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

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A. Draft Resolution

1. Europe is home to about 4-5 million undocumented persons. However, this figure may be a gross underestimation because reliable data is lacking. Many such persons de facto participate in the labour market as "invisible workers" but remain very fragile socio-economically – with poor or no access to socio-economic rights. Their vulnerability was highlighted during the Covid-19 pandemic, when this category of workers was exposed to a double hazard: high socio-economic precarity and haphazard, if any, access to basic health care.
2. By accepting the marginalisation of undocumented workers, member States tolerate inequality of treatment, discrimination and vulnerability which carry the potential for abuse and exploitation of persons. Such situation also breeds precarity, trafficking in human beings and the risk of crime, harms safety at work, fuels the underground economy, reduces State revenue from social contributions and undermines fair competition. Entire sectors of the national and international economy are based on an economic model that violates the fundamental rights of workers in general and more pronouncedly for people without residence permits. We cannot intervene effectively in the protection of undocumented workers without changing the economic philosophy – lowering production costs by mistreating workers to increase the profit of a few – that leads to this situation.
3. The Parliamentary Assembly notes that the problem of labour exploitation affects both migration and labour law. The tightening by member States of the legal channels for third-country nationals to come and work in Europe exacerbates the precarity of the labour and residence rights of persons who have sometimes been living in our States for many years. The Assembly recalls that asylum and migration policies themselves sometimes create situations of illegality for migrant persons. One of the main reasons for the abuse and exploitation of undocumented migrants in particular and workers in general is a labour market without sufficient controls, another being the dehumanisation of migrants, particularly in certain political discourses.
4. The Assembly strongly supports dialogue between the key stakeholders (the State authorities, employers, associations, and trade unions) as the way of developing programmes to restore rights to invisible workers in national labour markets and society in general. It considers that the "offence of solidarity", whether aimed at civil society organisations or private individuals in their efforts to help these vulnerable people on their arrival and during their stay in our countries, must be abolished where it still exists.

Amendment 1

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

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

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

Amendment 2

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 3, last sentence, after the words "One of the main reasons for the abuse and exploitation of undocumented migrants in particular and workers in general is a labour market without sufficient controls," add the following words:

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

5. In this context, the Assembly refers to its Resolution 1568 (2007) and Recommendation 1807 (2007) calling for regularisation programmes to be set up for irregular migrants. It notes that some European countries have taken measures aimed at improving the situation of undocumented workers or those in an irregular situation. Partial regularisation programmes or other administrative facilities thereby put in place have enabled better access of such workers to health and social welfare programmes, or at least temporarily extended the health coverage for these vulnerable workers sometimes without going through the regularisation process, in particular since the Covid-19 crisis. Nonetheless, the phenomenon of exploitation in economic sectors persists, especially for undocumented workers, and further bold human rights based measures are necessary to consolidate access to socio-economic rights for all across the Council of Europe member States in line with the standards set out in the European Social Charter (ETS No. 35) and the conventions of the International Labour Organization (ILO), as well as recommendations put forward by the European Commission against Racism and Intolerance (ECRI) in 2016.
6. The Assembly notes that invisible workers are at high risk of exploitation by employers who do not declare them or only partially declare them, pay them inadequately low wages, and often do not offer decent working conditions. These workers do not have the means to defend themselves against abuses in several areas (notably at work, regarding housing and access to basic medical care), because they feel that having recourse to the justice system would put them at risk of deportation and/or employer retaliation. The violation of fundamental rights, including social rights, of invisible workers must stop, and States can do that by changing their policies in several ways.
7. The Assembly is concerned that many member States' regulatory frameworks are too strict or not transparent regarding the conditions to be met, and that they make access to regularisation procedures for invisible workers excessively difficult, burdensome, opaque, or unpredictable. In addition, overly complex, costly, and slow administrative procedures often delay the issuance or prolongation of residence and work permits. This not only blocks the regularisation of the invisible workers' status but also throws thousands of workers with temporary permits into an irregular situation when their permits are not renewed on time.
8. The Assembly also deplores the restriction of the personal scope of application of the European Social Charter (that is, the exclusion of persons from countries that have not ratified it, and of those not lawfully resident or working regularly on the territory of the Party concerned), as set out in the Appendix to the Charter. The Assembly shares the view that this limitation is incompatible with the nature of the Charter as a human rights treaty. This anomaly should be corrected to bring the treaty into line with the state of development of international human rights law.
9. In light of the above considerations, the Assembly recommends to member States the following good

Amendment 3

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

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

"It also recalls its resolutions 1922 (2013) on "Trafficking of migrant workers for forced labour" and 2323 (2020) on "Concerted action against human trafficking and the smuggling of migrants"."

practices, whether in the context of ad hoc programmes of regularisation or permanent mechanisms aimed at the better integration of invisible workers:

