table 5 contains information about access to socio-economic rights, such as access to labour market, terms and conditions of employment, contributory and family benefits, healthcare and education, granted to third-country national ICTs and their families in England, Slovakia and in the ICTD.

Table 5 – Socio-Economic Rights of ICTs and their Families

	England	Slovakia	ICTD
Access to Labour Market by ICTs	Activity specified in the permit, plus some voluntary and supplementary work	Only activity specified in the permit	Only activity specified in the permit
Access to Labour Market by Spouses	Near-equality with EU nationals, as access to most professions after labour market test	Equality with EU nationals only after 12 months of residence	Equality with EU nationals
Working Conditions	Equality with EU nationals	Equality with EU nationals	Equality <i>at least</i> with posted workers, apart from salary

⁴⁹ See chapter 1, section 1.1., and chapter 2, section 2.2.

⁵⁰ Term “permanently temporary” was borrowed from J Hennebry, ‘Permanently Temporary?: Agricultural Migrant Workers and Their Integration in Canada’ (IRPP Study No. 26, February 2012) <<http://irpp.org/wp-content/uploads/assets/research/diversity-immigration-and-integration/permanently-temporary/IRPP-Study-no26.pdf>> accessed on 13 July 2016. According to Hennebry “permanent temporariness” seems to be a main feature of temporary migration programmes.

⁵¹ See chapter 4, section 4.3.2.

Contributory Benefits	Equality with EU nationals	Equality with EU nationals	Equality with EU nationals ⁵²
Family Benefits	No	Limited access by temporary migrants to some family benefit only	Equality with EU nationals, but can limit access by ICTs residing less than nine months
Healthcare	Equality with EU nationals (until April 2017) ⁵³	Equality with EU nationals	Equality with EU nationals
Education of Children	Equality with EU nationals	Equality with EU nationals	Not addressed

All three sets of legal rules were equally unfavourable to ICTs regarding free access to labour market, requiring ICT to obtain a relevant permit and tying them to one employer, which in essence trapped them in an “*unfree labour*” situation.

The ICTD provides for the most favourable rules on spouses’ access to employment, which in Slovakia will mean lifting the legal barriers, which were previously there under the national legislation (work permit required for 12 months).

In contrast, the ICTD offers ICTs the least favourable treatment regarding terms and conditions of employment, except salary, on par with posted workers rather than with EU nationals. This can allow foreign working conditions to creep into the host country’s labour law, enforcement of which can be difficult in the host country and can lead to undermining of domestic labour standards.⁵⁴

Regarding contributory benefits, all three sets of legal rules provide for equality with EU nationals, which can be positive for ICTs if they are allowed access to a more secure residence status. However, this equality with EU nationals could also have an adverse impact on ICTs, when their residence is only temporary, as it could result into lost or double contributions in the absence of ratification of the ILO migrant-specific conventions on social security or concluding bilateral agreements on social security.

Concerning access to family benefits, the Slovak national rules were more favourable to ICTs than the Tier 2 ICT route, which prohibits access by ICTs and their families to family benefits. They were even more favourable than the ICTD, which allows limiting the access to family benefits for ICTs residing for less than nine months.

Access to free education by children of third-country national ICTs was ensured under the Slovak and English legislation on equal footing with EU nationals.

⁵² Unemployment benefit is not addressed in the ICTD.

⁵³ Since 6 April 2017 ICTs and their families need to pay immigration health surcharge. See chapter 6, section 6.4.8.1.

⁵⁴ For a detailed discussion of this issue see chapter 4, sections 4.2.2. and 4.3.5.

Likewise, in both countries, at the time of research, the access to healthcare was granted to ICTs on equal footing with EU nationals. In Slovakia, non-economically active family members needed commercial health insurance. In England, the situation of family members was more favourable due to the principle of universal healthcare system.

7.2.2.4. *Social and Cultural Integration of ICTs and their Families*

Apart from granting access to rights, States can also facilitate the integration of migrant workers and their families through integration measures, such as language and orientation courses, provided to them upon arrival. *Table 6* outlines the availability of such measures in England, Slovakia, and the position under the ICTD.

Table 6 – Social and Cultural Integration of ICTs and their Families

	<i>England</i>	<i>Slovakia</i>	<i>ICTD</i>
Language and Orientation Courses on Arrival	ESOL (includes some orientation elements), limited access due to cuts ⁵⁵	Free courses only available through an NGO (IOM), no State policy yet	Not addressed as national competence, but prevents introduction of pre-entry integration measures

As the migrants' integration in the EU is primarily within national competences, the ICTD only prohibits the use of pre-entry integration measures, which is a positive development as such measures could hinder integration.⁵⁶ The provision of integration measures was very limited in Slovakia. The situation was better in England, but the availability of subsidised ESOL courses was becoming scarce due to budget cuts.

7.2.2.5. *Future of ICTs and their Families*

At this stage of the transfer States can also play a crucial part in the integration process of ICTs and their families. States, in their capacity as countries of origin, can help with the reintegration process of ICTs and their families back into the society, labour market and educational establishments in the country of origin.

⁵⁵ For example, in 2013 the ESOL was available on subsidised basis only to those migrants who were jobseeker already residing for one year, or to any migrant after three years of residence. See Oliver (n 18) 45 and 77.

⁵⁶ E Guild, K Groenendijk, and S Carrera, 'Understanding the Contest of Community: Illiberal Practices in the EU?', in E Guild, K Groenendijk, and S Carrera (eds.), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009), 17.

7.3. Integration from the Perspective of the ICTs and their Families

The ability of ICTs and their families to integrate in England and Slovakia was positively or negatively affected by the above-outlined laws, policies, and practices. Their level of integration was also influenced by other non-legal barriers, such as the language, attitudes of the host society, social and economic conditions, and migrants' own perceptions of integration. In this section, all these factors are discussed from the perspective of ICTs and their families.

7.3.1. Secure Residence: A Desired Status for ICTs

The knowledge of the fact that the stay in the host country is only temporary had a negative effect on the quality of life and integration of some ICTs in England:

“[...] It still feels like a business trip. I would expect it to change at some point, but maybe it is because I always had it on my mind I am going to go home, so to get through the time here and then I am going home [...] Somebody asked me if I want to go with them to Portugal in October 2015. There is no way I can commit to that, because I do not really know, what I am going to do. So, is it real life? I do not think it is. I still think it is big longer business trip.”⁵⁷

“To be honest I do not feel integrated at all. I feel like I am just a passer-by. Because of the visa category we are in there is no way, no opportunity to be permanent. Even though you have proven yourself that you are contributing to the society, you are doing contribution to charities and that kind of stuff. You cannot feel integrated at all, because there is time when you will have to leave. That's the limitation of the visa that we have. [...] at least I have few years of opportunity when I can save up. [...]”⁵⁸

Not all temporary migrations turn into permanent, and indeed many ICTs may not wish to stay permanently in the EU. This obligatory temporariness is mostly beneficial for the host countries. It may be beneficial for some MNCs, but not those which need to transfer ICTs for longer periods.⁵⁹ It is least beneficial for ICTs. Temporary migration programmes can make migrant workers vulnerable, exclude them from the society and

⁵⁷ Interview with E10.

⁵⁸ Interview with E15.

⁵⁹ Interview with SD.

expose them to potential exploitation.⁶⁰ Therefore, temporariness should not be forced and access to a more secure status should be available. The latter has been recognised as an issue in relation to the BCD. It has been recommended in the proposal to amend the BCD that highly-skilled workers should be granted access to permanent residence after 3 years (as opposed to 5 years under the Long-Term Residence Directive), to attract highly-skilled migrants to the EU and help them with their integration.⁶¹ Similarly, ICTs should also have access to permanent residence after 3 years. The ICTD should be amended to reflect this. This proposal may be going against the principle of equality and reiterating the fragmentation of the statuses of migrant workers in the EU, but at least it would bring closer in treatment similar groups of third-country nationals – highly-skilled. For now, this may be politically a more palatable approach, as opposed to granting equality of treatment to all the third-country nationals in the EU at once. This would probably be rejected by MNCs for fear of losing valuable employees. However, if MNCs look after their ICTs and support them adequately, as proposed in section 7.4. below, there is no reason why ICTs would leave. On the contrary, this would ensure the successful completion of international assignments and MNCs’ return on investments in them. Eventually, all legally resident third-country nationals in the EU should be given access to a secure legal status to avoid their exploitation, and protect labour standards and social cohesion throughout the EU.

7.3.2. Intra-EU Mobility: A Guarantee of Rights Protection for ICTs and their Families and of Fair Competition among EU Member States

ICTs’ intra-EU mobility rights in the ICTD do not constitute a free movement right as enjoyed by EU migrant workers, because the second Member State “*can check the intention of those using the mobility rights*”.⁶² Yet they are a significant novelty of the EU law on rights of third-country nationals, as thus far no other Directive gives non-EU

⁶⁰ C Costello and M Freedland, ‘Migrants at Work and the Division of Labour Law’ in C Costello and M Freedland (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law* (OUP 2014).

⁶¹ Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment COM(2016) 378 final, Strasbourg, 7.6.2016.

⁶² See D Kochenov and M van den Brink, ‘Pretending There Is No Union: Non-Derivative Quasi-Citizenship Rights of Third-Country Nationals in the EU’ (European University Institute, EUI Working Paper LAW 2015/07, 2015) 16 <<http://ssrn.com/abstract=2587661>> accessed on 13 June 2016. See also chapter 4, section 4.3.2.

nationals almost immediate intra-EU mobility rights.⁶³ The ICTD brings ICTs' rights of free movement a bit closer to those enjoyed by EU nationals.⁶⁴ However, the intra-EU mobility provisions contain many optional clauses, which could threaten the harmonisation of the scheme at EU level. Consequently, the intra-EU mobility provisions could lead to unfair competition in the EU and "forum shopping"⁶⁵, as States can choose to apply differently favourable intra-EU mobility schemes. To facilitate intra-corporate transfers within the EU and ensure protection of labour and other rights of ICTs (and eventually other regular third-country nationals) should enjoy intra-EU mobility rights, to achieve the professed objective of the EU to create an area of freedom, security and justice.⁶⁶ Thus, the intra-EU mobility provisions in the ICTD should be relaxed.

7.3.3. Socio-Economic Integration: A Stepping Stone to Social and Cultural Integration of ICTs and their Families

In both countries, ICTs were only partially socio-economically integrated for several reasons. They did not have free access to employment, though, it would be central for their better integration in the host society⁶⁷:

*"[...] I need to stay with the same company for 10 years. I would not say it is bad, but I have already spent working in this company almost 10 years and need to stay with them for 5 more years, if I want to obtain my permanent residence."*⁶⁸

Being trapped to one employer for a long time does not constitute full economic integration and it can lead to exploitation. The ICTD could slightly improve ICTs' economic integration in Slovakia, as it would lift the requirement of carrying out a labour market test, but this is not enough. The Proposal for the revisions of the BCD

⁶³ Long-term resident third-country nationals have access to intra-EU mobility rights after five years of permanent residence (LTRD, Arts 14(1)). Highly-skilled third-country nationals can exercise intra-EU mobility rights after 18 months of residence in the first EU Member State (BCD, Art 18(1)).

