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Precarious and irregular work situations of migrant seasonal and domestic workers

Report[1]
Committee on Migration, Refugees and Displaced Persons
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Summary

Precarious and irregular work situations of migrant seasonal and domestic workers have increased over the years, facilitated, *inter alia*, by poverty or insufficient economic conditions in countries of origin, as well as by the increasing dependence of the European agricultural and domestic work sectors on an abundant foreign workforce. Migrant workers' situations have been aggravated by cumulative factors, such as the temporary nature of seasonal employment contracts, almost no access to social rights, linguistic barriers, or the absence of work permits. These root causes have led to a high degree of precariousness and irregular working conditions among migrant workers, including female workers, especially in the domestic work sector.

To tackle such intolerable situations, the report calls on member States to join and effectively implement the existing international legal framework of the Council of Europe and other international institutions, namely the United Nations, the International Labour Organization and the European Union. Furthermore, the report recommends member States to improve practice, *inter alia* by adopting structural policies to protect migrant workers' labour and social rights, through effective labour inspections, regularisation programmes, family reunion, and awareness-raising campaigns. Finally, the report recommends an effective access to justice and appropriate sanctions, crucial to guarantee legal assistance and protection for migrant workers.

1. Reference to committee: Doc. 15274, Reference 4586 of 28 May 2021, extended on 23 January 2023.

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A. Draft resolution[2]

1. Precarious and irregular work situations of migrant seasonal and domestic workers (hereafter "migrant workers") have increased over the years, facilitated by poverty or insufficient economic conditions in countries of origin on the one hand, by the increasing dependence of the European agricultural and domestic work sectors on an abundant foreign workforce on the other. Furthermore, migratory trends, bilateral agreements, historical, but also geographical and cultural factors have favoured migration movements. Finally, false promises of recruitment agencies and employers, such as higher remuneration, social security coverage or access to social services, may also have led migrant workers to accept offers for seasonal work.

2. Migrant workers' situations are aggravated by cumulative factors, especially by the temporary nature of seasonal employment contracts, linguistic barriers, and lengthy and cumbersome procedures for obtaining work permits. Such factors often lead to recruitment of undocumented workers, who are in an irregular situation and more exposed to criminal organisations. The situation is worse for domestic migrant workers: labour inspections are difficult to carry out in the domestic work sector and employers are often reluctant to pay the employment-related taxes and social security contributions. This results in an increased vulnerability of migrant workers who have almost no access to social rights.

3. Female workers are particularly vulnerable in both domestic and seasonal work sectors, due to their high degree of dependence on employers. In the domestic work sector, many female migrant workers, especially those who are in an irregular situation, end up living in the house of their employers. This situation and the frequency of undeclared domestic work increase the risk of exploitation and sometimes, of sexual harassment and abuse.

4. These root causes have led to a high degree of precariousness and irregular working conditions among migrant workers, such as low or no 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, leading to situations of modern slavery.

5. This precariousness affects several types of migrant workers, including those from Eastern Europe. Some of them are victims of exploitation and human trafficking networks, via external factors or means, such as personal networks, recruitment agencies, pick-up spots, and online recruitment. Moreover, there is an increasing criminal use of social media and the internet for recruiting migrant workers, but also of intermediaries, leading to a higher degree of control over migrant workers regarding their working conditions, their transportation, or access to their bank accounts. More recently, the massive arrival of Ukrainian refugees in many European countries has increased the risks of labour exploitation and human trafficking.

6. The Covid-19 pandemic has demonstrated the paramount contribution of migrant workers to national economies, who were thus considered as "essential workers". But as essential workers, they were more exposed to the virus than other workers, and more to get infected.

7. To tackle such intolerable situations, the Parliamentary Assembly underlines the importance of complying with the existing international legal framework aimed at tackling precariousness and irregular working conditions.

8. Primarily, the Assembly underlines the importance of the European Convention on Human Rights (ETS No. 5) which, in Article 4, prohibits slavery, servitude and forced or compulsory labour. It also recalls the case law of the European Court of Human Rights, which extended the scope of this provision to include protection against trafficking for labour exploitation (*Chowdury and Others v. Greece*, 30 March 2017) and "domestic slavery" (for example, *Siliadin v. France*, 26 July 2005).

9. Furthermore, it underscores the relevance of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), aimed at defining common general conditions for the entry and stay of migrant domestic workers and ensuring a treatment not less favourable than that recognised to nationals.

10. The Assembly also recalls Recommendation CM/Rec(2022)21 of the Committee of Ministers on preventing and combating trafficking in human beings for the purpose of labour exploitation, which calls on member States to adopt national laws, policies, and strategies, following a human rights-based and victim-centred approach, and to strengthen the labour market regulation.

2. Draft resolution adopted unanimously by the committee on 8 December 2023.

11. The Assembly underlines the importance of the Convention on Action against Trafficking in Human Beings (CETS No. 197) and the monitoring work and guidance of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is responsible for monitoring the implementation of the Convention and pays particular attention to human trafficking for the purpose of labour exploitation in this context.

12. The Assembly also underlines the importance of the European Social Charter (revised) (ETS No. 163) as well as the conclusions and decisions of the European Committee of Social Rights. The Charter proscribes forced labour, and two of its provisions (Articles 18 and 19) address in particular the situation of migrant workers, enshrining the rights to engage in a gainful occupation in host countries, to protection and assistance for migrant workers and their families and to a treatment not less favourable than that of nationals concerning *inter alia* remuneration and working conditions.

13. The Assembly recalls that restrictions on the rights laid down in the Charter can be placed only if they are "necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals", and stresses that no other reason can be invoked to limit the enjoyment of the rights enshrined in the Charter.

14. The Assembly also recalls its Resolutions 1922 (2013) "Trafficking of migrant workers for forced labour" and 2323 (2020) "Concerted action against human trafficking and the smuggling of migrants", which both consider human trafficking as the most severe form of exploitation.

15. The Assembly likewise recalls the importance of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of the United Nations.

16. The Assembly also highlights the relevant conventions of the International Labour Organization, namely: the Migration for Employment Convention (Revised) No. 97, which requires an equality of treatment between national and migrant workers in matters of employment, remuneration and other working conditions; the Migrant Workers (Supplementary Provisions) Convention No. 143, aimed at tackling illegal employment of migrants; and the Domestic Workers Convention No. 189, which recognises freedom of association of all domestic workers, and promotes the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of employment discriminations.

17. Regarding European Union's texts, the Assembly takes note that while migrant seasonal workers coming from an EU member State are covered by Article 45 of the Treaty on the Functioning of the European Union on the freedom of movement for workers and by Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, third-country nationals are covered by Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

18. The Assembly also takes note of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals which has been elaborated to prevent abuses and labour exploitation of third-country migrant workers, to grant protection measures as regards access to justice and to ensure the implementation of adequate and effective labour inspections.

19. Beyond these texts, the Assembly underlines the necessity to also address the social aspects of precarious seasonal work, based on the initial motion for a resolution entitled "Precarious status of cross-border and seasonal workers in Europe" (Doc. 15274).

20. The Assembly therefore calls on member States to comply with the existing international treaties, norms and recommendations, to improve their laws, starting by migration and labour laws, and to effectively implement these texts in order to address precariousness and improve the social aspects of seasonal and domestic work in Europe.

21. The Assembly thus asks member States to:

21.1. consider signing and ratifying the European Convention on the Legal Status of Migrant Workers;

21.2. fully comply with the provisions of the Convention on Action against Trafficking in Human Beings and implement the relevant recommendations issued by GRETA and the Committee of the Parties to the Convention;

21.3. effectively implement the European Social Charter, especially the provisions on the enhancement of working and living conditions for migrant workers, and those aimed at eliminating all legal and *de facto* discrimination in access to public and private housing;

21.4. extend the Charter's legal scope to cover everyone *de facto* residing in the Council of Europe member States, irrespective of their status and place of origin, as requested in Resolution 2504 (2023) and Recommendation 2255 (2023) "Health and social protection of undocumented workers or those in an irregular situation".

22. The Assembly welcomes the report on "Protection of the labour and human rights of migrant workers" of the United Nations Special Rapporteur on the human rights of migrants, Mr Felipe González Morales, and calls on member States to closely consider its recommendations.

