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Resolution 2536 (2024)[1]

Precarious and irregular work situations of migrant seasonal and domestic workers

Parliamentary Assembly

1. The precarious and irregular work situations of migrant seasonal and domestic workers (hereafter "migrant workers") have increased over the years, facilitated by poverty or poor economic conditions in countries of origin on the one hand and, on the other, by the increasing dependence of the European agricultural and domestic work sectors on an abundant foreign workforce. Furthermore, migratory trends, bilateral agreements and historical, but also geographical and cultural, factors have favoured migratory movements. Finally, false promises by 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. The situation of migrant workers is 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 vulnerable to organised crime. 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 employment-related taxes and social security contributions. This results in increased vulnerability for migrant workers, who have almost no access to social rights.

3. Female workers are particularly vulnerable in both the 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 precarious and irregular working conditions among migrant workers, such as low or no remuneration, excessive workloads, harassment, lack of social security coverage and social rights, degrading and isolated accommodation, lack of safety, obstacles to trade union membership and limited access to justice, leading to situations of modern slavery.

5. This precarious situation affects several types of migrant workers, including those from eastern Europe. Some of them are victims of exploitation and human trafficking networks, via external channels or means, such as personal networks, recruitment agencies, pick-up spots and online recruitment. Moreover, there is increasing criminal use of social media and the internet to recruit migrant workers, but also use 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 mass arrival of Ukrainian refugees in many European countries has increased the risks of labour exploitation and human trafficking.

6. The Covid-19 pandemic demonstrated the vital contribution of migrant workers to national economies, to the extent that they were considered to be "essential workers". However, as essential workers, they were more exposed to the virus than other workers, and more of them were infected.

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 7 March 2024 (see Doc. 15930, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Diana Stoica; and Doc. 15931, opinion of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Pedro Cegonho).

7. To tackle such intolerable situations, the Parliamentary Assembly underlines the importance of complying with the existing international legal framework aimed at fighting 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. The Assembly 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" (*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 accorded to nationals.

10. The Assembly also recalls Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States 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 regulation of the labour market.

11. The Assembly underlines the importance of the Council of Europe 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 that 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, the Charter) and 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 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 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", 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 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 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 for 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 discrimination.

17. Regarding the European Union's texts, the Assembly takes note that while migrant seasonal workers coming from a European Union 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 was drawn up to prevent abuses and labour exploitation of third-country migrant workers, grant protection measures as regards access to justice and 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 on the basis of 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, improve their laws, starting with migration and labour laws, and effectively implement these texts in order to fight 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 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 determination of member States to strengthen social justice, democratic stability and commitment to the protection of social rights, as reaffirmed in the Reykjavik Declaration. It notes that a High-Level Conference on the European Social Charter is being convened on 3 and 4 July 2024 in Vilnius (Lithuania), which is a unique opportunity for member States to affirm their ambitions in terms of safeguarding and enhancing social rights. In this context, the Assembly calls on member States to join forces to achieve substantive improvements in the implementation of social rights, add new provisions to the European Social Charter to enhance the protection of workers in atypical forms of employment and remove the limitation on the personal scope of application of the Charter.

23. The Assembly welcomes the report "Protection of the labour and human rights of migrant workers" by 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.

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

24.1. 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;

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

24.3. 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;

24.4. 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);

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

24.6. 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 the latter with referral mechanisms and ensure confidential treatment of their claims;

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

25. The Assembly notes that access to justice and appropriate sanctions are crucial to guarantee legal assistance and protection for migrant workers, including the granting of a temporary residence permit in the context of legal proceedings and the rights to appeal to an independent body, obtain adequate compensation and not to be the subject of 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, establish State compensation funds and freeze the assets of exploitative employers.