⁶⁴ A Maricut, 'The Institutional Development of the EU's Area of Freedom, Security and Justice: Roles, Behaviors, and The Logic of Justification' (DPhil Thesis, School of Political Science, Public Policy and International Relations, Central European University Budapest, Hungary 2016) 227 <<https://pds.ceu.edu/sites/pds.ceu.hu/files/attachment/basicpage/478/phdthesismaricutadina.pdf>> accessed on 13 June 2016.

⁶⁵ ETUC, 'Agenda Item 9: Seasonal Work and Intra-Corporate Transfers' (ETUC Executive Committee, EC/189/EN/9, 13-14 October 2010) 5 <<http://online.cisl.it/dept.int/I0DB3F2B8.9/09-EN-Seasonal-work-intra-corporate-transfers.pdf>> accessed on 19 October 2016.

⁶⁶ Costello and Freedland, 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital's Handmaidens?', in Howe and Owens (n 6) 28.

⁶⁷ R Hansen, *The Centrality of Employment in Immigrant Integration in Europe* (Migration Policy Institute 2012).

⁶⁸ Interview with E17.

recommended easier access to labour market in the host country for Blue Card holders to aid their better integration.⁶⁹ Thus, ICTs too should be granted access to the labour market of the host country, even if only after several years of being tied to one employer (for example, after 3 years, which would coincide with gaining the right to a more secure status). This, along with the provision of adequate support⁷⁰, could alleviate MNCs' fear of losing valuable workers, it would enable States to retain high-skilled labour, and it would protect ICTs. The ICTD should be amended accordingly.

Regarding salary, under the national rules, as well as under the ICTD⁷¹, ICTs enjoy equality of treatment with EU nationals occupying comparable positions, which is very positive for their social inclusion, avoiding their exploitation and undercutting local labour standards. However, in respect of other working conditions, the Directive, unlike the national legislation, allows Member States not to guarantee to ICTs equality of treatment with EU workers, but with posted workers, who have a less secure status within the EU law.⁷² This could lead to lowering rights protection for ICTs under the ICTD compared to the Slovak or English legislation. More effective protection of labour rights, in the ICTD and in general, would provide more inclusive treatment for all workers, including nationals, as well as migrants. Then the argument that migrants undercut local labour standards would not stand. The ICTD should be amended to guarantee ICTs the equality with EU nationals regarding all terms and conditions of employment.

Access to healthcare is one of the basic social rights that needs to be provided to migrants.⁷³ The same can be said about providing a primary and secondary education to *all* children, including migrants' children.⁷⁴ Regarding access to healthcare and education, ICTs and their families had, at the time of research, legal entitlements to access these rights on equal footing with EU nationals. However, this fact alone did not

⁶⁹ Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment COM(2016) 378 final, Strasbourg, 7.6.2016.

⁷⁰ See section 7.4 of this chapter.

⁷¹ ICTD, Art 5(4)(b).

⁷² For more detailed discussion of this issue see chapter 4, sections 4.2.2 and 4.3.5.

⁷³ See D Biswas, B Toebes, A Hjern, H Ascher, and M Norredam, 'Access to Health Care for Undocumented Migrants from a Human Rights Perspective: A Comparative Study of Denmark, Sweden, and the Netherlands' (2014) *Health and Human Rights Journal* 14(2); European Union Agency for Fundamental Rights (FRA), *Report on the Cost of Exclusion from Healthcare: The Case of Migrants in an Irregular Situation* (FRA 2015).

⁷⁴ See CESCR, General Comment No. 13: The Right to Education (1999) UN Doc E/C.12/1999/10 [34]; and ECtHR, *Ponomaryovi v Bulgaria* (Appl. No. 5335/05) Judgment of 21 June 2011. For more details see chapter 3, sections 3.3.1.2. and 3.3.2.2.

ensure their full integration in these areas. ICTs and their families faced other obstacles in fully enjoying these rights. For example, there was a language barrier in both countries, but primarily in Slovakia. By providing access to language courses upon arrival, States could help to overcome this barrier. Other obstacles included mistrust of healthcare providers towards commercial health insurance taken out by economically inactive family members⁷⁵, and cultural differences⁷⁶.

Though in England arguably the principles of equality of treatment and the universality of access to healthcare have been challenged by the introduction of the IHS for all third-country nationals staying over six months and not having settled status.⁷⁷ States can exclude temporary and irregular migrants from having access to public services because they do not typically contribute to them.⁷⁸ However, ICTs who migrate to the UK for up to five years and are working, and thus contributing, could be considered to fall outside this category. In addition, any limitation on access to socio-economic rights in times of austerity should only be temporary, necessary, proportionate and non-discriminatory.⁷⁹ Therefore, the IHS should be abolished.

Migrants need to have access to social security protection, as it could help reduce their vulnerability.⁸⁰ Indeed, in law ICTs enjoyed such equality with EU nationals regarding access to contributory benefits, such as maternity, unemployment and pension. Yet, in practice most ICTs in Slovakia and England became net contributors towards contributory benefits, because they were unable to benefit from them. Equality with EU nationals leads to inequality. The ICTD does not really provide any solutions because access to social security by third-country nationals is a politically sensitive issue primarily in the competence of EU Member States and coordinated through bilateral agreements. The ICDT is without prejudice to such agreements. However, the Directive stipulates that

⁷⁵ Interview with SC.

⁷⁶ Interview with E9.

⁷⁷ Home Office, 'Regulating Migrant Access to Health Services in the UK' (IA HO 0095, 2013) 1 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251972/Health_impact_assessment.pdf> accessed on 10 March 2016.

⁷⁸ ECtHR, *Ponomaryovi* (n 74) [54].

⁷⁹ See AG Pillay, 'Letter from CESCR Chairperson to States Parties in the Context of the Economic and Financial Crisis' (16 May 2012) <<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>> accessed on 16 March 2017.

⁸⁰ L Lamarche, 'Human Rights, Social Security and Migrant Workers', in R Blanpain (ed.), *Social Security and Migrant Workers: Selected Studies of Cross-Border Social Security Mechanisms* (Bulletin of Comparative Labour Relations – 84, Kluwer Law International 2014).

[...] bilateral agreements or national law on social security rights of [ICTs] which are adopted after the entry into force of this Directive should not provide for less favourable treatment than the treatment granted to nationals of the Member State where the work is carried out. As a result of national law or such agreements, it may be, for example, in the interests of the [ICTs] to remain affiliated to the social security system of their country of origin if an interruption of their affiliation would adversely affect their rights or if their affiliation would result in their bearing the costs of double coverage [...].⁸¹

Such bilateral agreements could allow ICTs to remain attached to the social security system in their country of origin during their transfer (this could be especially beneficial in the case of shorter stays). Alternatively, and for longer stays, these bilateral agreements could guarantee that the time and contributions made in the destination country would be taken into account when calculating the eligibility for a benefit in the country of origin. This could provide an answer to the issues of double and missed contributions in the absence of the ratification by the UK and Slovakia of the ILO migrant-specific conventions on social security.

Access to social security benefits, which are not based on contributions towards social insurance, is even more problematic for migrants, especially temporary migrants, as these benefits are often reserved for nationals, EU nationals or long-term resident third-country nationals. ICTs and their families were excluded from access to public funds, including family benefits, in England, whereas in Slovakia they were entitled at least to some family benefits. The UK should allow access to at least certain family benefits, as access to them can assist ICTs and their families, given the high cost of living in the UK and ensure more equality. In Slovakia, ICTs should be made aware about their rights entitlements to access family benefits, so that they could enjoy them in practice, and the option in the ICTD to limit access by ICTs to such benefits should not be implemented.

ICTs' spouses were much better socio-economically integrated in England than in Slovakia, because in England they enjoyed labour market rights, which were comparable to the rights of family members of EU nationals, who enjoyed free access to the labour market. While in Slovakia, ICTs' spouses needed a work permit for the first 12 months in addition to the residence permit. The ICTD would remove this legal obstacle, as family members would no longer need a work permit. However, other non-legal barriers to

⁸¹ ICTD, Recital 38.

spouses' socio-economic integration, such as the language⁸² and high unemployment, would continue to be present in Slovakia, even after the transposition of the Directive. England is at advantage in this respect compared to Slovakia. Firstly, there is a lower unemployment and better economic situation. Secondly, English is spoken by many migrants and as such did not constitute major issue for economic integration for most ICTs' spouses.⁸³ In Slovakia, the lack of knowledge of the Slovak language by ICTs' spouses⁸⁴, combined with other barriers prevented their integration. This is very difficult to overcome and unlikely to change in the future. Hence, the socio-economic integration of ICTs' spouses was, and would remain, harder in Slovakia to achieve than in England, not due to restrictive legislation, but due to language barrier and social conditions. Access to language courses provided by national authorities could improve the spouses' chances to integrate in the labour market. Being employed is by no means full integration, though it often constitutes a first point of call for further social and cultural integration.

7.3.4. Social and Cultural Integration: A Realistic Picture of Integration

Moving beyond mere socio-economic integration, which is easier to be influenced via legislation, the next layer of integration of ICTs and their families in the host country takes place within the social and cultural dimension. This could be considered as a deeper form of integration, taking longer, requiring more pro-active efforts, especially in the case of temporary stays, and it is harder to legislate for. Having a job certainly provides a platform for social and cultural integration by enabling migrants to develop *social connections* with colleagues and improving learning of the host country's language and about its culture⁸⁵:

“My wife had some issues in terms of language. We both studied English at schools, but since I worked for international company, I had exposure with Europe and experience

⁸² AF Constant, M Kahanec, and KF Zimmermann, ‘Attitudes towards Immigrants, Other Integration Barriers, and their Veracity (The Institute for the Study of Labor (IZA) Discussion Paper No. 3650 August 2008) <<http://ftp.iza.org/dp3650.pdf>> access on 7 June 2016.

⁸³ See chapter 6, section 6.4.5.

⁸⁴ None of the ICTs' spouses, except one, who herself was an ICT too, worked in Slovakia. Interviews with S3 and S7. See also Gallová Kriglerová and others (n 39).

⁸⁵ See Figure 2 – ICTs' Indicators of Integration in chapter 2.

