



Provisional version

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Committee on Social Affairs, Health and Sustainable Development

Health and social protection of undocumented workers or those in an irregular situation

Rapporteur: Ms Ada Marra, Switzerland, SOC

Report¹

A. Draft resolution²

1. Europe is home to about 4-5 million undocumented persons. However, this figure may be a gross underestimation because reliable data is lacking. Many such persons *de facto* participate in the labour market as “invisible workers” but remain very fragile socioeconomically – with poor or no access to socio-economic rights. Their vulnerability was highlighted during the Covid-19 pandemic, when this category of workers was exposed to a double hazard: high socioeconomic precarity and haphazard, if any, access to basic health care.

2. By accepting the marginalisation of undocumented workers, member States tolerate inequality of treatment, discrimination and vulnerability which carry the potential for abuse and exploitation of persons. Their situation also breeds precarity, trafficking in human beings and the risk of crime, harms safety at work, fuels the underground economy, reduces State revenue from social contributions and undermines fair competition. Entire sectors of the national and international economy are based on an economic model that violates the fundamental rights of workers in general and more pronouncedly for people without residence permits. We cannot intervene effectively in the protection of undocumented workers without changing the economic philosophy that leads to this situation: lowering production costs by mistreating workers to increase the profit of a few.

3. The Parliamentary Assembly notes that the problem of labour exploitation affects both migration and labour law. The tightening of the legal channels for third-country nationals to come and work in Europe, adopted by member States, exacerbates the precarity of the labour and residence rights of persons who have sometimes been living in our States for many years. The Assembly recalls that asylum and migration policies themselves sometimes create situations of illegality for migrant persons. One of the main reasons for the abuse and exploitation of undocumented migrants in particular and workers in general is a labour market without sufficient controls, another being the dehumanisation of migrants, particularly in certain political discourses.

4. The Assembly strongly supports dialogue between the key stakeholders (the state authorities, employers, associations and trade unions) as the way of developing programmes to restore rights to invisible workers in national labour markets and society in general. It considers that the “offence of solidarity”, whether aimed at civil society organisations or private individuals in their efforts to help these vulnerable people on their arrival and during their stay in our countries, must be abolished where it still exists.

5. In this context, the Assembly refers to its Resolution 1568 (2007) and Recommendation 1807 (2007) calling for regularisation programmes to be set up. It notes that some European countries have taken measures aimed at improving the situation of undocumented workers or those in an irregular situation. Partial regularisation programmes or other administrative facilities thereby put in place have enabled better access of such workers to health and social welfare programmes, or at least temporarily extended the health coverage for these vulnerable workers sometimes without going through the regularisation process, in particular since the Covid-19 crisis. Nonetheless, the phenomenon of exploitation in economic sectors persists, especially for undocumented workers, and further bold human rights based measures are necessary to consolidate access to socio-economic rights for all across the Council of Europe member States in line with the standards set out

¹ Reference to Committee: Doc. 15194, Reference no. 4555 of 25 January 2021.

² Draft resolution adopted unanimously by the Committee on 22 May 2023.

in the European Social Charter and the conventions of the International Labour Organisation (ILO), as well as recommendations put forward by the European Commission against Racism and Intolerance (ECRI) in 2016.

6. The Assembly notes that invisible workers are at high risk of exploitation by employers who do not declare them or only partially declare them, pay them inadequately low wages, and often do not offer decent working conditions. These workers do not have the means to defend themselves against abuses in several areas (notably at work, regarding housing and access to basic medical care), because they feel that having recourse to the justice system would put them at risk of deportation and/or employer retaliation. The violation of fundamental rights, including social rights, of invisible workers must stop, and States can do that by changing their policies in several ways.

7. The Assembly is concerned that many member States' regulatory frameworks are too strict or not transparent regarding the conditions to be met, and that they make access to regularisation procedures for invisible workers excessively difficult, burdensome, opaque, or unpredictable. In addition, overly complex, costly and slow administrative procedures often delay the issuance or prolongation of residence and work permits. This not only blocks the regularisation of the invisible workers' status but also throws thousands of workers with temporary permits into an irregular situation when their permits are not renewed on time.

8. The Assembly also deplores the restriction of the personal scope of application of the European Social Charter (i.e., the exclusion of persons from countries that have not ratified it, and of those not lawfully resident or working regularly on the territory of the Party concerned), as set out in the Appendix to the Charter. The Assembly shares the view that this limitation is incompatible with the nature of the Charter as a human rights treaty. This anomaly should be corrected to bring the treaty into line with the state of development of international human rights law.

9. In the light of the above considerations, the Assembly recommends to member States the following good practices, whether in the context of ad hoc programmes of regularisation or with regard to permanent mechanisms aimed at the better integration of invisible workers:

- 9.1. information on official procedures to apply for national residence and work permits should be available in many languages to ensure it is accessible and understandable, and, to this end, should rely on civil society (trade unions, NGOs, and associations);
- 9.2. for workers with temporary contracts, a change of employer should not affect residence status;
- 9.3. the application should preferably be made by the undocumented worker himself/herself, without intermediaries who could blackmail him/her;
- 9.4. direct grant of residence and work permits to all illegal immigrants who co-operate with the police to report abuses;
- 9.5. for any victim of criminal labour exploitation, trafficking in human beings and other violent crimes who would like to remain in the country, suspend expulsion procedures, and facilitate access to specific permits independently of their co-operation with the authorities and their involvement in judicial proceedings;
- 9.6. there should be a possibility of appeal in the event of a negative response by the administrative decision-making body or of a decision by an authorised third party not to submit the application for regularisation to the decision-making body;
- 9.7. admissibility criteria such as a specific number of years of residence in the country (reasonable duration) should be as clear as possible, and the family situation of applicants should be taken into account;
- 9.8. application and procedural fees should be as low as possible or be waived entirely in view of the extremely low incomes of undocumented migrants;
- 9.9. support for associations that assist applicants in their regularisation process throughout the procedure should be put in place;
- 9.10. the number and type of documents to be produced by applicants should be reasonable and take into account the discreet nature of undocumented migrants' lives.
- 9.11. once undocumented persons have had their situation regularised, measures must be put in place to support them (e.g., language courses, help finding a new job, etc.);
- 9.12. access to healthcare must be ensured for all undocumented workers regardless of the advancement of their regularisation process.

10. The Assembly notes that access to justice is a key element of the protection of undocumented or irregular workers, which is not sufficiently guaranteed by member States. States should be encouraged to devise procedures that do not put the various courts in contact with the migration authorities, which constitutes the main subjective and objective obstacle to undocumented workers exercising their rights.

11. In order to eliminate the worst forms of exploitation of invisible workers, the Assembly urges member States:

11.1. to fully implement the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and Committee of Ministers Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation;

11.2. to enhance corporate social responsibility based on the United Nations Guiding Principles on Business and Human Rights and the Council of Europe Recommendation CM/Rec(2016)3 on human rights and business;

11.3. to better protect victims of human trafficking for sexual or labour exploitation purposes by granting a temporary residence permit for the time of the proceedings, as soon as the abuses committed are reported to a competent judicial or civil authority (e.g., labour inspectorate).

