

The Rights of Migrant Workers in the European Union

2006 Shadow Reports for
Estonia, France, Ireland and the United Kingdom





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Editor: René Plaetevoet

Lay-out & Print:
Crossmark bvba
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Belgium

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European Platform for Migrant Workers' Rights
c/o December 18 vzw
164 rue Gaucheret
1030 Brussels
Belgium

Tel: +32-2-2741435
Fax: +32-2-2741438
E-mail: epmwr@december18.net
Website: www.epmwr.net

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Executive Summary

After consultations with its members, the European Platform for Migrant Workers' Rights (EPMWR) decided to produce a first set of national reports, covering the rights of migrant workers in four EU Member States: Estonia, France, Ireland and the United Kingdom.

The main aim of this publication is to assess the emerging Common European Migration Policy, with a special emphasis on labour migration and integration, both in terms of policies and legislation as well with respect to their actual implementation. The latter is crucially important since the respect for rights at the formal level does not automatically result in their accessibility at the practical level.

The rapporteurs use the internationally accepted human rights standards, as elaborated in the UN Migrant Workers Convention, as the reference framework for these reports.

Each of the four country reports looks at a similar range of issues. Starting with a general overview of the situation of migrant workers within the context of the national policy approach to labour migration; the rapporteurs then move towards addressing the specific core economic, social, civil and political rights. Finally, they look at the integration policies and measures, based on the understanding that there is a strong link between a migrant's legal status and the degree to which her/his rights are respected in practice.

The general tendency emerging from these four reports is that labour migration policies are becoming ever more complex and that migrant workers are seen as having a utilitarian value, i.e. if managed properly they can contribute significantly to the economies of the receiving and sending countries alike. They are, in other words, not viewed as human beings who are entitled to fair and equal treatment.

These systems of managed migration are characterised by control mechanisms operating at a number of levels, principally in the issuing of visas, permitting of border crossings, issuing of residence permits, regulating entry into the workforce, and allowing the use of public serv-

ices. Apart from direct discrimination, the danger of indirect discrimination should not be underestimated.

As far as social and economic rights are concerned, the key principle of equal treatment is often not met. Migrant workers - especially those with an irregular status - are often excluded from access to adequate housing, health care and education services.

The civil and political rights of migrant workers in the four countries covered by this publication are generally in line with those listed in the UN Migrant Workers Convention. Questions should be asked, however, about the practical access to these rights, primarily because of the often vulnerable situation migrant workers and members of their families find themselves in.

In advocating for a stricter adherence to the norms elaborated in the international conventions, as well as working towards the ratification of the UN Migrant Workers Convention by all EU Member States, the EPMWR believes that the wide range of challenges and the structural discrimination which migrant workers and members of their family face would be greatly clarified. Civil society actions around the promotion and respect for the rights of all migrants combined with actions to obtain enforcement through the courts would help to move the Common European Migration Policy in a more equitable direction; away from the systems of managed migration that are only aimed at recruiting migrant workers to address Europe's labour market needs and meet its demographic challenges.

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I. Introductory Text

Today, migration is at the top of the agenda in the European Union, with a *Comprehensive European Migration Policy* being developed, step by step. Although such a policy is still far from completed, some of the main features that have emerged are worrisome; especially when assessed from a rights-based perspective.

The growing focus on security is becoming increasingly visible, with measures against irregular migration taking central stage. The massive round-ups, deportations and detentions that took place in Ceuta, Melilla, Lampedusa and Rabat and the increasing number of deaths at the border are but the most visible aspects of this.¹

While migration and asylum policies are increasingly “externalised,” the European Union and its Member States recognise the importance of labour migration to sustain their economic growth, address labour market needs and deal with demographic challenges. Economic or labour migration has indeed become one of the considerations for achieving the goals set in the Lisbon Strategy, which aims to make the European Union “the most competitive and dynamic knowledge-based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion.”

It can be argued, however, that current migration policies and practices in the European Union undermine the fundamental human rights of migrants and asylum-seekers. Key concerns raised time and again by the NGO community and other actors include: the routine detention of migrants and asylum seekers; the failure to respect the importance of family unity and the rights of child migrants; accelerated asylum procedures with inadequate procedural safeguards, including the inability to effectively challenge removal on the grounds of risk of torture on return; and a growing reliance on “readmission” agreements to return third country nationals to transit countries outside the E.U. with poor human rights records.

¹ See for example: “PICUM’s Main Concerns About the Fundamental Rights of Undocumented Migrants in Europe in 2006” PICUM (Brussels: February 2007)

In 2006, members of the European Platform for Migrant Workers Rights (EPMWR) decided to contribute actively to the debates around Europe’s labour migration and integration policies by producing national shadow reports on the status of labour migration and integration in the European Union.

The first set of these shadow reports has now been finalised², covering the situation in the following countries: Estonia, France, Ireland and the United Kingdom.³ The main aim is to assess the emerging Common European Migration Policy, with a special emphasis on labour migration and integration, both in terms of policies and legislation as well with respect to their actual implementation. The latter is crucially important since the respect for rights at the formal level does not automatically result in their accessibility at the practical level. Effective application and enforcement is needed, and this does require the availability of sufficient financial and human resources, for example for labour inspection teams.

The rapporteurs use the internationally accepted human rights standards, and especially the UN Migrant Workers Convention, as the reference framework for these reports. This particular Convention is one of the seven core international human rights treaties, « representing the most elaborate framework for states to deal with migration issues in full respect of the human rights of migrants.»⁴ Hence, in formulating laws and regulations governments should be guided by the underlying principles of the UN Migrant Workers Convention⁵ and other relevant international instruments.

² This is a pilot project which is supported financially by the Network of European Foundations through the EPIM programme.

³ We decided to select these countries because they offer a mix between old and new, both in terms of EU membership as well with respect to immigration and integration policies & practices.

⁴ Interview with Louise Arbour, UN High Commissioner for Human Rights on the occasion of International Migration Day 2006. Published by December 18 vzw.

⁵ Official name is: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

As a way of introduction and in order to put these shadow reports in context, the first chapter of this publication gives an introduction to what constitutes a rights-based approach to migration and provides an overview of the current EU labour migration and integration initiatives.

“The general tendency emerging from these four reports is that labour migration policies are becoming ever more complex and that migrant workers are not viewed as human beings who are entitled to fair and equal treatment”

Each of the four country reports looks at a similar range of issues. Starting with a general overview of the situation of migrant workers within the context of the national policy approach to labour migration; the rapporteurs then move towards addressing the specific core economic, social, civil and political rights. Finally, they look at the integration policies and measures, based on the understanding that there is a strong link between a migrant’s legal status and the degree to which her/his rights are respected in practice.

The general tendency emerging from these four reports is that labour migration policies are becoming ever more complex and that migrant workers have a utilitarian value, i.e. if managed properly they can contribute significantly to the economies of the receiving and sending countries alike. They are, in other words, not viewed as human beings who are entitled to fair and equal treatment.

There continues to be a problem with gathering good data on the situation of migrant workers and members of their families, primarily because States do not use a clear definition of the status of migrant workers. As a result, some official statistics will identify a person as a migrant worker whilst the same person would not show up in figures released by another government agency. As far as undocumented migrant workers are concerned, they are almost universally excluded from the official statistics.

General Policy Approach to Labour Migration

As mentioned above, there is a growing recognition of the value of labour migration to the national economies of the EU Member States, with policy evolving into the direction of « managed » migration. This system is characterised by control mechanisms operating at a number of levels, principally in the issuing of visas, permitting of border crossings, issuing of residence permits, regulating entry into the workforce, and access to the use of public services.

In the United Kingdom, considerable policy adaptations have been made over the past decade with the effect of increasing the proportion of the employed workforce who are migrant workers to almost 10%.

However, the procedures which have evolved to regulate this component of the labour force have in some Member States taken extremely complex forms, with multiple categories and hierarchies ordering the status and entitlements of these migrants.

In Ireland, the *Employment Permits Act (2006)* which was enacted in January 2007, includes a managed labour migration scheme with four distinct categories for the employment of migrants.

In France, successive governments have changed the provisions of the 1984 ordinance which recognised a real right for foreigners to stay on the French territory. The effect has been a gradual erosion of this right, culminating in July 2006, with the so-called *Sarkozy Law II*.

This law represents two main turning points in France's migration policy: (1) the ten-years residence permit became the exception; and (2) the government now favours what it calls *chosen migration*, giving migrant workers access based on France's labour market needs. The French report states that these changes will undoubtedly result in the increase of the number of undocumented migrants.

The situation in Estonia is quite different from the one in the other three countries covered by this publication. There are currently no specific policies aimed at facilitating access to the Estonian labour market for migrant workers.

land on a number of broad and vague grounds; failing to outline the criteria by which Immigration Officers make their assessment, thereby creating the potential for subjective, arbitrary and discriminatory determinations.

In the United Kingdom, the Working Holiday-makers Scheme, (WHS), places responsibility for decision-making on visa officials. The WHS permits citizens of all Commonwealth states aged 17-30 to live and work in the UK for up to two years. In practice it has shown a very substantial bias in favour of nationals of the mainly white countries of Australia, Canada and New Zealand and against people from African, Caribbean and South Asian Commonwealth members.

“Although visa procedures generally do not include explicit provisions that mandate discrimination on the grounds forbidden by the Convention, the scope for indirect discrimination should not be underestimated.”

Access to Residence and Entry into the Labour Force

The UN Migrant Workers Convention does not set out a requirement for migrant labour recruitment to take a particular form, but the effect of Art. 1.1 is that, whatever procedures are adopted, they should operate “without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”

Although visa procedures generally do not include explicit provisions that mandate discrimination on the grounds forbidden by the Convention, the scope for indirect discrimination should not be underestimated. The report from Ireland states that the *Immigration Act, 2004* empowers Immigration Officers to refuse leave to

In France, the Sarkozy Law II established the link between the residence permit and the work contract. Several types of residence permits exist and many do provide the permit holder with the authorisation to practise a profession. Here again, the system is characterised by its complexity and by the fact that more and more temporary work contracts are being issued and that these contracts are linked to temporary residence permits.

Economic Rights

Art. 25 of the UN Migrant Workers Convention which sets out the requirement that migrant workers “shall enjoy treatment not less favourable” in respect of conditions and terms of employment with nationals of the state of residence is one of the key articles with respect to guaranteeing economic rights.

Some of the reports in this publication show that economic rights are to a large extent more favourable for so-called highly skilled migrants. In the U.K., the Highly Skilled Migrants Programme (HSMP) provides the highest level of benefits in terms of security. Under this scheme workers are not required to have an offer of employment before arriving in the country. However, they are expected to establish themselves in either a high-skilled post as an employee or in business as self-employed service provider within their first year of residence. Those in employment are permitted to change jobs within highly-skilled categories of work.

In the United Kingdom, employment law generally operates on the principle that 'illegal' contracts of employment are not enforceable, and on this basis irregular immigration status is capable of rendering an employment contract unenforceable. The mere, undisputed suspicion of immigration irregularity is sufficient to render lawful an employer's decision to dismiss an employee without honouring conditions of the contract regarding wages – even if this suspicion is subsequently discovered to be unfounded.

In France, an illegal work contract does not withhold the employee from the right to a minimal protection. It is the employer who incurs the sanctions for not meeting the conditions set in the Labour Code. By way of legal action, the employee can obtain damages and interests. However, the implementation of this provision remains difficult, because the employee will have to prove the existence and duration of the work relation.

Social Rights

The UN Migrant Workers Convention clearly stipulates that States should facilitate *family reunification*. The national reports show that in general, family reunification is permitted under strict conditions. Often, these conditions are dependent on the immigration or legal status of the person who is already legally residing in the country of destination.

In France, the family reunification procedure only applies to a very small number of categories of foreigners, including those migrant workers who hold work permits as scientists, employees in mission or competence and talents card holders.

“Practice shows the need for a review of the states’ education policy, especially with respect to access to third-level education, language tuition for parents and the availability of support teachers in primary and secondary schools.”

In the United Kingdom, some categories of migrants workers are excluded from the family reunification scheme. These are: the Sector Based Scheme (SBS) and a scheme recruiting young people to work in agriculture, the Seasonal Agricultural Workers Scheme (SAWS).

In Ireland, there are currently no legislative provisions governing the right of legally residing migrants to have family members join them in Ireland and therefore no application for family reunification is guaranteed. The situation in Ireland is furthermore complicated because all family reunification applications are considered and granted at the absolute discretion of the Minister for Justice, Equality and Law Reform. Ireland opted out of the European Union Family Reunification Directive.

The transposition of this Directive by Estonia, however, resulted in amendments to its national

legislation that could be considered as having a positive impact on the family reunification procedures. The period after which a person can apply for his/her family member to join him/her was decreased from 5 to 2 years. Non-citizens, however, are treated less favourably than Estonian citizens. Migrants need to prove that their family reunification in Estonia is justified.

Art. 28 of the Convention sets out that “Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned.” This cannot be denied to people in an irregular or undocumented situation. As far as emergency health

ethnic groups within a framework of equality. In Estonia, the main problem with respect to accessing basic health care services is related to the language issue, because services are available in the Estonian language only.

As far as *education* is concerned, there is a generally accepted notion that children should have access to the school system, regardless of their nationality and legal status. However, in practice the authorities often encourage school principals or teachers to contact them if they believe that the child or its parents or guardians might have an irregular immigration status. In France, for example, it is not uncommon that mayors require parents to present their residence permit as part of the procedures to register a foreign child for school.