- 9.1. information on official procedures to apply for national residence and work permits should be available in many languages to ensure it is accessible and understandable, and, to this end, should rely on civil society (trade unions, non governmental organisations, and associations);
- 9.2. for workers with temporary contracts, a change of employer should not affect residence status;
- 9.3. the application should preferably be made by the undocumented worker himself/herself, without intermediaries who could blackmail him/her;
- 9.4. residence and work permits should be directly granted to all migrants in an irregular situation who co-operate with the police to report abuses;
- 9.5. for any victim of criminal labour exploitation, trafficking in human beings and other violent crimes who would like to remain in the country, expulsion procedures should be suspended, and access to specific permits facilitated, independently of their co-operation with the authorities and their involvement in judicial proceedings;

Amendment 4
Tabled by the (Former) Committee on
Migration, Refugees and Displaced Persons

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

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

- 9.6. there should be a possibility of appeal in the event of a negative response by the administrative decision-making body or of a decision by an authorised third party not to submit the application for regularisation to the decision-making body;

Amendment 5
Tabled by the (Former) Committee on
Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 9.6, after the words "there should be a possibility of appeal", add the following words:

"to an independent body"

- 9.7. admissibility criteria such as a specific number of years of residence in the country (reasonable duration) should be as clear as possible, and the family situation of applicants should be taken into account;
- 9.8. application and procedural fees should be as low as possible or be waived entirely in view of the extremely low incomes of undocumented migrants;
- 9.9. support for associations that assist applicants in their regularisation process throughout the procedure should be put in place;
- 9.10. the number and type of documents to be produced by applicants should be reasonable and take into account the discreet nature of undocumented migrants' lives;
- 9.11. once undocumented persons have had their situation regularised, measures must be put in place to support them (for example, language courses, help finding a new job);

- 9.12. access to healthcare must be ensured for all undocumented workers regardless of the advancement of their regularisation process.
- 10. The Assembly notes that access to justice which is a key element of the protection of undocumented or irregular workers, is not sufficiently guaranteed by member States. States should be encouraged to devise procedures that do not put the various courts in contact with the migration authorities, which constitutes the main subjective and objective obstacle to undocumented workers exercising their rights.
- 11. In order to eliminate the worst forms of exploitation of invisible workers, the Assembly urges member States:
 - 11.1. to fully implement the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Committee of Ministers Recommendation CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation;
 - 11.2. to enhance corporate social responsibility based on the United Nations Guiding Principles on Business and Human Rights and the Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business;
 - 11.3. to better protect victims of human trafficking for sexual or labour exploitation purposes by granting a temporary residence permit for the time of the proceedings, as soon as the abuses committed are reported to a competent judicial or civil authority (for example, labour inspectorate).

Amendment 6

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft resolution, before paragraph 11.1, insert the following paragraph:

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

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2023) "Health and social protection of undocumented workers or those in an irregular situation" and underlines the responsibility of member States to prevent human rights violations against undocumented workers. The currently prevailing national policies and legislation tend to render this category of workers invisible, extremely fragile and exposed to exploitation or even trafficking in human beings, including for the purpose of forced labour.
2. The Assembly supports the ongoing national efforts and institutional mobilisation to strengthen socio-economic rights for all across Europe, notably through the work of the Committee of Ministers Ad hoc Working Party on improving the European Social Charter system (GT-CHARTÉ), the Rapporteur Group on Social and Health Questions (GR-SOC) and the European Committee of Social Rights. In this context, the Assembly stresses the need to remove the restriction of the personal scope of application of the European Social Charter (ETS No. 35) (that is, the exclusion of persons from countries that have not ratified it, and of those not lawfully resident or working regularly on the territory of the Party concerned) and suggests adding new provisions to the Charter on enhanced protection of workers in non-standard forms of employment.
3. To this end, the Assembly calls on the Committee of Ministers to insist that all member States sign, ratify and fully implement as many provisions of the European Social Charter and its protocols as possible, and expand the reach of existing rights under the Charter to all persons de facto living under their jurisdiction.
4. Drawing on the experiences during the Covid-19 pandemic, the Assembly further asks the Committee of Ministers to recommend to member States to extend the criteria for access to permanent regularisation mechanisms and/or consider putting in place targeted regularisation programmes which would offer greater protection of socio-economic rights of undocumented workers, to facilitate their access to justice, which is the cornerstone of respect for their rights, by setting up procedures to ensure the non-cross-checking of data in the various services, and to facilitate their access to a universal healthcare system.

Amendment 7

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft recommendation, after paragraph 3, insert the following paragraph:

"Considering the relevance of the European Convention on the Legal Status of Migrant Workers (ETS No. 93) with regard to the general conditions for entry and residence of migrant domestic workers and aiming to ensure treatment no less favourable than that afforded to nationals, the Assembly asks the Committee of Ministers to encourage among member States the greatest number of signatures to, and ratifications of, this Convention."