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

Committee Opinion[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Ms Arusyak JULHAKYAN, Armenia, Group of the European People's Party

A. Conclusions

1. The Committee on Migration, Refugees and Displaced Persons welcomes the excellent report prepared by Ms Ada Marra (Switzerland, SOC) for the Committee on Social Affairs, Health and Sustainable Development. It fully supports the report's recommendation on the responsibility of member States to prevent human rights violations against undocumented workers and on the necessity to strengthen socio-economic rights for all across Europe.

2. As pointed out in the draft recommendation, this implies for member States to sign, ratify and fully implement as many provisions of the European Social Charter (ETS No. 35) and its protocols as possible, and to expand the reach of existing rights under the Charter to all persons de facto living under their jurisdiction.

3. It is also worth mentioning the report's recommendation inviting member States to extend the criteria for access to permanent regularisation mechanisms and/or to consider putting in place targeted regularisation programmes.

4. The Committee on Migration, Refugees and Displaced Persons wishes to propose a few specific amendments to reinforce the text with regard to the precarious and irregular work situations of migrant seasonal workers and domestic migrant workers.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 1, third sentence, after the words "Many such persons *de facto* participate in the labour market as "invisible workers" ", add the following words:

", including as migrant seasonal workers and migrant domestic workers,"

1. Reference to committee: Doc. 15194. Reference 4555 of 25 January 2021, modified on 27 January 2023. Reporting committee: Committee on Social Affairs, Health and Sustainable Development. See Doc. 15784. Opinion approved by the committee on 19 June 2023.

Amendment B (to the draft resolution)

In paragraph 3, last sentence, after the words “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,”, add the following words:

“, a situation further exacerbated in the case of migrant domestic workers for whom inspections are difficult,”

Amendment C (to the draft resolution)

In paragraph 5, after the first sentence, add the following sentence:

“It also recalls its Resolutions 1922 (2013) “Trafficking of migrant workers for forced labour” and its Resolution 2323 (2020) “Concerted action against human trafficking and the smuggling of migrants”.”

Amendment D (to the draft resolution)

In paragraph 9.5, after the words “for any victim of criminal labour exploitation, trafficking in human beings and other violent crimes who would like to remain in the country,”, add the following words:

“effective access to free legal assistance and to protection mechanisms should be guaranteed,”

Amendment E (to the draft resolution)

In paragraph 9.6, after the words “there should be a possibility of appeal”, add the following words:

“to an independent body”

Amendment F (to the draft resolution)

Before paragraph 11.1, insert the following paragraph:

“to sign and ratify the European Convention on the Legal Status of Migrant Workers (ETS No. 93);”

Amendment G (to the draft recommendation)

After paragraph 3, insert the following paragraph:

“Considering the relevance of the European Convention on the Legal Status of Migrant Workers (ETS No. 93) with regard to the general conditions for entry and residence of migrant domestic workers and aiming to ensure treatment not less favourable than that afforded to nationals, the Assembly asks the Committee of Ministers to encourage among member States the greatest number of signatures to, and ratifications of, this Convention.”

C. Explanatory memorandum by Ms Arusyak Julhakyan, rapporteur

1. First of all, I wish to congratulate Ms Ada Marra (Switzerland, SOC) on the excellent and timely report she has prepared for the Committee on Social Affairs, Health and Sustainable Development.

2. It is of the utmost importance to ensure dignified working and living conditions for migrant seasonal workers and domestic migrant workers (hereinafter “migrant workers”) as mentioned in the report prepared by Ms Diana Stoica (Romania, ALDE) for the Committee on Migration, Refugees and Displaced Persons, entitled “precarious and irregular work situations of seasonal migrant workers and migrant domestic workers”, . In her report, my colleague has detailed the root causes that have led to a high degree of precariousness and irregular working conditions among migrant workers, such as low or absent remuneration, excessive workload, harassment, lack of social security coverage and social rights, degrading and isolated accommodations, lack of safety, obstacles to trade union membership, and limited access to justice.

3. Indeed, the increasingly precarious and irregular work situations in which many migrant workers may find themselves have been facilitated by poverty or adverse economic conditions in countries of origin on the one hand, and by European agricultural and domestic work sectors becoming increasingly dependent on such an abundant foreign workforce on the other. Moreover, migratory trends, bilateral agreements, historical, but

also geographical and cultural factors have favoured these migration movements as well. Finally, false promises by recruitment agencies and employers, such as higher remuneration, social security coverage or access to social services, may have also led migrant workers to accept seasonal work offers.

4. As mentioned by the rapporteur of the Committee on Social Affairs, Health and Sustainable Development, “invisible workers” represent a huge workforce. This is notably the case in the agricultural and domestic work sectors. The situation of migrant seasonal workers has been aggravated by cumulative factors, especially the limited nature of seasonal work contracts, language barriers, and lengthy and cumbersome procedures for obtaining work permits (**Amendment A**). This is further exacerbated in the case of domestic migrant workers for whom inspections are difficult and employers often reluctant to pay taxes and social security contributions (**Amendments A and B**).

5. The Parliamentary Assembly has already adopted resolutions and recommendations with regard to migrant workers, such as the ones rightly underlined by the rapporteur. In this respect, I would suggest adding Resolution 1922 (2013) and Resolution 2323 (2020), both of which considered human trafficking as the most severe form of exploitation (**Amendment C**).

6. As also rightly mentioned by the rapporteur, the provisions relating to the legal status of victims of criminal labour exploitation, trafficking in human beings and other violent crimes should be simplified by member States. The Assembly should more broadly recommend member States to guarantee legal assistance and protection to migrant workers in such situations, including by granting a temporary residence permit in the context of legal pursuits, the right to appeal to an independent body, the right to obtain adequate compensation, and the right not to be retaliated (**Amendment D**).

7. Invisible workers who submit an application for regularisation should, as underlined by the rapporteur, be able to appeal in the event of a negative response by the administrative decision-making body or by an authorised third party. One should however make clear that such an appeal must be possible before a body independent from governmental institutions, especially from administrations dealing with migrants and migrant workers’ status (**Amendment E**).

8. Finally, the rapporteur recalls the urgency for member States to fully implement the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) as well as the Committee of Ministers Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation. Member States should also be invited to sign and ratify the European Convention on the Legal Status of Migrant Workers (ETS No. 93), considering the relevance of this text concerning the undocumented migrant workers (**Amendments F and G**).