*with spoken English, but she struggled for a year or two. Then she started working and now is much more comfortable with the language.*⁸⁶

Achieving *social connections* in the host country can happen in three layers. *Social bonds* are relations with family members and members of the same nationality, religion or ethnicity⁸⁷. *Social bridges* are created through interaction with the members of the host society. *Social links* are exemplified through migrants' membership and involvement with organisations and authorities. Developing *social bridges* and *links* is possible, if migrants speak the host country's language, which is one of the facilitators of integration. Overall, ICTs' and their families' social and cultural integration was better in England than in Slovakia, primarily because their knowledge of the English language facilitated their interaction not only with colleagues at work, but also with other nationals outside work, and even at different organisations, such as charities, or when volunteering.⁸⁸

This was certainly not the case in Slovakia, as most of the ICTs and their families could not speak the Slovak language, which made them more isolated and excluded. Thus, they constantly relied on someone, who spoke the Slovak language, for example, needing assistance of a Slovak translator during the birth of a baby.⁸⁹ None of the respondents in Slovakia, unlike in England, participated in any organisations. Few ICTs struck friendships with Slovak nationals, who were their colleagues and spoke English, so in their case the integration moved beyond *social bonds* to *social bridges*, but never all the way to *social links*.

The social and cultural integration of ICTs' spouses was non-existent in Slovakia for many reasons: they did not speak the Slovak language, they had very little opportunity to interact with anyone beyond their husbands and other few spouses; and they could not immediately access employment.

The UK and Slovak governments do not have a legal obligation, under international or EU law, to provide language courses to immigrants as migrants' integration is primarily a national competence. There is a strong case for providing such integration measures, because even a basic knowledge of the language could help migrants to improve their lives, especially in Slovakia, because authorities and other services do not speak any foreign language. ICTs and their families may not be able to learn the language

⁸⁶ Interview with E17.

⁸⁷ See the Ager and Strang definition of integration in chapter 1, section 1.8.

⁸⁸ Interviews with E2, E4, E12, E15 and E17.

⁸⁹ Interview with SC.

proficiently, but, as evidenced by the ICTs' interviews, knowing the language at least to some basic level is important for better interaction with the host society and navigating life in Slovakia:

*“First thing is the language, even though we can speak in English and we can communicate with them in English. I think it is at the very low level. So, if I could speak the Slovak language, it would be better to enjoy life in here in general.”*⁹⁰

*“I have learned some Slovak, it's not perfect, but just enough to go around with everyday life, I'm able to call anywhere and make appointments, and principally do not encounter any problems. [...] Language knowledge is very important in Slovakia. Before it was quite difficult, as people not always speak English in local supermarkets, hair salons, insurance companies, any other services.”*⁹¹

In times of economic stagnation countries tend to withdraw funding from integration projects and place the responsibility for integration on migrants, such as in the UK, or not to address integration-related issues at all, as in Slovakia. It is recommended that both countries, as a matter of policy, take an example from practices of other countries, such as Germany, where active integration measures, such as language and orientation courses, are helping migrants to integrate.⁹² States should make available such integration measures upon arrival to migrants, if possible on subsidised basis, and if not for financial reasons, some other creative arrangements could be put in place, for instance, in cooperation with employers. This would be beneficial for migrants' integration and save costs of integration for States in the long run.⁹³ The ICTD contains prohibition for States to introduce pre-entry integration measures, as these could be used to control immigration, rather than promote integration.⁹⁴

However, knowing the host country's language, as was the case for ICTs and their families in England, does not automatically mean fuller social and cultural integration, or that *social connections* would move beyond *social bonds*, to *social bridges* and *social links*. As was demonstrated in England, interaction with the host society was made

⁹⁰ Interview with S3.

⁹¹ Interview with S5.

⁹² Germany provides subsidised language and orientation courses and evidence suggest that such measures have a positive impact on migrants' integration. See Oliver (n 18) 92.

⁹³ Oliver (n 18) 92.

⁹⁴ Guild and others (n 56).

difficult, not so much because of the language barrier, but due to cultural differences, which could be overcome by providing orientation courses:

*“One of the reasons is that the working culture is so different. I am from Hong Kong and Chinese people work very hard and in R&D as well. I am not saying that the British people are lazy. I see that every day they have a coffee 4-5 times, have a 10 minutes’ break; every 2 hours go to the kitchen or canteen. And I cannot really do that. I want to talk to them, but I have too much work. I did not understand this culture still. So, this is the culture difference stopping me little bit to talk to them. [...]”*⁹⁵

Apart from knowing the host countries’ *language* and *culture*, another facilitator that can support or hinder integration is *safety* and *stability*. This facilitator encompasses ICTs’ and their families’ perception of safety, continuity and non-discrimination in the host country. This is closely associated with attitudes of the host society towards migrants. Hence, even if migrants know the language and culture of the host country and make active efforts to integrate, ICTs’ chances to interact with the host society could be diminished due to their “closed” attitudes towards them:

*“[...] It’s funny the suburbs, the area, where we live in, the neighbours are very reserved. When we have been out in the front garden, we tried to wave and catch their attention. They rush back in, especially the neighbours right beside us. We think they do everything to avoid us. So, we have not actually engaged too much just yet [...]”*⁹⁶

Despite the different policy approaches to integration of migrants⁹⁷, and different experiences with migration⁹⁸, the attitudes of the host society towards migrants were not so dissimilar in both countries – rather negative than positive. In both countries, ICTs or their families experienced discrimination, intolerance, and even became victims of crimes on account of “not being local”. Moreover, in Slovakia, ICTs have also complained of being mistreated by the authorities. Both countries need to work harder to prevent discrimination, violence and intolerance encountered by ICTs and their families. In relation to hospital staff, the police, and the Foreigners Police, Slovakia could take

⁹⁵ Interview with E4.

⁹⁶ Interview with E12.

⁹⁷ The UK still embraces cultural differences more than Slovakia, which has stronger assimilationist tendencies.

⁹⁸ The UK being a migration-experienced country, and Slovakia being only a novice to migration.

examples from how the UK accommodated migrant-specific needs, such as providing translation services. Both countries could benefit in the future, if they now invest efforts and resources in creating effective integration and immigration policies, targeting specific groups of migrants, to deal with growing immigration and cultural diversity – two interrelated phenomena, which are unlikely to disappear in our ever more globalised world. Ignoring them can exacerbate the distortion of social cohesion in Europe.

7.4. Companies as Architects of the Integration Process

This section identifies areas, where companies could make a difference in integration and rights protection of ICTs and their families. Drawing on the empirical research some recommendations and good practices are presented to guide MNCs.

7.4.1. Provision of Information during the Pre-Departure and Relocation

Making information available about the host countries' permit application procedure, migrants' rights and duties should be a primary responsibility of States.⁹⁹ However, sending companies could also provide information to their ICTs, not only on rights and duties in the host country, but mainly regarding the impact of the transfer on their rights in the country of origin, such as social security rights, future career, as these issues caused concerns to many ICTs.¹⁰⁰

7.4.2. Pre-Departure Training and Assistance

The provision of pre-departure training and assistance by MNCs appears not to be addressed in any international soft law instruments relating to MNCs. For instance, Principle 30 of the 2006 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy only covers the “on-the job” training to be provided in the host country.¹⁰¹ However, if there is lack of pre-departure training and assistance, this increases migrant workers' vulnerability in the host country.¹⁰²

⁹⁹ See section 7.2.1. above.

¹⁰⁰ Interviews with S7 and E9.

¹⁰¹ ILO, *Tripartite Declaration on Multinational Enterprises and Social Policy* (5th ed., ILO 2017, original version adopted in 2006). Principle 30 only covers the “on-the job” training to be provided by multinational companies in the host country.

¹⁰² Business for Social Responsibility, ‘International Labor Migration: A Responsible Role for Business’ (BSR October 2008) 20-22 <https://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf> accessed on 5 October 2016.

The transfer caused anxiety to ICTs and their families as they did not know what to expect in the host country in terms of language and culture.¹⁰³ From the empirical evidence it appears that ICTs and their families did not receive any pre-departure training, because many spoke of a cultural shock on arrival and difficulties to adjusting to different working cultures, and not having any knowledge of the host countries language, particularly in Slovakia.¹⁰⁴ Some of the knowledge about the transfer or the host country was passed down through informal channels, such as former ICTs, or ICTs informally liaising with the host company, and mainly concerning the actual role, but less so about the cultural differences.¹⁰⁵

Although informal channels are important sources of information, it would be beneficial for ICTs and their families to receive a more formal pre-departure training in host country's language and culture. Sending companies would be best placed to ensure such training, wherever possible. It is in their economic interest to do so, as inadequate training has been identified as one of the major factors contributing to the failure of international transfers.¹⁰⁶ Sometimes the suddenness of the transfer may prevent this. Then, upon arrival in the host country, language and orientation courses should be provided by the host countries as part of their national integration strategy, as discussed above. In absence of such measures, the host company could step in and provide language and orientation courses to ICTs and their families.

7.4.3. Relocation and Permits Application Procedure

Regarding relocation, it was observed that, where the host companies supported ICTs and their families, it had a very positive impact on them. Companies helped to ensure compliance with burdensome documentary requirements for obtaining permits, aided in communication with national authorities, mainly in Slovakia, and covered the cost of the expensive permits application procedure in England. Most companies assisted their ICTs at least with obtaining permits¹⁰⁷, and several also covered the cost of relocation. However, company policies were often not extended to family members. Only in some cases, the company provided support with obtaining family reunification permits, but not

¹⁰³ Interviews with S3 and E4.

¹⁰⁴ Interviews with E2, S1 and S6.

¹⁰⁵ Interviews with E17 and E8.

¹⁰⁶ N Cole and K Nesbeth, 'Why Do International Assignments Fail?: The Expatriate Families Speak' (2014) 44(3) *International Studies of Management and Organization* 66, 69-71.

¹⁰⁷ Although this depended on whether the transfer was for business reasons or for personal reasons. Interviews with S9 and S8.

with the cost of relocation. This resulted in a lot of financial burdens on ICTs and delayed family reunification.¹⁰⁸ One company in England supported ICTs' family fully, only if the couple were married, and if not, there was no support.¹⁰⁹ This policy could be considered unfair and family unfriendly, but would not be illegal as “*marital status*” is not one of the protected characteristics under the 2010 Equality Act. Some authors have argued that “*marital status*” should be included in the domestic equality legislation as one of the non-discrimination grounds.¹¹⁰ Such a policy could be discriminatory, because couples that were in a similar situation were treated differently.¹¹¹ MNCs should be guided by the general principle of non-discrimination throughout their operations according to the ILO.¹¹²

Regardless of the legal aspects, to make the most out of their investment into international assignments, MNCs should have family friendly and non-discriminatory policies. This could entail for host companies to provide support to ICTs and their families in obtaining permits, and covering permit application fees and relocation costs.¹¹³ Investing in effective intra-corporate transfer policies would have long-term benefits for ICTs, their families and MNCs.

7.4.4. Stay in the Host Country Stage

During this stage, host companies could support ICTs and their families in several ways. As already mentioned, they could offer language and orientation courses in absence of a provision of such courses by States. These courses could be provided at times suitable for ICTs and their families, considering their long working hours and cultural distances. This has been identified as an effective expatriates' coping strategy for adjustment.¹¹⁴ In addition, organising common social events and activities proved to be a good way to help

¹⁰⁸ Interview with E15.