“With respect to access to social security, migrant workers usually face great difficulties and are confronted with discriminatory measures.”

care is concerned, the reports show that this is indeed available. Beyond that, patients will need to qualify for health insurance or other schemes. In Ireland, migrant workers can apply for what is called category 2-status, but only if they can show to the health care services that it is their intention to stay in the country for a minimum period of one year. In France, lawfully residing foreigners have access to the basic universal health care coverage (the CMU system), whilst undocumented migrants have access to urgent health care only, unless they meet the conditions set by the State Health Aide (AME).

When looking at *health care*, health services should be provided in culturally appropriate ways, reflecting the diversity of the population. In Ireland, the development of the Health Service Executive’s National Intercultural Strategy aims to improve the services in such a way that they take into account the needs of minority

Access to full-time education for adults is often problematic, usually imposing strict residency requirements. In Ireland, once children of migrants reach 18 years of age, they must obtain independent status and are charged international student fees rather than the same fees as Irish college students, no matter how long they have been resident in the country. In the United Kingdom, spouses and partners who have been permitted to enter the UK and reside as dependent members of the family of a migrant worker have unrestricted rights to access education, though they will be treated as overseas students if they enrol in full-time courses in state sector colleges.

The 5th Common Basic Principle on Integration makes a case for promoting access to education for migrants and their descendants. Practice as outlined in the national reports shows, however, the need for a review of the states’ education policy, especially with respect to access to third-

level education, language tuition for parents and the availability of support teachers in primary and secondary schools.

Again, the situation in Estonia is quite different from the other states covered by this publication. In addition to the unique position of the Russian-language minority and its education requirements, the Estonian government did however recently start with a special project to assess the needs of the children of new migrants.

The UN Migrant Workers Convention guarantees access to housing and social housing schemes under article 43.1 (d), at least for documented migrant workers. Questions arise, however, in relation to the number of houses available and the quality of housing, particularly in the rental sector, that migrants who are more marginalised and in less well paid work can afford to access. The Irish report notes that migrants themselves should be included in future housing strategies and that these strategies would have to look at ways for increasing social and affordable housing, tackling homelessness and promoting the modernisation of the private rented sector.

There is no real right to housing in France. As far as social housing is concerned, immigrants are faced with administrative barriers as well as systematic discrimination. There are housing facilities for people in precarious situations, however these facilities either offer short-term housing only, or require the applicant to take part in a so-called integration project, which means that she/he would have to possess the necessary residence and work permits. This seriously jeopardises the admissibility of undocumented migrants. Access to housing and social housing schemes is problematic in each of the countries covered by the reports.

With respect to access to *social security*, migrant workers usually face great difficulties and are confronted with discriminatory measures. The effect of these measures is that they are often excluded from a wide range of social security benefits.

In the United Kingdom, people deemed to be 'subject to immigration control' - which will include all migrant workers on managed migra-

tion schemes - are restricted by the immigration condition that they should have no entitlement to a 'public funds' benefit. The same restriction applies to tax credits paid to workers in employment whose income is deemed insufficient for the needs of their families. Even where the 'no recourse to public funds' condition does not apply to a migrant worker, the person may still experience difficulty in access because of the so-called 'habitual residence' rule. This test requires that a worker demonstrate that she/he is (a) lawfully resident; (b) has the intention to remain permanently settled; and (c) has been resident for an 'appreciable period' (such a period being longer or shorter depending on other factors concerning the individual claimant).

A similar situation exists in Ireland, where the Habitual Residency Condition limits access to social welfare benefits. Section 246 of the Act states that "it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless he has been present in the State or any other part of the Common Travel Area for a continuous period of 2 years ending on that date."

The report from Estonia states that migrant workers who are legally residing in the country can exercise the same social security rights as Estonian citizens.

Civil and Political Rights

The civil and political rights of migrant workers in the four countries covered by this publication are generally in line with those listed in the UN Migrant Workers Convention. Questions should be asked, however, about the practical access to these rights, primarily because of the often vulnerable situation migrant workers and members of their families find themselves in. Fear of loss of employment – and consequently the withdrawal of the immigration status – may well have a negative impact on how these rights are exercised.

Support organisations, unions, churches and migrants rights groups all have a crucial role to

play in helping to create the necessary space for migrant workers to exercise their civil and political rights, and to set up their own organisations as they see fit.

In France, there is a long history of mobilisation around migrant rights by social movements. In 2006, for example, 800 NGOs, associations of undocumented foreigners, trade unions, political parties gathered in a movement called “United against a disposable immigration” in opposition to the new French immigration policies.

Governments, of course, also have their role to play. In Ireland, for example, the Prime Minister set up a Task Force on Active Citizenship back in April 2006, whose task it also was to gather ideas on what needs to be done to facilitate the participation of so-called newcomers. The lack of representation of migrants and ethnic minorities, however, was challenged by a number of civil society organisations who attended the consultation sessions held by the Task Force.

In 2003, the European Commission wrote that integration “should be understood as a two-way process based on mutual rights and corresponding obligations of legally resident third country nationals and the host society which provides for full participation of the immigrant. This implies on the one hand that it is the responsibility of the host society to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in economic, social, cultural and civil life and on the other, that immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.”⁶ Following this, the European Union adopted a set of Common Basic Principles that should help the Member States with implementing the Common Integration Agenda. This can clearly be linked to one of the core objectives of the UN Migrant Workers Convention, which is to encourage and establish equal treatment between migrants and citizens.

“For integration to be this mutual process of adaptation, it is crucial that all migrant workers and members of their families can freely assert their interests based on the effective access to the civil, political, economic, social and cultural rights as set in the Convention.”

Integration Policies and Measures

Integration has the potential to contribute positively to the way migrant workers and members of their family exercise their rights in the workplace and the society at large.

For integration to be this mutual process of adaptation, it is crucial that all migrant workers and members of their families can freely assert

⁶ *European Commission’s Communication on Immigration, Integration and Employment – COM (2003) 336, p. 17-18.*

their interests based on the effective access to the civil, political, economic, social and cultural rights as set in the Convention.

The situation in the United Kingdom is marked by the lack of a formal policy on the part of government aimed at the integration of migrant workers. The reason for this absence lies in the fact that UK immigration policy considers that only a proportion of migrant workers, at the most skilled end of the spectrum, are considered to be destined for long-term settlement.

Ireland as well has no formal integration policy. The recommendation by the Joint Oireachtas Committee on European Affairs that the government should publish a white paper on integration is therefore a welcome and much-needed development. There remains, however, a strong need for political leadership. The Department of Justice's *Scheme for an Immigration, Residence and Protection Bill*, released in September 2006, does mention the term integration several times but does not offer a working definition and does not contain any reference to the Immigrant Integration Unit, which had been mentioned in previous proposals.

In France, the Sarkozy Law II of July 2006 introduced the so-called integration and reception contract. Access to free linguistic (200 to 500 hours) and civic (6 hours) courses is thereby granted as well as a training day entitled "life in France" on practical rights regarding school, employment, accommodation and health (only 6 hours despite the obvious crucial interest). Paradoxically, however, access to the integration process has become much more difficult, because many programmes that used to be offered at various stages of the integration process have had their funding cut.

In Estonia, the government is implementing the *Integration of Estonian Society 2000-2007 Programme*, which has four components: general education, education and culture of ethnic minorities, teaching adult minorities the Estonian language and social language competence. The main aim of the programme is to encourage social harmony. Regrettably, the programme does

not address in any detail the topics of discrimination of ethnic or national minorities.

Conclusion and the Way Forward

With this publication, the European Platform for Migrant Workers Rights wants to contribute to a regular annual assessment of the migration and integration policies developed in the context of the emerging Comprehensive European Migration Policy and how this is being implemented at the level of the Member States. Our focus will continue to be on the labour migration components, using the UN Migrant Workers Convention as the reference framework for our assessment.

In advocating stricter adherence to the norms of international conventions, as well as ratification of the UN Migrant Workers Convention by all EU Member States, we believe that the wide range of challenges and the structural discrimination which migrant workers and members of their family face, would be greatly clarified.

Civil society actions around the promotion of and respect for the rights of all migrants combined with actions to obtain enforcement through the courts would help to move the European Common Migration Policy in a more equitable direction, away from the systems of managed migration that are only aimed at recruiting migrant workers to address labour market needs and meet demographic challenges.



II. Migrants' Rights and Labour Migration in the European Union

René Plaetevoet*

It is the purpose of this chapter to provide a brief introduction to what constitutes a rights-based approach to labour migration and to give an overview of the labour migration and integration policies and initiatives currently undertaken by the European Union.

1.1 A Rights-Based Approach to Migration

Reviewing and analysing the EU's emerging common migration policies should be done in the global context. International migration is primarily a consequence of the major economic and social inequalities that exist today and that are being deepened by the globalisation of the economy.

In the UN Secretary-General's report on International Migration and Development,¹ the estimated number of international migrants is 200 million people. As more people migrate, concern about their vulnerability to human rights abuses increases. And this is especially the case when migration happens in an "undocumented" or "irregular" way.

The current tendency amongst a growing number of States to view migration only in terms of its economic opportunities reflects a utilitarian approach, which is often accompanied by policies that are characterised by restrictions on the fundamental rights of migrants and members of their families. "The logic of this *migration management approach* may be described as utilitarian consequentialist, seeing migrants as factors of economic activity and ones that can be employed at lower standards of pay and conditions than those prevailing in host countries, precisely because lower pay will lead to creation of more jobs. A prominent feature of this approach is promoting temporary migration schemes where "bundles of rights" may be traded away in exchange for access to employment in labour markets where conditions are better than in home countries."²

1 "Globalization and Interdependence: International Migration and Development" June 2006

2 Patrick Taran, "Defending a rights-based approach to migration in the age of globalisation." Article published by

There is, therefore, a compelling case to be made for a rights-based approach to migration, "because of the need to focus on the fact that people are vulnerable as migrants not only because they have to deal with lack of respect for their basic human rights, but also because as migrants they are often excluded from political, legal and cultural remedies which are available in society to ensure the protection of human rights for those who are recognized as citizens."³

Adopting a rights-based approach to migration means that migrants are not only seen as *objects to be properly managed but as subjects with rights and responsibilities, who make individual choices*. This means recognising that *every person* – whether or not she/he has the relevant documents/papers – should be valued as a human being and is entitled to basic human rights, including working conditions that are in line with the internationally accepted labour standards.

A rights-based approach is a conceptual framework using the standards as agreed upon by the international community and concretised in a number of human rights law instruments and protection mechanisms.

At the international level, it is important to mention the work done by the ILO,⁴ which clearly puts respect for rights at the heart of its proposals on labour migration. Of particular significance is the *Multilateral Framework on Labour Migration*, of which the first Principle states that "opportunities for all men and women of working age, including migrant workers, to obtain decent and productive work in conditions of freedom, equity, security and human dignity should be promoted."⁵

December 18 vzw (Brussels: December 2006).

3 Don Flynn, "Migrant Voices, Migrant Rights," Report published by the Barrow Cadbury Trust (London: November 2006), p. 6.

4 In June 2004, the ILO adopted a Plan of Action for migrant workers calling for a rights-based approach to labour migration. This was followed in 2005 by the adoption of the *Multilateral Framework on Labour Migration*. The text was first published in 2006.

5 ILO's *Multilateral framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach*. International Labour Office (Geneva: 2006), p. 5

This is linked to the call for *Decent Work for All*, which the trade union movement is putting forward as a “strategy to achieve sustainable development that is centred on people. Decent work is a key element to build fair, equitable and inclusive societies being based around the principles of employment creation, workers’ rights, equality between women and men, social protection and social dialogue.”⁶ In other words, it is necessary to provide the proper environment so that all people have equal access to employment without discrimination.

1.2 The UN Migrant Workers Convention

The specificity of the human rights violations of which migrants are victims requires a specific international protection, one that is provided for by the UN Migrant Workers Convention.⁷

This main characteristics of this Convention can be summarised as follows:

- It is an elaborated, internationally agreed treaty that gives a clear definition of “migrant workers” and presents a comprehensive understanding of the migration process.
- It compiles and reinforces the fundamental human rights of all migrant workers and members of their families.
- It clearly fosters cooperation between all States involved in the migration process.
- It aims to eradicate irregular migration and seeks to put an end to the exploitation of migrants.

- It promotes the indivisibility of all rights.
- It provides normative benchmarks against which national policies and practices of the those States that have ratified the Convention can be assessed.

The Convention does not create new rights. Rather, it explicitly extends to migrant workers and members of their families those rights elaborated in other UN treaties. It sets out the fundamental rights that must be granted to migrant workers and members of their families, regardless of their status. The Convention provides a detailed list of minimum standards of protection in terms of civil, economic, political, social and cultural rights.

The rationale for explicitly including the recognition of the rights of undocumented or irregular migrant workers can be found in the preamble to the Convention, which states that “...the human problems involved in migration are even more serious in the case of irregular migration and (we are) convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking of migrant workers, whilst at the same time assuring the protection of their fundamental human rights.”⁸

This publication focuses primarily on the situation of migrant workers and members of their families who are in one of the four EU Member States covered by this pilot project. We are, therefore, looking at so-called post-admission policies. Important measures are generally required in the following areas:⁹

- labour market regulation, including access, mobility and recognition of qualifications;
- protection of migrant (and national) workers in the employment context, including monitoring of terms and conditions of employment, access to vocational training, language and integration courses, allowing for freedom of

⁶ The “Decent Work for a Decent Life” campaign was launched at the World Social Forum in Nairobi on 21st January 2007. It is a joint campaign led by the International Trade Union Confederation, the Global Progressive Forum, Social Alert International and Solidar.

⁷ While it is true that the human rights of migrants are also protected under the other six core UN human rights treaties, research shows that the protection available in those instruments is not being used effectively. See: “The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat” International Catholic Migration Commission and December 18 vzw (Geneva: November, 2004)

⁸ UN Fact Sheet No. 24 (revised) – *The Rights of Migrant Workers*, p. 22.

