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Agriculture and illegal employment in Europe

Opinion ¹
Committee on Migration, Refugees and Population
Rapporteur: Mrs Bousakla, Socialist Group

I. Committee's conclusion

1. The Committee on Migration, Refugees and Population wishes to thank and congratulate the Rapporteur Mr John Dupraz, Switzerland, of the Committee on the Environment, Agriculture and Local and Regional Affairs, on his thorough report on Agriculture and illegal employment in Europe. The report reveals a worrying pattern of exploitation of persons, notably migrants, often in an irregular situation, working in illegal, difficult, dirty and sometimes dangerous conditions.

2. The Committee on Migration, Refugees and Population fully supports the draft recommendation put forward but would, nonetheless, like to propose a number of amendments in order to fill certain gaps and provide greater clarity on certain issues.

II. Explanatory memorandum

3. The Committee on Migration, Refugees and Population is particularly pleased to be able to give an opinion on the issue of agriculture and illegal employment in Europe as many of those who are involved in agriculture and illegal employment are migrants and often migrants in an irregular situation. The report on Agriculture and illegal employment builds on work carried out by the Committee on Migration, Refugees and Population back in 2003 on migrants in irregular employment in the agricultural sector of southern European countries (Rapporteur Mrs de Zulueta (Italy) Doc. 9883)

4. Demand for workers in agriculture has, without doubt, been one of the major pull factors for migration over the last decades and has brought with it an increasing flow of irregular migrants.

5. Measures are needed to tackle illegal employment in agriculture. This is necessary from a human and human rights standpoint for the workers involved, many of whom are subjected to exploitation. It is also necessary from an employer's perspective, allowing employers to recruit legally the workers they need without fear of sanctions. Finally it is also necessary from a managed migration context. Legal avenues of migration in the agriculture sector, as in other sectors, have to be encouraged thereby cutting down the demand and need for irregular migration and accompanying illegal employment.

6. The Committee on Migration, Refugees and Population is of the view that a number of steps can be taken to tackle the issue of agriculture and illegal employment. In the first place steps should be taken

¹ See Doc. 11114 tabled by the Committee on the Environment, Agriculture and Local and Regional Affairs.

to protect those who find themselves in a position of exploitation in agriculture and illegal employment. They should have certain minimum rights, not only to protect their human dignity but also to protect them from exploitation by unscrupulous employers and gangmasters. In the second place steps should be taken to tackle the root causes of illegal employment in agriculture (economic costs, lack of domestic workforce, onerous administrative hurdles on recruitment, etc.). In the third place steps should be taken against employers who recruit and exploit illegal workers.

7. The Committee on Migration, Refugees and Population is particularly concerned about the rights issues of those working in illegal employment. The Report of Mr Dupraz has described worrying examples of exploitation in particular in Spain and France and also in his own country, Switzerland. Similar situations exist though in other countries both from the south of Europe, including vegetable and fruit pickers in Italy and from the north of Europe, where the plight of mushroom pickers in Ireland is one example that has recently made headlines.

8. The Italian investigative journalist Fabrizio Gatti, earlier this year in a report for L'espresso weekly magazine went undercover and reported on the conditions of workers in tomato fields in the province of Foggia in Apulia, Italy. He uncovered low pay, long working hours, withholding of pay, overcrowded and unhygienic lodgings without electricity or running water, brutal practices by foremen and sexual advantage by foremen and employers². As another example, Médecins sans frontières (MSF) (Italian branch) published a worrying report³ in 2005 outlining exploitation in the Southern regions of Italy expressing particular concern about the health care situation of those employed in these regions in agriculture. MSF interviewed a total of 770 migrants workers (50% of whom did not have a proper legal status). They found that 40% of persons interviewed lived in abandoned buildings, 30% of persons had to share their mattress with another person, more than half the persons did not have running water where they live, almost half had no toilets, 73.6% have chronic disease. More than half the pathologies were from various infections, most of them skin diseases (23.6%) mostly due to the fact that workers were exposed to pesticides without any kind of protection. The percentage of respiratory infections was 14.3%, including 12 cases of tuberculosis. 30% of persons examined declared they had been victims of physical violence or bad treatment. 48 % of persons interviewed reported that they were paid less than 3 Euros an hour.

9. The Committee on Migration, Refugees and Population at a recent hearing (Brussels, 21 March 2006) heard from the Migrant Rights Centre Ireland (MRCI) about work exploitation and bonded labour concerning fifteen workers from Latvia and Ukraine employed in mushroom picking in Ireland. Exploitation is not limited to the vast fruit and vegetable farming in the South of Europe, but it is a Europe wide phenomena⁴.

10. The Committee on Migration, Refugees and Population would like to draw particular attention to the work that it has undertaken in relation to rights of irregular migrants (see the Report of Mr van Thijn (Netherlands) on Rights of irregular migrants (Doc. 10924)). This is particularly relevant as it is irregular migrants who are the group most concerned by agriculture and illegal employment. In the light of this work the Parliamentary Assembly adopted Resolution 1509 and Recommendation 1755 on rights of irregular migrants, highlighting certain minimum rights which should be applied to all irregular migrants. These minimum rights would, as a result also apply to those in illegal employment whether or not they were in a regular or irregular situation. While the list of rights can be examined in the document referred to above, particular attention should be paid to the following rights.

