

SOLIDARITY



**Migrants in an irregular situation
employed in domestic work:
Fundamental rights challenges
for the European Union
and its Member States**



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



This report addresses matters related to respect for private and family life (Article 7), freedom of assembly and of association (Article 12), protection in the event of unjustified dismissal (Article 30), fair and just working conditions (Article 31), family and professional life (Article 33), and right to an effective remedy (Article 47) falling under Chapters 'Freedoms', 'Solidarity' and 'Justice' of the Charter of Fundamental Rights of the European Union.

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**Migrants in an irregular situation
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Migrants in an irregular situation employed in domestic work

Foreword

The European Court of Human Rights rendered judgment in 2005 in the case of a Togolese girl held in servitude in Europe. The girl worked 15 hours a day, with no days off, as a domestic servant, cleaning and caring for children. She slept on a mattress on the floor of the baby's bedroom. She was not paid. The Court ruled that these conditions contravened Article 4 of the European Convention on Human Rights, which prohibits slavery, servitude and forced labour.

This case dealt with the most extreme form of servitude in Europe and highlighted the extent to which a person in an irregular situation can be deprived of her most fundamental rights. While not dealing directly with domestic servitude or trafficking, this report explores the risks of violations of basic rights to which domestic workers may be exposed. It focuses on migrant domestic workers who are present in the European Union in an irregular situation, namely those who do not fulfil conditions for entry, stay or residence. Through interviews with migrants, the report explores the type of abusive and exploitative conditions that affect them. It is an exploratory study, but it is the first that analyses the situation on the ground with respect to access to rights for migrant domestic workers in 10 EU Member States. It documents fundamental rights violations that will need to be addressed.

Migrant domestic workers are mainly women, and thus specifically vulnerable to gender-based forms of discrimination and violence. As they are migrants, they are also exposed to racial or ethnic discrimination. Moreover, they work in one of the few economic sectors with limited labour law standards.

The irregular status of such migrants further exacerbates their risk of falling victim to discrimination, abuse or exploitation. Although core labour law provisions also protect migrants with an irregular status, the risk of detection and deportation make such rights elusive in practice, and access to redress mechanisms difficult, even in the event of serious crimes. Domestic households are usually not accessible to labour inspectors. Employers, in turn, are not necessarily aware of existing labour law standards that need to be respected.

Migrants in an irregular situation continue to be present in many parts of the EU. As this report illustrates, they face a heightened risk of abuse and extreme exploitation.

Morten Kjærum
Director

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Executive summary

A large number of domestic workers in the European Union (EU) are migrants. Though many are working legally, this is not always the case. Some have a right to stay in the host country but do not have the right to work, whereas others have no right to stay. This report focuses on the latter group of people: migrants in an irregular situation employed in the domestic work sector, which is dominated by women. The term 'domestic worker' is used to refer to housekeeping and caring for dependents, such as children, older persons and persons with disabilities.

The report explores, through fieldwork, the situation of domestic work in 10 EU Member States, namely Belgium, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Spain and Sweden. These countries were selected to cover a cross-section of EU geographic regions, and welfare systems and provisions regulating the domestic work sector and the rights of this group. While the research presents findings from interviews in 10 Member States, its results point towards fundamental rights challenges that are probably also applicable in other Member States.

The demand for caring and cleaning work, which has traditionally been performed by women and to some extent by welfare services, is increasing. The available country workforces cannot meet this demand alone. Some countries have drawn up migration schemes to cover this need, but, in practice, cleaning and caring work is in part carried out by (female) migrants with irregular status.

Migrants in an irregular situation employed in domestic work are at heightened risk of exploitation and abuse, including sexual abuse. This report concentrates on five fundamental rights areas which emerged as the most relevant for migrant domestic workers in an irregular situation. These include fair working conditions (including fair pay, sick leave, compensation for work accidents, rest periods and lodging for live-in workers), unjustified dismissal, freedom of association, access to redress mechanisms (including for serious crimes) and issues relating to family life. On many of these issues, international human rights law and labour law standards prohibit differential treatment based on status.

Like any other worker, migrants in an irregular situation are entitled to safe and decent working conditions including fair pay, compensation for work accidents and rest periods. Guarantees to ensure respect for such international standards may be provided for in national

law, but their applicability to domestic workers in an irregular situation may not be evident. Although arrangements between employer and domestic worker are typically made in an informal manner, the existence of a clear legal framework concerning wages, tasks, overtime, holidays, sick leave, combined with awareness by employers of their legal duties, would help ensure that the initial agreement between employer and worker respects basic labour law standards.

Severance pay, the existence of a valid reason to justify dismissal or the need to respect notification periods is foreseen in some countries to prevent unjustified dismissals. Nevertheless, in practice, illness, accidents or pregnancy of the migrant worker often lead to job loss.

Trade unions can be, and are in some countries, a key vehicle for migrants in an irregular situation to claim their rights. In several countries non-governmental organisations (NGOs) and trade unions undertake important advocacy work, campaigning for adequate employment conditions and fair treatment. Some also provide valuable legal support to migrants in an irregular situation.

There is a high risk of impunity, including for grave violations of rights. Accessing justice mechanisms is often difficult for labour law violations as well as for victims of abuse or exploitation. Fear of deportation, limited rights awareness and difficulties in accessing legal support are some of the obstacles faced by migrants in an irregular situation. Despite these difficulties, many migrants do find access to information and remedies through assistance from or participation in civil society organisations and migrant networks.

The very nature of domestic work makes it difficult to combine with family life, especially when the work is live-in. Due to their irregular status, migrants often do not have access to childcare facilities and need to find ad hoc solutions. Many female domestic workers are having to care for other people's children whilst their own children are back home in their country of origin.

There is a shared interest among States, civil society actors and the migrants concerned to put an end to situations of irregularity. While the EU clearly favours return, such an option is not always viable, as there may be legal, humanitarian or other obstacles preventing return. Social or economic considerations may also not favour return. Several countries have recently adopted regularisation measures driven by the

recognition that the demand for domestic services cannot be filled by the local workforce.

Overall, this report shows that the protection of rights of migrant domestic workers in an irregular situation varies across the 10 countries examined as do the roles played by civil society actors and by the justice system in protecting and safeguarding them. Factual access to fundamental rights is currently largely determined by the employer. More efforts are required to monitor whether fundamental rights of migrants in an irregular situation employed in the domestic work sector are respected. This should be combined with better rights awareness by migrants, employers and the wider society as a whole, for which the role of civil society is crucial.



Opinions

The gap between labour demand and supply

Member States should be aware of the gap between labour market needs and the available workforce in the domestic work sector. When filling this gap, migrants should not be exposed to abuse and exploitation. Situations of irregularity are a potential source of fundamental rights violations and should therefore be avoided, including, where relevant, through policies to prevent irregular labour migration, together with the introduction of targeted legal migration programmes.

Fair working conditions

A legal framework applicable to all domestic workers, including those in an irregular situation, would further legal clarity on issues such as minimum pay, (including a maximum ceiling for payments in kind for board and lodging), sick leave, compensation for work accidents, rest periods as well as adequate accommodation standards. Such a legal framework should provide for labour inspection to the workplaces of domestic workers in order to ensure safe and decent working conditions. Employers should be made aware of the obligation to treat their workers in accordance with existing labour law standards. Sanctions and penalties against employers responsible for abuse or exploitation of domestic workers should be set forth in law.

Compensation in the case of unjustified dismissal

In the case of dismissal, effective steps should be taken to remove any practical obstacles that prevent migrants in an irregular situation from claiming compensation or severance pay from their employers, when these are foreseen for migrants in a regular situation.

Freedom of association and right to collective bargaining

Migrant workers in an irregular situation should have the possibility to join trade unions and to participate effectively in their activities. Trade unions and NGOs should be supported to undertake awareness-raising and outreach activities targeting migrants employed in domestic work as well as employers and the general public.

Access to justice

Access to justice is a crucial right since the enforcement of all other fundamental rights hinges upon it in the event of a breach. Practical obstacles to accessing justice, such as reporting duties that may reveal a migrant's identity and/or whereabouts, should be removed. Building on the Employers Sanctions Directive, effective mechanisms should allow migrant workers in an irregular situation to lodge complaints against abusive employers. Trade unions, equality bodies and NGOs play a vital role in making justice mechanisms more accessible; they should, therefore, be given support to undertake legal proceedings against employers on behalf of migrants.

Rights related to family life

NGOs working with migrants in an irregular situation and public service providers should receive sufficient resources to enable them to offer social and legal advice, as well as assistance, in particular in cases of maternity and child care needs.

Regularisations

In order to reduce the exposure of migrant workers in an irregular situation to exploitation and abuse, consideration should be given to addressing protracted situations of irregularity, through regularisation schemes based on lessons learned from past experiences. Criteria and procedures for such schemes should be fair and transparent, and should be developed in collaboration with organisations representing the interests of the migrant workers concerned.

Introduction



The legal context

Charter of Fundamental Rights of the European Union

The Charter provisions contained in the boxes of this report illustrate the codification of respective rights. It is important to note that the Charter addresses EU institutions and EU Member States only when they are implementing EU law. In all other cases fundamental rights continue to be guaranteed at national level by national constitutional systems and by applicable international human rights law and labour law provisions.

The European Court of Human Rights (ECtHR) rendered judgment in 2005 in the case of a Togolese girl held in servitude in Europe. The girl worked 15 hours a day, with no days off, as a domestic servant, cleaning and caring for children. She slept on a mattress on the floor of the baby's bedroom. She was not paid. The Court ruled that these conditions contravened Article 4 of the European Convention on Human Rights (ECHR), which prohibits slavery, servitude and forced labour. This case dealt with the most extreme form of servitude in Europe and highlighted the extent to which a person in an irregular situation can be deprived of her most fundamental rights. While not dealing directly with domestic servitude or trafficking, this report explores the risks of violations of basic rights to which domestic workers may be exposed.

The prohibition of slavery, servitude and forced labour as well as other core rights enshrined in the ECHR are of general application. So are international human rights law and labour law instruments. Unless individuals are expressly excluded from their scope of application,

rights and freedoms are applicable to everyone within the jurisdiction of the contracting parties, thus also to persons who are not staying lawfully.

Migrant workers have rights. While access to the labour market can be restricted to nationals and/or lawfully abiding or residing foreigners, once a person is working, there are a set of human rights and basic labour rights which must be respected, even if the work relationship is not in conformity with the law. This includes, for example, rights with respect to fair working conditions, unjustified dismissal, or freedom of association and access to justice for violations of these rights.

This report will review some of these rights as set forth by the United Nations (UN) as well as International Labour Organization (ILO) instruments ratified by all or several EU Member States and reaffirmed in the EU Charter of Fundamental Rights.

At the global level, the ILO Migration for Employment Convention (Revised), 1949 (No. 97), which applies to migrants in a regular situation only, and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)¹ specifically deal with the rights of migrant workers. In addition, eight ILO Conventions have been identified by the ILO's Governing Body as fundamental to the rights of people at work.

¹ Migration for Employment Convention (Revised), 1949 (No. 97) ratified by 10 EU Member States and the Migrant Workers (Supplementary Provisions) Convention, 1975, (No. 143) ratified by five EU Member States. The applicability of Article 1 of Convention No. 143 to migrants in an irregular situation has been confirmed by the Committee of Experts, see ILO Conference 87th Session 1999, Global Survey on Migrants Workers, paragraph 297 at [www.ilo.org/public/libdoc/ilo/P/09661/09661\(1999-87_1B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1999-87_1B).pdf).

These conventions are applicable to all workers.²

Although the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) has not yet been ratified by any EU Member State,³ most of the rights enumerated in the Convention restate the application of rights already spelled out in the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) and the other core human rights treaties ratified by all EU Member States.⁴ Hence, it remains an important reference point; as is the first General Comment issued by the UN Committee on Migrant Workers, which specifically relates to domestic workers.⁵

International human rights standards which are binding for EU Member States can also be relevant for the interpretation of EU law. For instance, the Court of Justice of the European Union (CJEU) has made reference to ILO Conventions in the past.⁶ Also, when identifying general principles of law, the Court “draws inspiration from [...] the guidelines supplied by international treaties for protection of human rights on which the Member States have collaborated or to which they are signatories.”⁷

The EU Charter of Fundamental Rights also contains a number of rights and principles which relate to the issues covered in this report. In line with its Article 51, references made to the Charter shall be understood as referring to those matters which are covered by EU law.⁸

Secondary EU law on migrants in an irregular situation has focused on prevention of illegal migration and returns. This includes punishing employers for resorting to workers in an irregular situation.⁹ The Return Directive, however, also sets out some basic fundamental rights standards for persons who have been issued a return decision,¹⁰ whereas the Employers Sanctions Directive contains provisions which are intended to facilitate access to justice by victims of abusive or exploitative labour conditions.¹¹

In the last decade, increasing attention has been devoted to the situation of migrant workers employed in the domestic work sector. Scholars have studied the links between migration and domestic work,¹² and specialised NGOs have emerged to provide support and assistance to migrant domestic workers as well as to raise awareness of their specific vulnerabilities. This is the case of the RESPECT network.¹³

The situation of migrant workers employed in the domestic work sector has recently been put high on the agenda of the ILO. The ILO has embarked on a standard-setting process and led negotiations for the adoption of a Convention and a Recommendation on decent work for domestic workers, including migrant domestic workers.¹⁴

In light of the attention recently given to this issue in Europe, it is surprising that only limited materials analyse the situation of migrants in an irregular situation employed in domestic work from a fundamental rights perspective.¹⁵ With this report, the FRA aims to fill this gap.

2 ILO Conventions Nos. 29, 87, 98, 100, 105, 111, 138 and 182 covering freedom of association and collective bargaining, child labour, forced and compulsory labour, discrimination in respect to employment and occupation. All EU Member States have ratified them. The 1998 ILO Declaration on Fundamental Principles and Rights at Work stresses at Article 2 that all ILO Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights.

3 A UNESCO-commissioned report (MacDonald and Cholewinski, 2007) based on interviews with migration stakeholders examines obstacles for ratification of the ICRMW in seven European countries, which include misconceptions of the substance of certain provisions.

4 See MacDonald and Cholewinski (2007), p. 23; Weissbrodt and Meili, p. 43.

5 Committee of Migrant Workers, General Comment No. 1 on migrant domestic workers at www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm.

6 CJEU, C-41/90, *Höfner and Elser v. Macrotron*, 23 April 1991; C-158/91, *Levy*, 2 August 1993; C-197/96, *Commission v. France*, 16 January 1997.

7 CJEU, Opinion of the Court of 28 March 1996, Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Opinion 2/94, European Court Reports 1996.

8 Poland and the UK agreed on an opt-out protocol from the Charter of Fundamental Rights. Both countries remain, however, bound by Article 6 (3) of the Treaty on the European Union, which refers

to the ECHR and to the constitutional traditions common to the Member States.

9 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ 2009 L 168, pp. 24-32, (Employers Sanctions Directive).

10 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348, pp. 98-107, (Return Directive), Article 14.

11 Employers Sanctions Directive, Article 13. See also Article 6 which stresses the employer’s responsibility to pay any outstanding remuneration to the illegally employed migrant as well as an amount equal to taxes and social security contributions.

12 See, for instance, Anderson (2000); Cox (2006); Lutz (ed.) (2008); Schrover, van der Leun and Quispel (2007), pp. 529-540; Gallotti (2009).

13 See RESPECT European Network of Migrant Domestic Workers (2000); *Ibid.* (2009).

14 The latest report on the matter, including the draft text is available in two volumes – IV(2A) and (2B) – at <http://www.ilo.org/ilc/ILCSessions/100thSession/reports/lang--en/index.htm>.

15 See, however, ILO (2010); PICUM / Geddie and LeVoy (2009).

Research by the FRA

This report is the result of a project by the FRA on the situation of migrants in an irregular situation in the EU. It is the first of two thematic reports which complements a forthcoming comprehensive overview of the fundamental rights situation of migrants in an irregular situation in the EU's 27 Member States. The second thematic report relates to healthcare and will be published later in the year.

Based on research conducted with (predominantly female) migrants and civil society organisations in 10 EU Member States – Belgium, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Spain and Sweden – this report highlights some of the fundamental rights challenges affecting migrants in an irregular situation employed in the domestic work sector. It focuses on the experiences of migrants in an irregular situation. While many fundamental rights issues raised in this report are common to other persons employed in the domestic work sector, the risk of violations is exacerbated for workers who do not have the right to stay in the host country.

This report deals with domestic work performed by third-country nationals who are staying in the EU in an irregular manner as they do not or no longer fulfil conditions of entry, stay or residence. The report does not, therefore, cover undeclared work performed by legally staying migrant workers, such as, for example, nationals of new EU Member States whose right to work in other EU countries remains restricted due to transitional measures, or with respect to third-country nationals who work in violation of their visa regime.

The Agency carried out in-depth interviews with 72 domestic workers, most of whom were staying in the host country in an irregular manner. The interviewees covered 28 nationalities from four different continents and included persons performing housekeeping as well as caring for children, older people and persons with disabilities in live-in as well as live-out arrangements. The interviews were designed for an in-depth collection of the migrants' experiences. They were detailed, extensive and carried out after having created an atmosphere of trust with each individual migrant. This report does not intend to describe the prevalence of fundamental rights challenges affecting migrants in an irregular situation, but aims at showing, on the basis of individual experiences, the kind of challenges they are confronted with and the strategies they use to overcome problems.

One of the main challenges of the research was to come into contact with potential respondents as migrants in an irregular situation are often unwilling to be identified. Thus, the research design aimed at a

broad recruitment of respondents through many different channels. Respondents were recruited through so-called gatekeepers, namely diverse organisations, NGOs and individuals who come into contact with migrants in an irregular situation for various reasons. Where possible, chain referral was used, although migrants in an irregular situation are often unwilling to reveal whether or not they know others in the same situation.

The findings of the interviews are analysed taking into account the existing legal framework. In addition, in the 10 countries covered by the research, detailed interviews were also carried out with 46 civil society actors, including labour unions and NGOs working with migrants employed in the domestic work sector. More details on the persons interviewed and on the methodology can be found in the annex.

The research work for this publication was carried out by national experts co-ordinated by the research institute Hellenic Foundation for European & Foreign Policy (ELIAMEP). The latter was part of the consortium led by the International Centre for Migration Policy Development (ICMPD) which implemented, in cooperation with the FRA, the wider research on the fundamental rights situation of migrants in an irregular situation.

The draft report was shared for comments with government representatives in the 10 EU Member States covered, as well as with selected international organisations and NGOs. Feedback was provided by Germany, Hungary, Poland, Spain and Sweden, as well as by the Office of the High Commissioner for Human Rights (OHCHR), the ILO, the Organization for Security and Co-operation in Europe (OSCE), the European Institute for Gender Equality (EIGE), the RESPECT network and selected national NGOs.