⁹ Nilim Baruah and Ryszard Cholewinski, “Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination” (Geneva: 2006), p. 133.

association, and protection against discrimination;

- facilitation of social cohesion, particularly through measures to prevent discrimination, promote family reunification, and assist integration;
- improvements in social welfare, including areas of access to health care, education, housing and community organising;
- provisions on social security.

The above-listed measures should be linked to the minimum standards included in the international human rights law framework, of which the UN Migrant Workers Convention offers the most comprehensive approach.¹⁰ For the purposes of this publication, we are therefore using the fundamental rights as included in Part III of the Convention¹¹ as benchmarks against which to measure the implementation of the emerging Common European Migration Policy in the selected EU Member States.¹²

1.3 Brief overview of current EU migration policy developments

Population Figures

Since the 1970s, migration flows to and within Europe have changed significantly. In summary this can be characterised by an increased intra-EU mobility, the increased diversity of the migrant population and the growing complexity of their movements and their legal status.¹³

¹⁰ Instruments such as the ILO Conventions, several of the other core UN treaties as well as regional protection mechanisms such as the European Convention on Human Rights and the European Social Charter all offer opportunities to promote fair and equal treatment for all.

¹¹ These articles are applicable to all migrant workers and members of their family, regardless of their status.

¹² The corresponding articles as listed in Part IV of the Convention – applicable to migrant workers and members of their families who are documented or in a regular status – are used whenever appropriate.

¹³ See: Elizabeth Collett, "One size fits all? Tailored integration policies for migrants in the European Union" EPC Policy Paper

According to Eurostat,¹⁴ the total number of non-nationals living in the European Union in 2004 was around 25 million, just below 5.5 per cent of the total population. In absolute terms, the largest numbers of foreign citizens reside in Germany, France, Spain, the United Kingdom and Italy. In all EU Member States, except Luxembourg, Belgium, Ireland and Cyprus, the majority of foreigners are citizens of non-EU-25 countries. Population and migration data also show that in 2005 all countries of Western Europe (the European Union's first 15 members (EU-15), Norway, and Switzerland) have a positive migration balance, as do six of the 10 new EU Member States — Cyprus, the Czech Republic, Hungary, Malta, Slovenia, and Slovakia.¹⁵

There continues to be a serious lack of accurate data, and this is especially the case with respect to the number of irregular migrants. The OECD estimates that there may be from 5 to 8 million migrants with irregular status in Europe.¹⁶

Recognising the difficulties with data collection and the harmonisation of statistics in the field of migration, the European Commission is working on a regulation for a Common Framework.¹⁷ It should be noted, however, that although reliable statistical information is needed for the development and implementation of migration policies, any potential misuse of procedure or violation of an individual's human rights should be strongly opposed.

Conflicting Agendas

A recently produced working document by MEP Lilli Gruber¹⁸ describes the political context

¹⁴ (Brussels: April 2006).

¹⁵ "Non-national populations in the EU Member States", Eurostat: Statistics in Focus (August 2006).

¹⁶ Rainer Münz, "Europe: Population and Migration in 2005" published by Migration Information Source (Washington DC: June, 2006). See: <http://www.migrationinformation.org/Feature/display.cfm?ID=402>

¹⁷ As referred to in the report of the Global Commission on International Migration, "Migration in an interconnected world: New directions for action" (Geneva: October 2005), p. 33.

¹⁸ COM (2005) 375 final.

¹⁹ Working Document on the Policy Plan on Legal Migration,

within which the European Union's Common Migration Policy is emerging as quite complex and often hostage to different national policies. This is further complicated by the fact that the decision-making process for matters related to legal migration and integration is still based on the unanimity requirement, rather than the application of co-decision and qualified majority voting, as is the case with other Title IV matters.¹⁹

Nevertheless, the European Union does have competence in the field of migration, going back to the 1997 Treaty of Amsterdam. The meeting of the European Council in Tampere (1999) was crucial for the development of an area of freedom, justice and security.²⁰ It called for the development of a common EU asylum and migration policy, including the following core elements: partnership with countries of origin, a common European asylum system, fair treatment of third-country nationals, and the management of migration flows.

In 2004, the European Council adopted the Hague Programme,²¹ establishing priorities in the fields of freedom, justice and security. This follow-up programme to Tampere covers amongst others issues related to migration and integration and refers to the importance of a comprehensive approach in the area of migration and asylum policies.²²

Parallel to these developments, migration-related measures also emerged in the socio-economic field. The Employment Strategy is one of the key approaches used to reach the objectives

set in the so-called Lisbon Strategy,²³ which aims to make the European Union "the most competitive and dynamic knowledge based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion." The Strategy was re-launched in 2005 as the Lisbon Partnership for Growth and Employment, with the goal to "modernise our economy in order to secure our unique social model in the face of increasingly global markets, technological change, environmental pressures, and an ageing population."²⁴ The development of a common approach to economic migration remains one of the key actions of the Community Lisbon Programme: "In order to tap the world's human capital and mine its wealth of knowledge, the Commission will work towards a common framework for managing economic migration at EU level and proposes accelerated admission procedures for longer term stays of third country researchers and the facilitation of uniform short-stay visas."²⁵ Economic migration is viewed as a complementary policy response to deal with the labour market demands and demographic challenges. Indeed, business communities across the European Union continue to ask for migrant workers to fill shortages in such sectors as agriculture, construction, service, health care, IT and engineering.

Towards a Common and Comprehensive Migration Policy

The often conflicting concerns about labour market demands, demographic challenges, perceived security threats and the continued opposition by several Member States, are posing serious challenges to the development of a common and harmonised migration policy. This also has a negative impact on the adequate protection of the rights and entitlements of migrants and members of their families. However,

Committee on Civil Liberties, Justice and Home Affairs, 19 January 2007 (DT\648908EN.doc)

19 For a discussion see: Stefano Bertozzi, "Legal Migration: Time for Europe to Play Its Hands," CEPS Working Document No. 257 (Brussels: February 2007)

20 An excellent overview for the period 1999-2004 can be found in Jan Niessen, "Five years of EU migration and asylum policy-making under the Amsterdam and Tampere mandates" Migration Policy Group (Brussels: 2004).

21 See: European Council, Presidency Conclusions 04-05 November 2004.

22 For a discussion see: "The Hague Programme: Strengthening Freedom, Security and Justice in the EU" Working Paper No. 15, European Policy Centre (Brussels: February 2005).

23 See: European Council, Presidency Conclusions 23-24 March 2000.

24 "Common Actions for Growth and Employment: The Community Lisbon Programme" COM (2005) 330 final.

25 Ibid.

some progress towards a common migration policy has been made.²⁶

In December 2005, the European Council adopted the *Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean region*,²⁷ requesting the European Commission to report back on progress made by the end of 2006.

The European Commission, from its side, continues to take the lead in laying the ground work for the common migration and integration policy. Quite a number of Communications were published over the past two years, providing us with clear indications of what the elements are of this proposed *Comprehensive European Migration Policy*.

Of particular interest to the authors of this publication are the following Communications:

- The Global Approach to Migration one year on: towards a comprehensive European migration policy.²⁸
- Policy priorities in the fight against illegal migration of third-country nationals²⁹
- Policy Plan on Legal Migration³⁰
- A Common Agenda for Integration: framework for the integration of third-country nationals in the European Union³¹
- Migration and Development: some concrete orientations³²

Following the various meetings under the Finnish Presidency during which calls were made to intensify efforts to make the European Union's

approach to migration "truly comprehensive," the Commission presented its way forward in a Communication published on 30th November 2006 (COM 2006 – 735 final). In this document, the Commission gives an overview of recent measures taken and outlines its plans for the future, looking at a wide range of policy areas, including: external relations, development, employment and justice, freedom and security. The report expands on the 2005 Global Approach to Migration document, by adding legal migration and integration measures, thus ensuring that "partnership with third countries will address the full range of issues of interest and concern to all involved."³³

Although the Commission's report focuses on the situation in Africa and the Mediterranean region, the Commission argues that "comprehensiveness also needs to be translated in geographic terms in the future."³⁴ Measures and policies as described in this report should therefore be seen as precedents and indicators for the cooperation with countries at the eastern external borders of the Union as well as states in Latin America and Asia.

The comprehensive migration approach should - according to the Commission - be based on three key principles: (1) Solidarity between Member States; (2) Partnership with Third Countries; and (3) Protection of Migrants.

In the above-mentioned report from November 2006, it is however revealing and of concern to see that migrant organisations are only mentioned in the context of the chapter on integration and cultural dialogue. As if to indicate that partnerships with migrant groups and other non-governmental organisations should not be established when it comes to developing and implementing migration policies at the international level.

26 The European Council adopted such key Directives as the *Family Reunification Directive (2003) Council Directive 2003/86/EC of 22/9/03, transposition date: 03/10/05* and the *Directive on Third-Country Nationals who are Long-term Residents (2003) - Council Directive 2003/109/EC of 25/11/03, transposition date: 26/01/06*.

27 See: European Council, *Presidency Conclusions 15-16 December 2005*.

28 COM(2006) 735 final

29 COM (2006)402 final

30 COM(2005) 669 final

31 COM (2005) 389 final

32 COM (2005) 390 final

33 COM (2006) 735 final, p. 2

34 COM(2006) 735 final, p. 3.

1.4 The EU and Labour Migration

As mentioned before, the European Union is slowly moving towards a common and comprehensive approach to migration, of which labour migration is one important element. The creation of legal channels for labour migration could contribute to the reduction of irregular labour migration. Furthermore, the “manifold crosscutting combinations of regularity and irregularity in the three layers of entry, residence and work” should be considered when putting forward migration policy options.³⁵

This would be a positive development as long as the proposed measures for labour migration are based on internationally accepted human rights standards. Unfortunately this does not appear to be the case.

Initiatives³⁶ towards establishing a common framework for labour migration have encountered significant difficulties, reflecting the continuing opposition from several of the EU Member States to the very idea of a transnational EU-wide approach to labour migration. Whilst the Tampere Programme provided opportunities for a pioneering approach, its successor the Hague Programme is much less ambitious.

As far as “legal” labour or economic migration is concerned, both the European Commission and the European Council emphasise that the further development of a common European policy in this area needs to be a full part of the Global Approach to Migration, and therefore “needs to be integrated into both the external and internal EU policies.”³⁷

In its November 2006 progress report to the Council and the Parliament, the European Commission clearly states that the European Union is “taking a two-track approach for the next years:

facilitate the admission of certain categories of immigrants on a needs-based approach (e.g. highly skilled and seasonal workers) without prejudice to the application of the Community preference principle and provide a common secure legal status to all legal immigrant workers.”³⁸

This confirms the Commission’s decision to take a limited so-called vertical approach, developing a set of measures and procedures for a few selected categories of migrant workers.³⁹ This is contrary to the many recommendations submitted by civil society organisations and other actors as part of the consultation process on the Commission’s Green Paper on an EU Approach to Managing Economic Migration. They were in favour of a horizontal approach, i.e. adopting a set of measures that would apply equally to all third-country nationals seeking employment in the European Union.⁴⁰

In its Policy Plan on Legal Migration, the Commission argued that “the Member States themselves did not show sufficient support for such an approach. Moreover, there is the need to provide for sufficient flexibility to meet the different needs of national labour markets. Therefore, it is deemed more appropriate to attain the objectives of transparency, effectiveness of EU legislation and non-discrimination through a targeted set of several complementary measures.”⁴¹

The Policy Plan on Legal Migration puts forward initiatives in a range of areas, i.e. legislative measures, knowledge building and information, integration, and cooperation with third countries.

As a first step, the Commission is now developing a *General Framework Directive*, with the intent to set a common framework of fundamental rights for all third-country nationals in legal em-

35 Sergio Carrera & Marco Formisano, “An EU Approach to Labour Migration,” Centre for European Policy Studies, CEPS Working Document (Brussels: October, 2005), p. 10

36 For an overview see: Stefano Bertozzi, “Legal Migration: Time for Europe to Play Its Hand,” p.6

37 COM (2006) 735 final, p. 6

38 COM (2006) 735 final, p. 7

39 These categories are: highly skilled workers, seasonal workers, intra-corporate transferees, remunerated trainees. It is expected that the Directive on highly-skilled workers will be ready in 2007.

40 Submissions can be found by searching http://ec.europa.eu/justice_home/news/consulting_public/

41 COM(2005) 669 final, Policy Plan on Legal Migration, p. 5.

ployment already admitted in a Member State, but not yet entitled to the long-term residence status. The preliminary research for the drafting of this Directive is currently taking place under the direction of DG Justice, Liberty and Security, and it is expected that this new instrument will be ready in 2007.⁴²

Whilst the Commission engaged in a broad consultation process in 2005 on its Green Paper on an "EU Approach to Managing Economic Migration," this is unfortunately no longer the case for the development of the proposed Directives under the Policy Plan on Legal Migration. As a consequence, the wealth of practical experiences that civil society has will be lost. It is hoped for that Commission officials will reconsider their position.

1.5 Integration Measures

Closely related to the issue of rights is the integration of third-country nationals in the EU Member States. Integration has the potential to contribute positively to the way migrant workers exercise their rights in the workplace and the society at large. This can clearly be linked to the principles in the UN Migrant Workers Convention which elaborates in detail employment and trade union rights as well as a range of social and cultural rights.