² Statewatch News Online: Italy: 21st-century slavery in Apulia's tomato fields.

³ Médecins sans frontières: The Fruits of hypocrisy: Story of those who work in the European agricultural sector... in the shadow. Synthesis report. Survey on the living and health conditions of seasonal workers employed in Italian agricultural sector.

⁴ For further information on this problem, see the report of the Committee on Migration, Refugees and Population on The situation of migrant workers in temporary employment agencies, Doug Henderson (United Kingdom), AS Mig (2006) 11.

11. The European Convention on Human Rights has specific provisions relating to prohibition of torture, inhuman or degrading treatment or punishment (Article 3) and prohibition of slavery and forced labour (Article 4)/ Both of these Articles have direct relevance to persons in agriculture in illegal employment. In relation to social and economic rights it can be argued that those in illegal employment, as with those who are in an irregular situation, are entitled to fair wages, reasonable working conditions, compensation for accidents, access to the courts to defend their rights and freedom to form and join a trade union.

12. The Committee on Migrants, Refugees and Population is of the opinion that these basic rights should be applied to those who are in illegal employment in agriculture (as well as in other forms of employment). It considers equally that steps should be taken to reduce the number of person who find themselves in illegal employment and that steps should be taken against employers who recruit and exploit those in illegal employment.

13. Implementation of rights in practice is particularly problematic for persons in illegal employment. Those in illegal employment may not have the resources to go to court and they may fear the response of the authorities if they become aware that they are engaged in illegal work. If the migrants are in an irregular situation, they may fear expulsion. These are just some examples of problems that those in illegal employment might face in trying to enforce their rights. It is therefore important that there are ways and means of protecting the rights of those in illegal employment and allowing them to realise their rights in practice. National or regional ombudspersons may be able to play a leading role, particularly in countries where agriculture and illegal employment is a major issue. The Human Rights Commissioner of the Council of Europe should also be kept aware and investigate as necessary recurring practices of exploitation of agricultural workers in Europe.

14. It is with all of the above in mind that the Committee on Migration, Refugees and Population puts forward a number of amendments to the draft recommendation.

15. Amendment 1 and 4 are to highlight the work of the assembly on rights of irregular migrants which are of direct relevance to those in illegal employment in agriculture.

16. Amendment 2 provides clarification on the states that have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

17. Amendment 3 highlights that those in illegal employment are often irregular migrants facing the double difficulty of being in illegal employment and being in an irregular situation.

18. Amendment 5 highlights that it is essential to tackle the root causes of the use of irregular migrants in illegal employment in agriculture.

19. Amendment 6 explains that there are different options on how to deal with irregular migrants in illegal employment in agriculture. One of these options is to regularise their situation (as was done in the recent regularisation of approximately 600,000 persons in Spain in 2005). Another option is to return some of these persons to their countries of origin.

20. Amendments 7 and 8 relate to the important role that ombudspersons and also the Council of Europe Human Rights Commissioner can play in examining issues of exploitation of workers in the agricultural sector.

III. Amendments to the draft recommendation

Amendment No. 1

In the second sentence of paragraph 1., add after the word “notably” the words “its Resolution 1509 and Recommendation 1755 on rights of irregular migrants,”.

Amendment No. 2

Add at the end of paragraph 2 the following “and regrets that only three member states of the Council of Europe (Azerbaijan, Bosnia and Herzegovina and Turkey) have ratified this instrument.

Amendment No. 3

After paragraph 6, add a new paragraph as follows:

“The Assembly notes that those in illegal employment are also often those who are in an irregular situation and that they are doubly exposed to exploitation as illegal employees and as irregular migrants.”

Amendment No. 4

After paragraph 9.4, add a new paragraph as follows:

“to ensure that irregular migrants, including those working in agriculture, receive as a minimum the rights outlined in Assembly Resolution 1509 (2006) on rights of irregular migrants;”

Amendment No. 5

After paragraph 9.4 add a new paragraph as follows:

“to tackle the root causes of the use of irregular migrants in agriculture, including economic factors, lack of supply of local labour, restrictions on recruiting persons from abroad, complicated administrative procedures and unscrupulous employers;”

Amendment No. 6

After paragraph 9.4 add a new paragraph as follows:

“to deal with the situation of irregular migrants, including in agriculture, in a fair and humane fashion, examining options for their regularisation or for their return to their countries of origin;”

Amendment No. 7

After paragraph 9.6 add a new paragraph as follows:

“to invite national and regional ombudsmen to examine the precarious situation of illegal workers employed in agriculture;”

Amendment No. 8

After paragraph 11.3 add a new paragraph as follows:

"The Assembly also invites the Council of Europe Human Rights Commissioner to examine exploitation of workers in agriculture in the course of his individual country work."

Reporting Committee: Committee on the Environment, Agriculture and Local and Regional Affairs

Committee for opinion: Committee on Migration, Refugees and Population

Reference to Committee: Doc. 10597, Reference No. 3282 (modification of Ref. 3104 of 24.6.2005)

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Secretaries of the Committee: Mr Lervik, Mr Neville, Mrs Karanjac