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2023) on “Health and social protection of undocumented workers or those in an irregular situation” and underlines the responsibility of member States to prevent human rights violations against undocumented workers. The currently prevailing national policies and legislation tend to render this category of workers invisible, extremely fragile and exposed to exploitation or even trafficking in human beings, including for the purpose of forced labour.

2. The Assembly supports the ongoing national efforts and institutional mobilisation to strengthen socio-economic rights for all across Europe, notably through the work of the Committee of Ministers Ad hoc Working Party on improving the European Social Charter system (GT-CHARTÉ), the Rapporteur Group on Social and Health Questions (GR-SOC) and the European Committee of Social Rights. In this context, the Assembly stresses the need to remove the restriction of the personal scope of application of the European Social Charter (i.e., the exclusion of persons from countries that have not ratified it, and of those not lawfully resident or working regularly on the territory of the Party concerned) and suggests adding new provisions to the Charter on enhanced protection of workers in non-standard forms of employment.

3. To this end, the Assembly reiterates its call on all member States to sign, ratify and fully implement as many provisions of the European Social Charter and its protocols as possible, and its recommendation to expand the reach of existing rights under the Charter to all persons *de facto* living under the jurisdiction of States parties.

4. Drawing on the experiences during the Covid-19 pandemic, the Assembly further asks the Committee of Ministers to recommend to member States to extend the criteria for access to permanent regularisation mechanisms and/or consider putting in place targeted regularisation programmes which would offer greater protection of socio-economic rights of undocumented workers, to facilitate their access to justice, which is the cornerstone of respect for their rights, by setting up procedures to ensure the non-cross-checking of data in the various services and to facilitate their access to a universal healthcare system.

³ Draft recommendation adopted unanimously by the Committee on 22 May 2023.

C. Explanatory memorandum by Ms Ada Marra, rapporteur

1. Introduction

1. “Without papers but not without rights”: the words of the Council of Europe Commissioner for Human Rights neatly sums up the problem that is still very much alive in Europe.⁴ Eight years after the migration crisis, Europe is just emerging from another – triggered this time by the Covid-19 pandemic – but the countries receiving irregular migrants are still without the extensive and rights-based solutions required to tackle this issue.

2. As pointed out in the motion for a resolution (Doc 15194) presented by the Committee on Social Affairs, Health and Sustainable Development, “[i]n our countries there exists a category of workers whom the Covid-19 crisis brought to light since they are socioeconomically more fragile than others: this is the category of undocumented workers, of workers deprived from rights. These workers have confronted a double sanction: a high socioeconomic precarity and a haphazard access to health care”. As rapporteur on this subject, I will endeavour to come up with some concrete ways in which the extremely difficult situation of such persons might be alleviated.

3. The issue of undocumented workers has been the subject of several reports by international bodies, including the Parliamentary Assembly. In particular, the Assembly has adopted Resolutions 1509 (2006) on “Human rights of irregular migrants” and 1568 (2007) on “Regularisation programmes for irregular migrants”, in addition to Recommendation 1985 (2011) on “Undocumented migrant children in an irregular situation: a real cause for concern”. Resolution 1509 and Recommendation 1985 ask member countries to refuse to exchange information on the status of such persons between administrations where such information concerns vital services (e.g., medical care and schooling) in order to facilitate access to them by, in the first instance, undocumented migrants and, in the second, their children. Resolution 1568 (2007) has a different scope, addressing and encouraging regularisation programmes. PACE was also in favour of monitoring these programmes, but no real action was ever taken in this direction.

4. In 2016, the European Commission against Racism and Intolerance (ECRI) put forward a series of measures to tackle an urgent discrimination issue: access for those in this particularly vulnerable group to the rights guaranteed to them in international human rights instruments, in particular as concerns education, health care, housing, social security and assistance, labour protection and justice, while they are within the jurisdiction of a member State.⁵

5. While Covid-19 has undoubtedly worsened hardship for these workers who, from one day to the next, found themselves destitute and unable to obtain official state support (e.g., social assistance, unemployment benefits, health care), some countries, like Portugal, Ireland or Italy, have put in place partial regularisation programmes to ensure access to health and social welfare programmes. Others have temporarily extended their health coverage for these vulnerable workers without going through the regularisation process.

6. The approach I have adopted in preparing this report is a pragmatic one: to provide a snapshot of undocumented migrants today and to illustrate the abuses they are subject to despite the various texts adopted by PACE and international treaties signed by Council of Europe member States. On 18 May 2022, the Committee held a hearing⁶ with the representatives of the European association PICUM (Platform for International Co-operation on Undocumented Migrants)⁷ and Eurispes (Institute for Political, Economic and Social Studies)⁸ which promote the rights of undocumented migrants. In addition, on the basis of the replies to the questionnaire on the legislation, procedures, and programmes for the regularisation of undocumented or irregular workers, the report highlights best practices or shortcomings (even in the case of regularisation programmes), and seeks to promote human rights, including socio-economic rights as set out in the European Social Charter, in Council of Europe member countries.

⁴ [“Without papers but not without rights: the basic social rights of irregular migrants”](#), 20 August 2015, Human Rights Comment by Nils Muižnieks, Council of Europe Commissioner for Human Rights (2012-2018).

⁵ [ECRI General Policy Recommendation No. 16](#) on safeguarding irregularly present migrants from discrimination.

⁶ See the meeting report of the public hearing on [“Health and social protection of undocumented workers”](#), held in Paris on 18 May 2022.

⁷ For further information, see <https://picum.org/mission-vision-working-principles/>. Ms Liliana Keith, PICUM Senior advocacy officer in charge of labour rights and labour migration participated in the hearing.

⁸ Mr Marco Omizzolo, a sociologist, journalist, and researcher at Eurispes contributed comments on the situation of immigrant workers in Italy.

2. Profiles of undocumented workers

7. There is much literature covering undeclared work in our countries. The concept of undeclared work is vast: it can mean income not declared to the tax authorities, unpaid social security contributions, or the employment of people whose residence status is not in order. The scope of this report is limited to this last aspect, but there, differences also exist. There is a tendency to refer to a worker without legal residence as an undeclared worker. Yet there are employees without a valid residence permit who pay social security contributions, who pay insurance coverage of several types (for example contributions for private health insurance or retirement schemes) and, in rare cases, who pay taxes.

8. It is in any case wrong to assume that anyone who works without legal status is invisible to the authorities since these people or their employers may pay some contributions to state funds (social security contributions, contributions to pension schemes). This shows the double hypocrisy of the system: firstly, there are workers who contribute to the prosperity of a society but are denounced as *personae non gratae*; secondly, some of these same people contribute when they can to the financing of the various insurance systems, but are not entitled, for example, to unemployment benefits and/or social assistance if they cannot work (such as when they are ill or due to the pandemic).