This report is structured in line with the five fundamental rights areas which emerged as most relevant for migrants in an irregular situation working as domestics. Chapter 1 provides the context for the report and focuses on the gap between demand and supply in the employment market for domestic workers. Chapters 2 to 6 cover the five fundamental rights areas, namely fair working conditions, unjustified dismissal, freedom of association and the right to collective bargaining, access to justice and rights related to family life. Chapter 7 examines the issue of regularisations before general conclusions from the FRA research are drawn in Chapter 8.

1

The gap between demand and supply



This section provides the contextual information necessary to understand the specific fundamental rights challenges discussed in this report. It briefly touches upon the type of domestic work which is the subject of this report, examines existing legal migration channels for domestic workers and provides an indication of the fact that a considerable number of migrants in an irregular situation are employed in domestic work.

Type of domestic work

The type of domestic work covered by this research includes housekeeping, cleaning and care services. The activities in which migrants in an irregular situation are involved do not differ substantially from activities performed by migrants in a regular situation working in this sector.

In the sample of migrants interviewed for this research, care activities for older people and for children are typically combined with housekeeping tasks, such as cleaning, cooking, ironing or shopping. In practice, migrants in an irregular situation often provide multiple services, which in some cases became ever more extensive and eventually far exceeded those tasks initially agreed upon.

Employment is often unstable, with numerous changes of employers. This is in part due to the nature of employment (older persons for whom they care die or are hospitalised, children grow up, the employer moves), the emergence of better job opportunities or the migrant's change of plans (arrival of family members from country of origin, change of place of residence).

Existing literature distinguishes between three forms of domestic employment,¹⁶ all three of which were represented in the sample of migrants interviewed by the FRA:

- live-in domestic workers;
- live-out domestic workers employed full time by one employer;
- live-out domestic workers working for several employers.

Live-in employment involves a certain job security but less privacy. Live-out work involves greater risks and often more economic hardship, especially if the migrant's aim is to send remittances home or to bring their children to live with them – a concern stressed by several women interviewed.

A review of the 10 countries covered in this report suggests that live-in work is uncommon in some countries, such as Sweden – as confirmed by the Swedish SAC trade union – and decreasing in Spain.¹⁷ In other countries, the proportion of domestic workers living-in appears to differ according to the migrant's nationality. The Centre of Athens Labour Unions asserted that in Greece, for example, Albanians work as live-out workers while Ukrainians, Georgians, and Filipinos are more often employed as live-in domestic workers. In Belgium, the representative of the Brazilian migrant association Abraço observed that the majority of its members live in. Specific housing conditions, such as high rents, and the availability of a separate room for domestic workers (chambre de bonnes) can also

¹⁶ Anderson (2000); Scrinzi (2003).

¹⁷ Information provided by the Spanish Ministry of Labour and Immigration, General Directorate for the Integration of Immigrants to the FRA in March 2011.

affect the degree of live-in solutions, as appears to be the case in and around Paris.¹⁸

In all the countries studied, migrant domestic workers in an irregular situation have experienced both live-in and live-out employment. Usually live-in is the first job they get, either arranged before departing from their home country or found once in the destination country. Jobs are usually arranged through family or friends who are already in the host country. Sometimes the first job is a replacement – migrants in an irregular situation fill in for a friend or relative who has gone back home for a visit, who is giving birth or has some other health or personal problem. After they manage to put together some money and learn a bit more about the host country's language and other necessary information, migrants in an irregular situation often switch to live-out jobs. This 'career path' is documented in the field research in Spain, Italy and Greece.

Gender and equality issues

In the past two decades, women have become an important component of international migration flows. In 2010, of the 200 million international migrants, 49% were women.¹⁹ Many women now migrate on their own, leaving their families back home, and become the main breadwinner. Migrant women employed as housekeepers, nannies and carers for older people often possess a university degree but easily become de-skilled the longer they work in the domestic work sector. Female migration has been encouraged by both push factors in the countries of origin, such as poverty and unemployment, as well as pull factors in developed countries, such as increasing demand for domestic work.

Caring and cleaning work was traditionally performed by women and to some extent by welfare services, which have suffered cuts in a number of EU Member States in recent years. With a rapidly ageing society and women increasingly employed outside the home, demand for caring and cleaning services has boomed and migrant women have filled this gap.

There is a specific gender dimension that relates to recruiting migrant workers to fill jobs in the care and domestic work sector in developed countries. Such outsourcing allows native women to increase their

labour force participation. As a consequence, couples in developed countries²⁰ can avoid negotiating the burden of domestic work. However, the employment of migrant women, in turn, serves to perpetuate the gendered division of domestic labour.

Furthermore, many women who migrate from southern and eastern countries to take up domestic work in Europe leave their children back home. In the absence of mothers, care work in sending households seems to be primarily performed by female family members such as grandmothers, aunts or older daughters, or is outsourced to female neighbours or friends.²¹ This creates a 'global care chain' that contributes to the gender division of labour all over the world. On the one hand, remittances from abroad facilitate access to education and healthcare for children left behind. On the other hand, growing up in families where the mother is thousands of miles away for months or years on end presents a wide range of challenges for these children, including: a sense of abandonment and psychological distress, but also underperformance at school and a higher risk of depression.²²

Migrant domestic workers are vulnerable to discrimination on several grounds. They are mainly women and thus specifically vulnerable to gender-based forms of discrimination and violence. They are migrants and thus exposed to racial discrimination. In addition, they work in one of the few sectors with limited labour law standards. The fact that most domestic workers are female migrants performing informal, poorly paid and unprotected work is a clear example of multiple discrimination.

Evidence has shown the existence of stereotypes based on nationality and the segmentation of the domestic sector. For instance, nationality tends to be seen as the best indicator of personality and skill levels.²³ The stereotypes of the best nanny, babysitter or elderly carer tend to be self-reinforcing. Domestic workers themselves use these stereotypes to their own advantage, and are likely to contribute, inadvertently, to perpetuating racialisation and ethnicisation. Domestic workers from the Philippines, for instance, present themselves as the 'Mercedes-Benz' of domestic workers.²⁴

18 Field research of Anderson (2000, 2007) in Paris suggests that live-out domestic work dominates and Filipino migrant workers are more frequently employed as live-in. This has been confirmed by the interviewed organisation Rajfire from France.

19 See United Nations Department of Economic and Social Affairs, Population Division, International Migration 2009, available at: www.un.org/esa/population/publications/2009Migration_Chart/ittmig_wallchart09.pdf (All hyperlinks cited in this report were accessed on 31 March 2011).

20 It is worth noting that a feminisation of the domestic work sector has occurred in the last two centuries in different parts of the world, together with a broader range of employers from lower social classes. Thus the trend has been from upper-class employment of mostly male servants to middle-class employment of mostly female workers. See Moya (2007).

21 HondagnEU Sotelo (2001); Parrenas (2001).

22 See de la Garza (2010) (UNICEF social and economic policy working paper); ILO/IPEC (2010); Parrenas (2008).

23 Cox (1999).

24 Sarti (2005).



Legal migration channels for domestic workers

There is evidence that care needs are likely to increase in the future. According to Eurostat estimates, the proportion of the population aged 80 years or over in the EU 27 will triple from 4.66% in 2008 to 12.12% in 2060.²⁵ Even more relevant, the old-age-dependency ratio²⁶ will increase, which means there will be fewer young people to look after the growing elderly population.

The attractiveness of the domestic work sector to the indigenous workforce within EU Member States is low, mainly due to its low wages and poor entitlements. This, in turn, reflects the low standing of 'women's work'. The 10 countries covered in this study have adopted different policies to regulate increasing demand for care services. As table 1 shows, Italy has specific migration schemes which target domestic workers. In other countries, domestic work may qualify within general work permit schemes, whereas in a third group of countries no legal migration channels for the employment of third-country nationals in the domestic work sector seem to exist.

Following EU enlargement, priority was given to facilitate the admission of nationals from new EU Member States, as these were affected in some old EU Member States by transitory restrictions on access to the labour market.²⁷ Poland, in contrast, granted facilitated access to Ukrainian, Moldovan and Russian nationals.

In Italy, from 2005 onwards the government reserved a proportion of migration quotas for domestic workers. Quotas for domestic workers were substantial compared to the overall quotas for migrant workers.²⁸

In Spain, quarterly lists of shortage occupations to be filled by migrant workers are drawn up for each province which, depending on need, may include domestic workers.²⁹

Migrant domestic workers make an important social and economic contribution to European households and societies, and are likely to do so even more in future. Insufficient legal avenues to address actual labour demand can contribute to an increase in irregular work by migrants. In addition, when work permits are tied to employers and/or to the work sector, workers may fall back into an irregular status through no fault of their own. Women may lose residence rights as a result of divorce and become irregular. In other cases, employers may not fulfil certain requirements needed to extend the residence permit. As an illustration, in Greece a number of migrants ended up in an irregular situation as employers refused to pay – or could not afford – the necessary social insurance contributions for migrants.

Another legal means of entry for domestic workers is with diplomats. A diplomatic or legitimation card is provided to private domestic staff employed by members of diplomatic and consular staff as well as international civil servants, depending on their rank. These workers are in an especially vulnerable position compared to other migrant domestic workers in a regular situation. The employer enjoys diplomatic immunity, which bars the start of legal proceedings against him or her. Thus victims have no legal remedy. In addition, if the legitimation card is handed over to the employer, this may subject the employee to the risk of exploitation or abuse. Some countries have developed good practices, whereby the issuing authority meets the worker in person to hand over the card, provide her or him with written and oral information on her or his rights, and where and how to report abuses.³⁰

25 Eurostat, 'Ageing characterises the demographic perspectives of the European societies', Statistics in focus 72/2008, available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-072/EN/KS-SF-08-072-EN.PDF.

26 This ratio is calculated by dividing the population aged 65 years or over by the working age population (15-64 years old).

27 As an illustration, in Germany a recruitment process for household helps (*Haushaltshilfen*) assisting persons in need of care was introduced, but limited to migrant workers from new EU Member States, who had restricted access to the labour market until the end of the transition period (2011 and 2013 for Bulgaria and Romania, respectively).

28 Quota for domestic workers amounted to 15,000 persons (19% of the total migrant workers quota) in 2005; 45,000 (27% of the total quota) in 2006 and more than 100,000 domestic workers (70% of the total quota) in 2008. The last quota decree, which was intended to program the flows for the year 2011, establishes a total amount of 98,080 requests, 30,000 of which are for domestic work. See, for 2005, Decree by the President of the Council of Ministers (decree PCM) of 17 December 2004 (*Programmazione transitoria dei flussi d'ingresso dei lavoratori extracomunitari nel territorio dello Stato per l'anno 2005*), Article 2 available in Italian at: www.governo.it/Presidenza/DICA/10_FONTI_NORMATIVE/immigrazione/

decreto_17_dicembre_2004_all_1.pdf); for 2006, Decree PCM, 15 February 2006 Programmazione dei flussi d'ingresso dei lavoratori extracomunitari nel territorio dello Stato per l'anno 2006, Article 2 at www.altalex.com/index.php?idnot=10362; for 2008, Decree PCM, 4 December 2008 concernente la programmazione transitoria dei flussi d'ingresso dei lavoratori extracomunitari stagionali nel territorio dello Stato per l'anno 2008, Article 3 at www.meltingpot.org/IMG/pdf/decreto_flussi_2008.pdf; and for 2011, Decree PCM, 30 November 2010 Programmazione transitoria dei flussi d'ingresso dei lavoratori extracomunitari non stagionali nel territorio dello Stato, per l'anno 2010, Article 3 at www.lavoro.gov.it/NR/rdonlyres/13261F8F-FDC9-4A79-9944-0C533B24C871/0/20101130_DPCM.pdf

29 The catalogue is established by the Public Employment Service and approved following a consultation with the Tripartite Working Committee on Immigration (national and regional levels). The resolution establishing the procedure of the quarterly catalogue is available (in Spanish) at: http://noticias.juridicas.com/base_datos/Laboral/res141105-tas.html. For the quarterly catalogue covering the first quarter of 2011 (in Spanish), please see www.redtrabaja.es/es/portalttrabaja/resources/pdf/dificil_cobertura/CatalogoOcupacionesDificilCobertura.pdf.

30 See OSCE (2010), p. 28.

Table 1: Labour migration for third-country nationals in the domestic work sector in the 10 EU Member States studied

EU Member States	Legal migration options	Comments
Belgium	General work permit system	Work permit B for one year; preference given to the nationals of new EU Member States and countries with bilateral agreements. ¹
France	General work permit system	Preference given to the nationals of new EU Member States in sectors with labour shortages (covers domestic workers and child carers); bilateral migration agreements with African countries usually do not cover domestic work. ²
Germany	No	Specific recruitment scheme for household aid (<i>Haushaltshilfen</i>) limited to migrant workers from new EU Member States who work in households with a person in need of care.
Greece	General work permit system	Domestic work can be included among the established migration quota. ³
Hungary	General work permit system	Domestic workers in home care and nursing services are mainly ethnic Hungarians from Romania for whom transition measures limiting access to the labour market were lifted in 2009.
Ireland	Indirectly part of the permit system	Work permits were never issued for the category of domestic work in Ireland, but specifically for carers, child carers, childminders, and other categories. However, since 1 June 2009, no new work permits can be issued for these categories. ⁴ Existing permits for care are eligible for renewal. ⁵
Italy	Quota for domestic workers	Specific quota for domestic workers established from 2005 onwards. ⁶
Poland	General work permit system	Facilitated access to labour market since 2007 for non-EU citizens from Ukraine, Moldova and Russia (employer declarations instead of work permits). Domestic workers can benefit from this system.
Spain	Quarterly catalogue of shortage occupations	The <i>Catálogo de Ocupaciones de Difícil Cobertura</i> has been published quarterly since 2005 and contains a list of jobs that may be filled by foreign workers. ⁷
Sweden	General work permit system	Domestic workers can in principle apply for a permit under the general system in place. ⁸

Notes: 1 Martiniello et al. (2010).

- 2 List of professions with labour shortages for EU nationals defined by Decree of 18 January 2008, see Official Journal, 20 January 2008, available at: www.immigration-professionnelle.gouv.fr/sites/default/files/fckupload/arrete_18_janvier_150.pdf and for third-country nationals (30 professions): www.immigration-professionnelle.gouv.fr/sites/default/files/fckupload/arrete_18_janvier_30%281%29.pdf. For bilateral migration agreements see www.immigration-professionnelle.gouv.fr/nouveaux-dispositifs/accords-bilat%C3%A9aux.
- 3 For the year 2011, more than 90% of the quota for the Prefecture of Athens and the Prefecture of eastern Attica are foreseen for domestic workers; 252 out of 269 positions in Athens and 102 out of 111 positions in eastern Attica. See Greek government Gazette 268 of 18 February 2011 (FEK 268 B), Ministerial decision No. 2782/132).
- 4 Information provided by the Migrant Rights Centre Ireland (MRCI) to the FRA in April 2011.
- 5 See www.deti.ie/labour/workpermits/revisedworkpermitarrangements%20-%20june%202009.htm.
- 6 See www.interno.it/mininterno/export/sites/default/it/assets/files/15/0673_Rapporto_immigrazione_BARBAGLI.pdf, page 81.
- 7 See footnote 29.
- 8 Information on work permits can be found on the website of the Swedish Migration Board at www.migrationsverket.se/info/160_en.html.

Source: FRA

The *au pair* system is an additional legal channel of entry for migrants. Although initially designed as a way to allow cultural exchange for young people and provide some help to families with young children, it is often used as a way to recruit domestic workers. The employment of *au pairs* has been steadily growing in some countries in Europe during the last decade.³¹ Several cases of unfair compensation, excessive working hours, discrimination, sexual assault and other forms of maltreatment have been reported. In reaction, in 1997 the Philippine government banned young people from moving to Europe under this scheme.³²

Irregularity in the domestic work sector

Within the domestic employment sector undeclared work is widespread. The NGOs *Rajfire* in France, the Chamber of employees in one of the federal states in Germany and the trade union *CCOO* in Spain interviewed by the FRA pointed to the generally high levels of informal and undeclared employment in private households. Eurofound noted that in the EU undeclared work is highest in household services, corresponding to an estimated 19%.³³ While some data are available on undeclared work, it is more difficult to estimate the extent to which migrants in an irregular situation are employed in the domestic work sector. Such a lack of data were also highlighted by civil society organisations in France (*CFDT*), Greece (*KASAPI*), Ireland (*ICTU* and the Migrant Rights Centre Ireland - *MRCI*) and Spain (*CCOO*).³⁴

An indication of the extent to which migrants in an irregular situation are employed in the domestic work sector can be deduced from regularisation data. Some 500,000 irregular third-country nationals employed in domestic work have been regularised since 2002 in Italy and Spain, and another 250,000 persons are pending regularisation in Italy.³⁵ This shows that

numbers of migrants in an irregular situation employed in domestic work in the EU are significant, although differences exist between Member States. For instance, the organisation 'Here We Are!' estimates that in Hungary the presence of migrants in an irregular situation in this sector is marginal and concerns mainly ethnic Hungarians from Ukraine.

FRA opinion

Member States should be aware of the gap between labour market needs and the available workforce in the domestic work sector. Where migrants are used to fill this gap, this should not expose them to risks of abuse or exploitation. Situations of irregularity are a potential source of fundamental rights violations and should therefore be avoided, including, where relevant, through policies to prevent irregular labour migration together with the introduction of targeted legal migration programmes.

³¹ Anderson (2000); Cox (2006); Lutz (2002); Lutz and Schwalgin (2004).

³² In October 2010, the deployment ban for *au pairs* moving to Switzerland, Norway and Denmark was lifted after 13 years, and those countries guaranteed to protect *au pairs*. See www.pinoy-ofw.com/news/4329-au-pair-europe-protection.html.

³³ Eurofound (2008), p. 10, Table 3.

³⁴ There are estimates and data on migrants in an irregular situation in total and by section of employment where possible, but not specifically on those employed in the domestic work sector. See the results of the *CLANDESTINO* research project at: <http://clandestino.eliamep.gr>.

³⁵ See Chapter 7. These figures provide only an indication, as migrants in an irregular situation employed in domestic work may have been part of general regularisations or, conversely, individuals may have been regularised as domestic workers, although in fact they may have been employed in other sectors not covered by the regularisation.

2

Fair working conditions



Tasks, remuneration and other working conditions are determined by the initial agreement with the employer. This chapter deals with a basic set of rights which relate to the conditions of work. It examines the right to fair pay, compensation for work accidents, the right to sick leave, the right to rest periods and decent lodging for live-in workers. For each of these rights, the applicable international legal standards will be presented, against which the findings of the research will be analysed.

