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Committee on Social Affairs, Health and Sustainable Development

Minutes

Public hearing on “Health and social protection of undocumented workers”, held in Paris, on Wednesday, 18 May 2022

In the framework of the report currently in preparation on “Health and social protection of undocumented workers” by **Ms Ada Marra** (Switzerland, SOC), the Committee held a public hearing with the participation of:

- ✓ **Ms Liliana Keith**, Senior advocacy officer - labour rights and labour migration, PICUM (Platform for International Co-operation on Undocumented Migrants)
- ✓ **Mr Marco Omizzolo**, Sociologist, journalist, and researcher at Eurispes (Institute for Political, Economic and Social Studies)

Ms Sayek Böke, Committee Chairperson, opened the hearing and introduced the guest speakers. She then gave the floor to the rapporteur for a brief introduction.

Ms Marra explained that her report sought to focus on ‘invisible’ workers without an official status in the Council of Europe member States. The emphasis thus was on the work aspect and not migration. Among the people at work in Europe, undocumented workers were the least protected category of workers. It was estimated that Europe was home to about 4-5 million of undocumented persons, with roughly half of them residing in Germany and the United Kingdom. The report would look into the issues of access to justice, good practice, and effectiveness of regularisation programmes, as well as reviewing the existing legal framework.

Ms Keith presented an overview of the current situation in Europe as regards the fundamental rights and social protection of undocumented workers. She welcomed increased political attention towards undocumented workers. PICUM represented more than 160 organisations across 31 countries, mostly in Europe; it sought to build bridges between undocumented persons and policy makers. Undocumented workers had labour rights, including rights to equal pay and at least minimum wage, working time and rest periods (as well as paid holiday and parental leave), healthy and safe working conditions, protection from unfair dismissal, non-discrimination, compensation in case of injury at work and effective/accessible complaints mechanisms and legal procedures. However, in practice they were often excluded from the essential components of social protection.

Lack of access to justice could lead to exploitation. Although in most countries labour tribunals would help undocumented workers without checking their status, there were major barriers in terms of lack of information, advice and legal assistance with existing procedures, the burden of proof falling on worker and challenges to prove the employment relationship or the extent of violations of rights. Moreover, length of procedures, associated costs and the risk of immigration enforcement due to denunciation by the employer rendered access to justice very complicated. Even workers with permits faced the risk of becoming undocumented if they challenged abusive working conditions. Contacts with labour inspection complaints mechanisms were complicated by the fact that most inspection authorities would also check work permits which could in turn lead to the enforcement of immigration rules. Yet sanctions should target employers and not workers. Certain procedural safeguards in favour of undocumented workers (such as in Belgium, France and Switzerland) were examples of good practice.

Residence and work permits promoted access to decent employment and facilitated workers’ access to complaint mechanisms. During the pandemic, some countries such as Ireland had offered extended social protection to undocumented persons. It was important to uphold workers’ rights, sanction abusive employers, maintain the independence of labour authorities and make immigration policies fairer on the widest possible scale across Europe.

¹ The minutes were approved and declassified by the Committee on Social Affairs, Health and Sustainable Development at its meeting on 23 June 2022.

Mr Omizzolo focused on the situation of undocumented workers in Italy, explaining the exploitation mechanisms, workers' rights, and access to the regularisation programme. Based on participatory investigation, he had discovered that many undocumented workers were trafficked into Italy. Their number was estimated to be about 100 000 persons, including women and children. A typical working rhythm of an undocumented worker was 40 hours and six days per week, with pay as low as 50 cents an hour, but some workers were even asked to work up to 14 hours a day with a few 10-minute-breaks. The mechanism of exploitation was largely controlled by the mafia, in particular in agriculture and in the food production sector where about 30.000 workers originating from India worked. Those workers' human and social rights were systematically violated, and many such workers faced physical harassment. For trafficked workers, it would take on average of four years to repay traffickers. Under enormous pressure at work, some undocumented workers indulged in the use of narcotic substances to relieve pain and cope with the harsh working conditions. There were also numerous cases of sexual abuse. When an organised information campaign had led to exploited workers' strike, many persons involved had received death threats.