9. The issue of undocumented workers without residence permits is both vast and complex. As the motion for a resolution points out, “[w]e often find this category of workers in domestic work (housekeepers, babysitters, nursemaids) or in the foodservice and agricultural sectors, or even in sex work” but also at the service of delivery platforms and on construction sites. According to studies by the Pew Research Center, in 2017, the number of undocumented persons living in Europe was estimated at between 4 and 5 million. This number grew significantly in 2015 with the increase in asylum seekers (who constitute a quarter of undocumented people in Europe). According to these authors, half of these persons live in Germany and the United Kingdom.⁹

10. There is no single definition of undocumented migrants: their paths are sometimes very different. There are persons who arrive with a visa and after its expiry do not leave. Others arrive to apply for asylum and, if the answer is negative, still stay on the territory. Some arrive with a residence permit obtained thanks to a temporary employment contract, but see their situation change when they lose work or change employers; still others come through family reunification, but either the family structure changes or they can no longer meet minimum thresholds and criteria that allow them to take advantage of reunification policies, etc.

11. In this report, the question is not that of assessing their migratory path or whether the laws on foreigners in Council of Europe member States respect human rights. The report deals specifically with what we will call “undocumented / unauthorised” workers or those in an irregular situation resident in our countries. It seeks to observe the treatment of hundreds of thousands of people who should officially no longer be on our territories but who nonetheless remain and work in black or grey zones. These workers are exploited by employers who do not declare them or only partially declare them, pay them entirely inadequate wages, and often do not respect any decent working conditions. These workers do not have the means to defend themselves against abuses in several areas (work, housing, access to basic medical care, etc.) because recourse to justice would put them at risk objectively or subjectively.

12. The reasons why regularisations would be desirable are set out in the various reports and resolutions/recommendations mentioned above. There are many negative consequences of allowing people to remain indefinitely with no prospect of leaving and without legal status, such as the risk of labour exploitation, their complete dependence on the employer and their lack of access to the social safety net (especially unemployment insurance, welfare payments, etc) or to basic medical care, with the public health problems this may entail. Limited access to social protection leads to a considerable risk of high levels of insecurity. Children and young people are growing up in our countries with no prospects other than undeclared work. Areas of lawlessness and crime linked to these populations (violence, abusive and substandard housing situation, scams, loan-sharking, wage undercutting and related unfair competition) develop because people feel they cannot turn to the police and/or the justice system to defend their rights.

3. Types of exploitation of undocumented migrants

13. No country can claim there are no people working on its territory who should not officially be there. These persons live in such a way as to go undetected, especially by the authorities who could order and carry

⁹ See the full study in English and abstracts in French, German, Spanish and Italian at <https://www.pewresearch.org/global/2019/11/13/europes-unauthorized-immigrant-population-peaks-in-2016-then-levels-off/>. In France there are an estimated 400 000 – 600 000 undocumented migrants; 100 000-150 000 in Belgium.

out their eviction from where they have been living, some for many years. This position of inequality and vulnerability carries the potential for abuse and exploitation, including through forced labour. Exploitation can be organised by a person (for example, embassy officials vis-à-vis their domestic staff, as was recently reported in Geneva, Switzerland¹⁰) or on a larger scale, for example on farms or factories. In extreme cases of exploitation, there is a whole organisation of chiefs and sub-chiefs, often migrants themselves, who organise, monitor, and punish workers in fields or sweatshops. The example of countries around the Mediterranean – very well documented – is striking in this respect.¹¹

14. It is easy to see how the phenomenon of exploitation can take root, and why the law cannot protect these people (impossible access to the courts without the risk of being expelled or threats of reprisals). Strong measures must be taken. It is important to understand that the exploitation or widespread abuse of undocumented migrants' rights is part of a system that allows for breaches of the labour and social rights of workers in general, and which is even more violent for people with no residence permit. Indeed, the existing system leaves space for the expansion of mafia-like or other organisations that bring labour in from third countries either legally or illegally. Even if the working conditions are more or less satisfactory on paper, once these people have arrived the reality is often different, with gruelling working days, poor pay (or sometimes no pay at all for an extended period on the pretext of reimbursement of the travel or logistical costs), absence of insurance, etc.

15. During the committee hearing, the choice was made to take Italy as a “case study”, not because it is worse or better than any other country but because it is one of the main European immigration routes. For example, the Italian researcher Marco Omizzolo, who now lives under police protection, shared with us the results of his research: based on participatory surveys, he discovered that many undocumented workers are trafficked into Italy. Their number is estimated at around 100 000, including women and children¹². The typical working hours of an undocumented worker are 40 hours and six days a week, with some paid as little as 50 cents an hour and some even forced to work up to 14 hours a day with just a few 10-minute breaks. The exploitation machinery is largely controlled by the mafia, especially in the farming and agri-food sectors, which employ about 30 000 people from India.

16. The human and social rights of these workers are systematically violated and many are subjected to physical harassment. It takes an average of four years for trafficked workers to pay back the traffickers. Faced with enormous pressure in the workplace, some undocumented workers take drugs to ease their pain and cope with the harsh conditions. Many cases of sexual abuse are reported. Several exploited workers who went on strike (following an information campaign organised by civil society) received death threats. Worker exploitation increased during the Covid crisis,¹³ with a 15-20% rise in the number of migrant workers on Italian farms, increasing the number of people exploited or at high risk of being exploited by some 40 000 to 55 000.

17. This economic model that breaches workers' rights clearly exists in other countries too. For example, another area of intensive farming with huge economic stakes is vegetable production in the Spanish region of Andalusia (in particular Huelva and Alma), and several sources of information provide alarming facts and figures on the working conditions of agricultural workers.¹⁴ The growing of berries there (strawberries, blueberries, blackberries, raspberries) provides 100 000 direct and indirect jobs (52.5% of them carried out by Spanish nationals or residents of the country, 21.4% by seasonal workers from the European Union and 25.9% by seasonal workers from outside the EU). Depending on the source, between 3 000 and 7 000 people live in Huelva in shanty towns with no water or electricity during the harvest season. There are many workers from Morocco and other African countries without residence permits (despite an agreement between Morocco and Spain to reduce illegal migration). According to several associations and trade unions, a collective labour agreement (albeit below the national minimum wage) exists but there is scant regard for the wage scale and the payment of overtime and travel allowances. However, it should be noted that this is one of the few intensive agricultural areas in Europe where an agreement has been signed that includes the protection of the rights of seasonal workers. The Spanish government has committed to the full restoration of the protection of the rights of workers, including those of migrants. It has made co-operation with the Moroccan government a priority in

¹⁰ As was the case in 2021, concerning the Permanent Mission of Pakistan to the UN.

¹¹ See also the ILO (International Organisation of Labour) indicators of Forced Labour, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm, and the ILO Forced Labour Convention (No. 29), as well as the Council of Europe Committee of Ministers Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation.

¹² The total number of irregular migrants in Italy is estimated to be 600 000.

¹³ Mr Marco Omizzolo, a sociologist, journalist, and researcher at Eurispes, “Sfruttamento e caporalato dei lavoratori migrati in Italia al tempo del Covid-19”.

¹⁴ I refer to the 2021 study carried out by the French-speaking consumer federation in Switzerland <https://enquetes.frc.ch/reportage>. (only available in French)

managing this form of circular immigration, with the aim of ensuring maximum equality and eliminating opportunities for exploitation.