In 2003, the European Commission wrote that integration "should be understood as a two-way process based on mutual rights and corresponding obligations of legally resident third-country nationals and the host society which provides for full participation of the immigrant. This implies on the one hand that it is the responsibility of the host society to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in economic, social, cultural and civil life

⁴² Similarly, the Commission is working on the development of an instrument for the first category of migrant workers, i.e. the highly-skilled migrants. This is also expected to be ready in 2007.

and on the other hand, that immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity."⁴³

The problem with this definition is first and foremost the exclusion of a large group of immigrants, i.e. those who are in an irregular or undocumented status. This exclusion has a negative impact on the potential of integration. Secondly, the coherence of the Commission's integration framework is compromised because in its approach it seeks to "accommodate the policy diversity among Member States," which means that the principles are "broad statements with little substantive content."⁴⁴

EFIL writes that the concept of integration should be understood as the process of inclusion of migrants in the core institutions, relations and statuses of the receiving society. For the migrants, integration means a process of learning a new culture, acquiring rights, accessing position and status, building personal relations with members of the receiving society and growing to identify with it. For the receiving society, integration means opening up institutions, giving migrants equal opportunities and publicly welcoming their integration into society.⁴⁵

The Commission promotes the implementation of the Common Agenda for Integration, building on the Common Basic Principles on Integration. These principles were adopted in 2004 and are meant to provide guidance to EU Member States in the development of their integration policies.⁴⁶

⁴³ European Commission's Communication on Immigration, Integration and Employment – COM (2003) 336, p. 17-18.

⁴⁴ Elizabeth Collett, "One size fits all? Tailored integration policies for migrants in the European Union" EPC Policy Paper 24 (Brussels: April 2006), p. 17

⁴⁵ Wolfgang Bosswick and Friedrich Heckmann, "Integration of migrants: Contribution of local and regional authorities" European Foundation for the Improvement of Living and Working Conditions (Dublin: May 2006), p.

⁴⁶ See: COM (2005) 389 – Communication for a Common Agenda for Integration.

A range of initiatives were put in place to monitor the integration of immigrants in the Member States; such as the Joint Employment Report, the National Action Plan, the National Plan on Social Inclusion or the National Reform Programme. Member States are, for example, asked to focus on anti-discrimination action and integration in the labour market of immigrants and minorities.⁴⁷ According to the Commission, and as underlined in the draft joint employment report 2005/2006, the efforts of the Member States are clearly insufficient in this area. The Commission stated that in "Member States' plans to improve efforts to support the inclusion of those furthest away from the labour market", "groups such as non-EU nationals (...) often receive insufficient attention."⁴⁸

The European Council agreed in December 2006 that during the course of 2007 steps should be taken to "promote integration and intercultural dialogue and the fight against all forms of discrimination at Member State and EU level, strengthen integration policies and agree on common goals and strategies."⁴⁹

1.6 Annual Reports on Migration and Integration

As mentioned above, eleven Common Basic Principles were adopted as a basis for a European Framework on the Integration of third-country nationals. The European Commission's task is to present an annual report based on the application of these principles in each Member State.⁵⁰ The Commission writes that these annual

reports "aim to provide an overview of migration trends in the European Union, analysing the changes and describing actions taken regarding the admission and integration of immigrants at national and EU level. They, thus, serve as a tool to review the development of the common immigration policy."

The First Annual Report on Migration and Integration⁵¹ was released in July 2004 and gave an overview of, among other topics, the situation of immigrants in the labour market, developments in admission policies and trends in national policies on integration. The report also emphasised the economic benefits of immigration, and addressed recommendations to Member States regarding the integration of immigrants. However, the Second Annual Report – which was published in 2006 only – seems to be merely a compilation of replies received from the National Contact Points on Integration, resulting in a rather uninteresting summary of policies adopted by the Member States. It is also worth mentioning here that most of the information collected came from governmental sources.

This first set of national shadow reports should be seen as a complimentary tool to the European Commission's Annual Report. The reports focus on the rights of migrant workers and to a lesser extent on the integration measures at the local level.⁵² It is hoped for that future editions of the Commission's report will be produced in a more timely fashion and that they will not only be based on information coming from governmental sources. The migrant organisations and the larger NGO community have significant experience in the field of migration and integration and their voices should be taken into account.

47 *Joint Employment Report 2005/2006, § 5-2 "A continued focus is needed on labour supply and target groups such as: (...) Immigrants and minorities: comprehensive action with respect to anti-discrimination and labour market integration is necessary."*

48 *Joint Employment report 2005/2006, § 4-1, page 11*

49 *Presidency Conclusions from the European Council (Brussels 14/15 December 2006), p. 11*

50 *In June 2003, the Thessaloniki European Council invited the Commission 'to present an Annual Report on Migration and Integration in Europe, in order to map EU-wide migration data, immigration and integration policies and practices.'*

51 *The report is available on the Freedom, Security and Justice website of the European Commission.*

52 *For a recent overview of policy developments in the field of integration see, for example: "Local Integration Policies for Migrants in Europe," EFIL (Luxembourg: 2007).*



III. The Rights of Migrant Workers in Estonia

Julia Kovalenko*

1.1 Introduction¹

1.1.1 Background Information and National Context of Immigration Issues

Estonia is a country with a relatively young independent statehood, where recent history still plays a very important role in shaping policies and directions for further actions. Its path to independence starts in the year 1920 when the Tartu Peace Treaty with the Soviet Union was signed. The period of 1940 – 1991, is by various sources referred to as the “Soviet occupation”, a reference which continues to the current period.

Modern Estonia is a multi-ethnic society, where on 1st January 2005 the ethnic minorities make up 32% of the local population. The majority of them are of ethnic Russian origin, i.e. approximately 80% of the ethnic population or 26% of the total population. In some areas ethnic non-Estonians constitute the absolute majority (e.g. in Ida-Virumaa county some 80% of the total population). Most of them and their descendants indeed arrived on the territory of Estonia during the Soviet time and are originating from other Soviet republics. This is the result of a natural or sometimes forced process of migration that existed in the USSR. In most cases, this group of people resides permanently in Estonia and has stable links with the country. However, in a number of cases their legal status cannot be considered as “defined.”

In order to understand the Estonian migration issues and policies it is important to look back to the early 1990s, when Estonia became independent and started to build its own way of doing things.

As mentioned earlier, during the Soviet times migration, especially labour migration, had a organised and centralised character. The highly educated young specialists graduating from universities were receiving so-called “assignments”

according to their specialisation, the needs of the Soviet republics and/or the demands of a particular factory or institution. The lottery system was used in order to make the system more fair. Refusing the assignment was practically not possible. The young specialists were to work at an assigned place for two to three years. Given the fact that the majority of graduates were of a rather young age, many of them started families and settled down in the places they were assigned to.

Another type of migrant workers of those times were unskilled workers, who were sent to or choose to go to work in a particular place. Especially popular were big plants or building sites. For example, a large number of skilled specialists and unskilled workers arrived in Estonia at the end of the 1970s when the biggest industrial port of Muuga was being developed. A similar process happened when the construction of the infrastructure for the 1980 Olympic regatta took place.

In 1991 Estonia regained its independence and started to develop its own immigration policies. The direction taken by the leading political elite, however, had unfortunate effects for a large group of long-term residents in Estonia. According to the Citizenship Act of 1992 only those residents who held Estonian citizenship during its first period of independence (i.e. in 1938) and their successors received the right to become citizens of the newly independent Estonia. In addition, Estonians by ethnic origin could receive citizenship through a simplified procedure (submitting documents by which they could prove their ethnicity). All other people were considered to be migrants, and referred to by many from the political elite as “occupants,” despite the fact that many were born in Estonia, i.e. second and even third generations of migrants, who considered Estonia to be their motherland and had no links with any other country. They were not entitled to Estonian citizenship by birth and had to go through a bureaucratic procedure of naturalisation, which included tests about their Estonian language proficiency and knowledge of the Estonian history and culture. Needless to say that for many of those concerned, the harsh

¹ Section 1 was drafted with the use of the data collected in the report “Estonian Minority Population and Non-discrimination”, Report 2006, By V. Poleshchuk, LICHR, Tallinn

requirements of the language proficiency were too difficult to meet. This is due to the fact that during the Soviet times - even though both Estonian and Russian had an official status - Russian language was used in most cases and was most widely spread.

The legislator had also excluded certain groups of permanent residents from the right to obtain Estonian citizenship as well as from the right to stay on its territory. These were: (1) the former military of the Soviet army, their spouses and dependants; (2) former servants and technical staff of the security bodies and their spouses and dependants; (3) as well as the following de-facto residents of Estonia: persons, who had no permanent registration of the former Estonian SSR, detained or criminally convicted persons, people on low income or lacking sufficient income, the homeless, and disabled persons.

had to go through the regularisation process and first receive a temporary residence and work permit in Estonia. Only after a long period of time could they obtain the permanent residence permit. This group was in fact divided into two subgroups: (1) people who took up citizenship of another country, in most cases that of the Russian Federation; and (2) people who decided to stay **stateless** or in other words **persons with undefined citizenship** (this is the term used by Estonian officials). The latter group constituted the majority.

According to the data provided by the Citizenship and Migration Board in the year 1992 only 68% of the total population of Estonia were citizens of Estonia. The number increased significantly by the year 2005, to 82%. (Table 1).

Table 1. Estonian population by citizenship, 1992, 1999, 2003 and 2005, %²

	1992	1999	2003	2005
Citizens of Estonia	68	80	81	82
Stateless persons ('persons with undefined citizenship')	32	13	12	10
Citizens of foreign states	---	7	7	8
Total	100	100	100	100

Many of the people belonging to these categories later became illegal and continue to be so. According to some official sources this group is currently not higher than 5000 persons (the number has not changed for the past seven years). Some practicing lawyers involved in migration issues, however, consider the figure to be at least 10000. On the other hand, before the year 2000 the group of illegal residents was about 40000 persons, many of whom either found the possibility to regularise themselves or left the country.

The majority of permanent residents of Estonia who did not want or could not get naturalised,

Although the number of stateless persons (who are former citizens of the Soviet Union) is constantly decreasing – as a result of the naturalisation process, natural factors, migration, etc. – their number remains rather high. As of 1 January 2006, there were 136,000 'persons with undefined citizenship' with valid residence permits.³ The majority of these stateless persons (52%) were born in Estonia.⁴

The majority of the **foreign citizens** residing in Estonia are citizens of the Russian Federation.

² Citizenship and Migration Board, Yearbook 2003, Tallinn, 2003, p. 8; Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 13.

³ Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 24.

⁴ Statistical Office of Estonia, 2000 Population and Housing Census: Citizenship, Nationality, Mother Tongue and Command of Foreign Languages II, Tallinn, 2001, Table 3.

They are mostly former Soviet Union citizens who took up Russian citizenship after 1991, while remaining resident in Estonia. On 1st January 2006, there were 93,027 Russian citizens residing in Estonia with valid residence permits (38% of all such aliens). The number of citizens of the European Union, the European Economic Zone and Switzerland with valid residence permits was 7,067 (3%).⁵

The number of **asylum seekers and refugees** in Estonia is insignificant, even despite the fact that neighboring countries such as Finland experience a fairly large influx of asylum seekers. The first law regarding refugees was adopted in 1997 only. Previously there were no provisions in the national legislation or policies with that respect. Estonia has also joined the Geneva Convention on the status of refugees and its additional Protocol of 1967. Being bound by the EU requirements, Estonia had to amend its legislation with regards to refugees. However, only four people had received Convention status by 1st January 2006. Over the period 1997-2005 another ten people were granted the so-called subsidiary protection (Table 2).

pected that after joining the EU the number of persons seeking international protection would increase; at least with the purpose of transit to other more economically attractive countries. However, so far such tendencies are not being observed. The reason for this might not only be the economic instability of the country and the rather low income level, but also the officially projected vision of the country's future, which is based on a nationalistic perspective. Various international bodies have pointed out violations of the rights of the minority population in Estonia.

The refugee issue is hardly publicised in Estonia; it is not considered to be one of the topics for public discussion. This became evident through the media monitoring carried out by the Legal Information Centre for Human Rights during the period of May 2005 – May 2006. The issue of refugees had been hardly touched upon in the local media, both Estonian and Russian language outlets. This might be considered as an indicator of the low interest from the local public in the issue.

Table 2. Decisions concerning asylum in 1997-2005⁶

	2005	Total number of decisions since 1997	Total number of decisions (%)
Asylum granted	0	4	4
Subsidiary protection granted	1	10	9
Rejection of asylum application	8	15	14
Refusal	5	49	47
Proceedings terminated or suspended	0	28	26
Total	14	106	100

Such a low number of asylum seekers is indeed a very interesting fact, also because it was ex-

Another study carried out by the research centre Faktum also concludes that the Estonian society is rather inexperienced in the refugee-related issues. The majority of respondents showed a low interest in the issue and a neutral and sometimes even positive approach towards refugees. Nevertheless, 2/3 of them were in support of the rigid

⁵ *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 24*

⁶ *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 30.*

refugee policies exercised by the State. Considerably more tolerance was claimed with regards to those potential refugees coming from the CIS countries, the Russian Federation, North America and Japan. The least tolerance was expressed towards potential refugees from Muslim countries and Africa.⁷

On 1st July, 2006 a new Law on Granting International Protection to an Alien came into force in Estonia. It introduced new standards and policies with regards to refugee protection and is aimed at further harmonisation of the national legislation with the provisions of the EU legislation.

Another category of people that should be taken into consideration in this report are the so-called **new migrants** or all those who arrived for different purposes and reasons in Estonia after the year 1991. This group is rather insignificant in numbers as so far as Estonia has not been a destination country for those migrants seeking high incomes.