23. As regards improving legislation and practices, the Assembly asks member States to:

23.1. define and criminalise "forced labour" and "precarious and irregular working conditions" in legislation; establish anti-trafficking legislation and mechanisms to prevent and tackle the illegal practices of criminal organisations, and better detect undeclared work;

23.2. adopt structural policies to protect migrant workers' and their families' rights concerning wages, workload, social security coverage, working and living conditions, safety measures at workplace, and social services, including by giving migrant workers the possibility to change employers in order to escape from exploitative situations;

23.3. establish legal and practical measures for effective labour inspections, including for domestic work; increase financial and human resources dedicated to inspectorates and better train inspectors;

23.4. carry out regularisation programmes for undocumented workers; promote simple and inexpensive procedures; and support undocumented migrants' organisations, among other measures and best practices as recommended in Resolution 2504 (2023) and Recommendation 2255 (2023);

23.5. facilitate family reunion by lifting obstacles, such as unduly restrictive residency or income requirements;

23.6. put in place awareness-raising campaigns regarding migrant workers' labour and social rights and the risks of human trafficking for labour exploitation, including in the mother tongue of migrant workers; provide them with referral mechanisms and ensure a confidential treatment of their claims;

23.7. collect data and information with a view to sharing, among them, best practices for the prevention of precarious working and living conditions.

24. The Assembly notes that access to justice and appropriate sanctions are crucial to guarantee legal assistance and protection for migrant workers, including: granting a temporary residence permit in the context of legal proceedings; the rights to a remedy before an independent body, to obtain adequate compensation, and not to be subject to retaliation. Third parties should be able to file complaints against exploitative employers, particularly in situations of modern slavery or bans on the right to unionise. Moreover, the competent public authorities should do more to prevent illegal recruitment and, failing that, ensure the effective implementation of sanctions against exploitative employers or their intermediaries. Finally, provisions should be put in place in order to make back payments to migrant workers, to establish State compensation funds and to freeze the assets of exploitative employers.

B. Explanatory memorandum by Ms Diana Stoica, rapporteur

1. Introduction

1. Over the years, Europe's agricultural and domestic work sectors have become increasingly dependent on a migrant workforce from both European and non-European countries, making labour migration a key feature of these sectors. It is clear from the evidence, however, that there is a high prevalence of precarious and irregular working conditions among migrant workers, such as low pay, excessive workload, lack of social security coverage, unsanitary accommodation, lack of safety measures in the workplace and limited access to justice. High levels of undeclared work further exacerbated these exploitative conditions.

2. This precarious status is not peculiar to any one group of people, but affects several types of migrant workers, regardless of their country of origin. In the wake of the eastern enlargement of the European Union, many eastern Europeans, including a large number of female workers, migrated westwards in search of work and some became victims of exploitation and human trafficking networks.

3. With the outbreak of the Covid-19 pandemic, migrant workers found themselves in an even more precarious position. There were cases of migrant workers becoming infected in unsanitary dormitories or workplaces, while others lost their contracts and thus their source of income. Thousands of seasonal migrants, some of them in an irregular situation, especially in the agricultural sector, found themselves stranded on the streets of Europe. It thus became apparent that there were systemic problems associated with precarious work contracts for migrants.

4. More recently, the huge influx of Ukrainian refugees into many European countries since the start of the Russian Federation's aggression against Ukraine has exposed these refugees to heightened risks of labour exploitation and human trafficking. They may frequently find themselves in a precarious situation due to short-term contracts or irregular work.

5. The Parliamentary Assembly adopted Resolution 1922 (2013) "Trafficking of migrant workers for forced labour", as well as Resolution 2323 (2020) "Concerted action against human trafficking and the smuggling of migrants", based on reports of the Committee on Migration, Refugees and Displaced Persons presented by Annette Groth (Germany, UEL) and Vernon Coaker (United Kingdom, SOC), respectively. Both resolutions analysed human trafficking for the purpose of multiple forms of exploitation, including labour exploitation. It is important, however, to also address the social aspects of precarious and seasonal work in Europe. Together with other colleagues, therefore, I signed the motion for a resolution entitled "Precarious status of cross-border and seasonal workers in Europe".

2. Definitions

6. For the purposes of this report, the notion of "migrant seasonal workers" is defined in accordance with Article 2.2.b of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[3] according to which "the term 'seasonal worker' refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year". A characteristic feature of migrant seasonal labour, therefore, is the temporary nature of work contracts and the fact that work is carried out according to the seasons and the weather.

7. Additionally, Article 1.a of the Domestic Workers Convention of the International Labour Organization (ILO)[4] indicates that "the term 'domestic work' means work performed in or for a household or households". This concept is commonly used to identify workers employed in Personal and Household Services (PHS), whose main tasks may range from personal assistance, such as taking care of children and elderly people, to household services, such as cleaning, ironing or gardening.[5]

8. Lastly, although there is no universal consensus on the meaning of "precarious working conditions", the European Parliament has provided its own legal definition in a 2017 resolution on working conditions and precarious employment.[6] According to the resolution, precarious employment is "employment which does not

3. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted on 18 December 1990 by UN General Assembly Resolution 45/158.
4. ILO Domestic Workers Convention Co189 (2011).
5. European Federation for Family Employment and Home Care, "Personal and Household Services (PHS): a key sector of the future Action Plan", October 2020, p. 2.
6. European Parliament Resolution 2016/2221(INI) of 4 July 2017.

comply with EU, international and national standards and laws and/or does not provide sufficient resources for a decent life or adequate social protection" (Section I.3). Furthermore, in paragraph 6, it mentions specific factors that usually contribute to precarious working conditions, such as "rudimentary protection from dismissal and lack of sufficient social protection in case of dismissal; insufficient remuneration for a decent living; no or limited social protection rights or benefits; no or limited protection against any form of discrimination" and "low level of collective rights". The ILO has reiterated that "precarious work is typically understood as work that is low paid, especially if associated with earnings that are at or below the poverty level and variable; insecure, meaning that there is uncertainty regarding the continuity of employment and the risk of job loss is high; with minimal worker control, such that the worker, either individually or collectively, has no say about their working conditions, wages or the pace of work; and unprotected, meaning that the work is not protected by law or collective agreements with respect to occupational safety and health, social protection, discrimination or other rights normally provided to workers in an employment relationship".[7] The concept of precarious working conditions therefore refers to the exploitative treatment of migrant workers within a State.

3. The legal framework

3.1. United Nations Migrant Workers Convention

9. The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, known as the Migrant Workers Convention, constitutes a milestone in the protection of migrant workers. It was adopted by the UN General Assembly Resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003. The Convention is relevant at international level, as not only does it provide vitally important social protection to migrant workers, but it also extends it to their family members during the "entire migration process" (Article 1.2 of the Convention), namely from the preparation for migration to the period of stay, and their return to the State of origin. In particular, Article 25 places an obligation on signatories to ensure "treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration" and other working conditions such as "overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms". Article 25.3, furthermore, extends recognition of the same rights to migrant workers in an irregular situation with respect to their stay or employment.

10. While migrant workers who are present or employed irregularly enjoy the rights enshrined in Article 25 of the Convention, those who are in a regular situation (including migrant seasonal workers in accordance with Article 59), as well as their families, enjoy further rights laid down in Part IV of the Convention. For instance, Article 43 ensures equality of treatment with nationals of the State of employment in relation to, *inter alia*, access to education, to housing and to social and health services.

11. The Migrant Workers Convention, however, has found only limited support among European countries. Of the 58 signatories, only 4 Council of Europe member States (Albania, Azerbaijan, Bosnia and Herzegovina and Türkiye) have ratified it, while Armenia, Montenegro and Serbia have signed but not ratified the instrument.

3.2. International Labour Organization instruments

12. The ILO has produced several conventions relating to the rights of migrant workers, namely: the Migration for Employment Convention (Revised) (No. 97); the Migrant Workers (Supplementary Provisions) Convention (No. 143); and the Domestic Workers Convention (No. 189).[8]

13. As regards the Migration for Employment Convention (No. 97) (hereafter Co97), 18 Council of Europe member States have ratified this instrument. Frontier workers, short-term entry of members of the liberal professions and artistes, and seamen are not covered by Co97 (Article 11). Migrant seasonal and domestic workers, who are covered by the term "migrant for employment", benefit from the provisions of the Co97. The latter entails a series of commitments for signatories, starting with equality of treatment between national and migrant workers in matters of employment, remuneration and other working conditions (Article 6, mainly). The Co97 also invites States to take all appropriate measures to facilitate the departure, journey and reception of

7. ILO, "Non-standard employment around the world", 16 November 2016, Chapter 1.3., p. 18.
8. Co97 was adopted by the ILO General Conference on 8 June 1949, entered into force on 22 January 1952 and has 53 ratifications so far. C143 was adopted on 4 June 1975, entered into force on 9 December 1978 and has 28 signatories so far. C189 was adopted on 16 June 2011, entered into force on 5 September 2013 and has 35 signatories so far.

migrant workers (Article 4), including simplifying administrative formalities, providing interpretation if needed, and assisting them and their families during an initial period in their settlement (Annex I, Article 6). States Parties have to provide migrants with assistance for employment and related accurate information (Article 2; under certain conditions as specified by Annex II, Article 3) and, under Annex III to the Co97, signatories undertake to facilitate the circulation of the personal effects of migrant workers as well.