18. Therefore, what we have here is a huge economic market where profits are made at the expense of workers, most of them immigrants, whose rights are not respected, and with a very vulnerable population of undocumented workers. Apart from the intolerable nature of the abuses suffered – and even if the workplace abuse and its organisation is not always on this scale – these working conditions have a direct impact on the status of workers when the renewal of their residence permits depends on the number of hours worked, their income and their work permit. A person can arrive in our countries with a residence permit and work contract and see their conditions deteriorate as a result of abuse by employers (large industrial groups or smaller organisations), thus jeopardising their ability to meet the criteria to continue working there legally.

19. It is clear that what drives some employers to behave in this way is the competitive and liberal labour market system based on lowering costs and increasing profits. One way of achieving this is to make the workforce malleable and dependent, and this is carried out in serious violation of migrant workers' rights and human rights treaties. For example, people with regular status are put under pressure by threatening not to renew their contracts if they complain or report their working conditions, and individuals without residence permits are threatened with being reported to the migration authorities and subsequent deportation.

20. However, the agri-food sector is by no means the only one practising an economic model based on the exploitation of workers, especially undocumented workers, in insecure jobs where employees' rights are not respected. This model has been developing for some years in online platform services too. In a new employment situation in which an organisation denies it is an employer, there is an entire group of home delivery workers who are neither employees nor self-employed but dependent on an employer who does not wish to be classified as such in order not to pay social security contributions. This is where, based on the same type of systemic organisation, we find a large proportion of workers who have been refused asylum, people with expired work contracts or expired residence permits.

21. The weakness of labour law in this sector is amplified for undocumented workers: often declared as self-employed or microenterprises, delivery workers are paid by the drop and it is often not known how the price of the drop is calculated. Without social protection, an accident at work will either not be covered or be covered only to a limited extent. These couriers have no sick leave, no paid holidays and no unemployment benefit; they are often required to pay for their own equipment. In Spain, Greece and regionally in Switzerland,¹⁵ there have been attempts, sometimes successful through strikes or legal action, to give these delivery platform couriers employee status. The PACE expressed its position on the matter in 2019 (Resolution 2312 (2019) on the societal impact of the platform economy); the European Parliament expressed its support for employment status in similar situations, in a non-binding resolution in September 2021. In common with the agri-food sector, similar patterns are in evidence in this sector, namely insecure conditions of employment preventing people from renewing or obtaining a work or residence permit, not to mention the pressure and the abuses committed with impunity.

22. In addition to the agri-food and delivery platform sector, we might also mention what is happening in the fishing industry. In May 2022, researchers from the University of Nottingham condemned in a report¹⁶ intolerable abuses to which seafarers from countries outside the European Economic Area were subjected in the UK. This followed another report along the same lines by the International Transport Workers' Federation.¹⁷ The abuse is made possible by transit visas that allow fishing vessel owners to bring these migrant workers to fish in international waters in order for them to be in transit. However, they then take them back to British ports and make them sleep on the boats between fishing trips, which means they are no longer in transit. These visas can last up to a year and the workers are therefore confined to the vessels for that period because as soon as they step on British soil, they are considered illegal and risk return to their home countries. It is with this threat that some vessel owners commit serious abuses in terms of working hours, pay, rest time and living conditions.¹⁸

23. In 2017 abuses were reported in Ireland by the Migrant Right Centre Ireland (MRCI). Egyptians and Filipinos were working on Irish trawlers for € 2.82 per hour (the minimum wage is € 9). The MRCI recommended a series of measures to the Irish state to ensure that these abuses were not repeated, including the regularisation of the illegal workers among them within six months.¹⁹ Thus, it can be seen that in this sector as well the patterns are the same with serious breaches of labour law extended to all workers and with particularly

¹⁵ Rulings of the Federal Tribunal 2C 575/2020 2C 34/2021.

¹⁶ "Letting exploitation off the hook? Evidencing labour abuses in UK fishing", University of Nottingham.

¹⁷ See <https://www.obs-droits-marins.fr/actualites.html?idArticle=614>.

¹⁸ Idem.

¹⁹ Idem.

serious pressure exerted on those without legal status. And here it can be seen that sometimes it is even legal provisions (transit visas) which in fact exacerbate the potential for mistreatment.

24. The list of the areas involving undocumented workers and their exploitation could go on and on. We could mention building sites, including the recent case concerning the sites for the 2024 Paris Olympic Games. In Seine-Saint-Denis, near Paris, undocumented workers, from Mali in particular, have publicly condemned their working conditions.²⁰ Among the examples of abuse, one said it was possible to work for a week and not be paid, with no way of claiming the amount due. Here, a system of subcontractors enables the laws to be circumvented with no one really held to account.

25. In this report, which draws on specific cases involving particular sectors of exploitation, we must also consider domestic work. From the accounts of those who have been deprived of all liberty, subjected to serious labour rights violations and physical and psychological violence, it is clear that such treatment is a form of slavery. While not all undocumented migrants are subject to such awful treatment, much remains to be done to clean up the sector, in which undeclared work is likely to occur, as cases reported around the world have shown. On the one hand, workers who have a residence permit but do not pay social contributions have less access to social benefits and pensions, and on the other hand, the revenues of the State institutions that are responsible for providing such benefits are diminishing. For those without a residence permit, the lack of social protection and individual security is obviously even greater.

26. In this way, we are caught up in a dangerous double movement: we keep important parts of the economy going through the work done by exploited employees, with or without residence permits, thus jeopardising the economic activity of good employers; the policy increasingly brutalises the whole field of migration and leads to stigmatisation of all migrants, both those who are legally present and those who are undocumented. And while access to justice for the first category (local workers or those with a residence permit) is not easy for fear of losing their job, those in the second category (workers without a residence permit) find general or individual access to the courts even more difficult.

27. During the committee hearing, the PICUM representative said some countries, such as Switzerland, Belgium or France, have some good practices regarding access to justice. According to one of their studies, “(c)ivil courts and labour tribunals in 13 out of 15 EU member states in the study do or would consider undocumented workers’ claims equally to other workers. They usually check identity, but do not check work permits, and in practice do not report undocumented workers for immigration enforcement purposes if the irregular status of the worker is known”. However, this finding is tempered: “Practices of labour inspections reporting personal information on undocumented workers to immigration authorities vary greatly, as does whether they are based on law, a formal cooperation agreement/ policy or common practice. [...] Aside from the risk of immigration enforcement as a result of engaging in complaints mechanisms, key issues include lack of information, advice and legal assistance; the length of procedures and associated costs; additional sanctions related to irregular status or irregular work; challenges to prove the employment relationship and the extent of the rights violations; and difficulties to actually receive funds when employers evade payment.” Considerable progress therefore needs to be envisaged to enable these individuals to effectively defend their own rights as employees and as human beings entitled to a dignified life.