According to the data provided by the Citizenship and Migration Board the number of applications for the temporary residence permit has increased drastically in the year 2005. Namely 14189 applications were received, with a positive decision in 13222 cases.⁸ Unfortunately, there are no figures available with regards to the applicants' country of residence. However, it is known that on 1st January 2006, 7% of the valid temporary residence permits were held for work purposes (approximately 2500 cases), 1% for enterprises, 13% family reunification (or accompanying spouses and dependent children) and 2% for studies.⁹

At the same time, it is possible to say that together with the increase in the number of applications

for the residence permit for work, the number of illegal migrant workers also increased. If in the year 2002 only 28 cases of irregular migration were officially identified, then in the year 2005 the number of such cases had risen to 428.¹⁰

It is quite possible that the number of migrant workers will rise in the near future, especially those coming from the European Union. Recently, Estonia has also started to develop plans and provide research aimed at bringing highly skilled workers to the country. For example, a study concerning possibilities of welcoming medical workers in Estonia was carried out by the Migration Foundation. And in late 2006, the Ministry of Finance established a Working Group with the task to develop guidelines and policies with regard to importing highly skilled workers from the EU.

When looking at the attitudes of the local community towards migrant workers, the following observations can be made. In the course of the sociological study Integration Monitoring 2005, the majority of ethnic Estonians and non-Estonians choose to answer 'I am not against it' and 'I do not care' when replying to a question regarding possible migrant workers from the Nordic countries and the EU. However, the answer 'Better not' was chosen by the majority of both ethnic Estonians and non-Estonians when replying to the question regarding migrant workers from Asia, Africa and Turkey. Ethnic non-Estonians have always demonstrated a more liberal approach as compared with ethnic Estonians. 84% of minority members decided that they are not against or that they are indifferent towards potential migrant workers from Russia. For ethnic Estonians the figure was 36%. Nevertheless, it was much higher than is the case of Asians, Africans and Turkish people - 21, 21, 19% (for ethnic non-Estonians the relevant figures were 36, 33, and 34%).¹¹

7 *Eesti elanike teadlikkus ja hoiakud pagulasteema küsimustes, veebruar 2006, Arko Marketing, Faktum uuringukeskus. The study was conducted in January 2006. Estonian Minority Population and Non-discrimination, Report 2006, By V. Poleshchuk, LICHR, Tallinn, p.9-10*

8 *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 22*

9 *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 25*

10 *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 28*

11 *I. Pettai, "Sallivus rahvussuhetes Eestis", in Uuringu Integratsiooni Monitooring 2005 Aruanne, Tallinn, 2005, p. 38.*

1.1.2 Defining Migrants in Estonia in the Context of the Current Report

Estonia does not have a definition of a “migrant worker,” nor “seasonal worker” or “migrant” as such. According to the official data received from the ministries in charge of the issue the definitions are not introduced because it is not necessary to do so. Estonian legislation does define the concept of third-country national, foreigner and alien and does not make any difference with regards to the purpose why the third-country national entered Estonia. It is important that the person has the legal basis for staying on the territory of Estonia.¹²

Thus for the purpose of this report and better enhancement of the situation with regards to migrants rights in Estonia, the author of the report will be looking at the situation of the following groups residing in Estonia: (1) stateless persons and other third-country nationals, including those residing in Estonia for several generations as the length of their stay does not make a big difference in their rights and status;¹³ (2) new migrants including migrant workers; and (3) asylum seekers. Some attention will also be paid to irregular migrants. However, because this group of people has not been studied yet and requires a more profound approach and a separate report, we will just touch upon the issue and will not go into details.

It is also important to note that according to the national legislation only registered marriage is recognised. Civil cohabitation is not considered to be legal and therefore does not lead to legal rights, such as the possibility for family reunification, inheritance, economic rights, etc.

1.1.3 Estonian legal system and policies

With regards to its legal system, Estonia has a typically continental European system, which

was influenced a lot by the German legal tradition. The main sources of normative legal rules are the Constitution, laws and by-laws or secondary legislation. The legal acts are often supplemented with various programmes of action and developments and policies aimed at solving and regulating certain issues. Neither the legal norms or the plans of action should be in conflict with the provisions of the Constitution and must be harmonised with it. The case-law cannot be regarded as the source of legal norms, despite the fact that it is used by the courts when deciding similar cases. However, the decisions of the Supreme Court influence the legal practise to a considerable extent.

According to Article 123 of the Constitution, Estonia cannot enter into international treaties which are in conflict with its Constitution. Furthermore, “[i]f laws or other legislation of Estonia are in conflict with international treaties ratified by the *Riigikogu*, the provisions of the international treaty shall apply.”¹⁴

Starting from the early independence in the beginning of the 1990s, Estonia ratified a number of international agreements initiated by various international bodies (UN, CoE), such as CERD, CEDAW, ICCPR, ECHR and others and therefore is bound to fulfil the obligations taken. Unfortunately, Estonia has not ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families yet. According to the official data received from the Ministry of Internal Affairs the state does not see the need to ratify the Convention as the obligation to equal treatment of all residents of Estonia despite their ethnic background, citizenship or length of stay in the country is already guaranteed by the national Constitution and other legal acts adopted in order to transpose the EU Directives 2000/43/EC and 2000/78/EC. Moreover, as none of the EU Member States has ratified the Convention Estonia does not see the need to do so either.¹⁵

¹² *Vastus teabenõudele, Siseministeerium on 11.01.07 nr 11-2-1/13483, Valisministeerium on 15.01.2007nr 8.3/563*

¹³ *Moreover, as described above these people have received the status of migrants only in 1991 and therefore it is rather new to them. In their rights and obligations this group of people is equal to so-called new migrants.*

¹⁴ *Eesti Vabariigi põhiseadus, Riigi Teataja 1992, 26, 349 Riigi Teataja (RT) – Official State Gazette*

¹⁵ *Vastus teabenõudele, Siseministeerium on 11.01.07 nr 11-2-1/13483, Valisministeerium on 15.01.2007nr 8.3/563*

Since 2003, Estonia has made some attempts to harmonise its national legislation with the requirements of the *acquis communautaire* and therefore several legal acts were amended in order to meet these requirements. Some provisions related to migration and discrimination were introduced as well. It is worth highlighting that the amendments in question had been introduced solely to meet the EU requirements and therefore are often of a rather questionable quality. The debates around this and the explanatory notes submitted to the government by the responsible bodies are even less favourable. For example, it is interesting to note that the Gender Equality Act and the amendments to the Labour Contract Law have been adopted shortly before and entered into force on 1st May 2004, i.e. exactly on the day of accession to the EU. The general equal treatment act that would introduce at least the majority of the provisions of the Directives 2000/43/EC and 2000/78/EC has not yet been adopted. The first draft though, submitted to the parliament on 12th January 2007 after the note from the EU with regards to non-compliance, has been received.

Certain amendments have been introduced to the legislation regarding asylum seekers as already mentioned before. Also provisions transposing the so-called Family Reunification Directive and Long-term residence Directive. Those provisions will be introduced further in the report.

1.2 General Policy Approach to Labour Migration

As mentioned above, the issue of labour migration is a rather new for modern Estonia. If previously, during the Soviet period, migration was well-organised, then presently the state lacks direct provisions aimed at those aliens who arrive to Estonia with the purpose of employment.

There are currently no policies aimed at improving the access to the local labour market for migrant workers and at facilitating their integration into the society. In general it is possible to say that the law makers and the elites who are

in power are quite ignorant about the issue of labour migration and that therefore the general perception of the society about these issues can be described as insufficient and rather negative.

In general, the situation of non-Estonians on the labour market can be described as unprivileged. According to some data available, the unemployment rate among this group is twice as high as the one for Estonians. Similarly, the salary rate of non-Estonians is twice as low as that for Estonians.

1.3 Access to Residence and Admission to the Labour Force

In general, Estonian migration policies in 1990s – early 2000s appear rather rigid. That resulted in a very small number of newcomers. For instance, only 3% (2000) of all residents born abroad arrived in Estonia in 1990-2000.¹⁶

1.3.1 Admission

Estonian legislation does not provide for the definition of a migrant worker or a migrant. The general term of third-country nationals or aliens is being used. However, two groups of aliens are being distinguished: those holding EU citizenship (including the EEA citizens and Swiss citizens) and the rest of aliens originating from other countries and stateless persons. Different rules and legislation upon arrival and residence in Estonia are being used for these two categories of people. The first group falls under the provisions of the Law on EU citizens and the second under the Law on Aliens. Foreigners who arrive in Estonia for the purpose of employment have to apply for the residence permit for work. Family reunification and other reasons do apply on the other related grounds.

The services related to finding a job are provided by the Estonian Labour Market Board and are equally available to the foreigners holding a per-

¹⁶ Statistical Office of Estonia, 2000 Population and Housing Census: Place of Birth and Migration, III, Tallinn, 2002, Table 21.

manent or temporary residence permit in Estonia, EU citizens, EEA and Swiss nationals as well as those under the international protection and asylum seekers.¹⁷

Unfortunately the State does not provide any special information schemes to employers that are eager to hire migrant workers. It is possible that some NGO's deliver such services, however neither the ministry officials nor the author of this report have any particular information about it. The likely reason for the absence of such schemes is the relatively low number of migrant workers (those recently arrived as well as refugees).

Estonia does not have any bilateral agreements with other countries regarding the employment of other nationals, except for an agreement with Australia with regards to visa provisions with the right to work for young people. There are currently negotiations on the same issue with Canada and France.

The citizens of the EU, including those from new Member States Bulgaria and Romania, that are in Estonia on a legal basis during up to 3 months or who reside on legal ground can also engage in employment activities.

1.3.2 Legal Stay

In order to stay in Estonia a third-country national should receive a valid residence permit that is issued by the Citizenship and Migration Board. The residence permit can be issued for various purposes. The foreigners wishing to work in Estonia should apply for a residence permit for work or entrepreneurship or for the purpose of family reunification. This rule is different for the EU citizens.

Already before the EU accession several amendments to the Law on Aliens were made aimed at revising the procedure for granting residence permits. The result is however that the procedure has only become more complicated. Furthermore, both the surveillance procedures as

¹⁷ *Vastus teabenoudele, Sotsiaalministeerium on 16.01.2007.*

well as the expulsion procedures became more easily available.

Following the requirement of the EU to transpose its provisions into the national legislation of the Member States, Estonia was bound to amend its Law on Aliens in order to comply with the provisions of the so-called Long-term Residence Directive providing for the additional rights to those who received the long-term residence status. Following these amendments, in Estonia all persons with a permanent residence permit automatically received a long-term residents' residence permit. As of 1st January 2006, 85% of all residence permits valid in Estonia were permanent (207,448).¹⁸ Another 72% or 26000 of all temporary residents permits were based on international agreements. In the majority of cases this was applied to the former Soviet military service men, who before the amendments were not entitled to the permanent residence permit in Estonia (it could only be granted in exceptional cases). However, after the amendments they did not face any obstacles anymore as most of them if not all have been residing on the territory of Estonia since Soviet times, i.e. for at least 10 years.

The general rule is that a person who wants to apply for a long-term resident status has to meet the integration requirement - an Estonian language test. However, this rule is not applicable to aliens younger than 15 or older than 65, and to those with restricted active legal capacity. As the language requirement only applies from 1st July 2007, there is a window of opportunity for holders of temporary residence permits, who reside in the country.¹⁹ Nevertheless, one should note that the residence criteria necessary to get the permanent residence permit was 3 years. As for the long-term resident residence permit, a person has to live in Estonia for a period of 5 years (and this on the basis of a residence permit) in order to receive it.²⁰

¹⁸ *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 23*

¹⁹ *Law on Amendments to the Law on Aliens and to the Other Related Laws (RT I 2006, 21, 159), Article 17 (2).*

²⁰ *Estonian Minority Population and Non-discrimination,*

In case the migrant received a residence permit in Estonia for the purpose other than employment, he/she should also apply for the work permit if he/she wants to engage in a remunerated activity.

In case the migrant arrived in Estonia on the basis of a work permit issued for the purpose of employment no separate work permit is needed. However, his or her spouse arriving in Estonia needs a work permit.

It is important to note that in order to be granted a residence permit for work the applicant should receive a permission to be employed from the Estonian Labour Market Board. This is, however, conditional on the following: the vacancy can not be filled by a person already legally residing in Estonia; the vacancy was announced publicly for at least two months, with the use of the services of the employment agency. There are a number of exceptions to this rule. For example, the permission is not needed with regards to those third-country nationals, who are permanent residents of the EU as well as experts, university professors, etc.

Migrants who receive a residence permit that includes the provision of a legal income are prohibited from taking up employment.

Certain amendments to the national legislation have been introduced in order to transpose the provision of another EU Directive – the so-called Family Reunification Directive. These amendments can be seen as a positive development. The sponsor can invite his/her family members to reside with him/her in Estonia already after two years of the stay, whereas previously the length required was five years.

In the case of family reunification, the treatment of non-citizens is less favorable as compared with Estonian citizens. Thus, third-country nationals are required to 'prove' that their family reunification in Estonia is justified (Article 121 (7) of the Law on Aliens):

An application for a residence permit to settle with a spouse who resides in Estonia and who is an alien shall be considered to be unjustified if the alien who applies for the residence permit and the spouse for the purposes of settling with whom the residence permit is applied for do not prove that it is not possible for them to settle in the country of their common citizenship or in the country of citizenship or country of habitual residence of the alien who applies for the residence permit.

In December 2002 the *Riigikogu*²¹ amended the Law on Obligation to Leave and Prohibition on Entry.²² As a result, family life in Estonia is not regarded anymore as a ground that guarantees the issuance of a precept to legalise the status of an illegal alien.

