THE RECRUITMENT OF MIGRANT WORKERS

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Abstract: *Forced migration due to climatic conditions, economic reasons or armed conflicts has increased the number of refugees and those living in high risk conditions, forced to leave their homes and families. Recruitment and forced labor among the high-risk population has also increased. In this situation, amplified by the risk of infection with the Sars cov 2 virus, measures must be taken to reduce forced labor and the recruitment of cheap labor.*

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1. Introduction

Immigrant workers are the most vulnerable group of workers. The labor market and the social integration of migrants occupy the most important place among EU issues and policies.

In Europe, migrant workers play an essential role in fulfilling the essential survival functions of the state. Around 13% of staff identified as essential in the response to the COVID-19 pandemic in the EU are immigrants (both EU workers and workers from non-EU countries). In some occupations, such as cleaning, mining, and construction, up to a third of key workers are of foreign origin. Although immigration policies and nationals of the host country tend to favor highly educated immigrant workers, immigrants without higher education are numerous in health services, nursing, driving, transport and warehouse workers. or pawns. Despite this, immigrants, who often work illegally or on short-term contracts, remain largely outside the scope of income replacement tax benefits. The situation created by the pandemic is of particular concern to human rights organizations, who fear an increase in violence, especially against domestic workers (immigrant women are the most exposed). Immigrant workers are the first to be laid off, but the last to be tested for the virus. They are excluded from subsidies or social benefits or other forms of social protection. Even more difficult is the situation of those in an irregular situation, who may be detained or even expelled because labor legislation does not take into account this vulnerable group of migrant workers (domestic workers, homeworkers, agricultural workers) who make up the informal economy.

2. Protection of migrant workers

During this period of restrictions, the dismissal of migrant workers has not only meant the loss of income, but also of visas or work permits for those who are in an irregular situation. Immigrants have also been prevented from occupying the "jobs for foreigners" for which they were hired and for which they paid various fees and incurred various expenses to

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be hired, and these jobs have been filled by nationals, with which not only restricts the right of movement but also the right to work. On the other hand, the loss of income of immigrants is the cause of the reduction in remittances sent to families in the country of origin, which have decreased substantially. The World Bank estimates that remittance flows to low- and middle-income countries could fall by around 20% due to the global economic contraction caused by covid.

The first step to eradicate the phenomenon of irregular labor migration and the abusive conditions to which these workers are subjected is to apply measures to eliminate illegal intermediaries, that is, unregulated hiring.

To this end, the International Labor Organization has fought over the years to conquer and protect the rights of immigrant workers, with special emphasis on the protection of women among this category of workers, an issue debated at numerous conferences and a reason for reports that became the key to later Conventions. Thus, Convention 143¹ establishes in its article 2 that the main objective is the elimination of all forms of irregular labor migration in abusive conditions, referring both to it and to non-employment, as well as to the extreme form of trafficking in persons and to the forced labor of migrant workers. It points out that migration occurs outside regular channels and attracts vulnerable workers who are subject to abuse and exploitation, in terms of contracts, so it is necessary that hiring be fair, ethical and transparent to protect them, as well how to avoid private intermediaries who charge extra fees and violate workers' rights. These vulnerable migrant workers, eager to leave to find work and earn money, find that they have to take out loans or possibly mortgage their houses and land to pay the amounts that brokers ask of them, which puts them in a vulnerable position and, in ultimately, they end up in a state of slavery.

For all these reasons, the transparent hiring of migrant workers is considered necessary to eliminate illegal migration and reduce their forced labor. In this sense, article 3 of Convention 97 concerning migrant workers, revised in 1949, entered into force in 1952, provides for the protection of workers against misleading information provided by intermediaries (private recruitment agents), and Convention 29 (concerning Forced or Compulsory Labor, 1930) prohibits all forms of forced or compulsory labor and establishes criminal sanctions for illegal performance of forced or compulsory labor.

Along with these international measures, the adoption of others at the national level to eradicate the abuses of intermediaries-recruiters, human trafficking and the violation of the fundamental rights enshrined in the agreements is an issue that is on the agenda of countries such as Romania, but despite the efforts made by the authorities, it has not been possible to stop the phenomenon of irregular labor migration, although some improvements have been recorded. Despite these efforts, the employment of workers through immigrant networks continues to work, as many workers find jobs through friends or family. Factors such as poverty, unemployment, underdevelopment, domestic violence and persecution make migrant workers the most vulnerable group of workers and the most likely to accept any kind of working conditions. Highly qualified people (with a Masters or even a PhD) often accept conditions below their qualification or standard of living, wanting to leave their home country firstly to save money, and then to be able to return to their country of origin with the new acquired knowledge.