4. Regularisations

28. It is not possible to discuss the regularisation of undocumented migrants without paying tribute to the individuals and movements that have fought to bring into the open this issue of men and women rendered invisible, and who have attempted to influence the migration and labour law policies to remedy the problems identified. Mention may be made here of the March for Equality and Against Racism (*Marche des Beurs*) initiated in 1983 in Lyon, France, by the priest Christian Delorme. Although this was primarily an anti-racist march, it also made clear demands such as a 10-year residence permit. Similarly, in Paris in 1996 the images of the occupation of (and brutal expulsion from) the Church of St. Ambroise from March to August by 300 people, including women and children, demanding to be granted residence permits, went around the world.

29. We could mention the European march organised by the International Coalition of Undocumented Migrants in 2012, which crossed several European countries (it started in Belgium, passed through the Netherlands, Germany, Luxembourg, France, Switzerland and Italy and ended in Strasbourg in front of the European Parliament).²¹ We should also mention here the courageous strikes in 2018 in Italy, encouraged by

²⁰ https://www.francetvinfo.fr/replay-jt/france-3/19-20/paris-2024-des-sans-papiers-ont-ete-employes-sur-les-chantiers-des-jeux-olympiques_5530368.html.

²¹ This march and the International Coalition originated from a gathering of undocumented migrants organised by Anzoumane Sissoko, spokesperson for the French undocumented migrants’ movement, in Paris in 2011, and calling for the regularisation of undocumented migrants.

Aboubakar Soumahoro, of agricultural workers in response to distressing situations linked to their working conditions and status. In Belgium, in 2021, 442 undocumented migrants went on a gruelling hunger strike and took over the Béguinage church and the premises of Brussels universities. As is often the case, these protests and demands begin in reaction to dramatic events and stories of injustice, such as workplace accidents due to working conditions, inhumane evictions, or racially motivated murders.

30. How best to end the exploitation of undocumented workers has already been the subject of political discussions in many of our countries. It seems difficult in practice and ethically not desirable to expel tens of thousands of persons whose stay in our countries has lasted for years (we are sometimes faced with a second generation of undocumented migrants). Not to mention that economic circles would be deprived overnight of workers bringing prosperity and productivity. This Assembly took a position on the issue in its resolution 1568 (2007) on “Regularisation programmes for irregular migrants”, which recommended regularisations. Regularisation is designed to give workers access to fundamental rights but also to tackle the problem of undeclared work.

31. As I do not have the means to carry out a comprehensive or exhaustive review of regularisation practices, I wish to refer to documents and work done by PICUM. I quote: “The most comprehensive study on regularisation programmes and mechanisms in the EU is REGINE study (2009), which identified that 24 of the 27 EU Member States implemented regularisation programmes or mechanisms between 1996 and 2008, and some several times. An estimated total of 5.5 to 6 million people were regularised in that time. 43 regularisation programmes were implemented in 17 EU Member States in those 12 years, involving 4.7 million applicants, of whom at least 3.2 million were regularised”.²²

32. More recently, a study by the European Commission’s European Migration Network found that 60 “national protection procedures” (as opposed to international protection, most of which could be called regularisation mechanisms) existed in the 24 EU member States, the UK and Norway surveyed at the end of 2018. The survey covered procedures based on humanitarian grounds, exceptional circumstances, medical grounds, childhood, non-refoulement and climate change but did not include the residence status of victims of crime or trafficking.

33. Regularisations, especially regularisation programmes, have been used with different objectives in mind and often reflect the government’s broader approaches to equality, migration management or the economy. Regularisation has, for instance, been used both as a response to an acute economic challenge and to the failure of the wider migration system. Italy’s 2020 regularisation programme for agricultural workers in the face of the Covid-19 pandemic is an example of a government response to an economic challenge, while Sweden’s regularisation programme for unaccompanied minors and Ireland’s 2022 regularisation programme are examples of schemes addressing a broader migration policy issue.²³

34. In 2022, the German government decided to regularise some of “its” rejected asylum seekers (130 000 people): people with “tolerated” (*Duldung*) status, i.e., those who could not be removed for various reasons and who remain on German soil. Spain, which has a labour shortage, also decided in 2022 to facilitate access to work for immigrants, even those already in the country and in an irregular situation. Among them, those who have been living in Spain for more than two years will be able to be regularised and benefit from training. France is also considering a draft law that would allow temporary permits to be given to irregular migrants working in sectors with a shortage of workers.

35. There have been few reviews of regularisation programmes. I will mention one from Switzerland not because the programme was excellent in every respect but because it illustrates the positive effects of such programmes that could be transferred to others. Operation Papyrus, which enabled the Canton of Geneva to regularise 1663 adults and 727 children between 2017 and 2018, generated about €5.2 million in cantonal insurance at the end of 2019.²⁴ Moreover, the authorities mention important aspects in their Operation Papyrus evaluation report:²⁵ there was no ‘pull effect’ and the situation was extremely stable post-regulation; 88% of employment relationships continued six months later (employers did not dismiss these people, who became more expensive with regularisation) and there was no recourse to social assistance because the persons concerned had obtained a permit allowing them to apply for this right once regularised. These observations respond in a very concrete way to fears that some might have.

²² Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union, Policy Brief, February 2009, the International Centre for Migration Policy Development (ICMPD).

²³ Regularisation and access to secure residence status, PICUM FAQs, February 2022.

²⁴ *Idem*.

²⁵ “*Évaluation du projet pilote Papyrus relatif à la régularisation des travailleurs sans statut légal à Genève*”, p.56-57, December 2019.

36. It is also necessary to adopt a balanced attitude and admit that these programmes are not the absolute answer to all problems. Still in Geneva, the researchers behind the Parchemin study²⁶ (June 2022) on the 4-year evaluation of regularisation, assume that the benefits of regularisation on living conditions and health will probably take longer than expected to be felt and that it is mainly the second generation that will benefit. The first generation, as is often the case in migration situations, is the one that sacrifices. This makes the case for the rapid regularisation of these workers in order not to generate situations of insecurity over several generations.

5. Regularisations and various protection programmes during the Covid-19 pandemic

37. Before discussing undocumented migrants, it should be remembered that during the acute Covid-19 crisis, when strict lockdown measures were taken, there were sectors such as agriculture that increased their demand for workers, underlining the importance of foreign labour in these sectors. For example, in 2020 Confagricoltura, the organisation that represents investors in agriculture in Italy, organised aerial “green corridors” to bring in farm workers from Morocco. The same happened in England with Romanian workers. The strawberry harvest also continued in Spain. These people thus contributed to the “war effort” demanded by the liberal globalised market economy.

38. At the same time, during the Covid-19 crisis we saw many persons whose social and economic coverage was the most fragile, queuing in front of food banks even in the richest countries in Europe. Many of these people were either undocumented or had a precarious residence permit. Their access to official aid such as social assistance or unemployment insurance was made administratively impossible on the one hand, and the fear of losing a precarious title if they received public aid on the other hand.