Some undocumented workers were regularised in 2020. However, the requirement that a regularisation request should be submitted by the employer had limited the effectiveness of the programme: because employers took substantive economic advantage in exploiting undocumented workers, they had no interest in their regularisation. It was estimated that in Italy's agricultural sector, 80% of workers were immigrants and about 20% were Italians.

Mr Moutquin explained that in Belgium those persons were called "invisible workers". There were between 100 000 and 150 000 such workers in Belgium and an estimated 1-2% of workers in Europe were undocumented migrants. Political denial was widespread, and expulsion policies were very expensive for the State to enforce. Those resources should better be used to support workers' rights and in particular their access to justice. Unfortunately, some of the business sector was an accomplice, and overall there was a lack of legal channels for migrant workers at EU level.

Mr Özsoy deplored a massive exploitation of workers in the global South. Undocumented workers essentially worked in the margins of the European economy. In other continents, such as in the USA and Mexico, undocumented workers had launched nation-wide protest campaigns. It was essential to focus policy measures on targeting and tackling the structural components of this exploitation.

Ms Marra asked about the relevance of the European Social Charter (ESC) in the circumstances and wondered how the Charter's mechanisms could be better used.

Ms Keith explained the importance of providing undocumented workers with access to information about their rights. Lack of regular channels for migrant workers and too restrictive regularisation mechanisms fostered exploitation. In terms of regularisation processes, some good practices at national level included the possibility for undocumented workers to submit regularisation requests instead of employers; involvement of local organisations of civil society was very helpful and the general reduction in paperwork would be welcome. Authorities should issue long-term permits and take long-term measures that favoured a level playing field for all workers. The EU could strengthen due diligence requirements. Using anti-trafficking provisions of criminal law only had a very limited impact in economic terms.

Mr Omizzolo underscored the importance of access to information which should be made available in many languages. It was also important to give residence permits to those collaborating with the police. Such residence permits enabled undocumented workers to have access to training and employment more freely. Support from associations was particularly helpful to assist undocumented workers in filing their regularisation demands and in better protecting women victims of sexual abuse. When exploitation was a systemic feature, solutions needed to be transversal to reverse a violation of a social contract in society. Exploitation of undocumented workers was no longer confined to the South – it was a growing phenomenon across Europe and the world.

Mr Grin agreed that the exploitation of undocumented workers was a global problem which led to unfair competition and therefore required policy intervention. During the pandemic, such workers had experienced even more isolation. As labour rights concerned all people at work, they should be granted to all workers irrespective of their status.

Mr Schennach regretted that very similar exploitation mechanisms concerned many agricultural workers and those involved in sports in Austria. Countries should offer more regular channels of integration, for instance by issuing work permits to asylum seekers while their asylum requests were under consideration – or face the consequences of illegal economic activities through invisible workers' involvement in prostitution or drug dealing.

Mr Gomez-Reino stressed the need for more positive rather than punitive measures to prevent the current repressive legal model from becoming a dominant one. Mechanisms used or put in place for Ukrainian refugees could also be used to help undocumented migrants and workers of other origins.

The Chairperson asked about the option of pushing for minimum labour standards worldwide in order to mainstream decent work and ensure labour rights for all.

Ms Keith explained that the ESC was limited to States-parties and applied only to persons with an official status. That said, there were cases under the Charter's collective complaints procedure which considered the need for a basic protection of human dignity, especially for children ("bed, bread, bath"), and could be extended to other categories of persons. The ESC would need to be given more force and legitimacy to be applied more fully and to all persons resident on the territory of States-parties. Moreover, policy makers should advocate for the issuance of work permits to persons undergoing regularisation procedures in order to ensure that all workers can claim their rights. There were specific challenges concerning the situation of domestic workers. Overall, action was needed at all levels: local, national, European, and global. Further synergies should be sought between the EU legislation and the ESC framework with the aim of improving procedural aspects of regularisation and work across the Council of Europe member States while duly taking into account the local context and specificities.