¹⁰⁹ Interview with ED.

¹¹⁰ CG Joslin, ‘Marital Status Discrimination 2.0’ (2015) 90 Boston University Law Review 805.

¹¹¹ See CFI, Case T-10/93 *A v Commission* [1994] ECR II-0000 [42]. See also more recent cases such as CJEU, C-149/10 *Zoi Chatzi v Ipourgos Ikonomikon*, [2010] ECR I-8489 [64]; and C-279/93 *Finanzamt Köln-Altstadt v Roland Schumacker* [1995] ECR I-225 [30].

¹¹² ILO, Tripartite Declaration (n 101), Principles 21 and 22.

¹¹³ See SR Moulik and S Mazumdar, ‘Expatriate Satisfaction in International Assignments: Perspectives from Indian IT Professionals Working in the US’ (2012) 2(3) International Journal of Human Resource Studies 59, 70.

¹¹⁴ GK Stahl and P Caligiuri, ‘The Effectiveness of Expatriate Coping Strategies: The Moderation Role of Cultural Distances, Position Level, and Time on the International Assignment’ (2005) 90(4) Journal of Applied Psychology 603.

ICTs and nationals and other migrants to interrelate better to each other and to learn about their respective cultures.¹¹⁵

Host companies could have a crucial role to play in providing access to rights to ICTs and their families, when this is not possible either under national legislation or due to other barriers, such as the language. This is particularly critical in access to education and healthcare, as these are such fundamental rights. For instance, under the Slovak national legislation, third-country national family members, who are not economically active, need to have a commercial health insurance. Host companies could cover this expense to help ICTs and their families with the cost of relocation.

Regarding access of ICTs' children to education, it was beneficial for theirs and their parents' social integration to attend state schools.¹¹⁶ Sometimes it may not be in the children's interest, for instance, when the stay is relatively short or children are already of a certain age. Then, as in the case of Slovakia, such children could be placed in international schools with a foreign language of instruction. In such circumstances, it would not be unreasonable to expect the company to contribute towards the cost of education, especially as they often dictate, where ICTs and their family must go, i.e. not to an English-speaking country.

7.4.5. Future of ICTs and their Families

The end of an international assignment and repatriation constitute another stage in the ICTs' and their families' migration and integration process. This stage would fall outside the national legislation and policy of the host country and be out of the reach of the host company.¹¹⁷ It can be a very challenging phase for ICTs and their families, requiring adjustment to a new host country/company or re-adjustment to a country of origin/sending company, potentially resulting into "*reverse cultural shock*".¹¹⁸ The sending company could help ICTs and their families with their reintegration process.

¹¹⁵ Interviews with S9 and E14.

¹¹⁶ Interview with and E2 and E17.

¹¹⁷ Interview with ED.

¹¹⁸ SA Rahim, 'Repatriation Issues Relating to Expatriate Managers: A Critical Review' (2010) 4(2) ASA University Review 210-222 <<http://www.asaub.edu.bd/data/asaubreview/v4n2s118.pdf>> accessed on 17 September 2016; See also GK Stahl, CH Chua, P Caligiuri, J-L Cerdin, and M Taniguchi, 'Predictors of Turnover Intentions in Learning-Driven and Demand-Driven International Assignments: The Role of Repatriation Concerns, Satisfaction with Company Support, and Perceived Career Advancement Opportunities' (2009) 48(1) Human Resources Management 89.

The ICTs' future was often uncertain. They were unsure whether they would be transferred to another country, return to the mother company or stay on. Once that decision has been taken by the company, it could be abrupt, adversely impacting on ICTs' and their families' quality of life, even though they were expected to be flexible:

*“Unfortunately, I was ordered by my company to leave Slovakia and establish a new branch of our company in Mexico at the beginning of the next year. I was very disappointed. My wife too. We got used to living here and now we have to move again.”*¹¹⁹

Even if ICTs knew that the result would be a return to the mother company, it was not clear to them under what conditions. Some of them had it guaranteed in their contract, others could find themselves jobless upon return¹²⁰, or fall a couple grades in seniority¹²¹. Unlike the Slovak and English legislation, the ICTD contains a provision guaranteeing to ICTs a job upon return.¹²² This provision seems to cater for the future of ICTs, but it also underlines the Directive's aim – to keep ICTs' residence only temporary.

Perhaps a way forward that would ensure more certainty and stability for ICTs and their families would be to have a repatriation agreement. It has been argued that successful international transfers begin with repatriation planning at the time of expatriation.¹²³ They could be flexible, subject to amendment according to the changing needs/interests of the company and ICTs, and regarding what would be in them.¹²⁴ Having repatriation agreements in place could contribute to successfully completing the repatriation process, which would in turn demonstrate companies' commitment towards their ICTs.¹²⁵ It could reassure ICTs that their companies have their best interests at heart, which could result in an enhanced ICTs' commitment to the mother company.¹²⁶ This is crucial for the

¹¹⁹ Interview with S7.

¹²⁰ Interviews with ED or SA.

¹²¹ Interview with S8.

¹²² ICTD, Art 5(1)(c)(iv).

¹²³ G Latta, 'Expatriate Policy and Practice: A Ten-Year Comparison of Trends' (1999) 31(4) Compensation and Benefits Review 35.

¹²⁴ J Chew, 'Managing MNC Expatriates through Crises: A Challenge for International Human Resource Management' (2004) 12(2) Research and Practice in Human Resource Management 1 <<http://www.macrothink.org/journal/index.php/ijhrs/article/viewFile/2141/1872>> accessed on 30 September 2016.

¹²⁵ D Allen and S Alvarez, 'Empowering Expatriates and Organisations to Improve Repatriation Effectiveness' (1998) 21(4) Human Resource Planning 29.

¹²⁶ Chew (n 124).

companies' talent retention, as there is evidence that many expatriates leave their company shortly after the transfer.¹²⁷ Moreover, it would guarantee some certainty to ICTs, which can be vital for their enjoyment of life, mainly when they have families.

7.5. Conclusion

The analysis in this chapter revealed that the main sticking points to better integration of ICTs and their families under the national rules were burdensome permits application procedures and the insecurity of residence. ICTs and their family members were only partially socio-economically integrated with a limited access to employment-related and other social rights. The level of ICTs' and their families' social and cultural integration was lower than their socio-economic integration.

To address these issues a new legal and policy framework for rights protection and integration of ICTs and their families was devised. It is based on the ICTD. The Directive excels in two areas mainly: in providing for simplified permit application procedures and protecting a right to family reunification. It needs to be amended in some areas, including access to secure residence status and labour market after three years of residence, equality with EU nationals regarding all labour standards, and relaxing the intra-EU mobility scheme.

In addition, this chapter presented arguments for a greater involvement of MNCs in ICTs' and their families' integration and rights protection. In a globalised and interconnected world, MNCs will continue to transfer their employees to enhance their business operations. Such movement of persons, in this unregulated area, carry implications for rights protection and integration. Indeed, the empirical evidence revealed that some companies treated ICTs as a commodity, which they transferred around the world to achieve their economic objectives, rather than treating them ethically as human beings deserving protection. Ethics and business seem often to be irreconcilable, because it is believed that MNCs need to disregard rights protection to make profit. However, it is not necessarily so. There is a plenty of evidence that doing business ethically can contribute to the enhancement of the business.¹²⁸ Yet, human rights violations and/or suboptimal treatment of their workers by MNCs continues to persist.

¹²⁷ T Nery-Kjerfve and GN McLean, 'Repatriation of Expatriate Employees, Knowledge Transfer, and Organizational Learning: What Do We Know?' (2012) 36(6) *European Journal of Training and Development* 614.

¹²⁸ See chapter 1, section 1.7.

Therefore, much more can, and needs, to be done by States and MNCs to protect the rights of temporary migrant workers, such as ICTs, but also of other migrant workers. Given the current climate (economic, refugee and EU crisis) and the lack of political appetite to deal with migration and integration questions, it would appear to be untimely and idealistic to be asking to enhance protection of rights of ICTs and their families, by approximating their rights to those enjoyed by EU nationals. Providing ICTs and their families (and eventually other groups of migrants too) with equality of treatment on par with EU nationals in more areas of rights protection, such as access to secure residence and easier intra-EU mobility, and supporting them, would enhance their integration in host Member States. Moreover, it could improve social inclusion and cohesion in Europe.

It would also contribute to the achievement of the EU economic ambitions. Firstly, it would make the EU more competitive in the global market, as ICTs' employers would choose to invest in the EU, attracted by the favourable conditions. Secondly, it would assist in the realisation of the European Single Market.

Finally, and relatedly, by looking after their employees MNCs would ensure retention of the talented and invaluable labour and return on their investments in international assignments. Thus, this framework could be a triple win situation for all actors involved, rather than just for States and MNCs.

8. CONCLUSIONS

8.1. Introduction

This thesis examined the level of rights protection and integration of one group of third-country national migrant workers in the EU – ICTs and their families, using Slovakia and England as case studies. The guiding research question in this thesis was *what level of rights protection is granted to ICTs and their families compared to EU nationals, who enjoy rights protection on equal footing with nationals of the host EU Member State, which facilitates their integration?* Thus, the thesis set out to determine whether ICTs were granted similar level of rights protection and equality compared to EU nationals.

The answer to the guiding research question could not be found in the EU instruments, because the EU Intra-Corporate Transfer Directive (ICTD) was only a proposal, when the research for this thesis began in September 2012. At that time, it was not clear whether the ICTD would ever be adopted, and even if it had been, whether it would be implemented in the UK. It was predicted that it was unlikely that the Directive would enter into force in the UK due to the U opt-out option. Therefore, the attention turned to the review of international and CoE instruments, which was undertaken to assess whether any of these frameworks provide adequate rights protection to temporary migrant workers, such as ICTs (chapter 3). The analysis of international instruments, namely the UN and ILO conventions, revealed gaps in the rights protection. General human rights instruments have failed to address migrant-specific issues, such as family reunification or security of residence, and contain vague socio-economic rights. Migrant-specific instruments, excluding ICTs from their scope or limiting their access to socio-economic rights, were not ratified by Slovakia or the UK (or by most other EU countries). CoE instruments, although offering relatively good protection of rights, were limited in scope primarily due to the principle of reciprocity, or only cover civil and political rights. Thus, this insufficient legal infrastructure has strengthened the need for an EU instrument on the regulation and rights protection of ICTs and their families.

Due to these gaps in international and CoE instruments and because the ICTD was not yet adopted, the attention turned to scrutinising the national legal and policy frameworks applicable to ICTs and their families in Slovakia and England. Thus, the answer to the guiding research question was found through the review of the Slovak and English legislation, policy and practices.