14. As regards the ILO's Migrant Workers Convention No. 143 (hereafter C143), 13 Council of Europe member States have ratified the instrument. Frontier workers, short-term entries (liberal professions, artistes, specific and limited assignments by employers), seamen, persons staying for educational or training purposes are not covered by C143 (Article 11). Migrant workers benefit from the provisions of the Convention.[9] C143 is concerned with the means to tackle illegal employment of migrants. It states *inter alia* that the migration of workers "should take place under the responsibility of official agencies for employment" (Preamble, ninth paragraph) and refers to equality of treatment between national and migrant workers with regard to social security, among other standards (Preamble, thirteenth paragraph).

15. The C143 also and primarily stipulates that each signatory "undertakes to respect the basic human rights of all migrant workers" (Article 1). As regards the means to tackle illegal employment of migrants, C143 sets out several commitments for signatories, for instance employing appropriate means to determine whether there are illegally employed migrant workers on their territory (Article 2), suppressing clandestine movements of migrants (including taking measures against the organisers of such movements and employers, where applicable (Article 3). C143 also reiterates the importance of tackling abuses vis-à-vis illegal employment of migrant workers and the necessary involvement of representative organisations of employers (Article 7). Importantly, it guarantees equality of treatment between national and migrant workers in the case of migrant workers legally residing in the host country who lose their job (Article 8). C143 also guarantees equality of treatment between national and migrant workers when the latter are illegally residing or working in the host country, including the right to defend their case, either themselves or through a representative (Article 9). A policy to secure such equal treatment of migrant workers and their families is to be pursued (in co-operation with employers' and workers' organisations, Article 12), using "methods appropriate to national conditions and practice" "in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms" (Article 10) as well as with regard to working conditions for migrant workers (Article 12.g). C143 recommends that States Parties "take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection" (Article 12.c), without preventing migrant workers and their families from preserving "their national and ethnic identity and their cultural ties" (Article 12.f) and, in Article 13, calls on States Parties to "facilitate the reunification of the families of all migrant workers legally residing in [their] territory". C143 also deals with the critical issue of the "recognition of occupational qualifications acquired outside [the signatory's] territory, including certificates and diplomas" (Article 14.b).

16. As regards the Domestic Workers Convention (No. 189) (hereafter C189), 10 Council of Europe member States have ratified this instrument. C189 guarantees to all domestic workers, whether migrant or other, "(a) freedom of association […]; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation" (Article 3.2). In particular, States Parties to the Convention are to ensure that all domestic workers enjoy fair terms of employment, decent working and living conditions (Article 6), as well as to establish effective complaint mechanisms (Article 15.1.b; Article 17). In addition, States Parties are called on to "provide adequate protection for and prevent abuses of domestic workers" (Article 15.1.c).

17. C189 is accompanied by the ILO Domestic Workers Recommendation No. 201 (hereafter R201), which puts forward concrete solutions States should consider when deciding which policies to adopt. In particular, in paragraph 20, R201 encourages States to sign international and/or regional agreements granting equal treatment to migrant domestic workers regarding social security access and entitlements. Paragraph 21, furthermore, recommends that States consider additional measures to protect migrant domestic workers by providing translation and information services, organising pre-placement visits to the households where migrant workers are to be employed, developing a network of emergency housing and securing access to complaint mechanisms.

9. On the applicability of the Convention to migrant seasonal workers, see ILC87 – Report III (1B) Migrant Workers (ilo.org), paragraphs 107 and 108; and ILC87 – Report III (1B) Migrant Workers (ilo.org), paragraph 378.

18. Many European countries, however, have still not acceded to the above-mentioned conventions, with some claiming that existing national legislation already offers sufficient protection for domestic workers and their families, where applicable.[10]

19. Unlike in the case of migrant domestic workers, no international treaty or convention specifically addresses protection of migrant seasonal workers, although several UN instruments do apply to them, including notably the ones cited above.

3.3. Council of Europe instruments

20. The Council of Europe is active in this field and has introduced relevant norms and standards. Article 4 of the European Convention on Human Rights (ETS No. 5) prohibits slavery, servitude and forced or compulsory labour. Through its case law, the European Court of Human Rights has made it clear that Article 4 also protects against trafficking for labour exploitation.[11]

21. The main Council of Europe instrument in this field, however, is the European Social Charter (revised) (ETS No. 163). The Charter's employment-related rights are applicable to migrant workers from other States Parties who are lawfully resident or working regularly within the territory of the Party concerned, but two provisions in particular address the situation of migrant workers. According to Article 18 of the Charter, migrant workers and their family members enjoy the right to engage in a gainful occupation in the territory of other States Parties.[12] In concrete terms, signatories undertake to recognise their citizens' right to leave the country in order to find a gainful occupation in other States Parties, to streamline and liberalise recruitment procedures for foreign workers, and to reduce charges payable by foreign workers.

22. Article 19 of the Charter recognises the right of migrant workers and their families to protection and assistance. Specifically, States undertake to set up services to assist migrant workers, particularly in obtaining information, and to adopt measures to facilitate their departure, journey and reception, and to provide services for health, medical attention and good hygienic conditions during their journey. In addition, the Parties are to secure for migrant workers and their families treatment not less favourable than that of nationals in respect of remuneration, working conditions, trade union membership and enjoyment of the benefits of collective bargaining, accommodation, taxes and the right to lodge complaints concerning the application of Article 19. Finally, States Parties to the Charter undertake to promote the teaching of their national language(s) to migrant workers and their families, and to facilitate the teaching of the migrant worker's mother tongue to the children of the migrant worker.

23. According to Article G of the Charter, restrictions on rights laid down in the Charter, including Articles 18 and 19, can be imposed only if they are "necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals". No other reason can be invoked to limit the enjoyment of the rights enshrined in the Charter. Drawing on other approaches to the personal scope of the rights of migrant workers and their families, such as that of the ILO conventions mentioned above, consideration could be given to the personal scope and related restrictions as contained in Article G of the Charter with a view to limiting such restrictions.

24. There is, however, a significant limitation on the scope of the Charter in this respect since, according to Article 1 of its Appendix, subject to the provisions (Part II) of Article 12.4, and Article 13.4, the persons referred to in Articles 1 to 17 and 20 to 31 are to include foreigners only insofar as they are nationals of other contracting Parties lawfully resident or working regularly within the territory of the contracting Party concerned, it being understood that the above-mentioned articles are to be interpreted in the light of the provisions of Articles 18 and 19. This does not preclude the extension of similar rights to other persons by any Party. Within the framework of the Charter reform process, the States Parties to the Charter/Council of Europe member States are unwilling to engage with the issue of personal scope for the time being.[13] The crucial importance, however, of ensuring that the guarantees of one of the Council of Europe's most fundamental treaties can be

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10. European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), "Domestic workers in Europe: Getting the recognition they deserve", June 2021, pp. 6-7.
11. See Chowdury and Others v. Greece, Application No. 21884/15, 30 March 2017; legal summary.
12. Council of Europe, "Migrant workers rights as guaranteed by the European Social Charter", OSCE Human Dimension Implementation Meeting in Warsaw, 12 September 2017, p. 3.
13. Part I, paragraph 19 of the Social Charter: "Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party." See also Committee of Ministers, 1460th meeting, 15 March 2023, "Improving the European Social Charter system: longer term substantive and procedural issues – Report".

extended to all persons lawfully within the territories of the member States, irrespective of their nationality, in accordance with contemporary notions of human rights, militates in favour of taking immediate steps to re-examine the Charter's personal scope.

25. Aside from the European Social Charter, the Council of Europe has called on States to sign the European Convention on the Legal Status of Migrant Workers (ETS No. 93), which was opened for signature in 1977 and entered into force on 1 May 1983. This treaty seeks to define common general conditions for the entry and stay of migrant workers and to ensure treatment not less favourable than that accorded to nationals in respect of, *inter alia*, housing, working conditions, social security, medical assistance and access to the courts. Although Article 1.2.e explicitly excludes migrant seasonal workers from the enjoyment of rights set forth in the Convention, no provision limits the application of the Convention to migrant domestic workers. Only 11 Council of Europe member States have ratified it, however (namely Albania, France, Italy, Republic of Moldova, the Netherlands, Norway, Portugal, Spain, Sweden, Türkiye and Ukraine), while Belgium, Germany, Greece and Luxembourg have signed but not ratified it.