39. While various regularisation programmes have been carried out in a piecemeal fashion over the past few decades, the Covid-19 issue encouraged measures to be taken that either “only” involved expanding undocumented migrants’ access to health services as a public health approach in the light of a pandemic that draws no distinction between a person’s status in terms of documents or realising that an effective health measure was to increase regularisations. Accordingly, faced with the pandemic and the impossibility of sending people back because of border closures or the inability of their authorities to process permit renewal applications, many European countries adopted policies to extend residence permits. At least ten EU member States provided for the automatic extension of certain permits for a specific period (Czech Republic, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Slovakia and Spain). Some governments provided for the possibility of granting an extension, but only on application or request, and some countries, such as Belgium, did not guarantee a positive decision.²⁷ This helped to prevent an increase in the number of people without a valid residence permit but residing in the territory and in any case unable to travel because of the restrictions due to the pandemic.

40. Italy set up a regularisation programme and Portugal dealt much more flexibly with pending temporary regularisation applications (this programme permitted the regularisation of 240 000 people between May 2020 and March 2021, but 100 000 would have been excluded as they had not made a current application.²⁸ Spain also relaxed its regularisation criteria. In the United Kingdom, family members of a person who died from Covid-19 and worked for the National Health Service on a temporary residence permit were granted an indefinite permit. This also applied to undocumented migrants.

41. The Covid crisis resulted in various movements in many countries renewing their demand for regularisation. In Belgium and France, municipalities, associations of undocumented migrants, trade unions, lawyers, intellectuals, doctors and parliamentarians called for regularisation and even organised demonstrations on the subject. In Luxembourg, a working group, of which Caritas Luxembourg is a member, drew up recommendations to the government on regularisation and combating exploitation and trafficking. In Spain, a petition supported by 400 organisations and the #RegularizacionYa campaign called for the extraordinary regularisation of all irregular migrants, as did the city of Barcelona.²⁹

42. Some countries put in place special and extraordinary measures, one example being Ireland, which introduced a nationwide weekly payment for all employees and self-employed people who lost their jobs during that period. The government agreed that no information would be passed on to the immigration authorities, in line with the firewall principle, so that the assistance could be safely claimed by undocumented migrants. In

²⁶ See <https://cigev.unige.ch/recherches/research-l/health/parchemins/>.

²⁷ “Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19”, PICUM March-August 2020,.

²⁸ “Demystifying the regularisation of undocumented migrants”, Caritas Europa, March 2021.

²⁹ Idem.

practice, access to this assistance was limited to undocumented workers with a social security number and a tax record proving the loss of their source of income.³⁰

43. In May 2020, the Dutch Ministry of Health ordered every municipality in the country to ensure that all homeless people have access to a shelter, regardless of their migration status, in order to limit the spread of Covid-19. In Spain, at the regional level, the Balearic Islands extended from May to June 2020 their guaranteed income to all adults experiencing a social emergency due to Covid-19, irrespective of their administrative status. The Canary Islands provided for an emergency payment from June to October 2020 for registered residents who were not eligible for the regional minimum income, including undocumented residents.³¹ Although limited in time, all these programmes did at least exist and provided very concrete help to the people concerned.

6. Comparative review of relevant legislation in the selected countries: problem areas and good practices

44. As we have seen, regularisation programmes have been introduced before, during and after the Covid-19 pandemic. Associations defending undocumented migrants denounce the harshness of administrative processes and the conditions set by regularisation programmes that thus miss the original target. For example, in Italy, in 2020, during a regularisation programme, of the 600 000 people estimated to be in an irregular situation in the country, only 200 000 were able to apply. In some countries such as Switzerland where no regularisation programme has ever been put in place at the national level, a canton (that of Geneva), in partnership with the Confederation, launched its own programme called Papyrus between February 2017 and December 2018. Operation Papyrus consisted of a deal: clarification and broadening of the criteria for regularisation while also providing for an amnesty for employers who employed these people. Of the 10 000 undocumented persons in this canton, about 3 000 met all the required criteria and were thus able to be regularised (mostly women involved in the domestic sector).³² Although there are legal possibilities to give a residence permit to such persons elsewhere in the country, the various institutional channels through which the application must pass, drastically reduce the chances of obtaining regularisation.

45. This report should serve to reiterate the Assembly's support for these regularisation programmes, as was the case in 2007, and also highlight the concrete measures to be taken, underscoring good and bad practices, as well as the demands of various organisations defending undocumented migrants (regularisation with fewer complicated criteria to meet, improved working conditions, secure access to justice, etc.).

46. In 2022, a questionnaire was sent through the European Centre for Parliamentary Research and Documentation (ECPRD) to review national legislation on the regularisation of undocumented workers in Denmark, France, Ireland, Italy, Portugal and Spain.³³ Relevant information was also received from Belgium. These countries were asked questions on the legislative basis for the regularisation of undocumented workers, mechanisms, specific criteria and time constraints for regularisation, as well as on targeted regularisation arrangements or programmes during the Covid-19 pandemic.

47. The analysis of the replies received reveals a number of problems, such as regulatory frameworks that are too strict or not transparent regarding the conditions to be met and that make access to regularisation procedures excessively difficult, burdensome or unpredictable. It is therefore essential to clearly list the regularisation criteria as well as the documents recognised to demonstrate continuous residence in the country, professional activity or any other criterion mentioned by the regulation. Conversely, the use of broad, undefined concepts such as public order³⁴ or exceptional circumstances³⁵ is a source of uncertainty, unpredictability and even a risk of arbitrary interpretation by national authorities. In terms of procedure, Ireland appears to be a good example to follow, as its regularisation programme for long-term undocumented migrants recognises a wider range of documents as proof.

³⁰ "A snapshot of social protection measures for undocumented migrants by national and local governments", PICUM, 2022.

³¹ Idem.

³² See <https://www.swissinfo.ch/fre/op%C3%A9ration-papyrus--2390-personnes-ont-pu-r%C3%A9gulariser-leur-situation/45572092>.

³³ Request no. 5108. The reply received from Denmark contains very little information of any use for this report.

³⁴ In France, the Code on the Entry and Stay of Aliens and the Right to Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA) provides, among other things, that regularisation may be "refused to any foreigner whose presence in France constitutes a threat to public order" (see in particular Article L.432-1 of the Code).

³⁵ The case of "exceptional circumstances" is the only one likely to apply to undocumented workers in Belgium and to allow their regularisation on the basis of section 9bis of the Act of 15 December 1980 on Access to the Territory, Residence, Establishment and Removal of Foreigners. This notion is particularly vague and gives the Belgian authorities to which the application for regularisation is submitted broad powers of discretion.

48. Furthermore, with regard to ad hoc regularisation programmes, the limited eligibility period for applications deprives them of their effect: eligible persons may not be informed of their existence in time and therefore be unable to apply. For example, in Belgium, when the 2009 regularisation programme was launched, only applications submitted between 15 September and 15 December 2009 could be assessed. Similarly, in Italy, the exceptional regularisation scheme for foreign workers was only open for a few months, for applications submitted between 1 June 2020 and 8 January 2021. This very short opening period of the regularisation programmes very clearly restricted the number of applications.