States Parties to the ICESCR are obliged to guarantee the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions (Article 7 (b)). As illustrated in the following sections, detailed labour law standards exist in this regard, although some ILO instruments contain clauses that allow for exceptions for migrant workers.³⁶ Similarly, at EU level Council Directive 89/391/EEC on the safety and health of workers excludes domestic servants from its application.³⁷

At a national level, the legal framework defining and regulating professional categories and tasks in the domain of care and cleaning services differs greatly.

As an illustration, in France,³⁸ Italy³⁹ and Spain⁴⁰ specific legal regimes regulating domestic work exist, whereas in other countries domestic work is covered by general labour law. In Ireland, domestic work is covered under general employment law, but a legally non-binding Code of Practice sets out responsibilities under current legalisation.⁴¹

In Italy, France and Spain the tasks involved are defined in terms of type of contract and remuneration. In Italy, for instance, the relevant national collective legal framework is very detailed, providing for eight different categories of domestic work.⁴²

An important question is whether national legal provisions relating to working conditions apply only to migrant workers in a regular situation, or whether they are also applicable to domestic workers who are

³⁶ For a detailed overview, see ILO (2010), Chapter II, p. 16ff. These do not concern Conventions used in this report.

³⁷ See Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, Article 3a.

³⁸ Convention collective nationale des salariés du particulier employeur du 24 novembre 1999; étendue par arrêté du 2 mars 2000 (Journal Officiel, 11 March 2000).

³⁹ Law No. 339/1958 on the protection of domestic work; Presidential Decree No. 1403/1971 regulating the obligation to provide social insurance for domestic workers and other categories, and the National Collective Contract Regulating Domestic Work Relationships (CCNL) of 13 February 2007 (expiring 28 February 2011) regarding the regulation of domestic work.

⁴⁰ Royal Decree 1424/1985 of 1 August 1985, which regulates the employment of the special nature of Family Home Services and Decree No. 2346/1969, of 25 September 1969, regulating the Special Regime of Social Security for Domestic Workers.

⁴¹ Code of practice for protecting persons employed in other people's homes of the Labour Relations Commission (Ireland) (2007), available at: www.lrc.ie.

⁴² See CCNL. Purely cleaning jobs have a lower minimum salary. The more the work involves specialised and complex tasks (e.g. personal care and in particular assisting non self-sufficient persons, or overall management of the household) the higher the salary. The typology of domestic work in Italy is thus based on a combination of the qualifications needed for the tasks at hand, previous experience of the worker, and the difficult or demanding nature of the job.

staying irregularly in the host country. Whereas in Europe there is still some uncertainty, in the Americas the Inter-American Court of Human Rights clarified this issue in 2003, concluding that all migrants are entitled to the protection of their labour rights, regardless of their legal status in the country of employment.⁴³

In principle, in the 10 countries reviewed, irregular residence does not nullify a person's rights as a worker and the effects of labour law. As an illustration, according to Article 2 of the Polish Labour Code an employee is a person employed on the grounds of a labour contract, election, appointment or cooperative labour contract. No requirements with respect to nationality, citizenship or other aspects of legal status are made.⁴⁴ Swedish labour law makes no clear reference to migrants in an irregular situation; a recent government commission report concludes, however, that most labour law provisions, including those regulating the working environment, work hours and annual leave, would apply to migrants in an irregular situation without work permits.⁴⁵ In Greece, the Supreme Court recognised the labour rights of every worker in the country, whether in an irregular status or not, without any discrimination.⁴⁶ However, in several countries NGOs and trade unions interviewed noted that in practice the situation is often unclear.

The majority of interviewees in the FRA's research were engaged in undeclared employment, i.e. the employer did not pay social charges and taxes,⁴⁷ but this was not the case for all. At times, migrant domestic workers in an irregular situation may declare their work and pay welfare insurance. For example, in France two female migrants in an irregular situation from Sub Saharan Africa and South East Asia declared and paid their annual taxes for five and six years respectively, with a view to documenting their work relationship in light of possible regularisation in the future. Other migrants interviewed in France and the NGO Droits Devant have confirmed this practice.

43 See Inter-American Court of Human Rights, Advisory Opinion OC/18-03, 17 September 2003.

44 Article 2 of Polish Labour Code Dz. U. 1998 r. Nr 21 poz. 94. Similarly, according to information provided to the FRA by the German federal Ministry of Labour and Social Affairs in March 2011, irregular domestic workers are considered as employees under Germany labour law, regardless of their residence status.

45 See SOU 2010:63 (2010), pp. 182-188.

46 See Decision No. 1148/2004 about the rights of migrant workers irrespective of their legal status and Decision No. 1955/2007 about the rights of domestic workers, concerning the right to leave.

47 Some 15 persons also continued to work in an undeclared manner during an ongoing regularisation procedure, since the applicants were withheld a work permit during the processing of their application. However, as the experiences of some interviewees show, such procedures may last for several months or even years.

In order to limit irregular work in the domestic work sector, some countries have introduced service employment cheque systems (Belgium,⁴⁸ France,⁴⁹ Sweden⁵⁰). In 2006, the Chèque emploi service universel (CESU) scheme was set up in France. Under this scheme, individuals can purchase cheques from their local bank and use them to pay domestic workers. By using the CESU, employers are able to claim an income tax reduction of 50% of the sum spent on purchasing the cheques, up to a maximum of €1,830.

2.1. Fair pay

Charter of Fundamental Rights of the European Union

Article 23 (2)

Everyone, without any discrimination, has the right to equal pay for equal work.

Article 23 of the Universal Declaration of Human Rights (UDHR) guarantees to "everyone who works the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity [...]". This is reaffirmed with similar wording in Article 7 of the ICESCR.⁵¹ The ILO Discrimination (Employment and Occupation) Convention 1958 provides for equality of opportunity and treatment with respect to the terms and conditions of work.⁵² Paragraph 2 (b) (v) of Recommendation No. 111 specifies that all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of "remuneration for work of equal value".

48 In 2001, the Belgian government tried to formalise the domestic work sector by setting up the so-called "Titres services system" or "check-service system", a state-supported market for domestic work.

49 The system of the service employment cheque was initially introduced in France in 1993 and in 2005 was replaced by a modified "Universal service employment cheque" (CESU). The CESU allows a private household employer in metropolitan France to pay the social security contributions for a range of services carried out by a domestic service employee. See: www.cesu.urssaf.fr/cesweb/ces_ces1.pdf.

50 The so-called RUT-avdrag – a tax relief for domestic work. RUT stands for rengöring, underhåll och tvätt, meaning cleaning, maintenance and laundry.

51 The ICESCR has been ratified by all 27 EU Member States. Belgium, however, made the following interpretative declaration to the ICESCR: "With respect to article 2, paragraph 2, the Belgian government interprets non-discrimination as to national origin as not necessarily implying an obligation on States automatically to guarantee to foreigners the same rights as to their nationals. The term should be understood to refer to the elimination of any arbitrary behaviour but not of differences in treatment based on objective and reasonable considerations, in conformity with the principles prevailing in democratic societies."

52 ILO Convention No. 111, Article 1(3) ratified by all EU Member States.

Furthermore, according to Article 9 (1) of the ILO Migrant Workers (Supplementary Provisions) Convention No. 143, migrant workers who are irregularly employed and whose situation cannot be regularised should enjoy equality of treatment with migrant workers regularly admitted and lawfully employed with respect to rights arising out of past employment as regards remuneration, social security and other benefits.⁵³

Future income of an individual is also protected under Article 1 of Protocol No. 1 to the ECHR, where it has already been earned or where an enforceable claim to it exists.⁵⁴

Article 6 of the EU Employers Sanctions Directive (2009/52/EC) stresses the employer's responsibility to pay any outstanding remuneration to the illegally employed migrant as well as an amount equal to taxes and social security contributions. The agreed level of remuneration shall be presumed to be as high as the minimum wage unless proved otherwise. According to the same article, Member States have to provide for mechanisms to ensure that migrants in an irregular situation may either introduce a claim against their employer for any outstanding remuneration or may call on a competent authority of the Member State concerned to start procedures to recover outstanding remuneration.

The establishment of a minimum wage is a starting point for the implementation of the right to fair pay. All 10 countries studied have enacted provisions on minimum wages for domestic workers (or certain categories amongst them), although these may allow for the payment of portions of salaries in kind or provide for lower remuneration in the case of on-call service, such as time at night required to remain close to a sick person and to be ready to intervene where necessary.⁵⁵

All migrants interviewed for this research said that tasks and remuneration are defined in the initial agreement with the employer. While legally existing minimum thresholds may have an impact on the amount of remuneration negotiated, underpayment of salaries for the work done by migrants in an irregular situation is more likely to be the case. Several migrants in Sweden, Ireland, Belgium, France, Spain, Italy and Greece reported being paid far less than the legal minimum salary. As expressed by one woman working in Belgium:

"I worked from 15 to 20 hours a day, that's a lot! It was from 7 to 1am in the morning, as long as the woman wanted me to work. The salary was miserable; it was 400/500 euros per month. Each time, I heard her saying [...]: 'you earn a lot because you live in my house, you eat in my house and I pay you on top of that'. It was very hard, hard and humiliating."

31-40, Belgium, from Latin America

On occasion employees agree with employers on a fixed remuneration before the work has been done, and eventually receive less than agreed upon. This was reported by migrants and NGOs in Ireland, Sweden, Italy and Germany. A female migrant in Greece mentioned that additional tasks may be assigned at a later stage without being connected to any increase of pay.

In the case of live-in workers, accommodation and lodging costs are sometimes deducted from the salary. While this is not unusual, if the domestic worker is not properly informed, or if the deduction is high, this may create frustration, as pointed out by the organisation CCOO in Spain. A migrant in Poland was surprised to receive less than the agreed amount:

"Excuse me please, but you owe me more," and the woman replied: "you lived with us, used our phone line to call your home in Ukraine."

21-30, Poland, from eastern Europe

Similarly, a respondent in Ireland raised the fact that she was not paid for her overtime:

"One time I asked 'how about my excess hour?' and then they said 'no, you stay here, live in here, so that is enough'."

41-50, Ireland, from South East Asia

Even more seriously, instances of non-payment of salaries emerged from the interviews with migrants in all 10 countries. Respondents in Spain, Belgium, Greece and Italy reported that sometimes illegal status becomes a tool for not paying the migrant in an irregular situation:

⁵³ EU Member States that ratified the Convention include Cyprus, Italy, Portugal, Slovenia and Sweden. Paragraph 34(1)(a) of the accompanying Migrant Workers Recommendation, 1975 (No. 151) also refers to any severance pay normally due.

⁵⁴ See ECtHR decisions *Ian Edgar (Liverpool) Ltd v. the United Kingdom*, No. 37683/97, 25 January 2000 or *Wendenburg v. Germany*, No. 71360/01, 6 February 2003, as well as ECtHR, *Anheuser-Busch Inc. v. Portugal*, No. 73049/01, 11 January 2007, paragraph 64.

⁵⁵ ILO (2010), p. 43 provides an overview of existing ceilings of payment of salaries in kind in a number of countries. In Spain, the ceiling has been lowered to 30% of the total salary and the worker must be paid in cash not less than the amount of the minimum wage. See Article 26 (1) of the Workers Statute, available (in Spanish) at http://noticias.juridicas.com/base_datos/Laboral/rdleg1-1995.t1.html#a26. The article was amended by Law 35/2010 of 17 September 2010, available (in Spanish) at: http://noticias.juridicas.com/base_datos/Laboral/l35-2010.html. In Belgium, the ceiling for in-kind payment can be as high as 50 % for certain professions, including domestic workers. See Article 6(1) of the Law on the Protection of Workers' Remuneration (Loi concernant la protection de la rémunération des travailleurs of 12

April 1965, available (in French and Dutch) at: www.ejustice.just.fgov.be/cgi_loi/loi_a.pl. For an explanation of the law, see

"I was scared. Illegal. In fact, she was telling me she was doing a favour to me, to keep me at her place because I was illegal."

31-40, Belgium, from Latin America

The coping strategy for non-payment is essentially to leave the place and change employer, as illustrated in the following example:

"Recently there have been some problems at work, because one girl has not paid me for a month. I work and she does not pay. And I am just quietly thinking that I have to find something different."

41-50, Poland, from eastern Europe

Pay rises may be negotiated between the employer and the employee when the job lasts for several years. The first step is usually taken by the employer. The interviews show that migrants may be embarrassed to ask for higher pay particularly if they live with families to which they are attached. The employees themselves experience the ambiguous nature of domestic and care work, which takes place in the private sphere:

"It is always 7.50 Euros per hour. With this family I wouldn't dare asking to get a higher salary. I would not dare asking them to increase my wage, I am so attached to this family, they really helped me a lot."

31-40, Belgium, from Latin America

"I cannot say anything bad, everyone respects me, nothing, I do not feel like a maid here. That is important, not only the money."

61-70, Greece, from the Caucasus

2.2. Health issues and sick leave

Charter of Fundamental Rights of the European Union

Article 35

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

The right to sick leave is embedded in the more general right to health. Article 12 ICESCR stipulates that every person has the right to the highest attainable standard of physical and mental health. Acknowledging the abstract level of this right, the ICESCR clarified that as a minimum, states shall guarantee access to "essential primary health care"⁵⁶ and to "primary and emergency medical care"⁵⁷. Article 12 is not limited to the right to healthcare, but also includes a variety of underlying factors, such as nutrition or sanitary conditions, which impact on the state of health. It also includes safe and healthy working conditions.⁵⁸

This section describes first access to healthcare services in general and subsequently issues relating to sick leave. It is closely linked to the next section which deals with work accidents.

At a regional level, the European Social Charter (1961), as revised in 1996, includes provisions relating to healthcare (Article 13). Although the Charter was not initially intended to apply to migrants in an irregular situation, in *FIDH v. France* the Committee set up by the Charter concluded that legislation or practice which denies entitlement to medical assistance to foreign nationals within the territory of a State Party, even if they are there illegally, is contrary to the Charter.⁵⁹

There are marked differences in the national legal frameworks of EU Member States regarding access to healthcare for migrants in an irregular situation. In six of the 10 countries studied (Germany, Ireland, Poland, Hungary, Sweden and Greece) these persons cannot access public health care services beyond emergency care free of charge. Moreover, in Greece, Ireland, and Sweden they are also charged for the costs of emergency medical care.⁶⁰ In contrast, Belgium, France, Italy, and Spain grant migrants in an irregular situation access beyond emergency health care, although specific conditions may need to be fulfilled.⁶¹ Specific

⁵⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 3 to the ICESCR 1990, paragraph 10; General Comment No. 14 to the ICESCR 2000, paragraph 43.

⁵⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 19, The right to social security, paragraph 37.

⁵⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, paragraph 4.

⁵⁹ See European Committee of Social Rights, *International Federation of Human Rights v. France*, complaint No. 14/2003, decision of 8 September 2004 (concerning medical assistance).

⁶⁰ FRA, *Migrants in an irregular situation: Access to healthcare in the EU* (working title), forthcoming.

⁶¹ In France, for example, migrants in an irregular situation may access all basic healthcare services afforded to French citizens under a parallel administrative system, the Aide médicale d'État (AME), if they can prove that they have been residing in France for more than three months, provide an ID and an address, and have insufficient financial means.

national health policies exist in some of the countries covered, providing broader access to healthcare services to migrant children in an irregular situation or to prenatal and/or postnatal care.⁶² Moreover, national policies may coexist with specific programmes drawn up at a local level to respond to pressing public health issues.⁶³

Promising practice

Access to healthcare in Spain

In Spain, migrants in an irregular situation may access all services offered by the national health system under the same conditions as Spanish nationals and regular residents.⁶⁴ Migrants in an irregular situation may obtain an individual health card valid for two years. The card is issued after having registered with the local civil registry (which requires showing a valid identity document and confirmation of address). Children, pregnant women and specific risk groups are exempt from these requirements.

Nevertheless, migrants in an irregular situation face considerable barriers in accessing health services. As part of the wider study on migrants in an irregular situation, research done by the FRA on access to healthcare identified several challenges to receiving and providing healthcare: differences in access to healthcare granted migrants in an irregular situation across EU Member States, complicated access procedures, discretionary power of public and healthcare authorities, the cost of care, quality and continuity of care and fear of authorities.⁶⁵

“Then, when I was sick, a doctor [was] too expensive. Didn’t have so much money.”

41-50, Germany, from Latin America

Another major barrier is access to information on available general health services and more specific services for reproductive and sexual health.

“I will tell you something that my grandmother doesn’t know: I think I’m pregnant and this will be even more difficult for me here. I’m not very sure, and I don’t speak French and don’t know anything here, I don’t know a hospital, nothing....”

21-30, Belgium, from Latin America

According to some healthcare professionals there are health problems specifically affecting migrant domestic workers in an irregular situation. As an Italian general practitioner said:

“In our Ambulatory 3-5% of patients suffer from pathologies linked to the process of integration. We call these pathologies ‘pathologies of adjustment’: they are the problems linked to the psychological sphere that could become psychiatric diseases. Most of people who suffer from these pathologies are women who are alone here, who come from the Latin America or East Europe, and work as domestic workers. They often work precariously and in bad conditions, in a state of segregation, they are 40-50 years old and they suffer from diseases that are not compatible with their job. They suffer from anxiety, headache, insomnia. Here there was a psychologist who provided care to these patients, but now we haven’t enough funds. It would be useful to provide psychological care to migrants in an irregular situation, because psychologist services for them are difficult to offer.”

Turning more specifically to labour law issues, Article 25 of the UDHR stipulates that everyone has the right to security in the event of sickness.⁶⁶ The ECtHR has held that certain aspects of social security are protected under Article 1 of the first Protocol to the ECHR: if national law provides for the right to receive welfare benefits – whether conditional or not on the prior payment of contributions – that legislation generates a proprietary interest which is protected.⁶⁷ Unequal treatment – e.g. based on nationality – in the enjoyment of rights protected by Article 1 of Protocol No. 1 may raise issues under Article 14 of the ECHR.⁶⁸

62 See FRA, *Migrants in an irregular situation: Access to healthcare in the EU* (working title), forthcoming.

63 *Ibid.*

64 Law 4/2000 (as amended by law 2/2009) on the rights and freedoms of foreigners in Spain and on their social integration [Ley Organica 4/2000 sobre derechos y libertades de los extranjeros en Espana y su integracion social (11 January 2000)], Article 12.

65 FRA, *Migrants in an irregular situation: Access to healthcare in the EU* (working title), forthcoming.

66 In the ICRMW, the right not to be treated less favourably than nationals of the host State in respect of work conditions – including in relation to health issues – is listed among those rights which apply to all migrant workers, irrespective of legal status in the host country.