Since May 2003 the officials of the Citizenship and Migration Board and Labour Market Board have the right to enter (with the owner's permission) a person's dwelling for verification of the facts important for the issuance of a residence permit. In 2004, the relevant provision was worded as follows (Article 151 (3) of the Law on Aliens):

Officials of the Citizenship and Migration Board, consular officers, officials of the Labour Market Board, Border Guard officials and police officers have, according to their competence, the right to question an alien, his or her family members, the person who invited the alien to Estonia and other involved persons and agencies, and enter a person's dwelling with the permission of the person for verification of the facts which are the basis for application for, holding of, application for extension or revocation of the legal basis for the stay or taking employment in Estonia by the alien or for application for the approval of a visa invitation.

Short-term employment, including seasonal work, requires an applicant residing in Estonia on the basis of visa or without it, in case the country this person originates from has a visa-

Report 2006, By V. Poleshchuk, LICHR, Tallinn, p. 19-20

²¹ *Riigikogu* is the Estonian Parliament.

²² RT I 2003, 4, 21.

free regime with Estonia. Short-term employment cannot be exercised for a period longer than six months and should fall within the list of activities provided by law, such as:

1. lectures at the universities or other education institutions in cases provided by law;
2. for art and research work;
3. for the purpose of development of foreign direct investments and for the launch of a local branch of the foreign company;
4. sportsmen, trainers and coaches, referees and judges or other sport-related workers;
5. expert, advisor or consultant provided the foreigner has the required training;
6. skilled worker or assembler in case such employment is required for the best interests of Estonia. The proposal to employ such a person should be initiated by the member of the government and approved by the Minister of Interior;
7. to be employed within an international project aimed at development by the municipality or the state;
8. seasonal work in agriculture;
9. au pairs;
10. for internships;
11. to work for a diplomatic mission if the permission from the Ministry of Foreign Affairs is granted;
12. on the basis of an international agreement.

The list of activities is rather exhaustive. The registration for the short-term employment should be submitted to the CMB accompanied by the confirmation provided by the employer. The decision should be made within 10 days.²³

1.3.3 The Admission Quota

The Law on Aliens provides for annual migration quota. In 2000, the National Court recognised²⁴

²³ Official website of the Citizenship and Migration Board: www.mig.ee

²⁴ Decision of the Administrative Law Chamber of the State Court of 18 May 2000 no. 3-3-1-11-00, published RT III 2000,

that these quota may, under certain circumstances, violate the right to private and family life. As a result the parliament had to make several changes to the text of the law. It excluded from the application of the quota the members of families and close relatives of Estonian citizens and aliens with residence permits. Additionally, the current version of Article 6 of the Law on Aliens (valid since 1 May 2004²⁵) established a preferential treatment for citizens of the US and Japan: the annual migration quota will not be applied to them in any case. These preferences were preserved from the previous version of this provision that was rightfully challenged by the international community (see e.g. the CERD observations of 19 April 2000²⁶).²⁷

The quota for the year 2007 is 650 persons.

1.3.4 The Qualifications Recognition

Estonia is part of the Bologna Convention and therefore is bound to recognise professional qualifications of migrants coming from the States that are also a part of this agreement. However, as the legal practice of the Legal Information Centre for Human Rights shows, certain difficulties do occur with the diplomas received in Russia or other former Soviet republics and local branches of the Russian Universities in Estonia.

1.3.5 Linguistic Requirements

As mentioned above, Estonia has its own linguistic policy, aimed at preserving the Estonian language. Estonian is the only official language in the country. All the administrative matters, communication with public bodies, record keeping etc should be carried out in Estonian.

The legislator also set the requirements of language proficiency for various professions that

14, 149.

²⁵ RT I 2002, 102, 599.

²⁶ CERD/C/304/Add.98, 19 April 2000, Concluding Observations by the Committee on the Elimination of Racial Discrimination: Estonia, para. 11.

²⁷ Estonian Minority Population and Non-discrimination, Report 2006, By V. Poleshchuk, LICHR, Tallinn, p. 11

deal with the public, such as service providers, medical staff and others. The current proficiency levels are divided into three categories: beginners level, middle and advanced. All those, whose language of instruction during the education process at secondary or higher educational institution was not Estonian and whose mother tongue is not Estonian should pass the proficiency test and obtain a certificate.

This rule applies equally to Estonian nationals of non-Estonian background, third-country nationals residing on the territory of Estonia (both historically and newly arrived). The only exception is made to highly-skilled foreign experts or specialists that come to Estonia to work on a temporary basis. However, it does not apply to those people from this category who decided to settle in Estonia permanently.

1.3.6 “Migrant Hunting”

Since its independence, Estonian migration policy has been both stable and restrictive. As shown above, to date most immigrants have arrived from the CIS countries, mainly the Russian Federation. Most immigrants come to Estonia to settle with their spouses and close relatives. Another major group that settles in Estonia is composed of migrant workers. With accession, regular as well and irregular migration to Estonia is foreseen to increase. In order to prevent irregular migration and unauthorised employment, Estonia focuses on two main issues: firstly, prevention of irregular migration through visa applicant and residence permit checks; and secondly, the enforcement of monitoring procedures for irregular residents and workers, processing misdemeanours related to irregular stay and unauthorised employment, and arranged departures.²⁸

The activities regarding what could be called “migrant hunting” are carried out mainly by the officers of the Citizenship and Migration Board (CMB). The forthcoming accession of Estonia to the Schengen visa area is having a severe impact. In May 2005, Estonia introduced the visa sticker

with an integrated photo, which enables more efficient identification of visa holders. The visa inspectors are now being equipped with mobile work stations that enables them to work outside of their official premises. The database of aliens staying in Estonia illegally was launched in 2005. It enables a better cooperation with the police prefecture and border guards units that are also a part of the surveillance system.²⁹

The CMB also manages the voluntary departure from Estonia of illegal aliens. The alien can be expelled after he/she fails to leave voluntarily. In case of voluntary return certain assistance, including the provision of free tickets, can be provided to the person upon proof of need. However, the alien can be expelled from Estonia with the permission from the administrative court in case it is vital for the security of the State or the health of its citizens. In the following cases, expulsion can even happen without a permission of the administrative court: (1) if the aliens arrived in Estonia illegally; (2) detained persons who do not have legal ground to stay in Estonia after their detention; and (3) if the visa to come to Estonia had expired by the time of expulsion (Article 14, Law on Obligation to Leave and Prohibition on Entry).

According to the Law on Obligation to Leave and Prohibition on Entry, an illegal alien may receive precepts of two types: precept to leave and a precept to legalise. Both precepts may be appealed against in the courts (Article 13). However, according to the amendment of 9th June 2004,³⁰ an alien who entered Estonia with a valid visa, but this visa has expired, may be expelled without issuance of a precept and without the permission of an administrative court Article 14 (32). Before this amendment, the visa had to be expired for at least seven days. It can therefore be concluded that the procedure was seriously eased.

Those who stay in Estonia illegally and who cannot be expelled within the timeframe foreseen

²⁸ Official website of the Citizenship and Migration Board: www.mig.ee

²⁹ *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 28*

³⁰ *RT I 2004, 53, 369.*

by the law (usually because their case is pending before courts), are detained in the Repatriation Centre (or according to some Deportation Centre) on the basis of a decision of an administrative court. The Centre was opened in 2003 and by the end of 2005 had accommodated 53 persons.³¹ It is worth mentioning that before the Centre was opened, those people waiting to be expelled were detained in premises together with persons suspected of crimes or administrative assault.

The maximum length of stay in the Repatriation Centre is approximately one year. In the majority of cases such a long stay is the result of the inability to get a valid travel document for an alien from his/her State of origin, or because the cases are pending before the local courts. According to the officials of the CMB, in such case where within the 12 month period the documents cannot be provided or when the court did not take a decision, a temporary resident permit can be granted to the alien. This is, however, the exception. But, it should be noted that there are cases when the person awaiting deportation has been held in the Centre for several years.

Starting in 2005, the expenses related to compulsory execution of the obligation to leave the country are imposed on the aliens or on the people who had invited them to Estonia.³²

Shortly before the EU accession some amendments to the national legislation were introduced. In many cases these amendments further complicated the situation and actually made the country's migration policy even more rigid. For example, the amendments to the Law on Aliens of 18 December 2002³³ and 14 April 2004³⁴ gave the officials of the Citizenship and Migration Board additional rights to check the aliens at home and their workplace.

31 *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 28*

32 *Citizenship and Migration Board, Yearbook 2006, Tallinn, 2006, p. 28*

33 *RT I 2003, 4, 20.*

34 *RT I 2004, 28, 189.*

1.4 Core economic and social rights, measures against discrimination

1.4.1 Economic Rights

1.4.1.1 Trade Unions

In Estonia, there are no restrictions for immigrants to join trade unions. No trade unions were set up by immigrants or by ethnic minorities. According to Mr. Harry Taliga, Social Secretary of Confederation of Estonian Trade Unions (Estonian abbreviation EAKL), trade unions do not consider it necessary to emphasise the ethnic dimension of unemployment. He believes that the worsening situation of ethnic minorities in the labour market is the result of a decline in the economic activities where during the Soviet period Russian-speakers were traditionally employed in. Furthermore, in large enterprises Russian-speakers normally dominate the trade unions. On average, trade unions represent 12 to 15 percent of employees nation-wide, while Russian-speaking workers from Ida-Virumaa alone make up one-quarter of EAKL members.³⁵

Trade unions prefer not to deal with the issues of discrimination in employment. They do not take up concrete cases, neither do they gather statistical data.

Estonian trade unions furthermore do not see the need for the ratification of the UN Migrant Workers Convention.

1.4.1.2 Work Place Conditions and Terms of Employment

There are no differences with regards to work place conditions and terms of employment for migrant workers and locals. Non-Estonians need

35 (2002) "Minority Protection in Estonia: An Assessment of the Programme Integration in Estonian Society", in: *Open Society Institute, EU Accession Monitoring Program, Monitoring the EU Accession Process: Minority Protection, Budapest: CEU Press, Part 1, pp. 220-221.*

to be in the possession of the necessary documents which certify that they legally reside in Estonia and that they comply with the language criteria (as described above).

The employer hiring the migrant worker is not entitled to any additional benefits, programmes or support schemes.

According to the official data, discrimination is not an issue in the labour market. In 2005 no cases of discrimination were registered. This is partly because there was no official institution responsible for gathering statistics of discrimination in employment. However, in the first half of 2006 the Labour Inspectorate reported that they had registered four cases. In spite of this fact, there is evidence, mainly coming from the work undertaken by the Legal Information Centre for Human Rights (legal aid provision and hotline for the victims of discrimination), that lets us assume that the practice of unequal treatment of migrants does exist in Estonia. It remains, however, difficult to accurately estimate its scope.

1.4.2 Social Rights

1.4.2.1 Health care

Access to health care and medical services in Estonia is regulated by a number of legal acts. Free health services are guaranteed to all insured persons lawfully residing in Estonia, i.e. those people paying social contributions or being otherwise insured by the State. This also includes people who fall under the jurisdiction of bilateral agreements between Estonia and other countries. It is worthwhile mentioning that Estonia does have bilateral agreements covering medical services with the following countries: the Russian Federation, Latvia, Lithuania, Finland, Sweden and Ukraine. Therefore, people with health insurance in any of those countries should be able to exercise the same right in Estonia, without any additional requirements. After joining the EU, residents of the Member States also fall under the protection of the Health Insurance Fund and should be guaranteed equal protection to that of the local citizens.

In all other cases, health insurance is guaranteed to all those people who are engaged in employment activities in Estonia and for whom the employer is paying the social contribution or are insured otherwise. People registered as unemployed benefit from voluntary medical insurance only for a limited period of time, and on the condition that they can show proof of previous employment.

The spouses of the insured persons unfortunately cannot exercise the same right, despite the fact that previously such a possibility was granted to them.

Minors and other dependants of temporary migrants residing together with them legally benefit from the same rights with regard to medical services as Estonian nationals or permanent residents do.

In all other cases the medical services can be obtained on a commercial bases and according to the generally accepted price list.

Emergency medical services are available to everyone, also to those who do not have health insurance.

In Estonia, health insurance to the employed, including the self-employed, is made available without any discrimination or difference between local residents and migrant workers.

The main problem with regards to receiving medical help is linked to the language issue. Despite the fact that the country has a rather significant group of residents (Russian-speaking) whose mother tongue is not Estonian, medical personnel are not required to understand the Russian language. This is especially the case with young medical specialists, who did not have to participate in language training. Although in the majority of cases there are still alternatives (with respect to the choice of doctors), this is a potentially worrying situation.

Contrary to previous years, in 2005 there were no complaints with regards to discrimination in accessing health services. It should be mentioned,

however, that there is no public institution that is responsible to collect data on this matter.

1.4.2.2 Social security systems

The social security system in Estonia is available to all people legally residing on its territory: Estonian nationals, EU, third-country nationals, and those people who obtained a residence permit. There is no unequal treatment introduced based on a person's citizenship, ethnic origin or any other condition. Legally residing migrant workers should therefore be able to exercise the same rights as the Estonian nationals.

The social security system consists of a number of benefits and social guarantees including social services such as child care facilities, parental benefits and retirement schemes, unemployment benefits and support services for the unemployed (e.g. re-training), etc.

There are some restrictions. In the case of unemployment benefits, for example, eligibility is linked to the existence of a previous employment record. However, even in this case the migrant worker can still be entitled to job counselling, re-training activities and to benefits regarding the remuneration of travel expenses, etc.