49. The imposition of administrative fees when regularisation applications are made³⁶ is an additional obstacle that undocumented workers, most of whom are also economically deprived, find it hard to overcome. Moreover, paying these fees does not guarantee that the applicant will be regularised at the end of the procedure. Improvements are also needed in the follow-up to the procedure once the application for regularisation has been submitted. These procedures are generally long and cumbersome. Good practices to be highlighted include the use of electronic procedures (as in Ireland) alongside paper-based procedures for those who do not have access to new technologies,³⁷ the recording of supporting documents already submitted by the applicant for regularisation or residence permit renewal, for use when subsequent or parallel procedures are carried out³⁸ and fixing the time frame for processing applications.³⁹ The latter practice, which is linked to the legislation on foreign nationals in general, could be extended to the processing of undocumented migrants' applications for regularisation.

50. Information and the accessibility of procedures are also a real issue when it comes to ensuring access to regularisation. Often, the lack of information, the language for the dissemination of information, when it exists, and the short duration of certain programmes are significant obstacles to accessing regularisation procedures. To deal with this matter, member States should not only extend the duration of regularisation programmes but also try to communicate more widely and in a way that is more adapted to the specific case of undocumented workers. It is therefore crucial to make use of intermediaries, such as trade unions and local actors, including associations that assist undocumented migrants and people in an irregular situation, like Cimade in France. It is essential in these cases for people to be able to contact ombudspersons and intermediaries and be informed in their own language.

51. When considering the adaptation and modernisation of the regulatory framework for the regularisation of irregular workers, the obstacle should not be overlooked that people may be worried about the adverse consequences for their personal life and employment if they apply for regularisation. For example, in a number of states, a strict understanding of the condition of "continuous residence" in the national territory constitutes an obstacle to drawing up the application. In addition, in the case of irregular workers, the fear of being subject to deportation or an order to leave the territory is also present.⁴⁰

52. Finally, when the employer initiates the regularisation process the worker is less likely to apply for regularisation for fear of reprisals or of losing the employment contract. The worker should therefore always be able to apply for regularisation himself/herself. Group applications for regularisation through support groups for undocumented workers is also a good practice to encourage. Some States have already gone further in guaranteeing the rights of irregular foreigners in their territory in the context of the Covid-19 crisis by facilitating their access to healthcare and vaccines.⁴¹

53. We can accordingly highlight the following good practices that either exist or should be introduced, whether in the context of extraordinary programmes or with regard to permanent regularisation mechanisms:

³⁶ As is the case in Belgium (section 1 of Chapter I bis of the above-mentioned Act of 15 December 1980). Prohibitive administrative fees (€130 or €500 depending on the regularisation route chosen) were also imposed in Italy in 2020-2021 under the exceptional regularisation scheme for foreign workers.

³⁷ The digital platform used by Ireland for this purpose (<https://inisonline.jahs.ie/user/login>) is an example.

³⁸ See for example the practice in Portugal since the modernisation of the regulatory framework (<https://imigrante.sef.pt/en/novo-regulamento/>).

³⁹ In Belgium, for example, in the context of procedures for applications for international protection or family reunification (as distinct from the specific issue of the regularisation of undocumented workers), a maximum processing time is provided for by section 10ter of the Act of 15 December 1980. Moreover, in the absence of a decision by the administration within nine months, a favourable solution is provided for since the applicant is automatically issued with a residence permit.

⁴⁰ Some States require applicants for regularisation not to leave the country for several years in order to be eligible. This means not visiting family members abroad for a long period of time and can be an obstacle to applying for regularisation.

⁴¹ See in particular, in Portugal, Order No. 12870-C/2021 of 31 December 2021 providing from 31 December 2021 that all foreigners whose applications are being assessed are presumed to be legally resident in the national territory, in order to facilitate their access to health services in the context of the Covid-19 crisis.

- Specific regularisation programmes must be carried out over a sufficiently long period of time in order to reach those concerned. Such programmes could be announced ahead of time so as to enable people and organisations to be as well prepared as possible;
- The application must be made by the undocumented migrant himself/herself, without intermediaries who could blackmail him/her, in particular on behalf of the employer (application against payment for example);
- Information must be available in different languages to ensure it is accessible and understood;
- For people on temporary contracts, enable them to change employers without losing their residence status and thereby prevent them from being artificially placed in an irregular situation;
- Direct grant of a residence permit for all illegal immigrants who co-operate with the police to report abuses;
- For any victim of criminal labour exploitation, trafficking in human beings and other violent crimes who would like to remain in the territory, facilitate access to specific permits independently of their co-operation with the authorities and their involvement in judicial proceedings;
- Possibility of appeal in the event of a negative response by the decision-making body or of a decision by an authorised third party not to submit the application for regularisation to the decision-making body;
- Admissibility criteria such as a specific number of years of residence in the country (reasonable duration) should be as clear as possible, with shorter period in the case of children or individuals raised/born in the country;
- Application and procedural fees should be as low as possible because undocumented migrants have generally extremely low incomes;
- Support for associations that assist applicants in their regularisation process throughout the procedure;
- The documents to be produced and requested by the authorities should be reasonable and take into account that the discreet nature of undocumented migrants' lives means that not all papers and proof of their existence in the country are completed in the same way as for a citizen with official status;
- Once undocumented persons have had their situation regularised, measures must be put in place to support them (e.g., language courses, help finding a new job, etc.);
- Access to justice without fear of being reported is essential to exercising one's human and labour rights. Consequently, while cases falling under the Criminal Code (crime, theft, etc.) are automatically reported to the migration authorities, those pertaining to the civil justice system (child protection, industrial tribunals, etc.) should not be systematically reported (e.g., to prevent employers from reporting undocumented workers in the event of a labour dispute). The automatic transmission of data between the various judicial bodies should be discontinued in order to encourage undocumented migrants to take legal action.

7. Analysis of the scope of European legal tools to protect irregular workers

54. It is important to note that several European directives cover the scope of protection and rights of workers, and some explicitly cover workers without residence status. For example, Directive 2009/52/EC deals both with sanctions for undocumented migrants and with their rights (unpaid wages, legal procedures for bringing complaints against unscrupulous employers, etc). A 2021 Communication on the same directive calls on governments, among other things, to facilitate contacts of these people with law enforcement agencies without their running any risk due to their migration status.

55. There is also the European Directive 2004/81/EC, which deals with residence permits. It provides for the grant of a short-term residence permit (six months renewable) to victims of human trafficking. Directive 2012/29/EC deals with crime victims' rights to support and protection, which are to be guaranteed by member states in a non-discriminatory manner, including by virtue of residence status.

56. The Council of Europe has adopted the Convention on Action against Trafficking in Human Beings (CETS No. 197)⁴² and the Committee of Ministers Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation. This convention has a broad scope and covers all forms of trafficking (national or transnational, linked to organised crime or not) and all trafficked persons (men, women and children). The forms of exploitation it covers are, at the very least, sexual exploitation, forced labour or services, slavery or similar practices, servitude and organ removal. It focuses on

⁴² This treaty, adopted in 2005, now binds all Council of Europe member States in addition to Belarus and Israel.

human rights and the protection of victims. Its preamble defines trafficking as a violation of human rights and an attack on the dignity and integrity of the human being. It recognises a range of rights for trafficked persons, especially the right to be identified as a victim as well as to protection and assistance, a recovery and reflection period of at least 30 days, a renewable residence permit and compensation for harm suffered.