67 ECtHR, *Stec and Others v. United Kingdom*, No. 65731/01 and 65900/01, 12 April 2006, paragraphs 53-55.

68 ECtHR, *Andrejeva v. Latvia*, No. 55707/00, 18 February 2009; ECtHR, *Poirrez v. France*, No. 40892/98, 30 September 2003; or ECtHR, *Gaygusuz v. Austria*, No. 17371/90, 16 September 1996. See also FRA, ECtHR and Council of Europe (2011), pp. 107 ff concerning discrimination on the ground of nationality or national origin.

At national level, migrants in an irregular situation are in principle entitled to paid sick leave – for example in Belgium,⁶⁹ France,⁷⁰ Germany⁷¹ – although in practice claiming this right may be difficult.⁷²

As civil society actors pointed out, paid sick leave is usually not part of the initial deal with the employer. This appears also to be the case in the countries where the labour rights of migrant domestic workers in an irregular situation are generally recognised.

In the majority of cases, sick leave in the case of live-out workers means non-payment of the daily or weekly wage.

“Just once I had fever, I remember... she said ok, stay at home... but she didn’t pay me.”

31-40, Italy, from Latin America

“You cannot, if you are given a week of sick leave and you stay at home, they deduct you the week.”

31-40, France, from Sub Saharan Africa

In addition, in cases where the absence is prolonged, there is a risk that a replacement is found, which may result in job loss. Such a risk, combined with not being paid in case of absence, leads to persons going to work when they are sick, as was confirmed by several interviewees in France, Greece, Ireland, Italy and Sweden. Conversely, a few interviewees in Belgium, Greece and Italy confirmed that they can stay at home when they are sick, and that in such cases they are paid.

A major problem identified is that in many cases injuries or illnesses are not treated quickly and properly, as migrant domestic workers in an irregular situation do not have access to full healthcare services or avoid seeing a doctor for fear of being detected. This may lead to permanent disabilities or chronic illnesses. Migrants interviewed in Belgium, France and Sweden reported, respectively, permanent knee problems after falling down stairs at work, permanent back pain after a work accident, and continuous pain in a foot as a result of an accident while forced to do sports with the employer. Sometimes using strong medicine to endure the pain, workers continue in their jobs despite sickness or injuries:

“[The] doctor has told me: ‘You are sick. You will die immediately if you work so heavily.’ [...] I iron for hours, I clean for hours, I make food, I feed, do you understand? I must be calm the doctor told me. Because my head hurts every day, from neck. High pressure.”

61-70, Greece, from eastern Europe

2.3. Compensation for work accidents

ILO Migrant Workers (Supplementary Provisions), 1975 (No. 143)

Article 9 (1)

Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

According to Article 9 (1) of the ILO Migrant Workers (Supplementary Provisions) Convention No. 143, migrant workers who are irregularly employed and whose situation cannot be regularised should enjoy equality of treatment with migrant workers regularly admitted and lawfully employed with respect to rights arising out of past employment as regards remuneration, social security and other benefits. Recommendation No. 151, which accompanies Convention No. 143, more explicitly clarifies that a migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein, to benefits which may be due in respect of any employment injury suffered.⁷³

69 See for Belgium Act of 3 July 1978, Section 112.

70 Collective agreement, see footnote 66, Article 19.

71 In Germany, migrants in an irregular situation have the right of continuation of pay for sick workers if they have worked for the employer for four weeks. It has to be paid for a maximum of six weeks. See Ver.di (no date).

72 For example, in Sweden this is not clearly stipulated in the law and not covered by court cases. See SOU 2010:63 (2010).

73 Paragraph 34(1)(b). In accordance with national practice he/she should furthermore be entitled to reimbursement of any social security contributions which have not been given and will not give rise to rights under national laws or regulations or international arrangements. Where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants (paragraph 34(1)(c)). See also ILO (1999) paragraphs 306-308.

Another reference to equal treatment for non-nationals, although not specifically mentioning migrants in an irregular situation, can be found in Article 27 of the ILO Convention No. 121⁷⁴ on Employment Injury Benefits: “Each Member shall within its territory assure to non-nationals equality of treatment with its own nationals as regards employment injury benefits”. More generally, according to Article 9 of the ICESCR, everyone has the right to social security, including social insurance, thus also relating to the issue of compensation for work accidents.

In the countries covered, compensation for work injuries is usually paid by social insurance schemes. Only some countries have established policies to facilitate accident insurance for migrants in an irregular situation. As an illustration, in Germany all employers have to have accident insurance for their employees, which costs them €90 per year. The accident insurance is in the employer’s name and can therefore also be purchased for migrants in an irregular situation.⁷⁵

When migrants in an irregular situation are not insured, it becomes more difficult or nearly impossible to obtain compensation in cases of work accidents. The example of Belgium shows, however, that mechanisms to deal with this situation can be drawn up. In cases where the employer is not insured, compensation can be paid by the Belgian public Industrial Accidents Fund, provided the accident is reported within three years.⁷⁶

There are some typical occupational illnesses which are caused by the type of activities related to domestic work. These include: back problems, sciatica, herniated disc, allergies and eczema. A number of migrants interviewed in Belgium, France, Greece, Italy, Poland and Sweden reported work accidents which had happened either to them or to friends. Typically, accidents occurred while cleaning and concerned falling down from ladders, stairs or windows. One migrant reported severe back pain caused by caring work. Other respondents in France and Sweden mentioned the risks relating to the use of harmful chemical substances.

Often the interviewees have no choice but to accept risky working conditions, because they are unwilling to risk losing the job:

“Once I also had a problem with my back, due to [...] I used to carry very heavy carpets [...] But I worked anyway; I took painkillers and kept working. Sometimes I woke up bad, with strong body aches [...] I would call to say ‘I cannot come’, and they kept calling ‘oh, today I have so many things to do, couldn’t you come at least to stay here?’ Each time I would get angry, but due to the insistence I went to work.”

21-30, Belgium, from Latin America

Work accidents can lead to dismissal without any severance pay or compensation or, in the case of part-time work, to not being called again. This was reported by a respondent in Greece. A respondent in Germany reported the experience of her cousin as follows:

“They [...] gave her a tea, an aspirin, say ‘Get well soon’ and ‘good-bye’.”

41-50, Germany, from Latin America

Those interviewed stressed that migrants lack of status discourages them from seeking compensation. In one case, a trade union approached the employer, who then apparently paid:

“The employer said no, no, I do not know this, I do not know that. We sent [another letter] and he responded that he was going to pay.”

31-40, Sweden, from Latin America

In other cases, due to their irregular status, migrants do not seek medical help. This was the case for one domestic worker in Sweden who, despite fears of a broken rib following a fall from a ladder, stayed in bed for two days rather than seek medical help.

2.4. Right to rest periods

Charter of Fundamental Rights of the European Union

Article 31 (2)

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 24 of the UDHR acknowledges that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.⁷⁷

⁷⁴ In the EU, Belgium, Cyprus, Finland, Germany, Ireland, Luxembourg, Netherlands, Slovenia, Sweden have ratified ILO Convention No. 121.

⁷⁵ Ver.di (no date), p. 3.

⁷⁶ O.R.C.A. (2009), p. 63. In case of an accident the migrant worker can also access the procedure for Urgent Medical Help.

⁷⁷ In the ICRMW, such a right is included among those of all migrant workers including those in an irregular situation. See Article 25 (1) (a).

Article 31 (2) of the Charter is based, among other documents, on Article 2 (5) of the revised European Social Charter,⁷⁸ pursuant to which the Parties undertake “to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest”.

In all the countries surveyed there are regulations about maximum working hours, the remuneration of overtime and/or presence hours. As an illustration, the maximum hours of work are set at 40 hours per week in Poland and Spain (although hours of presence may be agreed for which no limit is set).⁷⁹ In Italy, the collective agreement is very detailed and provides for eight different categories of domestic work. Hours of work per week and rest periods are specified. Maximum weekly hours are 54 hours for live-in and 40 hours for live-out domestic workers.⁸⁰

There was great variety as regards effective weekly working hours among the respondents. While some had one or two days off per week, others were working non-stop or with a short break on Sundays. Working hours per day also differed. A live-in worker in Ireland reported working for 12 hours per day for five days. Another woman in Belgium reported working 10 hours a day seven days per week. Working days are usually shorter for live-out cleaning workers, but here, too, working hours can be excessive, as reported by one migrant from Spain who was expected to work non-stop and also over the weekend to clean a villa.

One of the issues that arises with live-in domestic workers is that of working hours versus on-call hours. The worker may not be working more than eight-to-ten hours per day but may be expected to be ‘available’ 24 hours a day, trade unions in Germany, Greece and Italy said.

A few respondents in charge of caring for older persons in Greece and Italy underlined that the person they care for wakes up regularly at night and that therefore it is difficult to define their exact working hours.

⁷⁸ It also builds on point 8 of the Community Charter of the Fundamental Social Rights of Workers. The Community Charter, adopted on 9 December 1989 by a declaration of all Member States, with the exception of the United Kingdom, established the major principles on which the European labour law model is based and shaped the development of the European social model in the following decade.

⁷⁹ Polish Labour Code, Article 129(1); Spain, Royal Decree 1424 /1985.

⁸⁰ Italy, 2007 collective agreement, Article 15. It should be mentioned, however, that the national regulatory framework (Article 8, Law 339/1958) does not regulate maximum working hours but minimum resting periods fixed at eight consecutive hours a night (Sarti 2005).

Newcomers are often discouraged from leaving the house by the lack of legal status. They continue, instead, to work and have limited contact with the outside world. The Polish NGO SWS indicated that migrants do not know the language or the neighbourhood and they are afraid of being stopped and deported, concerns that were also voiced by migrants interviewed.

The Greek organisation ‘The land of the stork’ reported that in some cases employers ask the live-in migrant worker not to take their day off but receive money in compensation. While this may be seen as a ‘fair deal’ by some migrants it breaches labour law and may lead to severe psychological and physical stress for the worker, as emphasised by some migrant workers in Italy and Poland, and the NGO ACLI colf from Italy. One worker in Poland stressed that she feels overly confined if required to stay at home all the time. Another worker in France expressed her frustration as follows:

“She told me that she will pay me well, but I cannot, that is impossible, I am a human being. I can work Monday until Friday, but I want to have 2 days of rest. But they do not think about it, they do not consider that we are human beings like they are. She thinks because we are Sans Papiers, we are nearly slaves. No! She said that her mother is very nice, but I told her that it does not matter if her mother is nice or not”.

51-60, France, from North Africa

Long working hours, the lack of rest periods at weekends or daytime breaks and social isolation at the home of the employer over sometimes very long periods of several years, especially among live-in domestic workers, may cause severe fatigue and depression.

“I: I had no days off, I was working also on Sunday and on Saturday.

P: You did 4 years like that?

I: Yes.

P: And you did never go out to take a walk, or [...]

I: When I went out I did it just to buy a phone card to call my family back home. But I didn’t walk around, to eat an ice cream, to go to McDonald’s or things like that [...] That’s why I tell you that I’m tired. If I see my past and my present I see the same things [...] And I start feeling worse [...] My legs hurt, my back hurts, and I’m always bleary eyed [...] because I do not sleep enough.”

31-40, Italy, from Latin America



As with any other worker, migrants in an irregular situation employed in domestic work need to have time off. Paid holidays are usually not available for domestic workers employed as live-outs and paid by the hour or the day. As a respondent noted:

“On the days you work you have to earn also for the days that you do not work.”

41-50, France, from South East Asia

In principle, migrant domestic workers in an irregular situation are entitled to paid holiday in France,⁸¹ Germany⁸² and Ireland,⁸³ while the situation is legally unclear in the other countries. In practice, however, much depends on the initial arrangement between the employer and the worker. In France – where an entitlement exists – as well as in Sweden – where the situation is unclear – some migrants interviewed noted that only those with a regular status received paid holiday.

Live-in workers are often asked to accompany the family on holidays and hence have a working holiday instead of a real one.

“But before, the time I came, in 1993, we were just working, without any summer holiday. You work, you go with them to the island, you come back and then you come back and start working again. Without bonus, without nothing. Just continuously working like that.”

41-50, Greece, from Sub Saharan Africa

Or they are simply not allowed to take holidays.

“I do not have the right to take my holidays like I want to, because I have to be there 24 hours a day for her mother at her mercy. And even when I found her a replacement so that I could leave on holidays, even that posed a problem and her daughter came to see me that her mother is not satisfied that I leave 3 weeks on holidays.”

31-40, France, from Sub Saharan Africa

In other cases migrant domestic workers in an irregular situation may stay at home and keep working, albeit at lighter tasks, while the family is away. Such a situation was reported by respondents in Belgium and Poland. On the other hand, the NGOs Rajfire from France, FIM

from Germany, ORCA from Belgium, as well as migrants in France, Germany and Sweden, said that it is quite common that when the employer goes on holiday they give holiday to the domestic worker too, albeit unpaid.

2.5. Lodging for live-in workers

Charter of Fundamental Rights of the European Union

Article 31 (1)

Every worker has the right to working conditions which respect his or her health, safety and dignity.

This section deals with one issue relating to safe and decent working conditions which emerged particularly from interviews with live-in domestic workers, namely living arrangements.

The UDHR (Article 25.1) and the ICESCR (Article 11.1) enshrine the right of everyone to an adequate standard of living. This right includes, but is not limited to, the right to adequate food, clothing, housing, and the continuous improvement of living conditions. The right to adequate housing is defined by the CESCR as “the right to live somewhere in security, peace and dignity”. In this respect, adequate housing is not to be interpreted as simply a roof over one’s head, but rather as the right to a shelter which provides sufficient privacy, space and security.⁸⁴

A number of interviewees in France, Germany, Ireland, Italy and Poland reported stress-related psychological or psychosomatic problems such as ulcers, anorexia, sleeplessness, nervousness, migraines and memory problems. These were caused by insults or bad treatment by their employers, and by a lack of privacy and long working hours in the case of live-in workers. However, the permanent situation of insecurity resulting from their struggle for survival was also a contributing factor, such as the stress of trying to live undetected and the fear of being expelled.

⁸¹ France, collective agreement, see footnote 66, Article 16.

⁸² According to information provided to the FRA by the federal Ministry of Labour and Social Affairs in March 2011, irregular domestic workers are considered as employees under Germany labour law, regardless of their residence status. Hence, the 1963 federal Law on Leave (*Bundesurlaubsgesetz*, as amended) which provides for a minimum of 24 leave days a year (Section 3) is also applicable to migrants in an irregular situation employed in domestic work.

⁸³ Ireland, Statutory Code of Practice.

⁸⁴ Committee on Economic, Social and Cultural Rights, General Comment No 4. The right to adequate housing (Sixth session, 1991) UN Doc. E/1992/23 (Art.11 (1)) (1991), paragraph 7.

In France,⁸⁵ Germany,⁸⁶ Ireland⁸⁷ and Italy⁸⁸ clear legal provisions as regards the living conditions of live-in domestic workers are set forth in law. Provisions in Belgium and Spain are formulated in more general terms.⁸⁹ In Belgium, Italy and Spain, trade unions and NGOs noted that food and lodging standards are not adequately regulated, stressing that there is no obligation for the domestic worker to have her own room, and its conditions and size are not defined. No specific provisions regulating lodging standards were found to exist in Greece, Hungary, Poland and Sweden.

Domestic workers in Greece, Italy and Hungary, gave testimony, respectively, of having slept on a living room sofa while family members watched television; sharing a small bedroom, sometimes among four domestic workers; or sleeping in the room of the children they looked after.

Even where provisions exist, lodging conditions in practice may still be completely inappropriate as the following two examples from Ireland and Spain illustrate:

"I have my own room which I shared with [...] the third child [who] was about one and a half years by the time I arrived. I was sleeping with him in my bed."

31-40, Ireland, from Sub Saharan Africa

Lodging conditions may interfere in the domestic worker's private sphere and overexpose women to the risk of sexual harassment or abuse.

"I did not have my own room, I slept in the living room so I was scared [...]; [in] summer, I was so hot and maybe that man [...] saw me in that living room sleeping."

31-40, Spain, from Latin America

Conclusions

As any other worker, migrants in an irregular situation are entitled to safe and decent working conditions, including fair pay, compensation for work accidents and rest periods. Guarantees to ensure this may be provided for in national law, but their applicability to domestic workers or to those in an irregular situation may not be evident.

At the same time, the research suggests that social considerations often override the legal framework, and that the possibility to benefit from certain rights depends on the initial agreement made between the employer and the employee. The existence of a clear legal framework concerning tasks, salary (including overtime pay), sick pay and sick leave, holiday pay and awareness by employers of their duties under the law would better enable the initial agreement between employer and worker to respect basic labour law standards.

FRA opinion

A legal framework applicable to all domestic workers, including those in an irregular situation, would further legal clarity on issues such as minimum pay, including a maximum ceiling for payments in kind for board and lodging; sick leave; compensation for work accidents and rest periods, as well as adequate accommodation standards. Such a legal framework should provide for the inspection of the workplaces of domestic workers to ensure safe and decent working conditions. Employers should be made aware of the obligation to treat their workers in accordance with existing labour law standards. Sanctions and penalties against employers responsible for abuse or exploitation of domestic workers should be set forth in law.

85 Article 21 of the collective agreement requires employers to provide "decent" lodgings, which must include a window and suitable lighting, appropriate heating and sanitary installations or access to shared sanitary installations which the employee must keep in good condition. See ILO (2010), p. 45. In addition, the French Criminal Code criminalises working and living conditions incompatible with human dignity. See Articles 225-14 and 225-15 of the Criminal Code.

86 According to Sections 617 and 618(2) of the German Civil Code the employer has to make the necessary living and sleeping arrangements, as well as the provision of food and work and leisure time, that are required with a view to the health, morality and religion of the employee. This also applies to irregular domestic workers as confirmed to the FRA by the federal Ministry of Labour and Social Affairs in March 2011.

87 Section 5.2.2 of the Code of practice provides that the employer shall provide a private, secure room with a bed (ILO 2010, pp. 45).

88 The Italian collective agreement includes an obligation for the employer to provide, in case of live-in arrangements, healthy and sufficient food, a working environment which does not affect the work physical and moral integrity, and an accommodation that guarantees the dignity and privacy of the employee (Article 34).

89 In Belgium, Article 110 of the 1978 law on labour contracts requires employers to provide appropriate clothing and decent hygienic and safe working conditions as well as basic comfort for domestic workers (available in French at www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1978070301&table_name=loi); in Spain, according to Royal Decree 1424/1985, Article 13, the owner of the family house is obliged to take care, in order to assure that the work is developed under properly conditions of security and hygiene. The serious deficiency of these conditions it would be a justified cause of resignation of the worker.