Mr Omizzolo also stressed the need to better oversee the implementation of the ESC by national authorities. Although a positive approach had its advantages, sanctions, fines (or the confiscation of proceeds of exploitation) and criminal liability of employers were necessary to ensure employers' better compliance with the existing labour legislation. Policy makers could solicit researchers to provide insights for more evidence-based policy making. Mature democracies should protect all persons living and working in a given country.

Ms Marra thanked the guest speakers for sharing their knowledge and advice on such a complex issue. Given the variety of profiles of undocumented workers and the diversity of national procedures, authorities were faced with considerable challenges. Her report would seek to spread good practice across European countries.

The Chairperson concluded the hearing by underlining the indivisibility of rights and the need to employ comprehensive approaches to protecting all humans on the territory of member States.

List of presence

Committee on Social Affairs, Health and Sustainable Development
Commission des questions sociales, de la santé et du développement durable

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Ms Selin Sayek Böke	Türkiye
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Ms Olena Khomenko	Ukraine
Ms Sibel Arslan	Switzerland / <i>Suisse</i>

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Mr Stefan Schennach	Austria / <i>Autriche</i>	Ms Doris Bures
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Ms Sevinj Fataliyeva	Azerbaijan / <i>Azerbaïdjan</i>	Ms Konul Nurullayeva
Mr Bob De Brabandere	Belgium / <i>Belgique</i>	Ms Els Van Hoof
M. Simon Moutquin	Belgium / <i>Belgique</i>	Mme Latifa Gahouchi
Ms Snježana Novaković Bursać	Bosnia and Herzegovina / <i>Bosnie-Herzégovine</i>	Mr Amir Fazlić
Mr Hamid Hamid	Bulgaria / <i>Bulgarie</i>	Mr Stanislav Anastassov
Zz...	Bulgaria / <i>Bulgarie</i>	Zz...
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Ms Christiana Erotokritou	Cyprus / <i>Chypre</i>	Mr Constantinos Efstathiou
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Ms Michaela Šebelová	Czech Republic / <i>République tchèque</i>	Mr Miroslav Adámek
Ms Katarina Ammitzbøll	Denmark / <i>Danemark</i>	Mr Kim Valentin
Mr Urmas Reitelmann	Estonia / <i>Estonie</i>	Ms Vilja Toomast
Ms Minna Reijonen	Finland / <i>Finlande</i>	Ms Tarja Filatov
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Mme Laurence Trastour-Isnart	France	M. Pierre Morel-à-L'Huissier
Ms Mariam Lashkhi	Georgia / <i>Géorgie</i>	Mr Levan Ioseliani
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Mr Andrej Hunko	Germany / <i>Allemagne</i>	Ms Sabine Weiss
Mr Christian Petry	Germany / <i>Allemagne</i>	Ms Martina Stamm-Fibich
Mr Harald Weyel	Germany / <i>Allemagne</i>	Ms Katrin Staffler

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Ms Nina Kasimati	Greece / Grèce	Ms Foteini Pipili
Ms Mónika Bartos	Hungary / Hongrie	Mr Jenő Manninger
Mr Róbert Dudás	Hungary / Hongrie	Mme Zita Gurmai
Mr Bjarni Jónsson	Iceland / Islande	Ms Jódís Skúladóttir
Mr Joseph O'Reilly	Ireland / Irlande	Ms Lynn Boylan
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Mr / M. Marco Omizzolo, sociologist, journalist, and researcher at Eurispes (Institute for Political, Economic and Social Studies) / *sociologue, journaliste, et chercheur à Eurispes (Institut pour les études politiques, économiques et sociales)*

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