Eventually, the ICTD was adopted on 13 May 2014, after four years of tough negotiations, and came into force in Slovakia in January 2017, but not in the UK, which opted-out, as predicted. The provisions of the ICTD were analysed in detail¹, but the implementation of this Directive in Slovakia was not covered in this thesis. A review of the EU legal and policy framework on the protection of rights of migrant workers was also carried out to contextualise the ICTD within the EU law and policy (chapter 4). This contextualisation revealed that the ICTD is not a human rights instrument facilitating integration, but only another “*Capital’s Handmaiden*”. It also demonstrated a significant fragmentation of rights protection and inequality among the various groups of migrant workers in the EU, starting from the best protected EU nationals, and then scaling down to long-term resident third-country nationals, followed by the EU Blue Card holders, ICTs, single permit holders and seasonal workers.

Integration at national level can be hindered through legislative barriers (lack of legal entitlement to rights) and non-legal barriers, such as language, attitudes of the host society, national social and economic context. Examination of the Slovak (chapter 5) and English (chapter 6) national schemes relating to the rights protection and integration of ICTs and their families illustrated that rights gaps identified in international and CoE conventions were also reflected at the national level. This meant that both countries limited access to rights by temporary migrants. In law, many ICTs did not have access to secure residence status, no free access to the labour market, only restricted socio-economic rights and right to family reunification. Results from the legislative and policy review were analysed in the light of real-world experiences of ICTs. The findings from Slovakia and England were then assessed using ICTs’ Indicators of Integration (*Figure 2*, chapter 2), which means that the treatment of third-country national ICTs was compared against the treatment granted to EU nationals. All three schemes (Slovakia, England and the ICTD) were contrasted and best practices were identified, which informed the formulation of a new legal and policy framework on rights protection and integration of ICTs and their families (chapter 7).

The level of ICTs’ integration in Slovakia and England was measured against the “ideal” level of integration (equality with EU nationals), which ICTs should also be allowed to reach, although it was also recognised that some ICTs may never achieve this because

¹ Chapters 4 and 7, respectively.

their migration is inherently temporary. They should still achieve a good outcome in socio-economic and social and cultural integration. This “ideal” level of integration also constitutes a “traditional” notion of integration, occurring within the borders of the host country only and primarily relevant to long-term migrants, which is not suitable for ICTs subject to intra-corporate transfer. This research argued that integration mattered to ICTs too, and that their process of integration was “borderless” – spanning beyond the borders of the host country to pre-departure and the end of the transfer stages, and “triangular” – involving three actors, namely States, employers and migrants. Thus, this thesis attempted to present a novel way of thinking about, and understanding of, integration, challenging the “traditional” notions of integration.

8.2. Difficulties Encountered, Limitations of the Study, Future Research

One of the main issues encountered is the lack of literature to draw on in the present research. In general, the migration literature is dominated by studies on refugees, but there are not many studies dealing with legal labour migrants. Works on temporary and highly-skilled migrants, such as ICTs, are scarce and almost non-existent from the socio-legal perspective. Thus, more socio-legal research into rights protection and integration of temporary and highly-skilled migrants is needed. It was the aim of the present research to contribute to this area of research.

Another set of issues was encountered during the empirical phase of the study with the recruitment of ICTs and their employers, particularly in Slovakia due to a general reluctance of employers to grant access to ICTs. A fruitful method for recruiting ICTs in Slovakia proved to be approaching acquaintances, who worked for MNCs, in combination with snowballing. In contrast, in England, companies were more willing to grant access to their ICTs, possibly due to being more familiar with cooperating with doctoral researchers. Mistrust and suspicion, present in Slovakia, could be related to Slovakia’s communist past and the corresponding police State style of government.²

The limitations of this qualitative research primarily concern the generalisability of the data obtained and the findings.³ “Thick” and “rich” data sets⁴ were obtained from respondents regarding their personal feelings, views and experiences to “*make sense of*

² B Marsh, ‘The Legacy of Communism in CEE’, E-International Relations Students, 23 May 2012 <<http://www.e-ir.info/2012/05/23/the-legacy-of-communism-in-cee/>> accessed on 4 November 2016.

³ A Bryman, *Social Research Methods* (3rd ed., OUP 2008) 391; RK Yin, *Case Study Research: Design and Methods* (4th ed., SAGE 2009) 15.

⁴ J Ward Schofield, ‘Generalizability of Qualitative Research’, in M Hammersley (ed.), *Social Research: Philosophy, Politics and Practice* (SAGE/Open University 1993) 200-225.

*their situation*⁵. It may not be possible to generalise all the study observations for all temporary or highly-skilled migrants, but perhaps some specific observations, relevant either to temporary or highly-skilled migrants, could be generalised. The findings about the way rights of ICTs are protected in law and in practice in Slovakia and England may not be transferable to other contexts. Though certain patterns regarding the lack of protection of rights of temporary migrants emerged in both countries.⁶ However, in relation to ICTs, even in different contexts (Slovakia and England) they shared many comparable experiences, because of similarities in lifestyle and life conditions typical to ICTs, which could be generalisable to all ICTs, and probably transferrable to other settings too. This particularly relates to the findings about ICTs' and their families' integration during pre-departure and the end of the transfer, and regarding their social and cultural integration in the host country. The generalisability of these findings was also supported by the emerging similarities in the experiences of ICTs in Slovakia and England as well EU nationals sent to third countries.⁷ Thus, even results of a small-scale qualitative study can be generalisable⁸, and could inform and give rise to a policy change. Future legal/socio-legal research is needed in this field that is heavily dominated by geographers and sociologists and most migration literature is concerned with refugee migration and low-skilled migrants.

Despite the abovementioned obstacles and limitations, the present thesis analysed integration of ICTs and their families in comparison to EU nationals, which was aimed at contributing to the understanding of the integration process of ICTs, and in some respects of other temporary and highly-skilled migrants too. These contributions will be discussed in turn below.

8.3. Reality Check for Integration of ICTs and their Families

Contrasting the Slovak and English national laws, policies and practices and the ICTD against the set of ICT's Indicators of Integration provided the following overview of the

⁵ WA Firestone, 'Meaning in Method: The Rhetoric of Quantitative and Qualitative Research' (1987) 16(7) Educational Researcher 16, 16.

⁶ For instance, the limited protection of socio-economic rights, family reunification and security of residence.

⁷ Interviews with E6, E7 and E13.

⁸ I Falk and J Guenther, 'Generalising from Qualitative Research: Case Studies from VET in Contexts' (Charles Darwin University) 8 <<https://avetra.org.au/documents/10-Guenther.pdf>> accessed on 29 July 2016. C Seale, *The Quality of Qualitative Research* (SAGE 1999).

level of integration and rights protection of ICTs and their families in Slovakia and England.

ICTs' economic integration was comparable in both countries. It did not amount to a full economic integration due to legal barriers in the free access to the labour market, social security rights only on paper, and the exclusion of ICTs from family benefits in England. In Slovakia, ICTs could access at least some family benefits.

Regarding economic integration of spouses, they scored much better in England compared to Slovakia, where economic integration of spouses was literally non-existent. In this respect, the ICTD will remove the legal barriers, but not other barriers, such as the language or higher unemployment.

Access to social rights, such as education and healthcare, was granted to ICTs' spouses and children on equal footing with EU nationals in both countries. However, legal entitlements to rights did not ensure full enjoyment of these rights, as other barriers existed, such as the language, particularly in Slovakia.

Regarding social and cultural integration, it must be pointed out that there were some ICTs to whom integration mattered and those who made active efforts to integrate, with a varying degree of success. The level of social and cultural integration of ICTs and their families in England was lower than their socio-economic integration. Yet it was better than in Slovakia. In England, ICTs even joined church or were volunteering. This was mainly because the language did not constitute a barrier to interaction and participation. In Slovakia, the level of social and cultural integration of ICTs and their families was lower than in England, though not negligible as one would think. There was a friendliness (understood as a tolerance/acceptance without a conflict) on the side of the host population, but there were hardly any more active interactions⁹, primarily due to the language barrier. ICTs interacted with nationals who were work colleagues, who spoke English, or with other foreign nationals through children attending the same school. In both countries, negative attitude of the host society also contributed to the ICTs' and their families' feeling of being unwelcome.

The ICTD could bring certain improvement to ICTs' and their families' integration in the EU and Slovakia. It would create a specific ICT scheme with less restrictive admission criteria, single administrative procedure, favourable conditions for family reunification, and intra-EU mobility rights, which makes the Directive more inclusive. However, all

⁹ A Ager and A Strang, 'Understanding Integration: A Conceptual Framework' (2008) 21(2) *Journal of Refugee Studies* 166, 180.

these improvements could be overshadowed by negative elements contained in the Directive, such as no access to secure residence status, no free access to the labour market, lowering labour standards, and very complicated intra-EU mobility rights. Therefore, the ICTD should be amended as proposed in chapter 7. ICTs should be granted access to secure residence status after a minimum of three years of permanent residence in the EU, which would include access to the labour market, equality with EU nationals regarding terms and condition of employment, and more relaxed intra-EU mobility rights.

By not granting ICTs' access to more secure residence status, the ICTD fails to reward migrant workers for the skills and contribution they would bring to the EU. This status would protect ICTs and allow host countries to retain highly-skilled workers. Employers' concerns of losing employees can be countered by the fact that access to secure residence status would become available only after three years. In any case, if employers look after their employees as suggested in chapter 7, they would be unlikely to leave. In addition, protecting their employees would enhance their reputation, and thus contribute to their business.

Furthermore, the potential to harmonise the ICT scheme at EU level, in combination with the clarity and predictability of the rules on intra-corporate transfers within the EU for the benefit of ICTs and their employers could be jeopardised by the wide discretion given to EU Member States, due too many optional clauses introduced in the ICTD. This demonstrates the continued EU Member States' resistance to the establishment of the common EU migration policy, and thus to the EU's ability to achieve rights protection and integration of third-country nationals via EU secondary instruments on labour migration, in the absence of EU competence concerning migrants' integration. For instance, many "may" clauses in the intra-EU mobility provisions could create unfair competition between States, allowing them to choose between more restrictive or more favourable rights for ICTs regarding the intra-EU mobility. The fact that the ICTD could lead to the exploitation of ICTs and unfair competition between EU Member States could have adverse impact on their inclusion and equality, as it was made clear by the ETUC,

It is unacceptable that after the (un)famous four ECJ decisions¹⁰, the Commission continues to legislate with the will to liberalise the single market,

¹⁰ The author refers to the effect of the CJEU decisions on the Posted Workers Directive. For a discussion of the CJEU caselaw see chapter 4, sections 4.2.2. and 4.3.5.

favouring unfair competition, undermining the equal treatment principle of different groups of workers and trying to erode the host country principle. And this even under the new legal framework of the Lisbon Treaty, ensuring a social market economy, demanding the European legislator to work for social progress and the European Charter of Fundamental Rights ensuring equality [...].¹¹

The ICTD was adopted for economic reasons – to enable MNCs to transfer their staff more easily from third countries and to encourage them to invest in the EU. This, of course, has had an impact on the level of rights granted to ICTs in the ICTD. Clearly there is a preference towards the interests of destination countries and MNCs over protecting migrant workers’ rights, which is largely justified by the temporariness of their stay and economic objectives.