3

Unjustified dismissal



Charter of Fundamental Rights of the European Union

Article 30

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

The Termination of Employment Convention, 1982 (No. 158) requires a valid reason for the termination of employment.⁹⁰ However, the convention allows for the exclusion of certain categories of workers from its scope. These include categories for which it was considered difficult to extend such protection, such as workers employed in small or family enterprises, managerial staff, agricultural workers, apprentices, seafarers and domestic workers.⁹¹

In some countries, notably France and Spain, domestic workers can only be dismissed with a valid reason, whereas in others, including Belgium, Germany, Ireland and Italy the employer can terminate the contract without having to provide valid reasons.⁹² Particularly in live-in situations, not getting on well with the employee may often be seen by employers as a valid reason. Termination of a work contract in order to comply with immigration law would also constitute a valid reason.

Where no valid reasons are required, domestic workers must normally be given advance notice before the termination of their employment.⁹³ Notification is also required in France and Spain in cases of dismissal for valid reasons.⁹⁴ Notification periods may vary depending on the length of service.⁹⁵

In four of the countries reviewed, employers are required to pay severance pay.⁹⁶ In France, for instance, Article 13 of the collective agreement sets out the employee's right to severance pay of not less than one month's salary in cases of unjustified dismissal.⁹⁷ In Belgium, when an employee is incapable of working for more than six months due to an illness or accident, the contract may be terminated with severance pay.⁹⁸ In principle, in those countries where it is provided, the right to prior notification and/or the claim for severance pay is also applicable to migrants in an irregular situation.

Employment in the domestic work sector can either be fairly stable, with some interviewees staying with the same employer for up to three years, or quite volatile, with others changing employer every few months. The reasons for changing employers are many and include resignation and dismissal, but also temporary replacement during home leave, which

⁹⁰ ILO Convention No. 158 on Termination of Employment (1982). The Convention has been ratified by one third of EU Member States: Cyprus, Finland, France, Latvia, Luxembourg, Portugal, Slovakia, Slovenia, Spain and Sweden.

⁹¹ See ILO General Surveys, 1985-2010, General Survey on Protection against unjustified dismissal (1995), Scope of the instruments as regards individuals. The ICRMW lists non-discrimination in respect of termination of employment among those rights applicable also to migrant workers in an irregular situation. See Article 25 (1).

⁹² ILO (2010), p. 54.

⁹³ See for Belgium, Germany, Ireland and Italy ILO (2010), p. 54.

⁹⁴ ILO (2010), p. 54.

⁹⁵ As an illustration, in France, Article 12 (a) (2) of the collective agreement establishes a notification period from one week to two months depending on length of service (ILO, 2010, p. 55). In Ireland, notice periods range from one week for an employee with less than two years of continuous service to eight weeks for an employee with 15 years or more (ILO, 2010, p. 55).

⁹⁶ This is the case of Ireland, Italy (when dismissed without valid reasons), France and Spain. See ILO (2010), p. 54.

⁹⁷ ILO (2010), p. 54.

⁹⁸ Section 116, Labour Contracts Act, 3 July 1978.

may become permanent if the replacement is considered a better performer.⁹⁹

Migrants and civil society organisations mentioned a number of typical grounds for dismissal. Some relate to the nature of the work, such as the departure of the employer or the end of caring needs for children or older persons. Others are linked to expected performance. These included work accidents or health problems deriving from the work, pregnancy or demands for a salary increase or time-off. Migrants interviewed in Greece and France reported that severance pay as well as payment of any other pending remuneration is normally out of the question.

Migrants in an irregular situation reported that they either have to continue to work without sick leave despite a serious illness, or risk dismissal.

“The other day I took 2 days of sick leave although I had a whole week [prescribed by doctor] and she called me to come to work, otherwise she would look for someone else.”

31-40, France, from Sub Saharan Africa

In other cases, migrants had a work accident or a health problem, for instance a severe pain in the back or knee, or a skin problem, and were no longer able to work. In the cases of respondents in Belgium, France and Italy, employers did not cover the cost of treatment and eventually dismissed the migrant.

“One day I started feeling a really bad pain at my back [...] it was sciatica [...] The doctor told me that I had to rest for a while [...] I told it to the lady and [...] she became really angry. She fired me.”

51-60, Italy, from Latin America

Alternatively, the migrant continued working while trying to get medicines and treatment by herself. Such cases have been documented by NGOs and/or are referred to by migrants in Spain, Sweden, Belgium, Poland, Greece, Italy and Germany.

The consequences of dismissals for work accidents are greater when the domestic worker has a family which is directly dependent on her:

99 As an employer in Greece said: “I feel very bad that I change women [domestic workers] for my mother all the time; I have changed five in the last three years. Now that they get on so well with each other [the replacement and the mother] I do not want to let S. [the replacement] go just because the other one came back from Georgia. My mum does not have a long life to live; I want her to live it well” (cited in Maroukis, 2009). This was also confirmed by migrants interviewed by the FRA in Spain and Hungary.

“She fell in the stairs, she slipped. She fell badly and broke her leg, at multiple places because of the stairs. And the employer, he dropped her at the hospital. That’s what he did. That’s all he did, nothing more. And she has children here. Her situation is really difficult. With the people from the church, we try to help her but it is not simple.”

31-40, Belgium, from Latin America

Asking for a better wage in response to increased tasks and longer hours of work does not happen often. Respondents in France and Italy reported that their main strategy is to look for another job and/or resign without notice. The research documented cases in France and Spain when migrants in an irregular situation did try to negotiate with their employer. However, they can risk dismissal without compensation or payment for previous weeks or months of work.

As highlighted by both NGOs and the migrants interviewed, pregnancy is also a common ground for an abusive dismissal. Respondents in Belgium, Italy and Ireland asserted that starting a family, pregnancy and giving birth constitute a major problem for migrant domestic workers in an irregular situation.¹⁰⁰ Migrants interviewed in Belgium and Germany said that they normally worked until the end of their pregnancy and restarted immediately after the birth.

While some remain with their employers and find a replacement worker during unpaid maternity leave, as reported by the Greek organisation ‘Network for aid and support of migrant women’ (DesMe), others lose their job. This is a risk particularly for full-time live-in care employees who also lose their accommodation following childbirth, as confirmed by the Italian NGO Nefida. The Italian NGO Gruppo Donne Internazionale observed that this may lead to more frequent abortions among live-in care workers.

The experience of a child carer and household employee from the Philippines who gave birth to two children in Ireland is illustrative.¹⁰¹ She maintained irregular status for six years as her employers falsely promised to apply for a work permit and regularise her status. Her employers dismissed her at the end of both her pregnancies. After the birth of her second child she made a living as a part-time cleaner, a caregiver for the elderly and a babysitter for several employers. More restrictive conditions for work permits¹⁰² and for the

100 On the general coverage of domestic workers by maternity leave legislation, see ILO (2010), p. 64.

101 Similar experiences were also reported by a migrant in Belgium and the Italian NGO Nefida.

102 Since June 2009 no new work permits are issued for domestic workers including carers in the home and child-minders (see www.deti.ie/labour/workpermits/revise-work-permit-arrangements%20-%20june%202009.htm).

regularisation of parents of Irish-born children,¹⁰³ broken promises by employers and her ignorance of regularisation possibilities meant she was unable to regularise her status. This was exacerbated by fears of being detected. She avoided attending post-natal check-ups for fear of expulsion and was deprived of any welfare benefits for her children. Recently, with the help of a public social worker she obtained a social security (PPS) number and access to a public kindergarten.

FRA opinion

In the case of dismissal, effective steps should be taken to remove any practical obstacles that prevent migrants in an irregular situation from claiming compensation or severance pay from their employer, when these are foreseen for migrants in a regular situation.

¹⁰³ Through the Irish Born Child (IBC) scheme non-Irish parents (including undocumented parents) of children born in Ireland before 1 January 2005 could apply for permission to remain. See www.mrci.ie/know_rights/legalstatus_residency.htm. Children of non-Irish national parents born after January 2005 are only entitled to Irish citizenship if at least one parent has been legally resident in Ireland for a minimum of three out of the four years immediately preceding the child's birth. If a person is eligible they have to apply for citizenship. It is not granted automatically. Such policy change was also highlighted by the Brazilian Association and the Family resource Centre in Gort, and several migrants interviewed in Ireland.

4

Freedom of association and right of collective bargaining



Charter of Fundamental Rights of the European Union

Article 12

Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

The UDHR states that everyone has the right to freedom of peaceful assembly and association (Article 20). Pursuant to Article 8 of the ICESCR, everyone has the right to form trade unions and join the trade union of his or her choice.¹⁰⁴

The right of workers and employers, without distinction whatsoever, to establish and join organisations or trade unions is also set forth in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).¹⁰⁵ The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) provides protection against prejudice and dismissal of a worker by reason of union membership.¹⁰⁶ The ILO Committee on Freedom of Association has confirmed that the right to join trade unions is also applicable to migrant workers in an irregular situation.¹⁰⁷

At the EU level, Article 12 of the Charter contains the right to freedom of association at all levels. In addition, Article 28 of the Charter enshrines the right to negotiate and conclude collective agreements.

Article 12 of the Charter has to be read in light of Article 11 of the ECHR which states that “everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests”. The right to form and join trade unions is an aspect of the wider right to freedom of association set out in Article 11 ECHR.¹⁰⁸

In the context of the obligation for Member States to provide for effective mechanisms through which irregular third-country workers can lodge complaints against their employers, the EU Employers Sanctions Directive (2009)¹⁰⁹ obliges Member States to ensure grounds for third parties, such as trade unions or NGOs, to assist migrants in an irregular situation in complaints procedures (Article 13).

Trade unions can be, and indeed are, a key vehicle for migrants in an irregular situation to claim their rights. Migrants in an irregular situation are allowed to join and/or form trade unions in all of the EU Member States studied. In particular, France recognises the right of everyone to form and join trade unions in the collective agreement. In Ireland, section 5.12 of the Statutory Code of Practice reminds employers that, in accordance with

¹⁰⁴ The only restrictions that may be placed on the exercise of this right must be prescribed by law and be necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

¹⁰⁵ ILO Convention No. 87 has been ratified by all 27 EU Member States.

¹⁰⁶ ILO Convention No. 98 has been ratified by all 27 EU Member States.

¹⁰⁷ ILO Report No. 327, Case No. 2121.

¹⁰⁸ See, for example, ECtHR, *Gustafsson v. Sweden*, No. 15573/89, 25 April 1996.

¹⁰⁹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ 2009 L 168, pp. 24-32, (Employers Sanctions Directive).

Irish law, an employer may not restrict an employee's right to trade union membership even if the employee is a migrant in an irregular situation.¹¹⁰ Migrants in an irregular situation also have the right to join and form trade unions in Italy, Belgium and Germany.

In Spain, the 2000 Aliens Act¹¹¹ limited the right of migrant workers in an irregular situation to join trade unions and to strike. Following a decision of the constitutional court¹¹² (Tribunal Constitucional) in December 2007, this provision was held unconstitutional and the law was amended in 2009.¹¹³ Irregular immigrant workers now have the same rights to join trade unions and to strike as Spanish citizens.¹¹⁴ In Hungary, migrants in an irregular situation can join trade unions, although they play only a marginal role in practice, partly due to the absence of trade unions covering this sector.¹¹⁵ In Sweden, the law is still unclear on the issue of migrants in an irregular situation, but no explicit prohibition exists and they can be members of one of the trade unions interviewed.¹¹⁶ According to the Labour Centre Athens, in Greece migrants in an irregular situation participate in trade unions even if there is no such explicit right.¹¹⁷

Lobbying and campaigning for the regularisation of migrants in an irregular situation in general, and those employed in the domestic sector in particular, is common amongst trade unions in the EU Member States studied, including Belgium, France, Germany, Greece, Ireland, Poland and Sweden.

Practices used can be quite innovative, such as using high-profile employers in advocating for regularisation.¹¹⁸ Raising the profile of domestic work

and speaking of its value in the host economies and societies is a strategy followed by several organisations. These highlight that migrants in an irregular situation fulfil a number of tasks for which there is a need. They make an important social contribution in big cities.¹¹⁹ Working on the social legitimacy and visibility of the value of domestic work is equally significant to establish inclusive employment laws, as stressed by the Migrant Rights Centre Ireland:

"It's not just about rights, [in Ireland] we do have employment laws that apply to migrants in an irregular situation... a lot of the problem comes into the respect and the dignity, people do not respect the workers so they do not afford them their legal rights and entitlements."

In France, the trade union CGT as well as the associations Droits Devant and Femmes Égalité issued cards for participants in a major Sans-Papiers-strike movement.¹²⁰ These cards not only helped migrants in an irregular situation to foster a collective identity, but also to represent their interests.

Specific actions and practices targeting the rights of migrants in an irregular situation employed in domestic work include NGO advocacy efforts for the regulation of long working hours, particularly required hours of presence or the payment of overtime.¹²¹

Sometimes NGOs and advocates for migrant workers in an irregular situation employed in the domestic work sector try to achieve convergence with the main labour law regime. Aligning remuneration of migrants in an irregular situation to the minimum salary foreseen for domestic workers is one such example.

FRA opinion

Migrant workers in an irregular situation should have the possibility to join trade unions and to participate effectively in their activities. Trade unions and NGOs should be supported to undertake awareness-raising and outreach activities targeting migrants employed in domestic work, as well as employers and the general public.

¹¹⁰ ILO (2010), p. 84.

¹¹¹ Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and on their social integration.

¹¹² STC 259/2007.

¹¹³ Law 2/2009 of 11 December 2009.

¹¹⁴ Law 4/2000 Article 11.

¹¹⁵ Information received by the FRA from the Ministry for National Economy of Hungary in March 2011.

¹¹⁶ The question of whether irregular immigrants have a right to join trade unions and to collective bargaining is not touched upon in the law and has never been tried in court. The recent government commission report SOU 2010:63 is forthcoming on the particular topic of trade union rights. However, in the view of Swedish union lawyer Samuel Engblom, this does not mean that a court could not come to the conclusion that the relevant law applies to irregular immigrants. See Engblom, S., *Arbetsrätten måste gälla även irreguljära migranter*, Dagens Arena, 1 December 2010.

¹¹⁷ No such right is included in the Law 3386/2005 Codification of legislation on the entry, residence and social integration of third-country nationals on Greek territory.

¹¹⁸ The French Association Rajfire referred to a campaign in Geneva that involved a petition of employers declaring "I employ a Sans Papiers, I demand her regularisation", a petition that was signed by prominent people, artists, and politicians.

¹¹⁹ This was expressed among others by the Association Femmes Égalité from France as well as MRCI from Ireland and CFDT – SSPE from France.

¹²⁰ A major strike movement of Sans Papiers migrant workers was launched under the leadership of the trade union CGT first in 2008 and continued in October 2009 for 9 months involving more than 6,000 Sans Papiers workers, among them also a smaller group of around 250 domestic workers. The strike was supported by 11 trade unions and migrant rights associations, as well as employer organisations ("group of 11") which achieved a change in the regularisation criteria for migrant workers in an irregular situation in negotiations with the government.

¹²¹ The NGO KASAPI in Greece is running the "International Campaign for the Rights and Recognition of Domestic Workers" (8-HR Campaign) with the support of other trade unions in Greece and abroad.

5

Access to justice



This chapter outlines some of the major obstacles faced by migrant workers in an irregular situation when they seek redress, and presents examples of effective remedies, with a focus on civil society initiatives.

Remedies against labour law violations as well as against serious forms of abuse and exploitation will be reviewed. In addition, sub-sections are dedicated to rights awareness and legal assistance.

5.1. Remedies for labour law violations

Charter of Fundamental Rights of the European Union

Article 47

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. [...]

According to Article 8 of the UDHR, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her by the constitution or by law. Article 26 of the ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.¹²²

¹²² In the ICRMW equality before courts is included among those rights which are to be afforded to every migrant worker, independent of his or her legal status. See Article 18.

Article 9 (1) and (2) of the ILO Convention No. 143 on Migrant Workers further stipulates that a migrant worker in an irregular situation shall have the possibility of presenting his or her case to the responsible body, either in person or through a representative.¹²³

The Committee established by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has stressed that the right to equality before the law and the right to benefit from the due processes of the law applies to all women migrant workers.¹²⁴

Article 47 of the Charter¹²⁵ is based on Articles 6 and 13 of the ECHR. According to Article 13, everyone whose rights and freedoms set forth in the ECHR are violated should be provided with an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity.¹²⁶

In the light of the particular vulnerability of domestic workers to labour exploitation and violations of their

¹²³ See also Article 34(2) of the accompanying Recommendation No. 151 (1975).

¹²⁴ See UN Committee on the Elimination of Discrimination against Women (2008), General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, paragraph 6.

¹²⁵ The Court of Justice of the European Union enshrined the principle in its judgment of 15 May 1986 (CJEU, C-222/84, Johnston, [1986] ECR 1651, 15 May 1986); see also CJEU, C-222/86, Heylens, [1987] ECR 4097, 15 October 1987, and CJEU, C-97/91, Borelli, [1992] ECR I-6313, 3 December 1992.

¹²⁶ See also Recommendation Rec(2004)6 of the Committee of Ministers to member states of the Council of Europe on the improvement of domestic remedies, which "encourages member states to examine their respective legal systems in the light of the case-law of the Court and to take, if need be, the necessary and appropriate measures to ensure, through legislation or case-law, effective remedies as secured by Article 13."

rights at work, the question of access to legal redress and protection is crucial. The existence of effective remedies depends not only on the accessibility of institutional justice systems to migrants in an irregular situation, but on the support that civil society actors provide. Adequate remedies should also include compensation, especially for victims of forced labour, with a view to avoid subjecting victims to new violations.

There are various ways to resolve labour law disputes.¹²⁷ These may include conflict mediation, civil courts, specialised labour courts, labour inspectors, equality and anti-discrimination bodies¹²⁸ and, for certain cases such as forced labour, criminal courts. By contrast, extra-judicial alternative conflict mediation procedures at company level, for example work councils, do not normally exist for domestic workers.¹²⁹

Labour inspectors usually play a secondary role, as their power to carry out inspections in private homes is limited. They can generally intervene only after employees report infractions. Court orders or similar permissions are usually required to conduct checks inside private households. Efforts are, however, underway in some countries to advocate for a greater role for labour inspectorates. To be an effective tool to address labour exploitation or indecent working conditions, labour inspectors should not be required to collaborate with the immigration authorities.

Promising practice

Campaign for inspection of private homes

The Domestic Workers Action Group (DWAG) of the Migrants Rights Centre in Ireland campaigned to have the National Employment Rights Authority carry out inspections in the private home sector, similar to those conducted in the hotel, catering and construction sectors. In November 2010, the National Employment Rights Authority (NERA), Ireland Labour Inspectors carried out a pilot campaign of inspections targeting domestic workers employed in private homes.