1.4.2.3 Education

The school system of Estonia consists of Estonian-speaking and Russian-speaking public schools where the subjects are taught in the respective languages. There is also a small number of private schools where in some cases parts of the education programme is carried out in other foreign languages. In the academic year 2003/2004 46401 pupils studied at Russian schools, which is 24 per cent of the total number of pupils.³⁶

In 2007 the so-called "reform" of the Russian-language education is to take place. This can be considered as the most challenging reform for the non-Estonian population and schools. According to the Law on Basic School and Up-

per Secondary School³⁷ a transition should take place in the Russian medium and upper secondary schools to Estonian as the main language of instruction, starting with the academic year 2007/2008. From that year onwards, 60% of the subjects in the curriculum should be taught in Estonian. The preparation of this transition already started in 2005.

With regards to the public higher education, the situation at the moment is more complicated. Whilst before 1991 this was available in Russian and Estonian languages, after independence the opportunities for instruction in Russian language were shrinking. Today, this type of education is only available in Estonian language, with some exception of some individual courses. At the same time, more possibilities are appearing for those who would like to study in English, although at an additional cost.

Young people without good knowledge of Estonian language can start their education in the private higher education institutions. However, in most of the cases the programmes offered by such universities lack accreditation, especially for the masters and PhD programmes.

In order to meet the needs of new migrants a special project was implemented by the Non-Estonian Integration Foundation and the Ministry of Education: the "New-Migrant Children in the Estonian Education System." The project targeted those migrant children that arrived in Estonia recently or who will be arriving and are third-country nationals or EU nationals. The project included a needs assessment as well as a study of the education opportunities. The aim of the project was to come up with recommendations that would help the State with the creation of a new and efficient education system for this particular category of students.

1.4.2.4 Housing

The concept of social housing is not well developed in Estonia. The system can be considered as based on the one previously existing under

³⁶ Statistical Office of Estonia (2004) *Education 2003/2004*, Tallinn: Statistical Office of Estonia

³⁷ RT I 1993, 63, 892

the Soviet system, but on a much narrower scale. The municipal housing is regulated by special decrees adopted by the City Councils.

The groups of people entitled to apply for housing are:

1. persons whose legally used or obtained real estate became unsuitable because of force majeure situations such as hurricanes, floods, etc, and only in case the owner cannot be held responsible for deliberate worsening the living conditions;
2. owners or tenants of houses or property that were expropriated by the city as a result of a City Council decision;
3. persons who are released from prison and who do not have a place to reside;
4. young people coming from the orphanages as well as those who have been under the supervision of relatives, tutors etc and who do not have another place to live;
5. people who experience other social difficulties.³⁸

A special commission set up by the local authority will decide – on the basis of an application – if a person or family will be allocated social housing (the rental contract will be for several years). The number of so-called municipal flats being distributed annually among the above-mentioned groups is rather limited. The priority is often given to the orphans.

Based on the above, it can be argued that municipal flats or social housing is basically unavailable for new migrants or persons under international protection (refugees). Historical migrants do exercise this right on the same grounds as country nationals. Neither the State nor the municipalities provide any special arrangements or regulations for migrant workers and members of their families.

The State, however, fully recognises this gap and its National Plan for Social Inclusion aims to

increase the number of municipal flats / social housing and making them more available. But, no direct references to the groups concerned in this report are included in the Plan.

Renting living premises from private parties is commonplace in Estonia. There are a large number of real estate agencies, but it is also common to rent directly from the property owner. Rent is not protected by any Estonian legal act and can therefore not be subject of a dispute.

Home ownership is encouraged through the availability of mortgages at very preferential rates. But, purchasing a property remains something for people with a high income and stable employment and is limited to those people who are permanent residents of Estonia.

With respect to housing, no information is available about cases of racism and discrimination. However, we assume that such cases do exist, but are hardly ever reported. Again, there is no official body that collects this kind of information in a systematic way.

A sociological study carried out in Tallinn in September 2005, asked both Estonian and non-Estonian speaking people if they had felt over the past three years any limitations to their housing rights (when renting or buying real estate, access and quality of communal services, contacts with landlords, etc). The Estonian-speakers claimed such and experience in 3% of the cases, for Russian-speakers it was 13%.³⁹ However, we believe that in the majority of cases such a negative experience should be linked to conflicts because of language use (i.e. Estonian versus Russian).

There were no complaints with regards to the quality of housing in the above-mentioned Reception Centre nor in the Deportation Centre. There were some isolated complaints though about the quality of food and access to medical

38 *Tallinna Volikogu määrus, 17.10.2002, nr. 56 Tallinna linna omandis olevate eluruumide kasutamise, käsutamise ja valdamise kord*

39 *K.Hallik, V.Poleshchuk, A.Saar, A.Semjonov, Estonia: Interethnic relations and the issue of discrimination in Tallinn, LICHR, 2006, p. 39*

services in the Deportation Centre (for the period 2000 – 2005).

1.4.3 Measures against discrimination

The concept of discrimination, disregarding the ground, is often neglected by Estonian researchers and politicians. It is common to hear that there is no such a problem in Estonia or that this issue should not be paid attention to. So-called “comparative discrimination” (i.e. discrimination based on someone’s opinion) is usually what’s been addressed, whilst the other forms of discrimination are in most cases neglected.

However, in the years 2003 – 2004 some important changes took place in the Estonian legislation, aimed at harmonisation of the national legislation with the requirements of the EU prior to accession. Namely, the amendment to the Law on Legal Chancellor was adopted providing this institution with the mandate to deal with discrimination cases, i.e. as an equality body. The Gender Equality Act was adopted as well as several amendments to the Labour Law.

These were additional anti-discrimination measures to the existing Article 12 of the Estonian Constitution, that bans discrimination on any ground. These amendments introduced several new legal concepts such as “direct and indirect discrimination,” “sexual harassment,” “shift of burden of proof,” etc. However, some of the provisions were insufficiently transposed and do not fully correspond with those of the EU Directives. In Estonia, for example, the concept of harassment has a narrow scope and can be applied only in cases when there is the relation of supervision, i.e. it is not applicable in cases between workers.

No separate Equal Treatment Act has to date been adopted in Estonia. There was an attempt in early 2003, but since then no new attempts have been made. In 2006, the EU urged Estonia to transpose as quickly as possible all remaining provisions of the so-called “Race” and “Framework” Directives.

So far Estonian legislation does not cover the following spheres of life with regards to discrimination: provision of services, education, housing

and social services. The concept of victimisation is practically not existent, and employment in the public bodies is not being covered.

By 2006, there was still no public body responsible for the gathering of statistical data on discrimination cases. It is furthermore not surprising that given the above, no discrimination-related case has been decided by the courts or prejudicial bodies.

The level of public awareness on the matter, especially with respect to how to prevent the violation of rights, continues to be extremely low in Estonia.

1.5 Civil and Political Rights

Third-country nationals are not entitled to vote or to be elected during national or European elections. However EU nationals can exercise their right to vote in European elections.

As far as municipal elections are concerned, third-country nationals can vote (but they cannot be elected), provided they have been residing legally in the municipality for at least five years prior to the elections. This rule is to be abolished in November 2006.

EU nationals who registered their residence in a particular municipality before the 1st of August of the year of the elections, can also be a candidate. The requirements regarding municipal elections have a rather limited scope. The government is however planning to amend these provisions by the end of the year 2006.

Only Estonian citizens can be member of a political party. However, there are no limitations for third-country nationals to set up or run non-governmental organisations.

1.6 Integration Policies and Measures

Unfortunately Estonia does not have any specific programmes developed for the migrant workers as such. However, there are certain provisions of other programmes that can be used to address

the needs of this category of residents. Some of the categories of migrants (e.g. stateless persons and historical migrants) can be addressed directly.

The core initiative that must be mentioned is the Integration of Estonian Society 2000 - 2007. This programme is in line with the already existing linguistic and naturalisation policies.⁴⁰

The legislation concerning the Integration Programme gives the following description of the integration process:

The nature of the integration of Estonian society is shaped by two processes: on the one hand the social harmonisation of society on the basis of knowledge of the Estonian language and the possession of Estonian citizenship, and on the other hand the enabling of the maintenance of ethnic differences on the basis of the recognition of the cultural rights of ethnic minorities. The harmonisation of society also means the integration of both Estonians and non-Estonians around a unifying common core.⁴¹

The framework of the programme consists of four sub-programmes (with their own measures and activities): general education, education and culture of ethnic minorities, Estonian language teaching for adults from the minority community, and social language competence. Unfortunately the programme addresses the issue of integration from a one-side perspective rather than accepting that integration is a two-way process. This issue had been criticised a lot by the specialists from the Legal Information Centre for Human Rights as well as by some other local and international experts and researchers.

Regretfully, the programme does not address in any detail the topics of discrimination of ethnic or national minorities neither does it focus on the promotion of the culture of the minorities resid-

ing in the country. Most of the special funds⁴² allocated to implement the programme have been used to support Estonian language proficiency training inside and outside public education institutions.

1.6.1 Naturalisation policy

As already mentioned above, a large group of permanent residents do not have Estonian citizenship. The majority of them do not hold citizenship of any state, i.e. they are stateless persons or those with undefined citizenship. This fact has been criticised by various international bodies such as the UN, CoE, ECRI, and OSCE. Taking into consideration the recommendations of these bodies Estonia is trying to build up its naturalisation policy and support the process by various means. The activities are aimed not only at those who are stateless, but at all third-country nationals, including new migrants who hold a long-term residence permit and have a regular income in Estonia.

The naturalisation process is regulated by the Law on Citizenship, that obliges the applicant to pass the language proficiency test plus the civic exam (the exam on Constitution and Law on Citizenship knowledge). A simplified procedure is available for those minors, who were born after 1992 and whose parents are stateless, as well as those under 15, whose parents are going to be naturalised or have obtained Estonian citizenship.

Since 1st January 2004 the State can reimburse up to 100% of the fee which a person paid to a licensed private school, if he/she passed a language test as well as the test on knowledge of the Constitution and the Law on Citizenship (Article 81). In previous years, partial compensation of expenses for language training was also available in the context of several projects funded by the Integration Programme.⁴³

⁴² Funds were provided through the European Commission's PHARE programme or were allocated from the national budget.

⁴³ "Minority Protection in Estonia: An Assessment of the Program Integration in Estonian Society", in: Open Society Institute, EU Accession Monitoring Program, Monitoring the EU Accession Process: Minority Protection, Part I, Budapest, 2002, p. 216-219.

⁴⁰ Estonian Minority Population and Non-discrimination, Report 2006, By V. Poleshchuk, LICHR, Tallinn, p. 19

⁴¹ Integration of the Estonian Society 2000 – 2007 programme, Article 3,2

In 2005 the Non-Estonians Integration Foundation started to implement a project aimed at supporting the orientation in the Civic exam. The first stage of the project was dedicated to the training of trainers and the second stage to education or mentoring of those applicants who wish to obtain Estonian citizenship and are preparing for the Civic exam. The course is free of charge and is available to everyone without any discrimination or limitation. The language of instruction is Estonian with some translation into Russian. This course can also be used by migrants who wish to learn about the country's legal system, historical background etc. For this, they will however need to have a sufficient knowledge of the language of instruction.

1.6.2 Linguistic policy

The core legal act of Estonia's linguistic policies is the Law on Language (1995). Article 1 (1) of the Law repeats Article 6 of the Constitution, stating that "Estonian is the State language of Estonia." According to Article 4(1) of the Law, "[e]veryone has the right to access public administration and to communicate in Estonian with state agencies, local self-governments, bureaus of notaries, bailiffs and certified interpreters and translators, cultural autonomy bodies and institutions, companies, non-profit associations and foundations". This rule is supported by numerous provisions that regulate the scope of and control over the use of Estonian in both the official and public domains.

The use of other languages in the public domain is the sole responsibility or better to say desire of an individual on service as well as employer and employee in the private domain. No obligation to speak any other language is being imposed.

The implementation of language policies is supervised by a special body: the Language Inspectorate. This agency can impose penalties for not using the official language in public domain or lack of language proficiency of the person under supervision. The institution is considered to be a "language police" among the non-Estonian population. This is because in practice its main responsibility is to monitor the undue use of the Russian language, and to penalise when deemed necessary. Interestingly, other languages are of no great interest to the Inspectorate.

1.7 Conclusion

Starting with the beginning of 1990s Estonia has been working hard to create its own legal system that would reflect the needs of the new society and attitudes of its citizens. Tremendous work was done in order to meet the harsh accession criteria set by the European Union. Some efforts were made in order to harmonise the national legislation with the EU requirements and certain policies and principles aimed at migrants were elaborated. They can, however, not be considered as sufficient and all-encompassing. In some cases they are not even applicable to the new situation.

Estonian legislation and policies can be described as more than insufficient and unable to provide newcomers with the stable conditions of life and equip them with the knowledge and skills needed to fully participate in society. Unfortunately, it is the power holders who underestimate the importance of such policies as well as the lack of awareness among general public. It is our feeling that the current policies reflect the discrepancy between the concerns of the national State and the inevitable demand to host migrants.

So far, Estonia did not have to accommodate many new migrants, migrants workers, asylum seekers or people who come through family reunification. It therefore did not have a chance to really implement its new migration policies. There are, however, serious doubts that it will be able to host migrants and integrate them into the society, unless the necessary legislative and policy changes are put into place. The current statistics also reveal that although at the time of accession to the EU predictions were in favour of increased migration to the country, the prognosis did not come true. There are also no indicators that show that such a growth in migration would take place in the near future. At the same time, the closest neighbours such as Finland, the other Scandinavian countries and even Lithuania do experience a serious influx of migrants and asylum seekers. The exception is Latvia, whose integration policies are similar to the Estonian ones.

We consider it to be of a high importance to undertake detailed research on the general situation regarding the effectiveness of the available measures aimed at hosting new migrants. It is also necessary to undertake a study about the reasons why Estonia is currently not a country of destination for migrant workers.