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¹ ILO Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975 (Convention on Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers).

If the measures taken to involve and integrate (in fact accept) immigrants in the national policies of many countries with a view to fair and equitable work had begun to bear fruit before the pandemic, after 2021 the Member States, and not only the Member States, have been seriously affected by the effects of the crisis, their own populations feeling the effects generated by it, so that what the immigrants had gained has been lost due to the lack of measures adopted for them with respect to national Covid policies.

3. The situation of migrant workers during the Covid-19 pandemic

The Covid-19 crisis, with its unprecedented impact on the economies of countries around the world, directly affects migrant workers². It is estimated that there are 164 million migrant workers, half of whom are women, and the vast majority are on the front line working in sectors such as health, services, construction, transport, agriculture and the food industry. In the so-called HORECA sector of the EU, approximately a quarter of the employees come from outside the EU, twice as many as in other sectors. Employment contracts in this sector are usually very short-term. Therefore, migrants are the first to lose their jobs. In countries like Ireland, Sweden, Norway and the United States, but especially in southern Europe, immigrants have been hit hard.

Most immigrant workers are concentrated in sectors of the economy with high levels of temporary, informal or unprotected work, which deprives them of health protection (medical insurance) and Social Security benefits, because the domestic work they generally do immigrant women is "undeclared" and pays them low wages, so that homecare workers have been forgotten for years and their work has been undervalued. Care work is often seen as 'low-skilled' and care workers, who are among the lowest paid, often earn much less than similarly skilled workers in the health care sector.

With the arrival of Covid-19, poor working conditions and severe staffing shortages have only widened the gap between home and institutional care workers, making migrant workers victims of a new and disproportionate risk of being one of the most vulnerable categories of the European workforce. The pandemic has highlighted the heavy reliance on frontline workers and the key role that migrant workers play in providing frontline services in the EU, where the population is rapidly aging and where, on average, 13% of essential workers are immigrants³. It has also significantly affected migrants, their families, host communities and countries of origin, and has exacerbated existing vulnerabilities faced by migrant workers and their families across the EU, hampering their mobility, access to the labor market, to social and health care and their right to decent working conditions.

The pandemic has drastically reduced migration. According to early estimates, the migration rate has been cut in half in the first half of this year. Border closures, travel restrictions and air travel closures have contributed to these developments and the situation will not change soon, even if the economy returns to normal capacity. One of the reasons is that, during the pandemic, many jobs have been replaced by telecommuting, which implies much less human mobility. The evident effects of COVID-19 are also being felt in the countries of origin of migrants. Remittances from those working abroad to families at home have fallen sharply, while coordinated actions by authorities in immigrants' preferred

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² ILO Briefing Note, Policy Brief, May 2020.

³ https://www.europarl.europa.eu/doceo/document/A-9-2021-0143_RO.html

countries to combat illegal migration have led to further frustration in developing countries. source. An important aspect is also the closure of schools. Migrant children have been and continue to be particularly affected when classes are taught online. Parents have, on average, fewer means at their disposal, for example they do not have computers, they have smaller living spaces and, lacking language skills, they cannot help their children with homework. Homeschooling puts migrant children at a greater disadvantage. All these situations caused by the pandemic require that safe, orderly and legal migration be guaranteed, through the improvement of cooperation on migration and the recognition of the shared responsibilities of all States to respond to the migratory needs and concerns of the others, as well as the general obligation to respect, protect and fulfill the human rights of all migrants, regardless of their status, while promoting the safety and prosperity of all communities.

Migration is influenced by a number of factors: economic, political, social and environmental, either as push factors (in the migrant's country of origin) or pull factors in the country of destination. Historically, it is clear that the economic prosperity and political stability of the EU have had a considerable pull effect on immigrants, given the legislative framework on migration and that, in destination countries, international migration can be a tool used to address specific shortcomings in the labor market. However, migration alone will not succeed in reversing the current trend of population aging in many parts of the EU. The pandemic has shown us “how much we need each other” and that migration is fundamentally positive, being “an integral part of our lives”, “something that connects us”. However, there is a danger that the pandemic and its consequences will partially reverse the progress made on migration and integration. For this reason, governments must consider the integration of migrants as a long-term investment in the interest of all.