According to the civil society organisations interviewed, in Belgium, Spain, France, Ireland, Germany and Italy, migrants in an irregular situation are entitled to raise claims with the

courts and access a procedure of reconciliation. They can also be successful. However, fear of being reported to immigration authorities often denies this right in practice.

The trade union Ver.di, the NGOs Verikom and Respect in Germany, and the French trade union CFDT SSPE interviewed for this research describe how they managed to win legal cases, and have employers retroactively compensate migrant employees in an irregular situation for several years of underpayment. For example, through the help of an association, a domestic worker in an irregular situation in Spain took a case of non-payment of salary to court and won. The employer was forced to pay salary for 12 days of work.

Migrant domestic workers in an irregular situation experience numerous obstacles to accessing remedies. Some of these obstacles may affect all domestic workers regardless of legal status. Others are more specific, such as the particular obstacles faced by those employed by diplomats, as diplomatic immunity usually precludes the ability of a worker to enforce his or her rights before a court. This issue could be the subject of further research.

Other obstacles, however, are closely linked with a migrant’s irregularity. Three such obstacles are discussed below.

Fear of expulsion

Effective access to remedies is closely linked to immigration control and enforcement policies, and in particular to the risk of being reported to police or immigration authorities. Intimidation by employers or mistrust of police and institutions are obstacles hindering the reporting of labour law violations.

Practices differ greatly depending on the procedure and/or institution involved. However, some general trends can be identified.

Access is usually better guaranteed where labour justice procedures are independent of the immigration enforcement system. This means that the reporting of migrant plaintiffs in an irregular situation to immigration authorities is not mandatory. Civil society interviewees (ACCEM from Spain, MRCI and the trade union ICTU from Ireland, the trade union SAC from Sweden, GISTI and the trade union CFDT from France) said that the risk of being reported to immigration authorities was low in Spain, Ireland, Sweden and France¹³⁰.

In contrast, the civil society organisations Caritas and Gruppo Donne Internazionale in Italy, as well as the

127 For a general discussion on access to various national, European and international redress mechanisms, see FRA (2011).

128 Though racist and discriminatory experiences by abusive employers do occur, as reported by migrants in Belgium, France, Italy, and Hungary, none of the interviewees ever mentioned having approached an anti-discrimination institution.

129 On alternative dispute resolution in EU comparison, see Eurofound (2010).

130 See also GISTI (2009) and Sohler (2009, p. 2) on penal sanctions for irregular residence.



Network for aid and support of migrant women (Des Me) and the Centre of Athens Labour Unions in Greece, considered that labour court procedures are less or hardly accessible in systems where such guarantees do not exist, as is the case in Italy, Belgium and Greece. In Italy, where recent policy changes have criminalised migrants in an irregular situation and enforced expulsion, migrants interviewed felt increasingly threatened with expulsion or punishment for staying irregularly.¹³¹ In Greece, public authorities, including labour inspectors, cannot admit claims from migrants in an irregular situation. In practice, access to labour inspections may be possible on a case-by-case basis if the migrant in an irregular situation is supported by a trade union. In such a case, the risk of expulsion would be low.

Promising practice

Legal assistance to migrants in an irregular situation

The German trade union Ver.di (United services union) offers legal assistance and representation for migrants in an irregular situation in labour court procedures. They first start a mediation procedure with employers. If there is no settlement they may assist migrants in an irregular situation – assuming they are members of the trade union – with trade union lawyers in a labour court procedure. This is a risk for claimants as their residence status might be reported to the foreigners' office. The judges are free to check the residence status of a foreigner in the labour court procedure. It is also possible that migrants in an irregular situation are represented by a lawyer before court and do not have to appear personally, and they are not required to give their personal address.

In Germany, the risk of removal dissuades migrants from starting legal procedures. Despite reporting obligations, the general service trade union Ver.di said that there is room to manoeuvre as the judge in labour court procedures may or may not ask information about the residence status of the migrant.¹³² The Bremen Chamber of Employees (Germany) pointed out that labour courts, unlike other courts, are not required to pass information on to the registry offices. This example, alongside the situation in Greece described above, point to the pivotal role of trade union representation in facilitating access to legal redress for migrants in an irregular situation.

¹³¹ Security decree (*Decreto sicurezza*, Law 125, July 2008). This fear was confirmed by interviews with the civil society organisations Nefida, Cgil, Caritas and Acli Colf.

¹³² See <http://besondere-dienste.hamburg.verdi.de/themen/migrar>; www.arbeitsrecht.de/aus-der-arbeitswelt/kurz-notiert/2010/09/03/rechtsschutz-fuer-illegale-einwanderer.php; www.nrhz.de/flyer/beitrag.php?id=1002&css=print. See also Cyrus (2004).

Among migrants there seems to be a general reluctance to address the justice system due to the fear of expulsion. As summarised by one interviewee:

“One thinks, ‘I better drop it. As long as I can stay here. That’s the way it is.”

31-40, Germany, from Latin America

Insecurity of residence during procedures

Another crucial point for effective remedies is the entitlement to residence permits and protection from expulsion during labour procedures. After being seized by the law enforcement bodies, migrant workers in an irregular situation are often immediately escorted to the border and are, therefore, unable to lodge an appeal with the judicial bodies of the country of employment.¹³³ Once migrants are expelled it is difficult or nearly impossible to initiate or continue justice procedures from abroad, an issue brought up by the NGOs and trade unions interviewed. The trade union Ver.di from Germany explained:

“[I]t is important for them [undocumented workers] that they can claim their salaries afterwards. However, it is not being said, how they are supposed to do it, because embassies and consulates do not feel responsible. [...] If those are, for instance, people from Latin America and then are deported to Peru, then they basically do not have any possibility.”

Enforced checks aimed at detecting migrants in an irregular situation, and targeting the irregular work of migrants, tend to prevail over the protection of their rights. Since migrants are mostly neither protected from expulsion nor entitled to a legal residence permit during the civil labour court procedure, they are in a weak position as they risk expulsion.

The situation may differ for criminal procedures for victims of violence or forced labour, where humanitarian or specific residence permits for victims of trafficking exist in national legislation.¹³⁴ As soon as it takes effect, the Employers Sanctions Directive will extend the possibility to grant temporary stay during legal proceedings already in place for victims of trafficking to victims of particularly exploitative working conditions and to minors.¹³⁵

¹³³ This has been pointed out by the ILO Committee of Experts on the Application of Conventions and Recommendations. See ILO (1999) paragraph 309.

¹³⁴ For a list of countries which offer a specific protection status to victims of trafficking, see ICMPPD (2010), pp. 10-15 and European Migration Network (2010c), p. 28.

¹³⁵ Employers Sanctions Directive, Article 13 (4).

Lack of proof

Another frequently encountered obstacle related to undeclared work is the lack of a written contract. This makes it difficult for employees to prove their actual employment relationship,¹³⁶ or breaches in relation to the payment of their salary or working hours, such as no pay slips or payments only in cash. The organisations Rajfire and CFDT (France), Abraco (Belgium), SAC (Sweden) and Ruminahui (Spain) emphasised that a particular difficulty results from the specific working conditions in private homes as there are typically no witnesses to the abuse or other work-related violations. This is illustrated by the following example.

“As she paid me in cash, there were also no proofs that associated/connected us. [...] It was ‘in black’ (undeclared), there is nothing at all. And thus I saw that, though, a lot of people have advised me to go file a complaint and all, but somehow you also have fear. I did not know what could happen afterwards. So, I preferred to leave like that.”

31-40, France, from Sub Saharan Africa

5.2. Remedies for victims of serious crimes

Charter of Fundamental Rights of the European Union

Article 5

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Domestic workers are exposed to serious crimes. This can be at work, but also beyond work, such as in the case of servitude. In addition to the provision of the Charter in the box above, Article 4 of the ECHR prohibits slavery or servitude and stipulates that no one shall be required to perform forced or compulsory labour. According to the ILO, forced labour comprises two basic elements: first, the service is exacted under the threat of a penalty; and second, it is undertaken against the person’s will.¹³⁷ In today’s globalised world, forms of compulsory labour have emerged which are sometimes

described as modern forms of slavery as they comprise a broader control of the person beyond being coerced to work.¹³⁸

The ILO has drawn up some indicators of modern forms of compulsory labour. These include deception, restrictions on freedom of movement, removal of identity documents, and threats of reporting to immigration authorities migrants who complain about substandard living and working conditions. Irregular status is seen as a vulnerability factor.¹³⁹

Effective protection of the rights of victims of crimes of forced labour and servitude is a particularly relevant issue for domestic workers, as recently stressed by the UN Committee on the Elimination of Discrimination against Women:

“Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. Undocumented women migrant workers must have access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment, or if they are coerced into forced labour, face deprivation of fulfilment of basic needs, including in times of health emergencies or pregnancy and maternity, or if they are abused physically or sexually by employers or others.”¹⁴⁰

Anti-Slavery International reported that aside from prostitution, the domestic work sector is among those labour sectors globally where forms of modern slavery are observed most frequently, although cases are also reported in agriculture, or in the catering and textile industries.¹⁴¹

In its landmark judgment *Siliadin v. France* concerning the case of a minor Togolese girl victim of domestic slavery, the ECtHR affirmed the duty of states to guarantee effective protection to victims of slavery and servitude. The Court held that States were obliged to penalise and punish any act aimed at maintaining a

has not offered himself voluntarily.” See also the ILO Abolition of Forced Labour Convention, 1957 (No. 105) as well as ILO (2005), p. 5.

¹³⁸ For a definition of slavery see 1926 Slavery Convention (Article 1) as well as 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices (Articles 1 and 7). In *Siliadin v. France*, No. 73316/01, 26 July 2005, paragraphs 113-129, the ECtHR deals with the definitions of forced and compulsory labour as well as the terms slavery and servitude.

¹³⁹ ILO (2005), p. 9.

¹⁴⁰ UN Committee on the Elimination of Discrimination against Women (2008), General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, paragraph 26 (i).

¹⁴¹ Anti-Slavery International (2006), pp. 17-18.

person in a situation incompatible with the prohibition of slavery, servitude, forced or compulsory labour of Article 4 of the ECHR.¹⁴²

In all 10 EU Member States covered by this study, legal frameworks and protection systems have recently been developed in the context of measures against trafficking of human beings.¹⁴³ These protection mechanisms include specific residence permits granted to victims either on humanitarian grounds or permits tied to cooperation in criminal procedures against perpetrators. Accompanying programmes offering social, housing or psychological assistance may also be in place. Their effectiveness is, however, limited.¹⁴⁴ Available figures show relatively low rates of prosecution of perpetrators in general and even lower rates in cases of trafficking for labour exploitation across Europe.¹⁴⁵

In this context, some NGO representatives from France, Italy and Belgium (CEM, CGIL, and ORCA, respectively) raised the problem of a two-tiered justice system for trafficked victims of forced labour on the one hand, and other victims, without a trafficking connection, subject to the same type of inhuman treatment.¹⁴⁶ No protection measures against expulsion would normally be available for the latter during a criminal justice procedure against their exploiters. The Employers Sanctions Directive might partly address this issue as it obliges Member States to define in national law the conditions under which they may grant permits of limited duration to third-country nationals who are victims of particularly exploitative working conditions or to illegally employed minors. This is, however, limited to individuals who collaborate with the justice

system.¹⁴⁷ The FRA has noted in its report on child trafficking that conditioning the grant of a residence permit to victims upon their cooperation in criminal proceedings has received criticism.¹⁴⁸

The interviews with migrants were not designed to explore experiences of extreme forms of exploitation or abuse.¹⁴⁹ Nevertheless, the informants were asked about bad experiences with employers and some issues did emerge.

Apart from several cases of verbal assault, a few respondents in Greece, Italy and Poland reported incidents of physical violence by the employer, either experienced by themselves or other migrants they knew.

“I was beaten by my employer. She scratched my back and ripped my t-shirt.”

31-40, Italy, from Latin America

“She took my bag, tipped it out on the stairs and she was hitting me with [various] things.”

41-50, Poland, from eastern Europe

Other interviewees in Germany, Sweden and Italy mentioned instances of sexual abuse by employers.

“For example, one companion who was here illegally, he abused her sexually. If she didn’t, without going to bed with her, he would not give her any work [he ran a cleaning business employing irregular migrant women].”

31-40, Sweden, Latin America

One woman working as a live-out cleaner in Germany said that, after finishing work, she was commanded to provide sexual services to her employer. Upon her refusal to do so, he began stalking her.

“He was often at nights in front of my door. He was standing in front of my door [...] he also destroyed my [car] tires.”

21-30, Germany, from eastern Europe

¹⁴² ECtHR, *Siliadin v. France*, No. 73316/01, 26 July 2005, paragraphs 130ff. France had not criminalised servitude and slavery at the time. See also ILO Forced Labour Convention, 1930 (No. 29), ratified by all EU Member States, which provides for penal sanctions for the exaction of forced labour.

¹⁴³ In Spain, for example, protection of the victims of human trafficking is included, among others, in Article 59.bis in the Law 4/2000 (as amended by law 2/2009). For a detailed comparison of the legislative and policy framework on protection of victims of trafficking in human beings in 17 European countries see ICMPD (2010).

¹⁴⁴ In its report on the application of Directive 2004/81 EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (15.10.2010) COM(2010) 493 final, the European Commission concluded: “While the identified victims in some Member States number several hundred or even upwards of two thousand per year, the number of residence permits based on this Directive is rarely higher than twenty per year.”

¹⁴⁵ See ICMPD (2010), p. 49 and p. 67. In France, for example, 45 criminal cases with conviction concerning forced labour were reported from 2000 to 2006 (ICMPD (2010), p. 150). For France, see annual reports of the Committee against modern slavery (*Comité contre l’esclavage moderne*, CCME).

¹⁴⁶ See also MRCI (2010).

¹⁴⁷ Employers Sanctions Directive, Article 13 (4).

¹⁴⁸ FRA (2009), p. 16 and p. 147.

¹⁴⁹ To build up the necessary relationship of trust repeated interviews over a longer period of time would have been necessary. Interviewees would have required specific training. Finally, a dedicated interview guide would have been needed, whereas the aim of this research was to explore a wider range of human rights.

The Italian organisation Gruppo Donne Internazionale reported that by denouncing an employer for physically abusing a female domestic worker, it managed to get the employee a residency permit on humanitarian grounds. But as mentioned by a recent report published by the European Commission, full rights to protection, provision and redress with regard to all forms of violence against women are not legally guaranteed to all residents on an equal basis in most Member States, and immigration status is a significant barrier.¹⁵⁰

Several migrant women interviewees did not dare to report criminal acts to the police. Some of the employers' acts that went unreported included a false rental contract promise and payment of a deposit (France), aggression and attempted suffocation in the street (Germany) and beatings by the employer (Italy). In Germany, one migrant reported sexual harassment and stalking by the former employer only after having obtained a legal stay. The reporting of migrants in an irregular situation to the police is also used by offenders as a weapon against their victims, for once the migrants are expelled, the offenders are not held liable for their crimes against them, a respondent in Sweden said.

The Swedish Trade union SAC drew attention to the relatively frequent sexual abuse of Latin American migrant women working in domestic work and to the difficulties of denouncing such abuse. Experiences of sexist or racist violence which are more frequent in employment in the private domestic sphere make reporting more difficult, especially for victims of sexual abuse.

A general climate of criminalisation of irregular immigrants combined with the fear and risk of being arrested and expelled may further fuel the belief, including among the victims themselves, that migrants in an irregular situation do not have any rights. This complex of fear and insecurity, produced by the illegal situation, dissuades migrants from seeking redress. Many instead prefer to leave abusive employers and not to seek redress.

As many interviewees from Poland, Germany, Sweden, France and Ireland said the price for claiming their rights – deportation – “would be too high”. As two women living in Germany said:

“What you said, ‘Can one claim a few rights here?’ Yes, but you have to leave. That’s the price.”

41-50, Germany, from Latin America

“[...] Ver.di (Service trade union) tries to do that here as well. One can be a member of Ver.di and if one needs the lawyers, I would say, for exploitation or so, one can use them, but there is always the risk. I know, when I do this, then I say bye, good-bye. They gave her right on the one hand, but then she had to go home.”

31-40, Germany, from Latin America

5.3. Rights awareness

The possibility of irregular domestic workers enjoying their minimum rights in practice is closely tied with their rights awareness.¹⁵¹

Most domestic migrant workers are unaware of their rights despite the fact that many rights enshrined in international human rights instruments are, as seen above, applicable to everyone, regardless of nationality or legal status. Awareness may also be limited among employers and the general public. This lack of awareness puts migrants at risk. Information dissemination helps fill this void by providing irregular domestic workers with the basis to make informed decisions and, above all, to claim their rights.

Clear, reliable information about the rights of irregular workers is in many cases not easily accessible. Particularly in the period following their arrival, access to information may be very limited: migrants neither know the legal system and assistance institutions nor speak the language sufficiently well. Limited free time, whether working as a live-in or alone, and limited free movement due to fear of detection limit social contacts to the outside world and thus access to information. This is, however, not always the case, as many domestic workers are women with a higher education and good language skills, especially those coming from former colonies in Spain and France.

¹⁵⁰ See EC (2010), Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence, available at www.europarl.europa.eu/eplive/expert/multimedia/20110405MLT17038/media_20110405MLT17038.pdf.

¹⁵¹ For some good practices related to awareness raising in order to improve access to justice in general, see FRA (2011), Chapter 3. Article 33 of the ICRMW lists the right to information among those rights that apply to all migrant workers irrespective of status.



Unclear and complex legal regulations further contribute to uncertainty. There may be considerable discretion in applying existing rules, and procedures may be difficult to comprehend even for legal experts.

Often interviewees reported that migrants were not aware of having any rights, particularly as they had no formal contract. The organisation SEDOAC from Spain gave the following account:

“Few days ago a mate has been expelled from her work, however, they have not paid her the entire quantity and they told her that she could do nothing because she has no contract. And yes, this regime does provide the contract not only written but verbal too, it’s also valid. Then, they must know that even without papers they have right to report and to claim an amount not paid.”

Despite the difficulties outlined, many do find access to information and remedies through civil society organisations, either as clients or active members. Access to first-hand information about rights is usually made through other migrants or community networks, which also play a key role in providing access to employment or other support NGOs or services. Migrant networks and community organisations or meeting places where co-nationals gather – such as church, public parks or before schools where child minders meet – are important for information exchange and awareness raising about rights.

Communities have also developed different coping strategies. Long-established and well-organised migrant groups such as Filipino migrants, often made up mainly of domestic workers, have organised themselves to cope with problems of irregularity or to provide a solidarity net for those in distress, including help to escape from abusive employers.¹⁵² By contrast, Ukrainians in Poland were reluctant to approach NGOs and were not addressed by NGOs as a specific target group in need of assistance. They relied mainly on well-organised informal community networks and tended not to approach other institutions out of fear of revealing their irregular status.