26. In recent decades, the Council of Europe has taken major steps to combat human trafficking. Firstly, the Council of Europe's Convention on Action against Trafficking in Human Beings (CETS No. 197) paved the way for the creation of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which monitors the implementation of the Convention and pays particular attention to human trafficking for the purpose of labour exploitation.[14] According to Article 4.a, of the Convention, "trafficking in human beings" refers to "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Recently, GRETA issued a Guidance Note on addressing the risks of human trafficking related to the war in Ukraine. During its country monitoring visits, in the course of the second evaluation round, GRETA noted the living and working conditions of undocumented agricultural workers in the village of Nea Manolada in western Peloponnese, Greece, in the area of Huelva in Andalusia, Spain, and in Borgo Mezzanone, Puglia, Italy.

27. Secondly, in April 2021, the Committee of Ministers adopted the terms of reference of the Drafting Committee on Trafficking for the Purpose of Labour Exploitation (DH-TET) under the authority of the Steering Committee on Human Rights (CDDH), its mandate being to "prepare a draft recommendation of the Committee of Ministers on preventing and combating trafficking in human beings for the purpose of labour exploitation, based notably on the Compendium of Good Practices and the Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation developed by GRETA, as well as on the case law of the European Court of Human Rights". Accordingly, on 27 September 2022, the Committee of Ministers adopted a Recommendation to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation (CM/Rec(2022)21).

3.4. The European Union

28. Mention should be made, firstly, of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

29. Depending on the country of origin, the rights guaranteed to migrant seasonal workers may differ. For the EU legal framework distinguishes between migrant seasonal workers coming from an EU member State and third-country nationals. Migrant seasonal workers coming from an EU member State are covered by Article 45 of the Treaty on the Functioning of the European Union (TFEU), which deals with freedom of movement for workers, and by Directive 2014/54/UE of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. Third-country nationals are covered by 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 (known as the Seasonal Workers Directive),

14. See GRETA's 7th General report, thematic chapter on human trafficking for labour exploitation; GRETA's Guidance note on preventing and combating human trafficking for the purpose of labour exploitation; and GRETA's Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation.

which covers third-country migrant seasonal workers' conditions of employment. Both EU and non-EU seasonal workers who legally work and reside in one EU member State but are sent by their employer to work in another EU country are considered "posted seasonal workers",[15] according to 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; they are also covered by Directive 2018/957 of the European Parliament and of the Council of 28 June 2018, known as the Posting of Workers Directive, amending Directive 96/71/EC.

30. In concrete terms, one of the main differences between migrant seasonal workers coming from an EU member State and third-country nationals concerns the entry requirements to the territory of an EU member State: EU citizens can move freely across the European Union by virtue of their right of movement, while non-EU migrant seasonal workers residing in an EU member State usually need to apply for visas or residence and work permits.

31. The first-ever example of EU harmonised legislation on entry requirements for third-country seasonal workers, the Seasonal Workers Directive 2014/36/EU was the result of a compromise between States' need to effectively manage seasonal migration movements and their concerns about migrant workers' precarious working conditions.[16] Accordingly the directive allows the migration of seasonal workers only for a limited length of time, with Article 14.1 stipulating that "Member States shall determine a maximum period of stay for seasonal workers which shall be not less than five months and not more than nine months in any 12-month period." The Directive thus avoids any automatic permanent migration, which could create uneasiness within the receiving State, unless the seasonal workers manage to obtain a residence permit in the host country. At the same time, the Directive theoretically requires member States to ensure decent living and working conditions for migrant seasonal workers. Article 23 ultimately recognises the right of migrant seasonal workers to equal treatment with nationals of the receiving State inasmuch as it relates, *inter alia*, to the terms of employment (for instance pay, minimum working age, working hours, holidays, health and safety requirements at the workplace), the right to strike and to be a member of a trade union, back payments, as well as social security benefits as defined in Regulation No. 883/2004. Migrant workers are also allowed to switch employers during their stay, thus enabling them to escape exploitative working conditions without the risk of reprisals from their employers (paragraph 31).[17] Lastly, Article 25 of the Directive calls on States to provide migrant seasonal workers with effective complaint mechanisms against possible violations of the provisions, while Article 24 provides for monitoring and sanctions.

32. Another important piece of legislation where the protection of migrants' working conditions is concerned is Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (known as the Employers Sanctions Directive). Enacted to prevent employers' abuses and labour exploitation of third-country migrant workers, it facilitates access to justice for migrant workers and requires States to ensure that effective and adequate labour inspections are carried out (Article 14). In the case of violations of Article 3 of the Directive, which prohibits "the employment of illegally staying third-country nationals", sanctions are imposed on the employer and the migrant workers are entitled to back payments of any outstanding remuneration or social security benefits (Article 6). Where an infringement is accompanied by "particularly exploitative working conditions", Article 9.1.c calls for criminal proceedings to be brought against the employer. According to Article 13.4 of the Directive, States "may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings".

33. The EU has also adopted Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. This directive is currently being revised.[18]

34. The outbreak of the Covid-19 pandemic had a detrimental effect on the working and living conditions of seasonal migrants, thus requiring an effective and immediate response from the EU authorities. In June 2020, the European Parliament, in a resolution "on European protection of cross-border and seasonal workers in the context of the Covid-19 crisis," called on States to effectively implement existing EU legislation and urged the

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15. European Commission, "Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak", 16 July 2020, pp. 1-3.
16. Virginia Passalacqua, "Has the seasonal workers directive missed its target? Evidence from Italy during the pandemic", in *European Law Open*, 4 November 2022, pp. 692-693.
17. Kate Hooper and Camille Le Coz, "Seasonal Worker Programmes in Europe. Promising practices and ongoing challenges", February 2020, p. 6.
18. "Revision of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims" | Think Tank | European Parliament.

European Commission "to propose long-term solutions to deal with abusive subcontracting practices and safeguard seasonal and cross-border workers employed all along the subcontracting and supply chain".[19] The following month, pursuant to the EP resolution, the European Commission published the new Guidelines on seasonal workers in the EU in the context of the Covid-19 outbreak.[20] These guidelines reiterate the need to provide decent living and working conditions, including physical distancing and hygiene measures, and address several issues concerning transport, occupational safety and social security.

3.5. Promising practices in EU member States

35. Even in the case of EU legal instruments member States enjoy a certain margin of appreciation in determining their own policies. Not only are they responsible for determining in law the maximum length of seasonal workers' employment contracts (within the parameters set by the Seasonal Workers Directive) and the overall number of seasonal workers to be admitted each year, but they can also choose which sectors to include in their seasonal work programmes.[21] For this reason, national legislation on migrant workers may differ from one EU member State to another.

36. In this context, some States' policies on seasonal and domestic work look promising and appear to be effective, and their example may help other countries to find practical solutions in this area.

37. For instance, in order to avoid labour shortages, France and other European countries have introduced circular migration mechanisms, whereby States sending and receiving migrant workers sign bilateral agreements to facilitate recruitment on the basis of multi-annual work permits.[22]

38. As regards labour inspections, the Netherlands allows migrant workers in an irregular situation to report crimes to the police without fear of immediate arrest or detention. French labour inspectorates treat migrants' complaints in confidence, in accordance with Article 15.c of the ILO Labour Inspection Convention (No. 81) of 1947, thus preventing sensitive data from being transferred to the immigration enforcement authorities. And Belgian labour inspectorates may request that employers pay their employees on the spot if there is evidence of non-payment.[23]

4. The situation of migrant seasonal and domestic workers

4.1. The main drivers of seasonal and domestic labour migration

39. The primary driver of seasonal and domestic labour migration is poverty or adverse economic conditions. At a structural level, therefore, there are "push" and "pull" factors, corresponding to demand and supply: there is a demand for labour in the richer countries and, at the same time, a supply of cheaper labour from poorer countries. Not only do workers from the least developed countries migrate for economic reasons, but the prospect of earning more money with which to support their families induces many eastern European citizens to search for temporary jobs abroad. In this context, the possibility of higher wages and sending remittances to the countries of origin may explain labour migration in seasonal and domestic work. Such seasonal and domestic work migration affects European citizens, but also citizens beyond Europe, since there is seasonal migration from North African and Asian countries, too (for instance from Morocco to Spain or Italy,[24] or from Bangladesh to Greece[25]).