57. GRETA (Group of Experts on Action against Trafficking in Human Beings), which is an independent body monitoring the implementation of the convention, provides useful insight on the efforts by national authorities to combat trafficking for labour exploitation. For instance, GRETA's recent report on Greece reviews measures taken further to the Chowdury judgment of the European Court of Human Rights as regards the regularisation of undocumented Bangladeshi workers and calls for further improvements, including through labour inspection missions.

58. One of the questions that arises is why a system of exploitation of irregular migrants of such vast magnitude (without mentioning trafficking in human beings) persists in our countries. The various instruments for the protection of fundamental rights in Europe are not sufficient to protect these people, who are often from third countries. In addition to the Convention on Action against Trafficking in Human Beings, another key instrument is the European Social Charter, so we need to look at its wording and its implementation to assess how to integrate populations that theoretically do not exist in our territories but which in fact are indeed there and are often subject to large-scale mistreatment as human beings and as workers.

59. Resolution 2384 (2021) on "Overcoming the socio-economic crisis sparked by the Covid-19 pandemic" points, in paragraph 5, to "a legal void in the European Social Charter: working migrants originating from countries that are not bound by this treaty are excluded from the application of certain provisions of the Charter. This loophole, one of many, highlights the need for the Charter to be modernised with new rights being recognised to meet the manifold challenges that were made more visible by the pandemic." The scope of the Charter should therefore be extended to cover all persons who live *de facto* in our countries. This would allow undocumented workers to better assert their fundamental rights.

60. On the proposal of the Secretary General of the Council of Europe and following the decision of the Committee of Ministers, the process of reforming the Charter mechanism was launched in June 2022 with the creation of the Committee of Ministers' ad hoc working party on improving the European Social Charter system (GT-CHARTÉ). This addresses procedural and substantive issues concerning the Charter and is expected to consider the question of adding new rights to it, in particular concerning rights related to atypical work (including fixed-term work, part-time work, telework/remote work, platform work, temporary agency work, domestic work, etc).

61. The restriction of the personal scope of application of the Charter (i.e., exclusion of persons from countries that have not ratified it), as set out in the Appendix,⁴³ is widely considered incompatible with the nature of the Charter as a human rights treaty. This anomaly should be corrected to bring it into line with the state of development of international human rights law. In addition, Article E (Part V) sets out the principle of non-discrimination to ensure that the enjoyment of the rights recognised in the Charter is secured "without discrimination on any ground".⁴⁴ Unfortunately, the fact that very few Council of Europe countries have ratified the Charter in its entirety makes its application even more complex. The 4th Council of Europe Summit in May 2023 is a unique opportunity to make ambitious proposals for action and give a strong political impetus to the implementation of the Charter.

8. Conclusions and recommendations

62. The issue of undocumented migrants is particularly relevant for PACE because these workers' rights are all too often flouted, sometimes in a brutal way. This may be down to large industrial groups or criminal organisations whose economic activity is based on this work, which could be likened to forced labour. It can also take on "softer" forms through working conditions that do not comply with the minimum standards of labour legislation for a decent life in smaller companies or the homes of private individuals.

63. The people concerned are very vulnerable because defending their rights is made difficult by their fear of being identified as undocumented and thus losing their jobs and/or being deported. All countries are aware of the presence on their soil of these workers without rights. The estimated figure is several million women and men who contribute not only to the economic prosperity of our countries but also to keeping our private or

⁴³ The Appendix states: "[...] the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned [...]."

⁴⁴ Article E – Non-discrimination: "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

public social security systems afloat. Despite this, there is a tendency to stigmatise these people when they are caught breaking residence permit laws.

64. Our Assembly must reiterate that undocumented workers have rights and that continued insecurity in their lives is intolerable, especially as there is sometimes already a second generation of undocumented migrants, confirming the presence over many years of people at the mercy of potential blackmail and ill-treatment.

65. Regularisation programmes activated before, during and after Covid-19 are the surest way to restore these people's rights, in addition to permanent national mechanisms. The fact that they are regularly implemented should not be seen as a sign of a pull effect but, rather, that our continent continues to need migrant workers to keep its economy running. The hypocrisy of stigmatising or even criminalising hundreds of thousands of people for contravening the laws governing residence permits and work contracts must stop. Entire sectors of our economies must be cleaned up in the medium term by implementing these regularisation programmes.

66. This issue concerns both migration law and labour law. The tightening up by our countries of the legal channels for people from third countries to come to Europe and work contributes to the insecurity of the labour and residence rights of people who have in some cases been living in our countries for many years. It is clear that the main reasons for the abuse and exploitation of undocumented migrants in particular and workers in general include an insufficiently controlled labour market and the dehumanisation of migrants.

67. In these circumstances, civil society associations, NGOs, trade unions and state actors are doing their utmost to restore rights to the persons concerned, based on national and international legislation to secure protection and rights. One way of doing this is through regularisation. Many states have understood this and have implemented specific programmes. For this to have a real impact, these regularisation programmes or standards have to meet a number of criteria, including with regard to the common values of the Council of Europe. The time has passed when workers are considered disposable and simply given a work and residence permit when the labour market needs them and then sent back home, for example.

68. Our Assembly must once again impress upon the Committee of Ministers and our member States the need for such regularisation programmes and monitoring mechanisms. Particular attention should be paid to the criteria imposed (such as time spent in the country), family situation and procedures for access to regularisation, the latter being to avoid applicants for regularisation become subject to financial blackmail by employers or other organisations. Administratively simple and inexpensive procedures should be promoted, as well as the other measures and good practice mentioned in chapters 5 and 6 of this report.

69. Access to justice is a crucial aspect of the protection of undocumented or irregular migrants. This protection is not sufficiently guaranteed by our states, which should be encouraged to find procedures that do not link the various courts with the migration authorities – the main subjective or objective obstacle to undocumented migrants asserting to their rights.

70. Our Assembly must also support undocumented migrants' organisations by underlining their role as key players in the discussions on, and protection of, the rights of such persons. A dialogue between the various parties (the state, employers, associations and trade unions) must be included in the development of regularisation programmes, for example. To this end, the "offence of solidarity", whether aimed at NGOs or private individuals in their work helping these vulnerable people on their arrival and during their stay in our countries, must be revoked where it exists. This will combat one aspect of the dehumanisation of migrants and ensure they are seen as stakeholders in our societies – as members of society, of the labour force and as a source of wellbeing and prosperity for our communities. They are neither simply "workers" nor 'others' on the periphery of our lives.

71. More generally, the European Social Charter and its implementation within the remit of our Organisation need to be strengthened, especially in order to close the legal loophole that migrant workers from countries not bound by this treaty are excluded from the application of certain provisions of the Charter. This loophole, among many others, highlights the need to modernise the Charter. Its scope should therefore be extended to cover everyone de facto resident in our countries, irrespective of their status, as this would make it easier for undocumented workers to assert their fundamental rights.