Employers can also play a role as ‘gatekeepers’ in accessing information, and often withhold information about rights. However, as reported by migrants interviewed in Sweden, Belgium, France and Ireland, a number of employers were helpful in providing assistance and information.

¹⁵² This has, for example, been reported by the Association Mahaarluka from France. Other examples are the more recently formed associations to address the problems of Brazilian migrants in an irregular situation in Belgium (Abraco) and Ireland (Brazilian Association in Gort).

Finally, public mobilisations and campaigns for rights awareness and regularisations have, in several countries, become an important way of informing migrants in an irregular situation engaged in domestic work. In some countries, these actions raised a high level of public interest in the national media, for example the Sans-Papiers-strike movement for regularisation in France¹⁵³ or the campaigns of the Migrant Rights Centre Ireland.

To counter the difficulties in reaching domestic workers at their workplaces and through trade unions, some associations have developed new strategies to reach and inform migrants in an irregular situation employed in the domestic work sector. Such innovative approaches include mobile counselling services,¹⁵⁴ information meetings, training or focus groups with migrant community organisations,¹⁵⁵ or visiting meeting places to get in contact with migrants in an irregular situation employed in domestic work.¹⁵⁶ Some also try to address language barriers: the Centre of Athens Labour Unions organises regular mother-tongue information meetings on Sundays for migrant domestic workers.¹⁵⁷ Domestic workers women’s organisations, such as the Domestic Workers Action Group of the Irish Migrant Rights Centre, SEDOAC – Domestic Territory (Spain) or Respect (Germany) promote training to empower women to defend their rights actively.

Some countries have developed good practices to meet domestic workers employed by diplomats and inform them about their rights in the host country and how to report abuses.¹⁵⁸

¹⁵³ See for more background on the strike footnote 123. Domestic workers became actively involved in this regularisation movement and participated in regularly held information meetings and mobilisations organised by the associations Droits Devant and Femmes Égalité.

¹⁵⁴ As offered by the association Verikom in Germany.

¹⁵⁵ The Belgian NGO OR.C.A organises information meetings with community organisations and started a project to promote participation in advocacy.

¹⁵⁶ In France, for example, the trade union CFDT went to meet migrant domestic workers in an irregular situation in front of schools and kindergartens to inform them about rights and trade union services.

¹⁵⁷ The Belgian association OR.C.A (2010) offers on its website an audio guide about rights in four languages: www.orcasite.be/?id=208.

¹⁵⁸ OSCE (2010), p. 28.

5.4. Legal assistance

Charter of Fundamental Rights of the European Union

Article 47

2. [...] Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

The absence of legal assistance can constitute a major obstacle to the enjoyment and exercise of irregular domestic workers' rights, particularly if they do not possess the means to pay a lawyer.¹⁵⁹ Aside from Article 47 of the Charter, one can also refer to the relevant ECtHR case law, in accordance with which provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy.¹⁶⁰

The effective protection of the rights of migrants in an irregular situation is facilitated by, and dependent on, the support and legal representation available from the civil society organisations who defend their rights, such as migrants rights associations, migrants' self-organisations and trade unions.¹⁶¹

It emerged from the interviews conducted for this research that migrants seek help and legal redress mostly for unpaid wages and unfair dismissal. In some cases, with the help of associations and trade unions, interviewees in Spain, Germany, Sweden, Belgium, Ireland and Italy lodged complaints against their employers or managed to obtain redress by settling out of court.

Migrants in an irregular situation often turn either to migrant rights associations or trade unions, some of which provide specific legal counselling and aid services for irregular domestic workers.¹⁶² In many cases, migrants' rights associations provide more

comprehensive legal services for migrants in an irregular situation – including in relation to residence and regularisation procedures, and social and psychological assistance for victims of abuse – than those offered by trade unions. The latter focuses on labour law cases and defence of their members.

Migrants do not usually immediately seek legal redress in labour law conflicts, but rather support with regularisation procedures, as pointed out by migrants interviewed in Hungary, Sweden and Belgium. Interviewees in Spain and Germany, as well as civil society organisations from Belgium, Ireland, France, Greece, Italy and Spain, said that the migrant community or women's organisations for domestic workers generally play an important role as intermediaries, facilitating access to legal advice and assistance from other organisations or public services.

Most trade unions interviewed rely principally on informal conflict mediation and reconciliation with employers to enforce the rights of migrant workers in an irregular situation while avoiding the risk of expulsion for migrants. Such strategies prove to be more efficient for migrants to recover the salary owed to them by employers than long court procedures. The German trade union Ver.di explains:

"It is also not always immediately about a labour court case, but first a letter is written to the employer. Then we see if one can settle amicably."

Nevertheless, the legal cases won in court procedures may have a broader impact on facilitating access to justice for migrants in an irregular situation engaged in domestic work. Particularly when cases are covered by the media they encourage other migrants to seek redress.¹⁶³ Such cases may also change the practices of employers, who may otherwise take advantage of the fact that migrants in an irregular situation fear seeking legal redress. When such rights violations do not go unpunished, the need to protect migrants in an irregular situation gains wider legitimacy in society.

¹⁵⁹ For a general discussion on how the lack of legal aid may lead to denial of access to justice in general, see FRA (2011), chapter 4.

¹⁶⁰ For example, ECtHR, *Airey v. Ireland*, No. 6289/73, 9 October 1979.

¹⁶¹ NGOs specialised in support activities for migrants in an irregular situation employed in the domestic work sector are rather scarce. Furthermore, it was found that these organisations are often local, small and operate with limited infrastructure and resources.

¹⁶² This is, for example, the case with Ver.di (MigrAR) in several German cities, and the French trade unions CGT and CFDT in Paris.

¹⁶³ Examples of such cases were reported in France and in Germany.

Conclusions

There is a high risk of impunity for violations of the rights of migrants in an irregular situation, including when these are of a grave nature. The ECtHR highlighted that in relation to certain core rights enshrined in the Convention, such as the prohibition of slavery and forced labour, States have positive obligations to adopt criminal-law provisions which penalise prohibited acts and to ensure that they are applied in practice.

Accessing justice mechanisms is often difficult both for labour law issues and for victims of abuse or exploitation. Such difficulties are to some extent intrinsic to the migrants' irregular status and their fear of expulsion.

These are further aggravated by the limited awareness that domestic workers have about their rights and the difficulties in accessing legal support, both in terms of advice and legal representation.

FRA opinion

Access to justice is a crucial right since all other fundamental rights depend upon it for their enforcement in the event of a breach. Practical obstacles to accessing justice, such as reporting duties that may reveal a migrant's identity and/or whereabouts, should be removed. Building on the Employers Sanctions Directive, effective mechanisms should allow migrant workers in an irregular situation to lodge complaints against abusive employers. Trade unions, equality bodies and NGOs play a vital role in making justice mechanisms more accessible; and they should, therefore, be given support to undertake legal proceedings against employers on behalf of a migrant.

6

Rights related to family life



Charter of Fundamental Rights of the European Union

Article 7

Everyone has the right to respect for his or her private and family life, home and communications.

In addition to Article 7 on private and family life, the Charter provides for the protection of children's rights (Article 24) and for the legal, economic and social protection of the family (Article 33). The latter provision includes a prohibition of dismissal for a reason connected with maternity, and the right to paid maternity leave and to parental leave.

There are several other international human rights instruments that protect one's family life, including the family life of migrants in an irregular situation employed in domestic work. Article 16 (3) of the UDHR proclaims that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. According to Article 10 of the ICESCR, "the widest possible protection and assistance should be accorded to the family, particularly for its establishment and while it is responsible for the care and education of dependent children". Article 32 of the ICCPR also contain provisions for the protection of family life.

Family unity is safeguarded by Article 8 of the ECHR, which protects the right to respect for family life. The ECHR does not guarantee the right of an alien to enter or to reside in a particular country. In cases where an alien has family members with a regular status in the country, the ECtHR has found violations of Article 8

where disproportionate restrictions have been placed on this right in the context of the expulsion of foreigners or their admission into a State party.¹⁶⁴

Child care

A number of migrants interviewed in Ireland, France, Italy, Belgium, Germany, Sweden and France lived with dependent children in an irregular situation. Most children were born in the country of immigration. All interviewed migrants with children faced particular difficulties in combining their long and irregular working times, such as night-shifts caring for older persons or early morning cleaning duties, with care for their own children. A key reason was that they were excluded from public crèches, kindergartens or schools, as reported by a migrant interviewed in Ireland as well as the Network for aid and support of migrant women (Des Me) in Greece and FIM in Germany. Several respondents in Italy, Sweden, Belgium and France reported having been refused access to childcare because of their irregular status or because they were not able to provide the required employment declaration¹⁶⁵ or residence registration.

Due to low incomes, private childcare facilities are in most cases unaffordable. Migrants in an irregular situation have to rely on family support or informal care arrangements with other migrant women, who themselves are often in an irregular and precarious

¹⁶⁴ For example, ECtHR, *Boultif v. Switzerland*, No. 54273/00, 2 August 2001; or ECtHR, *Sen v. Netherlands*, No. 31465/96, 21 December 2001.

¹⁶⁵ For example, the requirement of parents to provide an employment and income declaration was observed in the cities of Paris, Hamburg and Athens by the organisations Rajfire from France, FIM and Verikom from Germany, and the Network for aid and support of migrant women (Des Me) and The land of Stork from Greece.

status and look after children for low remuneration. An informal sub-labour market for newcomers caring for the children of working migrant women develops. Some mothers are forced to send their children born in the country of immigration back to family members in the country of origin,¹⁶⁶ whereas others brought their children with them to work, if the employers did not object.¹⁶⁷ In these cases, the safety and protection of children at the workplace is an additional problem, as emphasised by the Family Resource Centre in Gort, Ireland, as is the potential risk that children may not attend school.

Family reunification

Irregular immigrants are generally excluded from starting family reunification procedures. However, when they have dependent children born in the country or accompanying minors, or when they marry or join other legally resident family members, irregularly staying migrants may be protected against expulsion and have the right to request a residence permit.

It is rare for migrants in an irregular situation to bring their minor children with them when they first arrive. They typically do not want to expose their children to insecurity in the host country resulting from their irregularity. More frequently, they plan to bring the children at a later stage, once or if regular status is obtained. The wish to unite with children and family members thus constitutes an important incentive for starting a regularisation procedure.

Some, however, change their initial temporary migration plan with advancing integration and personal ties in the host country, and in the light of dwindling prospects of return. In Italy, a couple of migrants interviewed brought their children or family from the host country before regularising their stay.¹⁶⁸

In other cases, as reported by interviewees in Germany, Hungary and France, migrants became 'trapped' in an irregular status as family reunification or regularisation procedures are absent, fail or protract over years. In Hungary, for example, as a result of unsuccessful family reunification procedures one of the interviewed migrants stayed irregularly with her legally staying husband and children born in the country for 17 years.

FRA opinion

NGOs and public service providers working with migrants in an irregular situation should receive sufficient resources enabling them to offer social and legal advice, as well as assistance. This is particularly important in relation to maternity and child care needs.

¹⁶⁶ This was reported by FiM from Germany and AcliColf from Italy.

¹⁶⁷ This was reported by migrants in Italy, Germany and France.

¹⁶⁸ Among interviewees, only two Latin American migrant women in Italy brought their minor children from the country of origin while in an irregular status: a live-in carer who brought her 16-year-old daughter, and a carer whose husband and baby child joined her irregularly.



7

Regularisations



There is a shared interest amongst States, civil society actors and concerned migrants themselves to put an end to situations of irregularity.¹⁶⁹ Similarly, ILO Recommendation No. 151¹⁷⁰ states in paragraph 8(1) that “without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.”

The two most common tools to address irregularity are return and regularisation. While the EU clearly favours return,¹⁷¹ such an option is not always viable. Practical obstacles, for example in obtaining travel documents, but also humanitarian, social or economic considerations may prevent or discourage return. In setting new directions for action, the Global Commission on International Migration recommends that regularisations take place on a case-by-case basis and calls for a transparent process with clearly defined criteria, such as the applicant’s employment record, language ability, absence of a criminal record and the presence of children who have grown up in the country.¹⁷² Similarly, the Pact on Immigration and Asylum adopted by the European Council in 2008 agreed to “use only case-by-case rather than general regularisations”.¹⁷³

Even when irregular, domestic workers in several countries fulfil an important social role, by working in this niche in the labour market. Hence, several countries have recently adopted regularisation measures, some of which specifically target or include domestic workers.¹⁷⁴ The regularisation of migrants in an irregular situation working in the private home care sector was driven by awareness and recognition by policymakers of a need for such services, as these could not be filled by the local workforce.

Table 2 provides an overview of regularisations carried out in the 10 EU Member States covered by this report since 2002. While some forms of regularisation were introduced in all the countries, in four of them programmes partly targeting or expressly including domestic workers were adopted.

¹⁶⁹ This is also acknowledged in the ICRMW which stresses the need to take appropriate measures to avoid the persistence of a situation of irregularity. See Article 69.

¹⁷⁰ ILO Migrant Workers Recommendation, 1975.

¹⁷¹ Stockholm Programme at 6.1.6. Return Directive, Article 6 (1).

¹⁷² Global Commission on International Migration (2005), p. 39.

¹⁷³ See Pact on Immigration and Asylum adopted by the Council on 20-21 October 2008 at II.

¹⁷⁴ For a detailed overview of regularisation schemes in Europe see Baldwin-Edwards and Kraler (2009).

Table 2: Regularisation programmes targeting or expressly including domestic workers, 2002-2010

EU Member State	Year	Domestic workers regularised or total applications
France	2009-2010	1,800 applications (only partly domestic workers)
Ireland	2009	n.a.
Italy	2002 2009	316,000 regularised 295,000 applications
Spain	2005	About 187,300 regularised

Note: n.a. = not available

Source: FRA, 2010

In Italy¹⁷⁵ and Spain,¹⁷⁶ large-scale regularisation programmes expressly including migrant domestic care workers were implemented, regularising some 500,000 domestic workers. In Ireland, the specific situation of migrants arriving with a regular work permit but then becoming irregular through no fault of their own was addressed in 2009 with a specific scheme.¹⁷⁷ In France, since 2007 there has been a permanent regularisation mechanism for migrants employed in certain sectors where labour shortages exist.¹⁷⁸ The mechanism was complemented in 2010 by a temporary scheme including domestic workers running from 1 July 2010 to 31 March 2011.¹⁷⁹

175 See Law 189/2002 (Bossi-Fini law): nearly half of the approximately 650,000 regularised workers were domestic workers (316,000 persons). See Ruspini / REGINE (2009), pp. 354-355 and Carfagna et al (2008), p. 3. The September 2009 regularisation programme (Law 102/2009) was exclusively addressed to domestic workers and allowed families with Italian, EU or legally long-term resident third-country citizenship to regularise their domestic workers. An evaluation and official data on the number and composition of effectively regularised migrant workers are not available. So far, some 295,112 applications were submitted, but no official data on the number of those regularised are available. See European Migration Network (2010a).

176 See Royal Decree 2393/2004. The General Directorate for Immigrants Integration, Secretary State of Immigration and Emigration, Spanish Ministry of Labour and Immigration informed the FRA in April 2011 that the official figure of domestic workers regularised as a result of the 2005 scheme amounted to 187,296 persons. In addition, since 2005 an ongoing regularisation programme exists for individual migrants who can prove that they are "rooted" (arraigo) in the country. Basic conditions for regularisation include a minimum residence of 2-3 years and an employment contract or proof of employment (Royal Decree 2393/2004, Art. 45 (2)), (Arango and Finotelli / REGINE (2009), p. 443 and Undocumented Worker Transitions Project (2007), p. 8. For the original Spanish version of the Royal Decree 2393/2004 (Reglamento de la Ley Orgánica 4/2000, aprobado por Real Decreto 2393/2004, de 30 de diciembre), see http://ec.europa.eu/ewsi/UDRW/images/items/docl_1497_734684780.pdf.

177 See Undocumented Worker Scheme (2009), consisting of a time bound regularisation programme, running from 1 October to 31 December 2009, eligible to migrants including those working in the domestic work sector who became irregular by losing work and residence permits through no fault of their own. See www.inis.gov.ie/en/INIS/Pages/Undocumented_Workers_Scheme.

178 Loi n° 2007-1631 du 20 Novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile, published in the Official Journal 21 November 2007; Art. L.313-14 CESEDA and Circular of 7 January 2008 Circulaire N° NOR: IMI/N/08/00012/C. See also Sohler / REGINE (2009), pp. 245-246 and Le Monde, Régularisation des sans-papiers: le dogme sarkozyste écorné, 7 July 2010.

179 Domestic workers were granted exceptional conditions considering the fact that they might work for multiple employers. As of 9 September 2010, some 1,600 applications were filed,

In contrast, no regularisation measures explicitly referring to migrants in an irregular situation working in the domestic work sector took place in Belgium, Germany, Greece, Hungary, Poland or Sweden, although it is not unlikely that individuals performing domestic work were included in regularisation schemes adopted in Belgium, Greece and Sweden on humanitarian or other grounds.¹⁸⁰ Moreover, a large number of migrants in an irregular situation from Central Europe – and Poland in particular – were indirectly regularised with the EU accessions in 2004 and 2007.

In Hungary and Poland the regularisation of migrant domestic workers was not significant. Domestic jobs are filled by workers from neighbouring states with facilitated access to the labour market, entering via temporary visa regimes.

including migrants employed in domestic work. For the temporary scheme see www.gisti.org/IMG/pdf/addendum_2010-06-18.pdf. See also European Migration Network, (2010b), p. 19; Le Monde, Eric Besson assouplit la régularisation par le travail, 20 June 2010; La Cimade, Régularisation des travailleur-e-s « sans papiers »: respecter les engagements !, 9 September 2010, available at: www.cimade.org/nouvelles/2651-R-gularisation-des-travailleur-e-s-sans-papiers-respecter-les-engagements-.