In this thesis, it is not argued that the aim should be to grant ICTs immediately complete equality of rights with EU nationals, because that does not reflect the realities of their integration process and the purpose of the intra-corporate transfer – flexible and temporary movement of employees across borders. However, it is contended that the level of rights protection granted to ICTs and their families under national schemes or the ICTD could contribute to ICTs’ and their families’ exclusion from the host society, in combination with other factors, such as strict companies’ policies or social factors. This situation makes them vulnerable and should be improved. It is important for the protection of ICTs and their families that they are treated as human beings rather than just as “economic units of production”. Protecting migrant workers would be beneficial for States, the EU and MNCs. This will be discussed in section 8.4.

Proposed amendments to the ICTD – granting access to secure status and rights only after three years of residence and employment with one employer – take into account the nature of the intra-corporate transfer, but also recognise ICTs and their families as individuals. This would bring the rights protection of another group of third-country nationals in the EU one step closer to the Tampere principles of equality and would achieve better integration for third-country nationals in the EU. This step by step approach is not ideal, but it may be more palatable for EU Member States, and thus more realistic to achieve than immediate full-scale equality. In years to come, depending on the political will and the situation in the EU, similar steps could be taken in relation to other

¹¹ ETUC, ‘Agenda Item 9: Seasonal Work and Intra-Corporate Transfers’ (ETUC Executive Committee, EC/189/EN/9, 13-14 October 2010) <<http://online.cisl.it/dept.int/I0DB3F2B8.9/09-EN-Seasonal-work-intra-corporate-transfers.pdf>> accessed on 19 October 2016.

groups of migrants to gradually achieve a higher level of protection for them, thus closing the gap between EU nationals and third-country nationals, once they enter the EU.

8.4. New Vision of Integration for ICTs and their Families

This thesis attempted to conceptualise ICTs within the existing migration typologies as migrant workers, who move within the employer-organised pattern of migration, as opposed to classical freely moving job-seeking migrant workers, who have more freedom to choose destinations, time and conditions of their migration.

The study of the rights protection and integration of ICTs and their families in Slovakia and England sought to contribute to a more in-depth understanding of the level of integration achieved by temporary migrants, such as ICTs and their families, and their unique process of integration, so that appropriate measures could be taken to improve their situation. Consequently, this work tried to fill gaps in the existing literature. In this respect, this thesis is the first socio-legal study examining the rights protection of ICTs and their families from the integration and equality perspectives. Moreover, this research employed a comparative component, using Slovakia and England as case studies, two countries that have never been compared in the migration and integration sphere. The findings of this research contrasted with the presumption present in the literature on highly-skilled migrant workers that these elites did not encounter any issues with the integration due to their high economic, social and cultural capital.¹² To the contrary, this study confirmed existence of different types of ICTs, which supports findings in more recent literature¹³, but also showed other factors influencing their ability to integrate in a variety of ways.¹⁴ This demonstrates the need to study integration and rights protection of temporary and highly-skilled migrants and their families further.

This thesis set the basis for the theoretical framework regarding the integration of ICTs as temporary migrants, subject to intra-corporate transfer, upon which two pillars were built. Firstly, a legal and policy framework for the rights protection and integration of ICTs and their families was formulated (chapter 7). Secondly, it laid down the

¹² See chapter 2, section 2.2.1.

¹³ See chapter 2, section 2.2.1.

¹⁴ See chapters 5 and 6.

groundwork for a model of integration applicable to, and capable of, assessing more efficiently the level of integration of temporary migrants, such as ICTs (*Figure 1*, chapter 7). In this model integration is presented as a “borderless” and triangular concept.

This research revealed that three different actors played a significant role in the integration process: States, employers and migrants. This thesis sought to contribute to the understanding of the different roles of these three actors, and their impact on, and the responsibilities for ICTs’ and their families’ rights protection and integration. It was argued that the approach of these actors to integration should be more pro-active and flexible and should address issues arising from the temporariness of ICTs’ stay, such as the preservation of socio-economic rights. Moreover, integration efforts should begin before departure, continue throughout the stay in the host country, and extend to the end of the transfer. This triangular model could ensure ICTs’ better rights protection and integration, but benefit the other actors too.

As already stated in chapter 1, existing international legal instruments bind States to protect the rights of migrants in their territories. However, cross-border migration of human beings, resulting from the globalisation and international trade, is not regulated by international law, in the form of a single organisation or a homogenous set of rules, that would oblige States to protect migrants in a more comprehensive manner. Instead there is an array of instruments, such the UN and ILO instruments.¹⁵ In addition, there is no internationally binding legal instrument that would oblige MNCs, as non-State actors, to provide protection to ICTs and their families, when they transfer them across borders. Currently, only non-binding principles govern the intersection of human rights protection and business.¹⁶ They address human rights obligations of businesses in a general manner and do not specifically cover intra-corporate transfers.

A treaty on business and human rights should be elaborated at international level, as it would help to expressly clarify basic human rights obligations of businesses. In this thesis, it is not claimed that MNCs should have the same human rights obligations as

¹⁵ See chapter 3, sections 3.2. and 3.3.

¹⁶ These include the J Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (HR/PUB/11/04, UN 2011); OECD, *OECD Guidelines for Multinational Enterprises* (OECD 2008, updated in 2011); ILO, *Tripartite Declaration on Multinational Enterprises and Social Policy* (5th ed., ILO 2017, original version adopted in 2006).

States, but some well-defined specific obligations in certain spheres of their influence.¹⁷ Thus, as such an international treaty is likely to be general, it should be supplemented by more specific instruments at regional level in different spheres, for instance, intra-corporate transfers. Such an EU legal and policy framework has been proposed in this thesis in chapter 7. It defined main issues and provided solutions on how they should or could be addressed. Such a framework should be created with the participation of the three main actors and would serve as a platform for coordination of their activities. The basis of this framework is the ICTD (with the amendments proposed in chapter 7), which would govern the obligations of States and the EU. The ICTD is complemented by several recommendations on policy changes addressed to policymakers at national and EU level, and to MNCs regarding best practices. Arguably, it is not sufficient just to have non-binding recommendations. Much more will need to be done in this field, as with the ever more globalised world the number of intra-corporate transfers is likely to grow. Elaborating non-binding recommendations is only the starting point.

There is a natural tension in this triangular constellation between States, employees and companies, because each actor has different interests. States want to protect their territories and domestic labour markets. Companies need deregulation to freely conduct business. Employees require more regulation to protect themselves. However, if these actors work together, and comprehend their exact role, each of them could benefit from this cooperation. ICTs and their families would benefit from better rights protection, States from more foreign investment, by attracting companies via favourable conditions, and companies from these favourable conditions because protecting rights and managing their employees effectively would prevent failures of international assignments, and thus guarantee the return on the company's investments in them.¹⁸ The EU would benefit in two ways. Firstly, it would encourage more transfers, by attracting MNCs to invest in the EU, which would in turn contribute to the EU competitiveness in the global market.

¹⁷ As early as 1949, the International Court of Justice stated: “*The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community.*” Reparations for Injuries suffered in the service of the United Nations, Advisory Opinion, 1949 ICJ 174, 179 (April 11).

¹⁸ See chapters 2 and 7. See S Seagal and J Marczak, ‘Cities, Migrants and Integration’, in I del Sola (ed.), *The Business Case for Migration* (World Economic Forum 2013) 39 <http://www3.weforum.org/docs/GAC/2013/WEF_GAC_Migration_BusinessCase_Report_2013.pdf> accessed on 16 March 2016. See also N Cole and K Nesbeth, ‘Why Do International Assignments Fail?: The Expatriate Families Speak’ (2014) 44(3) *International Studies of Management and Organization* 66, 69-71; SR Moulik and S Mazumdar, ‘Expatriate Satisfaction in International Assignments: Perspectives from Indian IT Professionals Working in the US’ (2012) 2(3) *International Journal of Human Resource Studies* 59, 61.

Secondly, it would enable ICTs to participate in the realisation of the European Single Market, thus to the EU resilience.

Although States have the primary responsibility for ensuring human rights compliance, including by MNCs, there is only so much that can be achieved via domestic laws and policies. National parliaments can pass legislation ensuring access to socio-economic rights, but much less regarding social and cultural integration. In fact, EU Member States, through EU law, used integration measures as a tool to control migration rather than to facilitate it¹⁹, and the equality treatment to attract the desired groups of migrants to the EU, rather than to protect them once they were in the EU²⁰. In addition, national legislation cannot regulate the attitude of the host society. Thus, it will always be harder for migrants to achieve social and cultural integration. That is not to say that States should do nothing to enhance social and cultural integration of migrants, even temporary ones. They could provide post-entry language and orientation courses and provide incentives, for instance, access to a secure status. Openness of host societies towards labour migrants could pay off, as it is well documented that labour migration can be beneficial for the economy²¹, but can also assist with solving demographic challenges²². Host societies should treat migrant workers with respect primarily because they are human beings, same as the members of the host society. Companies should also observe any international, regional and national human rights laws and labour standards, and other international guidelines, but could even go further, where circumstances so warrant²³, as in the case of intra-corporate transfers, where little regulation exists.

¹⁹ E Guild, K Groenendijk, and S Carrera, 'Understanding the Contest of Community: Illiberal Practices in the EU?', in E Guild, K Groenendijk, and S Carrera (eds.), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009), 17.

²⁰ E Brouwer and K de Vries, 'Third-Country Nationals and Discrimination on the Ground of Nationality: Article 18 TFEU in the Context of Article 14 ECHR and EU Migration Law: Time for a New Approach', in M van den Brink, S Burri, and J Goldschmidt (eds.), *Equality and Human Rights: Nothing but Trouble?* (SIM Special 38, Netherlands Institute of Human Rights 2015) 136.

²¹ E Boubtane and J-C Dumont, 'Immigration and Economic Growth in the OECD Countries 1986-2006: A Panel Data Analysis' (Documents de Travail du Centre d'Economie de la Sorbonne No. 2013.3, 2013) <[ftp://mse.univ-paris1.fr/pub/mse/CES2013/13013.pdf](http://mse.univ-paris1.fr/pub/mse/CES2013/13013.pdf)> accessed on 16 March 2016.

²² J Gagnon, 'Demographic Change and the Future of the Labour Force in the EU27, other OECD Countries and Selected Large Emerging Economies', in OECD/EU, *Demographic Change and the Future of the Labour Force* (OECD 2014).

²³ Principle 12 and relevant Commentary in J Ruggie *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (HR/PUB/11/04, UN 2011) 14.