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19. European Parliament Resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis (2020/2664(RSP)), paragraph 9.
20. European Commission, "Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak", 16 July 2020.
21. European Parliament Briefing, "Migrant seasonal workers in the European agricultural sector", 26 February 2021, pp. 1, 4-5; see also Article 79.5 TFEU.
22. Kate Hooper and Camille Le Coz (2020), op. cit., pp. 4 and 9.
23. European Union Agency for Fundamental Rights (FRA), "Protecting migrants in an irregular situation from labour exploitation. Role of the Employers Sanctions Directive", 24 June 2021, pp. 20 and 29.
24. With regard to North Africa, see for example "Emigration flows from North Africa to Europe" | European Journal of Public Health | Oxford Academic (oup.com).
25. With regard to Asia, see for example "Greek minister: Seasonal work visas to give Bangladeshi migrants dignity" – AP Migration (ilo.org); and "Seasonal work visas to give Bangladeshi migrants 'dignity'" – DW – 29 August 2022.

40. Another important driver of seasonal and domestic labour migration is illiteracy. Because migrant workers sometimes find themselves in a vulnerable position in their own countries due *inter alia* to illiteracy, the absence of any requirement to be educated or highly skilled in these sectors represents an incentive to migrate.

41. In addition, national labour shortages lead to an abundant foreign workforce moving in search of work. In the agricultural and domestic work sectors in particular, the improvement in living standards in western European countries has pushed the national workforce into higher-paid sectors of the economy, drastically decreasing the number of nationals employed in those industries.[26] The large numbers of eastern European and third-country migrant workers have thus served to offset the lack of domestic workforce.

42. These migration movements are further influenced by migratory trends and bilateral agreements, and fostered by a mixture of historical, geographical, cultural and economic factors. For instance, in the past decades, France and Spain have had close ties with Morocco,[27] and Sweden with Thai migrants,[28] while Germany has been receiving mainly eastern Europeans (for instance Polish and Romanians).[29] As a result, migrant workers may choose their country of destination based on the national communities already living there and the presence of relatives who can help them into employment.

43. Lastly, migrant workers may not have any desire or need to migrate to other countries for labour reasons but are lured into accepting offers of seasonal work by false promises from recruitment agencies and employers (for instance higher pay, social security coverage or access to social services). Under Article 3.2 (safety and health at work) of the European Social Charter, interim, temporary, seasonal workers and those on fixed-term contracts must be afforded adequate protection, including against risks resulting from a succession of accumulated periods spent working for a variety of employers during which they may be exposed to dangerous substances, in order to avoid any discrimination in respect of occupational safety and health in the workplace (Conclusions 2009, Andorra, Article 3.2). If necessary, regulations must prohibit the hiring of temporary workers for some particularly dangerous activities (Conclusions 2013, Bulgaria, Article 3.2).

44. While all these factors may lead workers to migrate to European countries in search of work in agriculture and domestic sectors, they may also increase the risk for migrant workers to become victims of trafficking and labour exploitation. Migrant workers' economic needs have the potential to develop into a bond of dependence on their employers and the fear of losing their job, and hence their means of subsistence, which may lead them to accept inadequate working and living conditions.[30] At the same time, unfulfilled promises by employers to secure work permits may induce migrant workers to accept exploitative conditions, for fear of being returned to their countries of origin.

4.2. The risks of trafficking

45. In the context of labour exploitation, recent years have seen an increase in human trafficking in all European countries, including in the agricultural and domestic work sectors.[31] Migrant workers usually fall victim to human trafficking for labour exploitation via external factors or means, such as personal networks, recruitment agencies – including temporary work agencies –, intermediaries, pick-up spots and online recruitment. Current trends reveals an increase in the criminal use of social media and internet for recruiting migrant workers in the agricultural and domestic work sectors.[32]

46. Personal networks are the principal channel through which migrant workers fall victim to trafficking for the purpose of labour exploitation.[33] Trust bonds may be a practical barrier to awareness of the risks of human trafficking. In addition, sham marriages between an EU citizen and a third-country national have the potential to further aggravate exploitation, as the migrant's regular status is dependent on them being married to the European citizen.

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26. European Parliament Briefing (2021), op. cit., p. 3.
27. See for example In Dialogue with Morocco, Experts of the Committee on Migrant Workers Commend Migration Policy Development, Raise Issues Concerning Children of Migrants and Treatment of Migrants by Border Police | OHCHR. See also France, ministère de l'Intérieur, Office français de l'immigration et de l'intégration, "Attracting and protecting third country seasonal workers in EU and OECD countries".
28. See for example "Thai migrant workers pay for the 'privilege' of picking berries in Sweden" – InfoMigrants.
29. European Parliament Briefing (2021), op. cit., p. 2.
30. FRA, "Protecting migrant workers from exploitation in the EU: workers' perspectives", 24 June 2019, p. 66.
31. GRETA, "Human Trafficking for the Purpose of Labour Exploitation", October 2019, p. 5. See also the United Nations Office on Drugs and Crime (UNODC), "Global Trafficking in Persons", Report 2022, *inter alia* figure no. 11.
32. See GRETA report: "Online and technology-facilitated trafficking in human beings".

47. As regards recruitment methods, a 2019 report by the European Union Agency for Fundamental Rights found that almost two thirds of the surveyed migrant workers recruited via employment agencies eventually fell victim to trafficking for labour exploitation.[34] Also, whether located in EU member States or in third countries, these recruitment agencies appear to be particularly involved in the agricultural and domestic work sectors.

48. Several factors may explain the way recruitment agencies and intermediaries create human trafficking networks for labour exploitation. First of all, false promises made by recruiters to migrant workers about pay, working and housing conditions, as well as visa issuance, end up creating bonds that render migrant workers dependent on the exploitative system. Furthermore, recruitment agencies usually demand hefty fees, in some cases amounting to thousands of euros, despite international norms prohibiting such practices.[35] In this way, recruiters are able to create debt bondages which further increase migrant workers' dependence on human trafficking mechanisms. These intermediaries may also be part of larger networks of outsourced and subcontract recruitment agencies, thus reducing the degree of transparency and the possibility of holding them accountable.

49. Apart from recruitment agencies, many migrant workers may find jobs in agricultural and domestic work sectors through "gangmasters", who act as intermediaries between migrant workers and employers. Compared with recruitment agencies, gangmasters usually retain a higher degree of control over migrant workers, for instance by managing their working conditions, arranging their transport to the workplace, having access to their bank accounts or having the migrants' wages paid into their own accounts. In Italy, in particular, the practice of "*caporalato*" (the Italian equivalent for "gangmaster") is widespread in the agricultural sector.[36]

50. Therefore effective labour inspections and anti-trafficking legislation are of paramount importance, in preventing and tackling these illegal practices. As Diane Schmitt, Anti-Trafficking Co-ordinator of the European Commission, pointed out, not only is the European Union revising Directive 2011/36/EU (mentioned above) in an effort to better address the issue, but also member States of origin and destination of migrant workers are called on to contribute to the fight against human trafficking.[37]

51. As regards the situation of particularly vulnerable groups, special mention should be made of children. In the context of the Council of Europe's instruments, in addition to Article 4 of the European Convention on Human Rights on "Prohibition of slavery and forced labour",[38] forced labour is proscribed by the European Social Charter which provides that "Everyone shall have the opportunity to earn his living in an occupation freely entered upon" (Part I, 1) and the related undertaking of the Parties "to protect effectively" this right (Part II, Article 1.2). Further, the European Committee of Social Rights (ECSR) has stated that "States must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation and begging."[39]

52. The issue of the prohibition of labour exploitation underlies many provisions of the Social Charter (such as just conditions, fair pay or health and safety, among other examples) and is monitored by the ECSR. Within the monitoring process, the ECSR regularly determines whether or not situations are in conformity with the Charter. According to Article 7.10 of the Social Charter, States Parties undertake "to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work". This provision is likewise regularly monitored by the ECSR.