180 See for Belgium Instruction relative à l'application de l'ancien article 9,3 et de l'article 9bis de la loi sur les étrangers, 18 July 2009 available at www.dbbaw.eu/fr/news.asp?NewsId=606 (see also for an explanation (www.droitbelge.be/news_detail.asp?id=562)). This regularisation programme lasting for 3 months between September and December 2009 did not specifically address domestic workers, but included some. Similarly, in Germany migrants employed in domestic work are likely to have benefitted from the German regularisation programme *IMK-Bleiberechtsbeschluss* (Decision of the Conference of Ministers of the Interior on the Right to Remain), which was adopted in November 2006 and for which the deadline for submitting applications was 16 May 2007. Temporary residence permits were issued, which would be valid until 31 December 2009, the date on which migrants had to prove that they had found employment. This deadline was extended to the end of 2011. Another temporary regularisation scheme was part of the Immigration law (*Zuwanderungsgesetz*) reform, under which temporary residence permits could be obtained under certain conditions. Today, the regulations for adjustment of old cases (*Bleiberechts- oder Altfallregelungen*) may, under strict conditions, provide the possibility to obtain a residence permit, but only for migrants who are officially 'tolerated'. See Kraler, Dzhengozova and Reichel/REGINE (2009), pp. 288-289, and Pro Asyl, *Bleiberecht: Auf ein Neues*, 23 July 2010, available at: www.proasyl.de/de/themen/bleiberecht/detail/news/bleiberecht_auf_ein_neues/.

Some governments have been sceptical about regularisations, indicating that regularisation programmes encourage further irregular migration.¹⁸¹ However, this can be mitigated if regularisations are implemented with adequate measures to prevent future flows, such as new enforcement or legal admission measures.¹⁸²

Viewed from a migrant perspective, regularisations are valued as an opportunity to exit irregularity. At the same time, procedures for regularisation may cause difficulties. According to various respondents, frequently encountered obstacles include the need to have full-time work contracts,¹⁸³ high income thresholds¹⁸⁴ or regularisation fees,¹⁸⁵ short timeframes for submitting an application¹⁸⁶ and the need to submit additional proof of previously declared employment. In addition, migrants interviewed in France reported that their employers were afraid to be sanctioned for previous irregular employment. The research also showed that in France sometimes migrants in an irregular situation declared their work and paid welfare insurance in order to document their work relationship in light of future possibilities to regularise their status.

FRA opinion

To reduce the exposure of migrant workers in an irregular situation to exploitation and abuse, consideration should be given to addressing protracted situations of irregularity through regularisation schemes based on lessons learned from past experiences. Criteria and procedures for such schemes should be fair and transparent, and should be developed in collaboration with organisations representing the interests of the migrant workers concerned.

¹⁸¹ Baldwin-Edwards and Kraller, A. / REGINE (2009), p. 65.

¹⁸² IOM (2010), pp 35-36.

¹⁸³ In some countries, labour law may not require employers to give a written contract to domestic workers. This can become an obstacle for migrants who are required to have a contract for their regularisation procedure. A number of migrants interviewed for this research in Belgium, Greece and Italy faced difficulties as their current employers were not willing to give them a work contract and to support their application.

¹⁸⁴ This was a difficulty faced in the recent 2009 regularisation programme in Italy, as the conditions for regularisation excluded many from eligibility: €500 for regularisation, a minimum income level for families to be eligible of €25,000 or €20,000 for single bread-winner families, minimum hours of work per week of 20 hours for one employer, or reasons linked to the economic crisis which prevent families from employing declared domestic workers and paying the corresponding taxes. Examples from the interviews include two migrants from Italy whose employing families did not reach the minimum income level of €20,000 to be eligible for regularisation.

¹⁸⁵ Although to be paid by the employer, in practice the fee is often shifted onto migrant employees on the condition that employers agree to regularise. Migrants might not be able to pay the required fees themselves; a migrant worker in Greece reported a lack of money and an interviewee in France mentioned that her employers do not want to pay the fee for the work permit and the regularisation.

¹⁸⁶ A respondent from Italy did not succeed in getting a job within the application period for regularisation.

Conclusions



Overall this report shows that the rights of migrant domestic workers in an irregular situation vary across the 10 countries examined. Most importantly, what varies is their access to these rights, and the role played by civil society actors and by the judicial system in protecting and safeguarding their rights. The study shows that access to fundamental rights by migrants in an irregular situation is currently largely at the discretion of their employers.

Consequently, employment issues that may appear clear and relatively easy to solve for regular workers – such as sick leave and sick pay, maternity leave and maternity pay, prior notice for dismissal and severance payments – are, for migrants in an irregular situation, luxuries they often cannot afford.

The main strategy used by migrants in an irregular situation to solve such problems seems to be to change employer, to rely on family and friends, and for some, albeit not many, to turn to NGOs and trade unions for assistance. There is a need to monitor the implementation of fundamental rights and to ensure that they are disconnected from immigration status considerations and enforcement procedures. At the same time, awareness of the rights of migrants in an irregular situation has to be raised, among the migrants themselves, among employers and within wider society. Here the role of civil society is crucial, alongside that of the state.

In recent years domestic workers, including migrant workers, have received increased international attention. As the ILO Bureau for Workers' Activities highlighted in June 2010:

"The relationship between domestic workers' associations and trade unions has become much stronger, leading to their demands being voiced at the ILO. It was clearly thanks to the Workers' Group in the ILO that this subject has been put on the agenda. Some associations have turned into unions, like in Hong Kong, for example. The trade union movement itself has worked hard at organising domestic workers [...] The mere prospect of a Convention created great enthusiasm both among domestic workers and in trade unions. Their mobilisation has already attracted the attention of governments and employers, even before the existence of a Convention. So although the debate has not yet officially begun, the mere prospect of a Convention has had a major political impact."¹⁸⁷

Whether this 'impact' will be transferred into practice for migrants in an irregular situation employed in the domestic work sector has yet to be seen.

¹⁸⁷ Luc Demaret, Specialist in workers' activities. See International Trade Union Confederation (ITUC) (2010), p. 8.

Annex

This report is mainly based on information collected through primary research. It includes individual interviews with migrants in an irregular situation employed in the domestic work sector and with representatives from non-governmental organisations (NGOs) and trade unions. Legal information was collected through desk research and has been used to contextualise data derived from the interviews.

The field research with migrants consisted of semi-structured interviews with migrants, predominantly women, by female interviewers. Most interviews were carried out individually; however, on a few occasions they were conducted in pairs. In these cases, each migrant was accounted for separately. A total of 72 migrants in an irregular situation were interviewed, including 68 women and four men. The small number of male interviewees reflects the limited number of men engaged in domestic work. In addition, 46 NGOs and trade unions were interviewed.

The field research was carried out in 10 EU Member States: Belgium, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Spain and Sweden. The aim was to conduct five-to-10 interviews with migrant domestic workers in an irregular situation and two-to-five interviews with civil society actors in each country.

The interviews were designed to collect in-depth information about the migrants' experiences. They were detailed, extensive and carried out after having created an atmosphere of trust with each individual migrant. This report does not intend to describe the prevalence of fundamental rights challenges affecting migrants in an irregular situation. On the basis of individual experiences, it aims to show the kind of challenges migrants in an irregular situation are confronted with and the strategies they use to overcome problems.

One of the main challenges of this research was to come into contact with potential respondents, as migrants in an irregular situation are often unwilling to be identified. Thus, the research design aimed to recruit a broad range of respondents through many different channels. Respondents were recruited through so-called gatekeepers, namely organisations, NGOs and individuals who come into contact with migrants in an irregular situation for various reasons. Where possible, chain referral has been used, although migrants in an irregular situation are often unwilling to reveal whether they know others in the same situation. The interviews'

findings are analysed taking into account the existing legal framework.

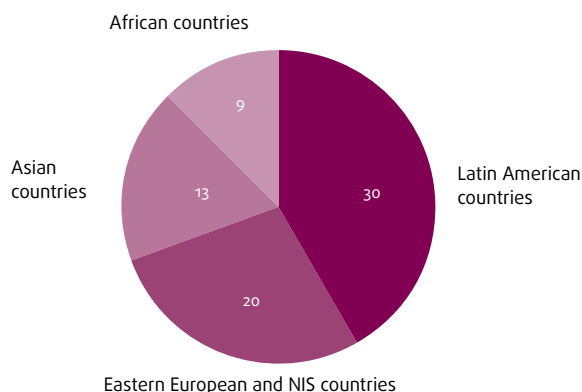
Figure A1: Number of migrants interviewed, by country and sex



Source: FRA, 2010

The irregular immigrant domestic workers interviewed for this report came from a total of 27 countries, the most represented being Ukraine, the Philippines, Brazil and Ecuador. The composition of the respondents' origins differed between countries of residence. For example, in Belgium all seven respondents came from Latin American countries, as did five out of six respondents in Spain. In Poland, all seven interviewees came from Ukraine. In other EU Member States, migrant respondents in an irregular situation were of more diverse origins.

Figure A2: Number of migrants interviewed, by region of origin



Source: FRA, 2010

Among the migrants interviewed some were live-in domestic workers, while others were living independently. They included individuals involved in cleaning, housekeeping and care work. Table A1 provides an overview of the interview sample by types of activity carried out and the type of employment.

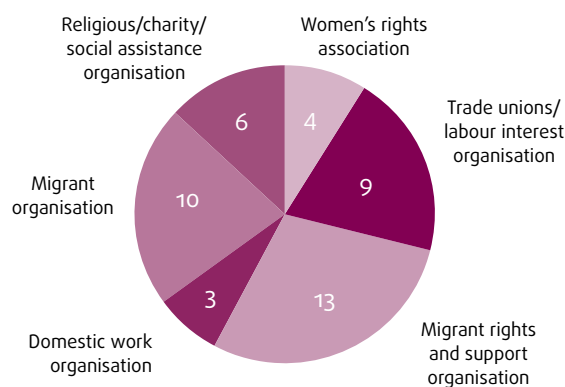
The respondents were selected for the interviews through the help of informal personal contacts, NGOs, trade unions and, on a few occasions in Italy, a priest. In several instances, respondents were contacted through previous interviewees, the so-called ‘snow-ball’ method.

In Belgium, France, Greece and Poland, all interviewees were living in the country’s capital, whereas in Germany, Hungary, Ireland, Italy, Spain and Sweden migrants and civil society actors living in other cities were interviewed.

The interviews were conducted in the respondents’ or interviewers’ homes, in public areas such as parks or restaurants and in NGO or trade union premises. They were carried out in a confidential setting, with no or limited interruptions and, based on the assessment of the interviewees, with a low or medium level of fear. However, some interviewees reported cases of an initial feeling of distrust from the side of the interviewee that mostly eased as the purpose of the research was explained and as the interview progressed. In some exceptional cases, the respondents appeared lacking in confidence during the whole interview and after it had finished. This seems to be grounded in a fear of connection between the interviewer and the authorities in the country of residence and, ultimately, fear of expulsion.

The field research with NGOs and trade unions consisted of 46 focus groups and semi-structured interviews. People from a total of 45 different NGOs or trade unions were interviewed. The sampling was based on a complete mapping, undertaken by the field researchers, of all local actors with activities relating to domestic workers and/or irregular immigrants in the cities covered.

Figure A3: Type of organisation in absolute numbers



Note: Some of the domestic work organisations also focused their work on migrant domestic work.

Source: FRA, 2010

With regard to the interviewees’ legal status, the interview sample includes primarily immigrants with an irregular residence status at the time of the interview. However, in EU Member States where it was too difficult to access domestic workers with irregular status, immigrants who at the time of the interview were legal residents or in the process of regularising

Table A1: Interview sample, by type of activity and employment

Type of activity	Type of employment						Total
	full time with several employers	full time with one employer	part time with several employers	part time with one employer	unemployed / occasional work	n.a.	
Care for elderly persons	2	1		1			4
Care for elderly persons and domestic work	3	7	3	1			14
Child care	1	1					2
Child care and domestic work	5	8	2		2		17
Domestic work (cleaning, housekeeping)	9	4	11	3	3	3	33
Other				1	1		2
All interviewees	20	21	16	6	6	3	72

Note: n.a. = not available.

Source: FRA, 2010

their residence status were included in a few exceptional cases. These cases were limited to migrants who were able to ensure that their experiences as migrant domestic workers in an irregular situation were recent enough to depict the current situation.

Researchers were selected in each country mainly based on their previous experience in this field of research and their capacity to carry out qualitative interviews, as well as a short literature review limited to the most relevant non-English materials.

Interview guidelines, which are reproduced on the following pages, were developed to ensure consistency during the research. Interviewers received training on these guidelines in Brussels, Belgium, on 8 and 9 April 2010. The field research took place between April and August 2010.

Most of the interviews were conducted in each country's national language. However, a number of interviews were also conducted in English or in the interviewee's mother tongue with the assistance of interpreters.

Based on the interviewees' consent, the interviews were audio-taped or notes were taken during the conversation. Interview transcripts were translated into English and interviews anonymised. Thematic coding supported by a software that facilitates qualitative interview analysis (Maxqda) were used to analyse the interviews. Eliamep (Michaela Maroufof, Thanos Maroukis, and Anna Triandafyllidou) and ICMPD (Karin Sohler) then prepared a case study, which included both the results of the desk research and the interview analysis. Both the case study and the Maxqda data set of coded interviews were used as a basis for the FRA to draft this thematic report.

Interview guidelines for civil society actors in the domestic work sector

General presentation

Introduce yourself and the scope of the study – provide a letter presenting the project and main contact details of the researcher and of the coordinator of this case study (ELIAMEP)

Ask and discuss with interviewee

A) Role of their organisation in general and with special focus to irregular migrant domestic work

- Could you shortly explain the main mission and activities of your organisation?
- When and why did you start to become actively involved in the issue of irregular migrant domestic workers?
- Your main activities and projects in regard to the assistance/protection/interest representation of irregular migrant domestic workers?
- What are the main issues of your advocacy work concerned this group?
- Do you collaborate with other NGOs, international organisations, with state authorities, other actors on this issue – any particular problems or positive experiences?

B) Statistical data and background information on living and working situation of IMDW¹⁸⁸

- Statistical data about clients /irregular migrants seeking support / members or constituency (in case of migrant organisations): numbers and characteristics of the population that you represent/assist?
- From your work experience in the field what are the main characteristics of irregular migrant domestic workers in the country? e.g. with regard to main nationalities, age and gender composition of irregular domestic workers, the main sector/type of employment (cleaning, caring or both / live in, live out, with or without stable employer), educational background (qualified migrants, deskilling)

C) Issues of special interest regards IMDW living and working conditions

- What are the major problems that IMDW face with regard to their employment situation: contract, working hours, accommodation, relations with employers, pay, welfare insurance, holidays, maternity leave and benefits (access to childcare)
- What are the major problems IMDW face with regard to their (legal) migrant status?
- Are there any other issues of special concern (health, family, special vulnerabilities)?

D) Legal provisions and actual practice with view to irregular migrant domestic workers' access to their basic rights

- What are the main labour and social rights covered /not covered by legislation?
- What are the main gaps in national legislation regards access to labour rights and social protection of irregular migrant domestic workers?
- What are the major problems in actual practice in access to these rights?
- Which kind of bad practices of state authorities do you experience?
- What are your propositions to improve working conditions and social protection of irregular migrant domestic workers?
- Do you know any good practice initiatives in your country?

Policies and impact

- Are there policy initiatives underway (or recently adopted) that changed the situation of IMDW? How do you evaluate their outcome/impact?
- How do you assess the importance and impact of EU policies on this issue?

¹⁸⁸ Irregular Migrant Domestic Worker



Interview guidelines for migrants

General presentation

Introduce yourself and the scope of the study – provide a letter presenting the project and main contact details of the researcher and of the coordinator of this case study (ELIAMEP)

Ask and discuss with interviewee

A) Personal, social and migration background

Could you tell me something about your personal background?

- country of origin
- age
- education and former profession (if any) in the country of origin
- length of stay in the country
- present legal status (undocumented or legal stay/irregular work)
- family status (married/single, nationality of spouse/partner) and household composition ('live-out' or live-out with own family, living with their children and/or spouses, etc.)
- (In case the interviewer is married and/or has children but they remain in her/his country of origin): Was that your decision? Do you want them to join you (in the host country)? Have you ever tried to bring them to the host country? (If yes) how did it turn out?

Legal status changes

- Did you, at any point, have legal documents? If so, how did it come that you have lost your residence/work permit? How long are/have you been in an irregular situation?
- Did you ever try to apply for regularisation? What was the result?

B) Current employment situation

- What kind of work are you doing?
Part-time or fulltime?
 - caring, cleaning or both
 - live-in or live-out
 - live-out with a stable employer on full time or live-out with many employers
- How did you initially find this employment (through personal contacts, friends, agency, etc.)?
- Was this your first job as a domestic worker (former jobs in the same area, career path from live in to live out or from one to many employers for instance?)
- What was your profession before you came here?

C) Living and working conditions

- Did you get a work contract? Why not?
- What are your main working tasks?
- How many hours per day/week do you normally work? And do you have a day-off?
- Salary per month/hour
- In case of live-in: is the accommodation included in your salary? How do you live at the home of your employer?
- How is your relationship with your employer(s)?
- Are you satisfied with your job and conditions at work? What is good/what is difficult in your view?
- Problems at the workplace? Did you have any past or current bad experiences with regards to the living and working conditions?
- Do(es) your employer(s) assist you when communicating/visiting with certain services or authorities? (For instance: municipal authorities, police/migration authorities, insurance organisations, doctors/hospitals etc.)

D) Access to social protection and rights

- Do you have a health insurance (social security card)?
- Is your work declared (tax payments, ...)?
- Was there ever a case in which you or someone you know in a similar status did not get paid for your/their work or got paid less than what was initially agreed? How did you/they react? Did you/they manage to receive what was claimed?
- Have you (or maybe anyone you know in a similar status) ever had an accident during work? If yes, did you/they claim any compensation? Did they receive what was claimed?
- Are you able to take a leave for health reasons? Do you get paid while on a sick leave?
- Have you (or maybe anyone you know in a similar status) ever been abused by your/their employer? How did you react? What was the outcome?

Access to support

- Did you contact any NGOs or informal networks for support or to solve any problems arising (emergency situations, problems with employer, regularisation, any other issue)?
- Whom did you address? Ethnic / migrant associations; Trade unions or other non-ethnic NGOs (e.g. women's associations)?

Perspectives

- In case of a future regularisation what do you expect with regard to your employment situation? Would you remain in your current profession/ with your current employer? What would you like to change then?



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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Chilling accounts of the abuse of domestic workers' fundamental rights have surfaced recently in Europe. To help those charged with protecting these rights, the European Union Agency for Fundamental Rights (FRA) prepared this research, the first to analyse on the ground the situation of migrant domestic workers who are present in the European Union (EU) in an irregular situation. Through interviews with migrants and representatives of organisations who may come to their aid, the report explores the heightened risks of abuse and exploitation faced by these workers, overwhelmingly female, whose fears of detection and deportation hinder their ability to access rights from healthcare to claiming unpaid wages. The report takes an in-depth look at the situation in 10 EU Member States, finding that employers largely determine and often limit migrants' ability to access their rights. Awareness-raising – among the migrants themselves, employers and wider society – of those rights is crucial to efforts to safeguard them.



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