8.5. Future of Rights Protection and Integration of ICTs and their Families

In the absence of international instruments on intra-corporate transfers, the future of rights protection and integration of ICTs and their families in the EU lies in the ICTD, if amended as suggested. Inaction could result in continuing differences among Member States regarding intra-corporate transfers, as the Directive in its current form gives a lot of discretion to Member States. This could endanger harmonisation of the scheme at EU level and prolong the fragmentation of the rights protection in the EU *vis-à-vis* third-country national migrant workers. This fragmentation of rights would also be enhanced by the potential of the Directive to undermine local labour standards and create unfair competition. The Directive, in its current form, is not capable of providing a sufficient protection to ICTs and their families. Therefore, it is not an integration measure, but just an instrument regulating migration to facilitate business.

Regarding the UK, as the ICTD will not be implemented there, domestic legislation will continue to govern intra-corporate transfers. The UK policymakers should adopt the recommendations made in this thesis to better protect ICTs and their families and maintain the Tier 2 ICT route as a viable one to bring in skilled labour and business.

Beyond this and given the current economic, social, and political instability and refugee crisis in Europe, it is hard to predict what will become of the EU and rights protection of migrant workers in the future.

APPENDICES

Appendix I – Anonymised List of Participants

SLOVAKIA

ICTs	Date	Employers	Date
S1	25 August 2014	SA	12 August 2014
S2	4 September 2014	SB	25 August 2014
S3	5 September 2014	SC	25 August 2014
S4	5 September 2014	SD	27 August 2014
S5 ¹	16 September 2014	SE	4 September 2014
S6 ²	24 September 2014	SF	5 September 2014
S7	25 September 2014	SG	25 September 2014
S8	26 September 2014	SH ³	1 October 2014
S9	17 December 2015		

ENGLAND

ICTs	Date	Employers	Date
E1	9 October 2014	EA ⁴	29 October 2014
E2	9 October 2014	EB ⁵	14 October 2014
E3	9 October 2014	EC	20 October 2014
E4	13 October 2014	ED	28 October 2014
E5	14 October 2014		
E6	17 October 2014		
E7	17 October 2014		
E8	20 October 2014		
E9	20 October 2014		
E10	21 October 2014		
E11	27 October 2014		
E12	28 October 2014		
E13	28 October 2014		
E14	28 October 2014		
E15	28 October 2014		
E16	28 October 2014		
E17	8 October 2014		

¹ Completed interview template.

² Completed interview template.

³ Completed interview template.

⁴ Completed interview template.

⁵ Completed interview template.

Appendix II – Gatekeeper Letter

Name of Gatekeeper
Company Address

Date

Dear Ms/Mr,

RE: Seeking Access to Your Employees for PhD Research Project

I am a PhD candidate at the School of Law, Faculty of Humanities and Social Sciences, Oxford Brookes University. In my PhD thesis, I am examining how the national law and policy impacts on rights and recruitment of a specific group of migrant workers, intra-corporate transferees (ICTs). I decided to approach you because I believe your company employs ICTs.

I am seeking your kind permission to conduct interviews with your company's representative and with some ICTs in order to gain understanding of their practical experiences with the legal and policy framework relevant to ICTs.

This study is original and timely. It is original as - to my knowledge - no other socio-legal projects of this nature have been conducted. It is timely as there is a proposal for new EU Directive on Intra-Corporate Transfers. It is hoped that *involvement of your company's representative and ICTs will further the understanding of the topic and provide a basis for recommendations to legislators and policy makers as the target of this study is to contribute to the improvement of the life & working conditions of ICTs and simplifying the recruitment process for their employers.*

All information collected will be kept strictly confidential (subject to legal limitations). Confidentiality, privacy and anonymity will be ensured in the collection, storage and publication of research material. The research will receive an approval of the University Research Ethics Committee, Oxford Brookes University. The anonymised data will produce results of the research, which will be published in the form of PhD thesis. A copy can be sent to you upon request.

I am the principal investigator conducting the research. I am supervised by Dr Sonia Morano-Foadi, a Reader in Law at the School of Law, Faculty of Humanities and Social Sciences, Oxford Brookes University (T: [REDACTED], E: [REDACTED]). This research project has been internally funded by the Oxford Brookes University Scholarship.

I would like to thank you for time taken in considering my request. Should you be interested in granting me your permission, I would be most grateful, if you could contact me by email.

Yours sincerely,

Lucia Brieskova, LLM, LLB
School of Law
Faculty of Humanities and Social Sciences
Oxford Brookes University
Headington Hill Hall
Oxford, OX3 0BP
The United Kingdom
Mobile : [REDACTED]
Email : [REDACTED]

Intra-Corporate Transferees:

You are invited to participate in a PhD research project

Confidential

I am examining the level of legal protection provided to you and how this may affect your everyday living and working conditions to potentially inform a change in policy.



IF YOU:

1. Are an intra-corporate transferee and
2. Wish to potentially contribute to informing policymakers and legislators about necessary policy changes in the area of labour migration

I would like to hear from you about your own life experience

If you are interested in participating in my PhD research project and would like more information on how to contribute please contact me, LUCIA BRIESKOVA, on:

Mobile: [REDACTED] or Email: [REDACTED]

Appendix IV – Information Sheet for ICTs

“The Rights of Migrant Workers in Europe: The Case of Intra-Corporate Transferees (ICTs) in Slovakia and England”

You are being invited to take part in a doctoral research project. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully.

What is the purpose of the study?

This Doctoral study¹ (start date 20th September 2012 and end date 30 June 2015) aims at evaluating the protection of rights of ICTs in Europe. The project's central core is to map out what protection of rights is afforded to ICTs in order to identify potential gaps in the protection of their rights in Europe, using Slovakia and England as case studies.

Why have I been invited to participate?

You are being invited to take part because of your experience as an ICT. Your experiences as an ICT are extremely valuable for this project as you will provide personal and practical perspective, which will help the researcher to understand what the impact of the national laws and policy on your rights and employment is. Interviews will also take place with employers' in Slovakia (in August 2014) and in England (in September 2014). A cross-analysis of the views expressed by ICTs in England and in Slovakia with those elaborated by the employers' representatives would provide a clear picture of the impact of national legislation on ICTs and their employers.

Do I have to take part?

Taking part in the research is entirely voluntary. It is up to you to decide whether or not to take part. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. If you decide to participate, you are still free to withdraw at any time and without giving a reason.

What will happen to me if I take part?

You will be invited to take part in a semi-structure interview. The interview will be audio-recorded. The interview template will be available on request prior to the interview date. The interview questions will focus on your everyday experiences of the life in the destination country, but also on your experiences upon arrival to the destination country, and what happens when your assignment is over. The time required will depend on your availability to talk and there will be no disadvantages or 'costs' involved in taking part to study. The interview will take place at your company's site (conference room, canteen) or at an off-company site, such as a café, as preferred by you. Researcher will try to seek employer's permission to interview during the work time. The interview transcript will be sent to you for accuracy checking.

What are the possible benefits of taking part?

Your involvement in this project will enable you to reflect on your own experiences as an ICT.

Will what I say in this study be kept confidential?

All information collected from you will be kept strictly confidential (subject to legal limitations). Confidentiality, privacy and anonymity will be ensured in the collection, storage and publication of research material. However, as the sample sizes and the potential group of participants are small, you might be able to identify your quotes. Data generated by the study will be retained in accordance with the University's policy on Academic Integrity and kept securely in paper and electronic form for a period of ten years after the completion of the research project. Data will be

¹ PhD candidate secured full PhD Oxford Brookes University Scholarship.

stored on lap-top and will be security-code encrypted and stored at all times in a safe place. The interview transcript will need to remain de-identified to return it to you for verification. Once you return checked transcript, your identity will be anonymised by using pseudonyms. Your identity will remain anonymised in the processing and reporting of the findings. The identity of the company will remain confidential in the processing and reporting of the findings.

What should I do if I want to take part?

Please contact me and provide an email address. Consent form will be sent to you via email. You will be asked to sign the consent form immediately before the interview begins - after a repeat explanation of the aims of the study and the opportunity to ask questions.

What will happen to the results of the research study?

The interview will be transcribed and emailed to you to check/authorise before publication. The anonymised data will produce results of the research, which will be published in the form of PhD thesis. A summary of findings can be sent to you on request.

Who is organising and funding the research?

The principal investigator conducting the research is a PhD candidate at the School of Law, Faculty of Humanities and Social Sciences, Oxford Brookes University. The candidate is supervised by Dr Sonia Morano-Foadi, a Reader in Law at the School of Law, Faculty of Humanities and Social Sciences, Oxford Brookes University (T: [REDACTED], E: [REDACTED]). This research project has been internally funded by the Oxford Brookes University Scholarship.

Who has reviewed the study?

The research has been approved by the University Research Ethics Committee, Oxford Brookes University.

Contact for Further Information

Lucia Brieskova, LLM, LLB
School of Law
Faculty of Humanities and Social Sciences
Oxford Brookes University
Headington Hill Hall
Oxford, OX3 0BP
The United Kingdom
Mobile: [REDACTED]
Email: [REDACTED]

If you have any concerns about the way in which the study has been conducted, please contact the Chair of the University Research Ethics Committee on ethics@brookes.ac.uk.

Thank you for taking the time to read the information sheet.

Appendix V – Information Sheet for Employers

“The Rights of Migrant Workers in Europe: The Case of Intra-Corporate Transferees (ICTs) in Slovakia and England”

You are being invited to take part in a doctoral research project. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully.

What is the purpose of the study?

This Doctoral study¹ (start date 20th September 2012 and end date 30 June 2015) aims at evaluating the protection of rights of ICTs in Europe. The project's central core is to map out what protection of rights is afforded to ICTs in order to identify potential gaps in the protection of their rights in Europe, using Slovakia and England as case studies.

Why have I been invited to participate?

You are being invited to take part because of your experience as an employer of ICTs. Your experiences are extremely valuable for this project as you will provide personal and practical perspective, which will help the researcher to understand what the impact of the national laws and policy on the employment and rights of ICTs is. Interviews will also take place with ICTs in Slovakia (in August 2014) and in England (in September 2014). A cross-analysis of the views expressed by employers of ICTs in England and in Slovakia with those elaborated by ICTs would provide a clear picture of the impact of national legislation on employers of ICTs and on ICTs.

Do I have to take part?

Taking part in the research is entirely voluntary. It is up to you to decide whether or not to take part. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. If you decide to participate, you are still free to withdraw at any time and without giving a reason.

What will happen to me if I take part?

You will be invited to take part in a semi-structure interview. The interview will be audio-recorded. The interview template will be available on request prior to the interview date. The interview questions will focus on your experiences with employing ICTs and the specificities of the contracts of employment, and about any relevant company policies. The time required will depend on your availability to talk and there will be no disadvantages or 'costs' involved in taking part to study. The interview will take place at your company's site (conference room, canteen) or at an off-company site, such as a café, as preferred by you. Researcher will try to seek employer's permission to interview during the work time. The interview transcript will be sent to you for accuracy checking.