4.3. Work situations and related social rights

53. According to the Seasonal Workers Directive and the TFEU, member States are responsible for determining the number of migrant seasonal workers admitted every year. Although these quotas usually appear very low compared with the sectoral needs for labour, available data show that only a small percentage of the number of work permits available are actually issued.[40] There are two main reasons for this

33. FRA (2019), op. cit., p. 33.
34. FRA (2019), op. cit., p. 31.
35. See the above-mentioned key instruments in the section of the report on the legal framework, in particular: Convention on Action against Trafficking in Human Beings; the revised European Social Charter, Article 1.3; the Charter of Fundamental Rights of the European Union; Article 7.1 of the ILO Private Employment Agencies Convention No. 181.
36. See GRETA's 2nd report on Italy, paragraph 79 et seq.
37. Sub-Committee on Migrant Smuggling and Trafficking in Human Beings, 20 June 2022.
38. Conclusions 2015, Estonia, Article 7.10; see also ECHR Guide on Article 4 – Prohibition of slavery and forced labour.
39. Conclusions 2015, Estonia, Article 7.10; see also Statement of Interpretation, Article 7.10 (Conclusions 2001).

discrepancy. Firstly, the legal procedures for applying for a temporary work permit can be lengthy and cumbersome. Secondly, the short duration of seasonal work, together with the heavy dependence on weather conditions for agricultural activities, often lead employers to recruit migrant workers who are already residing in the relevant country or living there irregularly. This last group of migrant workers are the ones who suffer most from precarious working and living conditions, as their irregular status exacerbates their existing vulnerabilities and limits enjoyment of their rights. It is nevertheless worth mentioning that in May 2023 the Italian Government published the 2023 quota of work permits for non-EU citizens. "Of the 82 705 work permits to be issued this year, 44 000 are reserved for seasonal work, such as fruit picking."[41]

54. Difficulties in carrying out inspections in domestic households, as well as the reluctance of employers of domestic workers to pay employment-related taxes and social security contributions, increase the likelihood of migrant domestic workers not being declared.[42] According to estimates, 70% of domestic work is carried out by undeclared workers under informal employment arrangements, thus effectively preventing them from enjoying the rights enshrined in international conventions and national legislation.[43]

55. Despite EU efforts to harmonise procedures for admitting migrant workers and granting them employment and social rights, the sectors concerned by seasonal work are heavily dependent on migrant workers with irregular status or third-country nationals already residing in the country of employment, but suffering from harsh working and precarious living conditions. In various Council of Europe member States, the temporary nature of seasonal work contracts combined with language barriers further aggravate their vulnerability, including to modern slavery, a multifaceted phenomenon that leads to cumulative abuses and violations of migrant seasonal workers' fundamental rights. Often, for example, they suffer racism and are threatened with being sent back home if they fail to meet their targets. Migrant seasonal workers frequently experience substandard living conditions, with cramped, unsanitary accommodation and no privacy. Some do not have adequate food and drinking water. Often their working hours are not paid or not fully paid, and they can be pressured to do extra hours, sometimes with few or no breaks and unrealistic targets. Too often they do not receive proper medical assistance, yet the harsh conditions in which they live and work frequently lead to medical issues. Migrant seasonal workers are also liable to be pressured, harassed and threatened by the farmers who hire them.[44] Recent years, moreover, have shown how climate change is having knock-on effects on the working conditions of migrant seasonal workers, with, for example, exposure to increasingly high temperatures during summer seasonal jobs, leading in some cases to death.[45]

56. As regards teaching the national language of the receiving State, the Charter stipulates in Article 19.11 that States undertake to promote and facilitate the teaching of the national language of the receiving State to migrant workers and their families. The ECSR has concluded (Conclusions 2019, Armenia, Article 19.11) that the teaching of the national language is the main means by which migrant workers and their families can integrate into the world of work and society at large.[46] According to the ECSR, States are required to provide national language courses free of charge, as otherwise such courses would not be accessible for many workers.[47]

57. The Charter underlines, in Article 19.4.a, that States undertake to eliminate discrimination against migrant workers vis-à-vis national workers in matters relating to remuneration. According to the case law of the European Court of Human Rights, this includes legal and *de facto* discrimination with respect to remuneration and other employment and working conditions, including in-service training, promotion and vocational training.[48]

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40. Virginia Passalacqua (2022), op. cit., p. 694.
41. See "Want to move to Italy? These are the jobs that are most likely to get you a work permit in 2023" | Euronews.
42. Jean-Francois Lebrun and Aurelie Decker, "The status of migrant female domestic workers in Europe: time for an overhaul", *European Trade Union Institute*, Autumn-Winter 2019, p. 23.
43. See GRETA's 2nd report on Spain, paragraphs 86 et seq. See also the International Domestic Workers Federation (IDWFED), "Between Regularization and Informality: European states need to meet their commitment to C189".
44. See for example "Exposed: Secret report on UK modern slavery the Home Office didn't want you to see" | The Independent.
45. See for example "Quatre morts suite à des arrêts cardiaques dans les vignes en Champagne: ce que l'on sait" (francetvinfo.fr), and "Décès de six vendangeurs pendant la canicule: le code du travail doit s'adapter au changement climatique" (novethic.fr) (both sources in French only).
46. Conclusions 2011, Statement of interpretation, Article 19.4.b.
47. Conclusions 2011, Norway, Article 19.11.
48. Conclusions VII 1981, United Kingdom, Article 19.4.

58. Obstacles to trade union membership among migrant workers are another form of abuse that increases their vulnerability. Article 19.4.b of the Charter stipulates that States Parties undertake to secure for migrant workers treatment not less favourable than that of their own nationals in respect of "membership of trade unions and enjoyment of the benefits of collective bargaining". According to the ECSR, this includes the right to be founding members of, and to have access to administrative and managerial posts in, trade unions.[49] States have to ensure that migrant workers enjoy equal treatment when it comes to benefiting from collective agreements on equal pay, or from legitimate collective action in support of such an agreement.[50] Excluding or limiting the right to collective bargaining or action with respect to foreign companies, for the sake of enhancing free cross-border movement of services and advantages in terms of competition within a common market zone, constitutes discriminatory treatment on the ground of nationality.[51]

59. As regards the right to "family reunion", the Charter stipulates in Article 19.6 that the Parties undertake "to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory", with a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party. In the context of seasonal workers for instance, States may require migrants to have been resident for a certain length of time before their family can join them. According to case law, however, although a period of one year is acceptable, longer periods are considered excessive.[52] For example, a period of 18 months is not in conformity with Article 19.6. Also, the requirement to have sufficient or suitable accommodation to house the family should not be so restrictive as to prevent any family reunion. States are entitled to impose such accommodation requirements in a proportionate manner, but they should not apply those requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, such as migrant workers.

60. In addition, migrant seasonal workers often live together in degrading and isolated places, referred to *inter alia*, and depending on the place, as "ghettos", "camps" or "informal settlements", consisting of tents, containers or makeshift shacks. These informal settlements often lack essential services, such as electricity or access to drinking water and sanitation, and are usually located in the countryside, near to workplaces, where poor health and housing conditions are aggravated by social isolation.[53] As a consequence, migrant seasonal workers are unable to integrate with local communities and are restricted in their access to public services, such as hospitals, schools and trade union support.[54]

61. Notwithstanding extensive evidence of inhumane conditions, these informal settlements continue to exist.[55] Their persistence can be explained by two main reasons. Firstly, authorities often do not consider seasonal workers as a structural element of the national economy. As a result, they tend to address related issues only through an emergency approach, without providing permanent solutions. Secondly, the intrinsic characteristics of seasonal work (for instance temporary nature of contracts, irregular status of many migrant workers, workplace often located in the countryside), and related economic forces, contribute to the perpetuation of ghettos, thus creating a vicious circle of precarious living and working conditions.

62. As regards obstacles to accessing social and private housing, the Charter requires in Article 19.4.c that States undertake to eliminate all legal and *de facto* discrimination concerning access to public and private housing.[56] Consequently, there must be no legal or *de facto* restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances.[57] In this context, there must be an effective right of appeal before an independent body against the relevant administrative decisions.[58] Economic obstacles to achieving provision of social housing for those eligible are not a valid reason to discriminate against nationals of non-EU States.[59]

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49. Conclusions 2011, Statement of interpretation, Article 19.4.b.
50. Conclusions 2015, Serbia, Article 19.4.b.
51. See *LO and TCO v. Sweden*, Complaint No. 85/2012, paragraphs 140 and 142.
52. Conclusions 2011, Statement of interpretation, Article 19.6.
53. Cristina Brovia and Valeria Piro (2020), "Ghettos, camps and dormitories. Migrant workers' living conditions in enclaves of industrial agriculture in Italy", in *International Labour Migration to Europe's rural regions*, Routledge, London, p. 52; see also Passalacqua (2022), op. cit., p. 696.
54. Cristina Brovia and Valeria Piro (2020), op. cit., p. 54.
55. See for example GRETA's 2nd report on Greece, March 2023, paragraphs 70 et seq.
56. *ERRC v. France*, Complaint 51/2008, paragraphs 111-113.
57. Conclusions 2011, Italy, Article 19.4.
58. *FEANTSA v. the Netherlands*, decision on the merits of Complaint No. 86/2012, paragraph 204.
59. Conclusions 2015, Slovenia, Article 19.4.c.