In addition, as has been pointed out, migrants have been particularly affected by the coronavirus pandemic, as confirmed by the Organization for Economic Cooperation and Development, and migration has been greatly reduced, which is bad for both countries of origin and destination. The pandemic and its consequences have affected the lives of people around the world, but especially migrants, despite the fact that they have contributed to sustaining strategic sectors such as health, commerce and logistics during the restrictions and working on the restoration, hospitality and tourism, that is, in the same industries that are now struggling to survive. This explains why, in the midst of the pandemic, some governments have taken exceptional measures, such as the one decided by the Berlin executive to allow foreign seasonal workers to enter Germany (this is the case of Romanian seasonal workers).

Against the backdrop of rising unemployment, xenophobia will be more present in everyday life as immigrants are seen as potential competitors. Campaigns are underway in some countries to combat the idea that immigrants are competitors in the labor market and to blame for the spread of the virus.

Therefore, measures on this vulnerable group, such as the inclusion of migrant workers in national policies on Covid 19, can help achieve equality and social justice, and bilateral and multilateral cooperation with migrant workers and their families, can help their protection and safe return, as well as their effective reintegration into the labor market.

Of course, the need for labor in the health sector, in hospitals, will create strong job opportunities for qualified and highly qualified immigrants, to the extent that freedom of movement allows it (closed or open borders of some countries or the requirement of proof of vaccination).

On the other hand, the pandemic has only made the situation worse, giving States an excuse to stop family reunification. Britain has used Brexit as a pretext to cut cooperation with Europe and not accept relatives of immigrants who live outside the country. In this way, families and children alone are left without prospects and often fall into the clutches of smugglers.

This makes a new pro-immigration campaign necessary even now, when Brexit has already caused many Eastern European workers to return to their country of origin or go elsewhere in search of new jobs, claiming that the United Kingdom is applying "modern slavery" and a legal situation similar to that of 2002 already indicated. Unlike then, in 2021 the UK is losing the "integrated workers" it badly needs. Many Romanians have chosen to return to Romania because the lack of social assistance, the help of their employer, the dozens of hours of work and unpaid extras, the threat of deportation of irregulars, the detention of Romanian tourists at the airport of London, have created tension and discontent.

Immigrants are willing to work hard, for low wages and overtime, in poor conditions. However, they help regulate the labor market because an increase in the number of workers implies an increase in the growth of goods and services. The aforementioned 2009 UK Report showed that migration rebalances wages and that, in any market economy, the number of jobs available in the labor market is a consequence of a greater number of people. A growing population, whether due to immigration or other demographic changes (for example, a high birth rate), should lead to increased employment.

4. Conclusions

For a more progressive approach to migration that favors inclusion and integration rather than criminalization and isolation. Ensuring equitable access to health care and other rights, such as education and legal employment, would not only help manage the pandemic, but would also create better social and economic conditions for refugees and immigrants, as well as the population of the host countries.

The new European Pact on migration⁴ disappoints more than it offers hope for fair treatment of immigrants and refugees in the EU, although it is more rigorous in giving priority to refugees with higher education or professional qualifications. Furthermore, this will open up more avenues to implement legal migration. It seems that the EU wants to attract talented and educated people and reject refugees and so-called economic immigrants. The focus will be on closing the gaps in the labor markets of host countries. In particular, the health, healthcare and agriculture sectors will be considered. A kind of European New Talent Fund will be created as a platform for international recruitment. However, although the Plan states that it will fight against the exploitation of migrant workers, de facto, it does not provide procedures to ensure that these people are not exploited.

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⁴ November 2020.

Bibliography:

1. Convention 97 on Migrant Workers (revised in 1949)
2. ILO Convention 143 Convention on Migrant Workers (Supplementary Provisions), 1975 (Convention on Migration in Abusive Conditions and the Promotion of Equal Opportunities and Treatment of Migrant Workers).
3. Convention 29 on Forced or Compulsory Labor, 1930, ratified by Spain on August 29, 1930.
4. Directive 2014/66 / EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the context of a transfer within the same undertaking.
5. Family reunification directive (Directive 2003/86 / EC).
6. Student Directive (Directive 2004/114 / EC).
7. Researchers' Directive (Directive 2005/71 / EC).
8. Blue Card Directive (Directive 2009/50 / EC).
9. Single permit directive (Directive 2011/98 / EU).
10. European Commission Annual Report on Migration and Integration of Immigrants at EU level (presented in 2004).
11. EU Action Plan against Racism 2020-2025 "[COM (2020) 565 final] (2021 / C 286/21), published in Official Gazette No. 286 of 16-07-2021.