What are the possible benefits of taking part?

Your involvement in this project will enable you to reflect on your own experiences as an employer of ICTs.

Will what I say in this study be kept confidential?

All information collected from you will be kept strictly confidential (subject to legal limitations). Confidentiality, privacy and anonymity will be ensured in the collection, storage and publication of research material. However, as the sample sizes and the potential group of participants are small, you might be able to identify your quotes. Data generated by the study will be retained in accordance with the University's policy on Academic Integrity and kept securely in paper and

¹ PhD candidate secured full PhD Oxford Brookes University Scholarship.

electronic form for a period of ten years after the completion of the research project. Data will be stored on lap-top and will be security-code encrypted and stored at all times in a safe place. The interview transcript will need to remain de-identified to return it to you for verification. Once you return checked transcript, your identity will be anonymised by using pseudonyms. Your identity will remain anonymised in the processing and reporting of the findings. The identity of the company will remain confidential in the processing and reporting of the findings.

What should I do if I want to take part?

Please contact me and provide an email address. Consent form will be sent to you via email. You will be asked to sign the consent form immediately before the interview begins - after a repeat explanation of the aims of the study and the opportunity to ask questions.

What will happen to the results of the research study?

The interview will be transcribed and emailed to you to check/authorise before publication. The anonymised data will produce results of the research, which will be published in the form of PhD thesis. A summary of findings can be sent to you on request.

Who is organising and funding the research?

The principal investigator conducting the research is a PhD candidate at the School of Law, Faculty of Humanities and Social Sciences, Oxford Brookes University. The candidate is supervised by Dr Sonia Morano-Foadi, a Reader in Law at the School of Law, Faculty of Humanities and Social Sciences, Oxford Brookes University (T: [REDACTED], E: [REDACTED]). This research project has been internally funded by the Oxford Brookes University Scholarship.

Who has reviewed the study?

The research has been approved by the University Research Ethics Committee, Oxford Brookes University.

Contact for Further Information

Lucia Brieskova, LLM, LLB
School of Law
Faculty of Humanities and Social Sciences
Oxford Brookes University
Headington Hill Hall
Oxford, OX3 0BP
The United Kingdom
Mobile: [REDACTED]
Email: [REDACTED]

If you have any concerns about the way in which the study has been conducted, please contact the Chair of the University Research Ethics Committee on ethics@brookes.ac.uk.

Thank you for taking the time to read the information sheet.

Appendix VI – Interview Template for ICTs

Date:

Time and Length of interview:

PERSONAL DETAILS

Name of ICT:

Country of origin:

Native language:

Other languages:

Education achieved:

Employment history:

Current position:

MIGRATION HISTORY

1. Do you have any former experience of moving from one country to another before your intra-corporate transfer? If so, please describe the moves/countries/reasons for the move.
2. Have previous migration experiences encouraged you to make this application/to migrate again?

APPLICATION FOR PERMITS/VISAS

1. Please tell me what prompted your transfer on this occasion and how it happened.
2. Please tell me about the application procedure for permits/visas.
3. Have you encountered any difficulties during the application process?
4. Was the application process clear/transparent/easy to understand?
5. Were authorities/employer helpful?
6. Who arranged/ met cost of the travel to/accommodation in the destination country?

FAMILY REUNIFICATION

1. Do you have a partner and/or children? What is your partner's/children's nationality?
2. If you have a partner and children, have they moved/spent periods of time with you during your intra-corporate transfer?
3. How did you come to the decision that your partner/children will move/stay in the country of origin?
4. How do you feel about that decision?

If you have been joined by partner and/or children:

5. Please describe the process/steps involved in bringing your family to the destination country?
6. What conditions (if any) you/they had to comply with?
7. What permits have your family obtained? How long for/ length corresponds with length of your stay? How long it took the authorities to decide on the application?
8. How have application process and/or the possibility to bring your family impacted on your family life/integration in the destination country?

If your partner and/or children stayed in the country of origin:

9. How does the fact that your family stayed in the country of origin impact on your family life/integration in the destination country?

WORKING IN DESTINATION COUNTRY

1. Please describe to me your contract package with your employer in the destination country.
2. Are you satisfied with your contract package/ employment conditions?
3. Is your salary/allowances provided by the employer adequate (especially if have to support family in the destination country)?
4. Can you please describe your experiences and interactions in the workplace?

SOCIAL INTEGRATION

In general

1. Who do you mainly socialise with/what sort of social life do you have outside work?
2. Do you feel integrated in to the society in the destination country? If so, to what level and what influenced it? If not, why not?
3. What do you see as the main issues preventing your (your family's) better integration?
4. Have you ever felt that you were discriminated against in the workplace/elsewhere? If so can you please describe the situation(s)?
5. What is your understanding of the process of integration?
6. Do you feel the need to integrate?

Access to labour market/social welfare benefits/healthcare/education

7. What is your situation in relation to having access to healthcare/ social welfare benefits/education? Are they provided for in your contract package/do you have access to these public goods or you need to provide for yourself?
8. Are your partner/children entitled to access labour market/ social welfare benefits/healthcare/education? Is provision for any of these a part of your contract package or you need to support them yourself?
9. How does access/not access to them impact on your life/integration in the destination country?

Language

1. Do you speak the language of the country of destination? What language do you speak at work/home/children at school/when visiting a doctor/public office? Do you get any assistance?
2. Do you think that the inability to speak the language has any impact on your life/integration?

FUTURE PLANS/IMPACT ON CAREER

1. What are you planning to do following your intra-corporate transfer? Do you plan another move, return home or remain in the destination country?
2. What is your impression of the impact of your transfer (and period spent in destination country) on your career trajectory?
3. Do you feel that intra-corporate transfer will help you to achieve your career objectives? Will the transfer be taken into account in future career development/prospect of promotion?
4. What happens to your children being born/educated in the destination country? (Problem of language of education in the country of origin?)
5. What happens to your pension?
6. Are there any other issues arising out of your return?

PROPOSALS FOR IMPROVEMENT OF THE CURRENT SCHEME

1. Is there anything else you would like to add?
2. Do you have any suggestions about how the current scheme could be improved?

Appendix VII – Interview Template for Employers

Date:

Time and Length of interview:

PERSONAL DETAILS

Name of Company:

Name of Person Interviewed:

Position within Company:

Country of origin:

EMPLOYING HISTORY

1. What was your motivation to employ migrant workers?
2. What are the advantages/disadvantages in employing migrants?
3. Please describe your experience with employing non-EU nationals (third country nationals) and intra-corporate transferees (ICTs) in particular?

APPLICATION FOR PERMITS/VISAS for ICT

4. Can you please tell me what your views about the process of obtaining permits/visas for ICTs are? What is your company's involvement in the application process? Do ICTs apply themselves or does your company offer any assistance to them?
5. Is the process clear and easy to understand?
6. Does the current system work quickly and effectively to attract skilled and highly-skilled migrants?
7. How easy/difficult it is to verify migrant workers' documents?
8. What in your view are the difficulties with the current system of recruiting and employing ICTs?

TIER 2 (INTRA COMPANY TRANSFER) PERMIT *(England only)*

Can you tell me about the application process for sponsor licence? Tell me about the online application & payment procedure. Any difficulties encountered during the application procedure. Compliance with the eligibility/suitability requirements and checks. How long it took to obtain the license? How much it cost you? Nature of the licence obtained (multiple tiers/ how many certificates of sponsorship allowed to assign)? Reasons? Tell me about your sponsor duties. How difficult it is to comply with them? Do you have experience under the old system where ICTs had to obtain ICT work permit? If so can you please describe the differences in employing ICTs under the work permit system and now under the Tier 2 ICT permit of the PBS? With these changes is the process of employing ICTs easier or harder?

EMPLOYMENT PACKAGE

9. Can you please describe the contract package you offer to ICTs (Provision for healthcare for ICTs and his family members/ sick leave/ education of children and partner/ training available/ pensions/allowances, etc.)?
10. Please describe ICTs' terms & conditions of employment (hours worked/ holiday entitlements/ sick pay/ working pattern)

INTEGRATION IN WORK PLACE

11. Do you have in place company policies that are either migrant workers or family friendly? If so can you please describe them?
12. Do you have specific integration policy in place? If so can you please describe it? If not can you please describe how is the integration of migrant workers happening in practice?
13. Can you please describe the level of interactions of ICTs with other colleagues who are nationals, with other migrant workers and the company management?
14. Are you encouraging interactions between ICTs and national workers and other groups of migrant workers in/outside work place? If so how please?

15. What is the language of interaction in workplace between migrants and nationals?
16. From a point of view of an employer, what are main hurdles to integration of ICTs in workplace/outside workplace?
17. Do you have any anti-discrimination policies in place? Have you noted any issues with discrimination? If so, how did you deal with such situation?

IMPACT ON CAREER & FUTURE

18. Can you please tell me what happens to ICTs (and their partner & children) after the purpose of the transfer ends? Is there provision in the contract package covering this?
19. Will the transfer be taken into account for purpose of any future career development/prospect of promotion?
20. Will the time/level of pay in the destination country be taken into account when calculating pay/pension other employment related benefits in the country of origin/another country?
21. What happens to children educated in the language of the destination country/second language when they return to their country of origin or transfer to another country?

IMPACT ON COUNTRY/LABOUR MARKET

22. Do you feel that there is a shortage of skilled and highly-skilled labour amongst the settled labour force (i.e. nationals, EU and EEA nationals) in your industry?
23. Do you have a view what the impact of the current migration laws & policy on immigration inflows, businesses, labour market and country's economy is? In general? From the ICTs' perspective?

PROPOSALS FOR IMPROVEMENT OF THE CURRENT SCHEME

24. Is there anything else you would like to add?
25. Do you have any suggestions about how the current scheme could be improved?

Appendix VIII – Consent Form

Full title of Project: “The Rights of Migrant Workers in Europe: The Case of Intra-Corporate Transferees in Slovakia and England”.

Name, position and contact address of Principal Investigator:

Miss Lucia BRIESKOVA, LLM, LLB, PhD Candidate, Oxford Brookes University, Faculty of Humanities and Social Sciences, School of Law, Headington Hill Hall, Oxford, OX3 0BP; E-mail: [REDACTED]; Mobile: [REDACTED]; Fax: [REDACTED]; web page: <http://www.law.brookes.ac.uk/>

Please initial box

1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.
3. I agree to take part in the above study.

Please tick box

- | | Yes | No |
|--|--------------------------|--------------------------|
| 4. I agree to the interview being audio recorded | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. I agree to the use of anonymised quotes in publications | <input type="checkbox"/> | <input type="checkbox"/> |

Name of Participant

Date

Signature

Name of Researcher

Date

Signatur

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