63. According to testimonies, cases of harassment and physical or emotional abuse by employers are common among migrant domestic workers.[60] Many of them have reported working between ten and eighteen hours per day, including on tasks not related to their job, and some have highlighted issues with wages, be they underpaid or not properly paid for all the hours they have worked.

64. These exploitative conditions are exacerbated by precarious and irregular working conditions. Firstly, migrant domestic workers depend heavily on their employers.[61] They need money for day-to-day expenses and remittances, and sometimes they live in the same place where they work. As a result, the fear of reprisals from their employer (for instance losing their job, being subjected to physical violence, or losing their housing) may drive them to accept degrading working and human conditions. At the same time, their irregular status and, in some cases, the need for an employment contract in order to apply for residence permits may deter them from reporting abuses, for fear of being deported or detained.

65. Secondly, many migrant domestic workers have reported that there are few, if any, labour inspections[62] at their workplace, because of the legal and practical challenges involved in inspecting employers' private properties.[63] Consequently, migrant workers are effectively unable to report possible violations of their rights to the competent authorities and impunity among employers increases the likelihood of further infringements of workers' rights.[64]

66. Lastly, migrant domestic workers are often not aware of their rights and language barriers merely compound the problem.[65] Even when employers are aware of their employees' rights, they may pretend otherwise in order to engage in abusive behaviours.

67. Despite European and national legal provisions entitling migrant workers to file claims against their employers, several studies[66] show that scant use is made of these rights. This can be explained both by migrant workers' lack of awareness of their rights and by the fact that there is little incentive for them to pursue their employers in court due to the length and cost of civil and criminal proceedings. Often, too, there are no *ex officio* investigations in cases of labour exploitation, and not all countries allow trade unions to lodge complaints on behalf of migrant workers; furthermore, many migrant workers are not unionised in the first place and trade unions do not protect their rights. All these shortcomings mean that the onus is on victims to initiate proceedings and gather evidence of abuse,[67] making it harder for migrant workers to effectively enjoy their rights.

68. Another explanation for migrant workers' reluctance to lodge complaints against abusive employers, particularly in cases where the worker is in an irregular situation, is the fear of losing their job, or even of being deported to their country of origin.[68] The ECSR has held, albeit in a different context, that the inspection system should be adapted to the features of the target population. Migrant workers might not be aware of their rights or might not want to take legal action against an abuser for fear that it could affect their future employment prospects. Given this powerful disincentive, the relevant authorities may need to adopt a proactive approach, besides ensuring an efficient inspection service.[69] Firstly, temporary residence permits to enable individuals to remain in the country and pursue civil claims against their employers are hardly ever granted.[70] This reduces the chances of migrant workers initiating legal proceedings, due to the impossibility of remaining in the country. A second major factor in the reluctance to lodge complaints is the fear of joint inspections by labour and immigration authorities.[71] In some cases, immigration inspectorates may issue

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60. FRA, "Out of sight: migrant women exploited in domestic work", 11 June 2018, pp. 5-6.
61. Ibid., pp. 7-8.
62. See Article 3.3 of the Charter and the main Statement of Interpretation of the Committee under Article 3.3.
63. FRA (2018), ibid., pp. 8-9.
64. Pursuant to Article 1.2 of the Charter, the ECSR reiterated that domestic work may give rise to forced labour and exploitation. See for example Conclusions 2012, General Introduction, General Questions, and the judgment of the European Court of Human Rights in Siliadin v. France**,** Application No. 73316/01, ECHR 2005-VII**.**
65. FRA (2018), op. cit., pp. 10-11.
66. FRA (2021), op. cit., p. 5-6, 13-14 and 26.
67. European Trade Union Confederation (ETUC), "ETUC Position on the Implementation of the Employers Sanctions' Directive", adopted at the Executive Committee meeting on 5-6 October 2021, p. 2.
68. FRA (2021), op. cit., pp. 5-6.
69. See, *mutatis mutandis*, YFJ v. Belgium, cc 150/2017, Decision on the merits of Complaint No. 150/2017, paragraph 145.
70. ETUC (2021), op. cit., p. 3.
71. Sometimes even labour inspectors acting on their own detect irregular workers and report them to the migration authorities. See the Explanatory Memorandum to the Committee of Ministers Recommendation on Preventing and combating trafficking in human beings for the purpose of labour exploitation – Recommendation CM/Rec(2022)21, which explains the need for a "firewall" between labour inspections and migration enforcement.

expulsion orders or detain irregular migrant workers, without considering the abuses committed by the employer with respect to working conditions.[72] In other cases, inspections are conducted solely by labour inspectorates, but national legislation or practice requires them to report to the immigration enforcement authorities, who may eventually return migrant workers found to be in an irregular situation to their country of origin.[73]

69. In addition, labour inspectorates are often understaffed and underfunded, making inspections less frequent and less effective.[74] In the domestic work sector, it is even harder to carry out inspections, due to the privacy that surrounds households. Indeed, it was the concern to protect privacy that led the United Kingdom and other countries not to sign the ILO's Co189.[75]

4.4. The plight of female migrant workers

70. Female workers appear to be particularly vulnerable in both domestic and seasonal work environments, due to their high degree of dependence on employers. As female migrant workers often have children to support, the "work or lose your income dilemma" becomes even more fraught, forcing them to accept harsher working conditions in order not to lose their sole means of sustaining themselves and their families. As of May 2022, female workers accounted for more than 90% of total domestic workers in the EU,[76] and the number of female migrant seasonal workers has increased in recent years due to eastern European migration.

71. In the domestic work sector, many female migrant workers, especially those with irregular status, end up living in their employers' home. This situation and the frequency of undeclared domestic work increase the risk of exploitative conditions, in the form of low or no pay, lack of social security benefits and excessive workload. In some cases, all these factors may lead to a form of "domestic slavery", as the European Court of Human Rights underlined in Siliadin v. France.

72. Female migrant seasonal workers seem to be particularly vulnerable to precarious working and living conditions. Not only do women work for ten to twelve hours per day in precarious conditions and with low pay, but in some cases they are also sexually harassed and abused. Article 26 of the Social Charter stipulates that, in order to achieve effective protection against harassment, there should be a general anti-discrimination act or a specific law against harassment in place.[77] The protection should include the right to appeal to an independent body, the right to obtain adequate compensation and the right not to be retaliated against. According to a European Parliament study,[78] such abuses are carried out by employers both on non-EU migrant workers and on EU citizens, especially Romanian women working in Spain and Italy, the EU countries that admit the largest number of migrant seasonal workers.

4.5. The impact of the Covid-19 pandemic on migrant seasonal and domestic workers

73. In 2020, the closure of borders and disruptions to global value chains highlighted the paramount role of migrant workers, especially those employed in agriculture. In that context, they were considered as "essential workers", namely employees whose economic activities are of vital importance to the country. They were accordingly exempted from lockdown measures and travel bans, putting them at greater risk of infection.[79]

74. States adopted a set of measures to allow migrant seasonal workers to enter the country, despite restrictive provisions. They organised charter flights for a large number of migrant essential workers and extended visas and residence permits for those who were already inside the country. In addition, many countries adopted a general policy aimed at regularising the status of migrants and asylum seekers already within their territory.[80]

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72. FRA (2021), op. cit., p. 5.
73. Ibid., pp. 27-28.
74. ETUC (2021), op. cit., p. 3. See also the position of the ECSR, which considers that lack of resources makes inspections less effective.
75. EFFAT (2021), op. cit., p. 8.
76. European Federation for Services to Individuals, "Personal and Household Services: a key sector for the forthcoming European Care Strategy", May 2022, p. 3.
77. For further details and examples, including the recommendation on shifting the burden of proof in the context of vulnerable women migrant domestic workers, see Conclusions 2014, Finland; Conclusions 2005, Republic of Moldova, Article 26; Conclusions 2003, Bulgaria; and Conclusions 2005, Lithuania, Article 26.1.
78. European Parliament Study, "The vulnerability to exploitation of women migrant workers in agriculture in the EU: the need for a Human Rights and Gender based approach", May 2018, p. 20.
79. Virginia Passalacqua (2022), op. cit., p. 690.

75. The recognition States gave to the work of migrant seasonal workers was not, however, matched by decent working and housing conditions. Indeed, the lack of social distancing in the workplace, the sharing of transport and being in overcrowded, unsanitary accommodation together with the practice of employing migrant seasonal workers from countries with higher incidences of infection from Covid-19 increased migrant workers' exposure to the virus.[81] At the same time, pressure from employers to extend the working hours of migrant seasonal workers and the lack of protective equipment had a further detrimental effect on the health status of those workers.[82]

76. Migrant domestic workers also saw a deterioration in their already inadequate working and living conditions during the pandemic. When they were considered "essential workers", they were sometimes unable to take leave.[83] And in those States which did not take steps to regularise domestic workers, they were particularly hard hit by the economic downturn and their inability to access social security benefits.

77. The Covid-19 pandemic clearly highlighted the gap between considering such persons as "essential workers" and granting them decent working and living conditions. More broadly, it drew attention to the inadequate recognition accorded to their work, given its fundamental contribution to the national economy.

5. Recommended actions

78. In light of the harsh working and living conditions experienced by many migrant workers in the seasonal and domestic work sectors, solutions need to be sought at national and international levels. The shortcomings mentioned above highlight several possible areas of intervention.

79. In order to protect migrant workers' rights, greater attention should be devoted to the observance of existing international treaties, norms and recommendations. In the context of the Council of Europe, member States are firstly called on to effectively and adequately apply the relevant provisions enshrined in the European Social Charter. In addition, steps should be taken to remove the limitations on the Charter's personal scope and bring it into line with a contemporary human rights approach, for example by setting up a task force of international experts to provide advice on the matter.

80. Member States should also consider signing the European Convention on the Legal Status of Migrant Workers. In addition, full compliance by all member States with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings and implementation of the recommendations issued by GRETA and the Committee of the Parties to the Convention should be pursued.

81. The Covid-19 pandemic has demonstrated the vital contribution made by migrant seasonal and domestic workers to the national economies of our member States. It is therefore essential that decent and adequate working and living conditions be granted to every migrant worker employed in Council of Europe member States, on an equal footing with nationals. For this to happen, States should commit to adopting structural policies, rather than emergency measures, in order to find permanent solutions to these problems.

82. Proactive inspections should be conducted in order to prevent and sanction illegal recruitment practices, such as charging migrant workers recruitment fees. This would also enable member States to better detect undeclared work and criminal networks of human trafficking for labour exploitation.[84]

83. In terms of social rights protection, member States should abide by European and international norms, in particular the European Social Charter, for the enhancement of decent working and living conditions for migrant workers, such as adequate wages and working time, proper social security coverage, hygienic working and living conditions, safety measures in the workplace and social services for all migrant workers, regular or irregular. Member States should properly define "precarious and irregular working conditions" in their legislation and criminalise them. Employees should be provided with referral mechanisms and their claims dealt with in confidence so that labour authorities can inspect workplaces without migrant workers fearing that they might be detained or deported. In addition, States could grant migrant workers the possibility of switching employers to enable them to escape exploitative conditions and reduce their dependence on employers.

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80. ILO Brief, "Seasonal Migrant Workers' Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19", May 2020, pp. 3-4; European Parliament Briefing (2021), op. cit., p. 8.
81. European Parliament Briefing (2021), ibid., p. 9.
82. ILO Brief (2020), op. cit., p. 5.
83. IDWFED, op. cit.
84. See the explanatory memorandum to the Committee of Ministers Recommendation on labour trafficking, op. cit.

84. Migrant workers' lack of knowledge of their social rights has been highlighted as a contributory factor in labour exploitation. It is essential therefore that States take concrete steps to overcome this problem. In particular, they could develop campaigns to raise awareness of the employment and social rights of regular and irregular migrant workers and the risks of human trafficking for labour exploitation via employment agencies, online recruitment or other means. It is important that language not be an obstacle to the full comprehension of migrant workers' rights. For this reason, migrant workers should be provided with information and services in their own languages.

85. The report has highlighted deficiencies in migrant workers' ability to effectively access avenues for the enforcement of their rights. Inspection mechanisms should therefore be strengthened and more support made available to migrant workers. Firstly, member States could increase funding for labour inspectorates, in order to ensure more frequent and effective inspections. These additional funds should lead to an increase in the human resources devoted to labour inspections, more frequent, unannounced inspections in sectors at risk, and better training to detect precarious and irregular working conditions. Secondly, further legal and practical measures to avoid impunity in workplaces should be adopted and employers should never be informed in advance of labour inspections; this includes domestic work for which law and practice should make it possible for effective labour inspections to be carried out. Thirdly, member States should adopt laws that guarantee effective access to information and legal assistance for migrant workers as well as the possibility for third parties to file complaints against exploitative employers on behalf of migrant workers; migrant workers should have the right to unionise.[85] In this way, migrant workers would not have to cover the high costs of legal proceedings on their own. Lastly, given the lengthy nature of court proceedings, migrant workers should be granted a temporary residence permit for as long as they need to legally pursue the protection of their own rights.

86. Effective sanctioning mechanisms vis-à-vis employers or intermediaries, namely corporate liability, should also be put in place. Provisions granting back payments to migrant workers, State compensation funds and the freezing of exploitative employers' assets are possible examples.

87. Furthermore, as mentioned in the explanatory memorandum to the Committee of Ministers Recommendation CM/Rec(2022)21, "Member States should also strengthen the framework for corporate liability, including around several and joint liability across supply chains, and ensure that such legislation is effectively applied in practice in cases of trafficking in human beings for the purpose of labour exploitation." (Section V of the memorandum).

88. The last report on "Protection of the labour and human rights of migrant workers" by the UN Special Rapporteur on the human rights of migrants, Mr Felipe González Morales, is also relevant and should be given close consideration by member States. It recommends *inter alia* that migrant workers "be able to access decent work in safe environments free from discrimination and exploitation and have their labour and human rights protected wherever they are living and working". The report also refers to "the responsibility and obligation of States to institutionalize rights-based migration governance, guided by the principle of non-discrimination for all workers (in areas such as pay, deductions for housing or transportation, access to rights, social protection and health-care insurance)". In the report, the Special Rapporteur also lists a series of recommendations to States aimed at improving for all migrant workers, *inter alia*, domestic labour protection – including recruitment policies, inspection systems, bargaining rights – and access to education, ensuring equal access to justice, equal opportunities for migrant women on the labour market, and action against gender-based violence and trafficking.[86]

89. Additionally, data collection and information sharing among member States should be pursued to effectively fight transnational networks of human trafficking for labour exploitation. At the same time, sharing promising national practices in the prevention of precarious working and living conditions can be a valuable tool for developing effective and adequate policies to protect migrant workers' rights.

90. Finally, as the Covid-19 period demonstrated in the States concerned, enacting general policies to regularise the status of migrants and asylum seekers already present in the country, and especially in sectors facing labour shortages (such as agriculture, construction, care work or the service industry), is beneficial to States' economies and strongly encouraged, without, however, creating any pull effect.[87]

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85. Ibid.

86. "Protection of the labour and human rights of migrant workers" – Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales | OHCHR. See in particular Section E. Conclusions and recommendations.

6. Conclusion

91. The contribution made by migrant workers to the seasonal and domestic work sectors is acknowledged. Over the years, many international and European instruments have been developed to ensure the protection of the labour and social rights of migrant workers and to prevent human trafficking for labour exploitation. In this context, the Council of Europe has once again played a crucial role by enshrining migrant workers' rights in the European Social Charter, by promoting the signature of the European Convention on the Legal Status of Migrant Workers and by adopting the Convention on Action against Trafficking in Human Beings.

92. Despite these international efforts, human trafficking networks and precarious working and living conditions, especially in seasonal and domestic work, still persist. The task of preventing these illegal practices is not helped by the high levels of undeclared work and the inadequacies of States' inspection mechanisms. Lastly, the outbreak of the Covid-19 pandemic further reinforced migrant workers' dependence on their employers and heightened the risks of labour exploitation.

93. The persistence of impunity may induce exploitative employers to flout the human rights of migrant workers. This vicious circle has to be stopped. The swift adoption of structural policies and measures to ensure effective complaint mechanisms and labour inspections are essential, therefore, if migrant workers are to enjoy decent and adequate working and living conditions, especially in the seasonal and domestic work sectors.

87. See, among other concerned States, France, "France: des centaines de travailleurs sans-papiers obtiennent leur régularisation après un jour de grève" | TV5MONDE – Informations (in French only); Greece, "Minister announces regularization program for migrants to cope with labor crunch" | eKathimerini.com; Italy, "The Politics of Regularisation of Migrant Workers in Italy" – Migration Policy Centre (MPC); Portugal, "Government launches operation to regularise immigrants" – The Portugal News.