The legislative measures, although existing, are rather narrow in scope and are not sufficient for the successful integration and adequate protection of migrants. Therefore it is important for the legislator to envisage provisions applicable for *new migrants* and introduce amendments directed at the *historical migrants*, as referred to in the report.

One of the key issues to address is discrimination. The existing policies exclude even the idea that discrimination can exist in Estonia, reflecting the vision and belief of the current power-holders and state officials. We do welcome the initiative of the government to finally elaborate the general Equal Treatment Act. We have deep concerns, however, about its practical implementation and potential. At present there are no effective measures to fight against discrimination in the work place or in any other sphere.

The public is hardly aware of its rights and their possibilities. The main activities aimed at increasing the knowledge of the society are carried out by the NGOs within the projects supported by the European Commission. No local budget is available for such actions.

Special attention should be paid to the official linguistic policies and in particular to the mandate and practices of the Language Inspectorate, which often exercises unfounded and disproportionate control over the use of the official language. This often excludes migrants from taking up a number of jobs that they could otherwise exercise (i.e. jobs in which the language proficiency criteria are clearly overestimated). It also prevents migrants from contacting the public administration and hinders access to publicly available information.

Serious attention should be paid to the campaigns (including through the media) directed at public awareness rising over the issue of migration and intercultural dialogue. We believe that the current approach cannot be considered as efficient. It is the reflection of yet another episode of the State being unwilling to take any action to tackle the issues of concern.

The Common Basic Principles (CBP) developed by the EU can be considered as an efficient measure to improve the integration of migrant workers in the Member States, envisaging different types of actions and approaches. So far, Estonia did not actively implement its provisions into its policies. Many of the requirements are not even being discussed yet. The local practices show that there is a preference to consider integration as a one-sided process whereas it is obvious that such a position is a mistake. Much more attention should be paid to tackle the existing stereotypes with regards to migrants. Newcomers should be provided with support aimed at improving their civil participation and orientation in the local civil, political and cultural space.

To date, Estonia does not have any bilateral agreements to encourage labour migration to its country. Moreover, employment schemes for this group of new migrants as advised in the CBPs could be a good practice providing additional possibilities for both employers and migrant employees.

In general the CBPs should be used as a helpful guide when drafting the local policies aimed at new migrants.



IV. The Rights of Migrant Workers in Ireland

Fidele Mutwarasibo*

1.1 Introduction

Significant immigration is a recent development for Irish society. Ireland has traditionally been a country of emigration rather than immigration. Until recently, the weakness in the Irish economy, characterised by high unemployment, meant that thousands of people had to leave Ireland to seek employment abroad. These economic conditions, coupled with Ireland's geographical location and its lack of a colonial past, meant that there was no tradition of immigration to Ireland. It was not until Ireland's participation in the European Communities (EC) in 1973 that immigrants were permitted to reside and work in Ireland in any significant numbers. Nonetheless, immigration from other European member states remained relatively low until the 1990s. However, along with our successful economic performance, the number of people migrating to Ireland during the 1990s increased considerably. Since 1997, the total number of immigrants coming to Ireland on an annual basis has consistently exceeded 40,000. In a very short space of time, Ireland has experienced rapid changes, moving from being one of the most "homogeneous" countries in the EU to a country with a diverse population base. Immigrant workers and their families, refugees, and other immigrants are present in every sector of the Irish economy and society and in every part of Ireland.¹ The preliminary results of the 2006 Census suggest that 10% of the Irish population was born outside the State. For recent immigration trends in Ireland see the IOM report for NESD.²

In Ireland, like other jurisdictions, immigration policy is frequently debated in conflicting terms, between those who want no immigrants and those who want no border controls. While

some see immigration as a solution to labour shortages and the fiscal burden of ageing societies, others stress the problems of integrating newcomers, particularly those from different cultural and ethnic backgrounds.³ Ireland is not a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴ (hereafter the UN Migrant Workers Convention, or UNMWC) which is the most comprehensive document outlining the rights of the migrant workers. Although there are administrative procedures for granting periods of residency in Ireland for up to five years and the Government has stated that it is considering permanent migration systems, there is currently no provision in law for acquiring long-term residency status in Ireland. Furthermore, Ireland has not opted to participate in the *EU Long Term Residents Directive*.⁵ As a result of this, people cannot have any degree of certainty on arrival in Ireland as to what plans they may reasonably make for the future.

1.2 General Policy Approach to Labour Migration

The Aliens Act, 1935 was the legal basis for all issues pertaining to immigration in Ireland up until the mid-1990s. It replaced the *Aliens Restriction Act, 1914* and the *Aliens Restriction (Amendment) Act, 1919*; both pieces of legislation had been inherited from the British legal system. Numerous Aliens Orders were made under the *Aliens Act, 1935*, the most significant being those of 1946 and 1975. Under the *1946 Order (as amended by the 1975 Order)*, an Immigration Officer who refuses leave to land must as soon as possible inform the person in question in writing of the ground or grounds on which leave to land has been refused. It also provides that the 'alien' may be arrested and detained by an Immigration Of-

1 Cosgrave, C. (2005): *Summary Analysis and Initial Response to the Government's Proposals for an Immigration and Residence Bill*. Immigrant Council of Ireland (p.9).

2 IOM: *Managing Migration in Ireland: A Social and Economic Analysis. A Report by the International Organisation for Migration for the National Economic and Social Council of Ireland*. No. 116 September 2006. National Economic & Development Office NESDO

3 Cosgrave, C. (2005): *Summary Analysis and Initial Response to the Government's Proposals for an Immigration and Residence Bill*. Immigrant Council of Ireland (p.10).

4 UNMWC was adopted by the United Nations General Assembly on 18 December 1990

5 Council Directive 2003/109/EC of 25 November 2003

ficer or a member of the Garda Síochána (Irish Police). Following the rise in numbers of people seeking asylum in Ireland, the *Refugee Act, 1996* as amended by the *Immigration Act, 1999* and the *Illegal Immigrants (Trafficking) Act, 2000*⁶ was introduced on November 20th, 2000. Section 5 (1) (e) of the 1935 Act dealing with the deportation of non-nationals was found to be unconstitutional⁷ and the *Immigration Act, 1999* was enacted to provide for deportation. The *Irish Nationality and Citizenship Acts, 1956-2001* set out the conditions under which non-nationals may apply for, and be granted, Irish citizenship. The *Criminal Justice Act (UN Convention against Torture) Act, 2000*⁸ provides that a person shall not be returned to a country where “the Minister is of the opinion that there are substantive grounds for believing that the person would be in danger of being subjected to torture”.

The *Immigration Act, 2004* empowers Immigration Officers to refuse leave to land on a number of broad and vague grounds, for example, if people are unable to provide for themselves, if people suffer from a ‘prescribed’ disease or disability, or if a determination is made that it is ‘conducive to the public good that a person remain outside the State’. The provisions of the Act fail to outline the criteria by which Immigration Officers make their assessment, thereby creating the potential for subjective, arbitrary and discriminatory determinations.⁹ The deficiencies of the legislation were highlighted by a number of organisations.¹⁰

In April 2005, the Department of Justice, Equality and Law Reform published a discussion document that sets out its policy proposals for

the proposed *Immigration and Residence Bill*. Migrants, as well as those working with migrants, welcomed the publication of the document. The publication of the document was accompanied with an invitation from the Department of Justice, Equality and Law Reform for submissions and comments on the document; the deadline for submissions was July 31st, 2005. Many organisations in the voluntary sector invested their limited resources in the consultation process, however, over one year on, the submissions have yet to be posted on the Department of Justice, Equality and Law Reform website. Indeed, the content of the recently published Heads of the Immigration, Residence and Protection Bill¹¹ suggests that the consultation process of 2005 was a rather cosmetic exercise as the main recommendations were not taken on board.

Key features of the Heads of the Immigration, Residence and Protection Bill published in September 2006 include:

- All non-EU residents will be required to carry ID cards with biometric data all the time
- Non-regular status will constitute an automatic offence
- Accelerated procedures for removal/deportation and restricted appeal procedures, including provision for deportation even in the event of minor offences
- Asylum seekers and those with non-renewable employment permits will not be allowed to marry
- Refugee status and leave to remain will only be granted for a period of 3 years and are renewable thereafter
- Long term residence will be granted for 5 years only, but will be renewable
- The Minister is to retain his/her discretionary powers

The Irish Refugee Council, the Irish Penal Reform Trust and the Immigrant Council of Ireland’s joint report on Immigration-related detention in Ireland highlighted the use of detention in immigration related situations and gave an

6 Prohibits trafficking of illegal immigrants see *Handbook on Immigrants’ Rights and Entitlements in Ireland, ICI (2003)*

7 *Laurentiu V Minister for Justice (1999) 4 IR 26.*

8 *The main purpose of the Act is to create a statutory offence of torture and thus enable Ireland to ratify the UN Convention Against Torture, which it signed in 1992.*

9 *Cosgrave, C. (2005): Summary Analysis and Initial Response to the Government’s Proposals for an Immigration and Residence Bill. Immigrant Council of Ireland (p.19).*

10 *Immigrant Council of Ireland, Irish Council for Civil Liberties, Irish Refugee Council and Migrant Rights Centre Ireland: Joint Response to the Immigration Bill 2004. 3 February 2004.*

11 *Published on September 6th, 2006 by the Department of Justice, Equality and Law Reform*

overview of the conditions of detention of immigration-related detainees.¹² There is need for a debate on the rationale of the use of detention in immigration policies and procedures. There is a sense of urgency for rational discussions on the issue in the wake of the publication of the Heads of the *Immigration, Residence and Protection Bill*, which seems to indicate that the use of detention in the administration of immigration policy is likely to increase in the future. Such a debate should explore alternatives to detention and the type of facilities that should be used in cases of immigration-related detention. Increasing numbers of people are being refused leave to land at Dublin airport. Whereas in 2003 4,827 people were refused leave to land, this increased to 4,844 in 2004.¹³ The figure for 2005 was 4,893 including 460 asylum seekers; there is clearly a case for putting in place an independent monitoring system at the points of entry in Ireland, specifically at Dublin airport. This should be backed up by access to translation, medical and legal services.¹⁴

The number of people applying for refugee status in the State increased from 39 in 1992 to 11,598 in the year 2002. The numbers declined to 4,265 in 2004 and 4,323 in 2005. Ireland has been running a resettlement scheme for programme refugees for some time. This resettlement scheme has in the past included Hungarians (1956); Chileans (1973); Vietnamese (1970s and 1980s); Bosnians (1990s) and Kosovars (late 1990s).¹⁵ Since 2000, the Irish Government has implemented an annual admission quota of 10 refugee families from various backgrounds and most recently the scheme was expanded to allow for the admission of around 40 families annually.

¹² Kelly, M., *Human Rights Consultants (2005) Immigration-Related Detention in Ireland Dublin: Irish Refugee Council, the Irish Penal Reform Trust and the Immigrant Council of Ireland*

¹³ *Ibid*

¹⁴ *NGO Alliance Against Racism: One Year on: Comments on the Implementation by the Irish Government of the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD). June 2006 (p.21).*

¹⁵ 1,033 Kosovar refugees who have been granted temporary protection in Ireland

1.3. Access to Residence and Entry into/Admission to the Labour Force

The *Employment Permits Act, 2003* regulates employment-based immigration. There are four major types of employment permits:¹⁶ work permits, work visas and work authorisations, permits for intra-company transfers¹⁷ and permits for trainees¹⁸. Employment permits are issued to the employer and are valid for one year. There is a separate business permission scheme for non-EEA nationals who wish to come to Ireland to set up a business. Up until April 2003, Ireland's work permit policies were employer led as long as the employers were prepared to go through lengthy administrative procedures. The number of employment permits issued in 1995 was approximately 3,000. This peaked at 47,551 in 2003 and declined to 34,067 in 2004 following the expansion of the EU and the restrictions introduced in the low skills labour market. The number of employment permits issued has been declining since then. Following the publication of the *Employment Permits Act in April 2003*, which facilitated access to the labour market for the nationals of the ten new EU member states, a new more interventionist work permit system emerged.¹⁹

Since April 2003, the Department of Enterprise, Trade and Employment (DETE) and FÁS intermittently publish a list of occupational categories that are ineligible for work permit services.²⁰ In August 2004, the Department of Enterprise, Trade and Employment announced that it

¹⁶ IOM: *Managing Migration in Ireland: A Social and Economic Analysis. A Report by the International Organisation for Migration for the National Economic and Social Council of Ireland. No. 116 September 2006. National Economic & Development Office NESDO*

¹⁷ *Suspended since 2002*

¹⁸ *Suspended since 2002*

¹⁹ IOM: *Managing Migration in Ireland: A Social and Economic Analysis. A Report by the International Organisation for Migration for the National Economic and Social Council of Ireland. No. 116 September 2006. National Economic & Development Office NESDO*

²⁰ See the list of ineligible sectors at http://www.fas.ie/services_to_businesses/wp_eligible.htm

would no longer consider applications for new work permits for the employment of non-EEA nationals in low-skilled and/or low-wage occupations.²¹ The reduction in numbers of work permits issued corresponded with the expansion of the EU²². Following the 2004 expansion of the EU, Ireland opened up its labour market to the citizens of the new EU member states. Between May 2004 and February 2006, 183,996 nationals from the 10 new EU member states applied for PPS (Personal Public Service) numbers from the Department of Social and Family Affairs. This figure represents those who have registered as opposed to those who are residing in the State. The Enterprise Strategy Group estimates that between 2001 and 2010, in order to sustain the Irish economy 420,000 new workers will be needed.²³

Working visas (issued to migrants from countries with an Irish visa requirement) and work authorisations (issued to migrants from countries without a visa requirement) are issued to highly skilled migrants. In the year 2000, 991 working visas and 392 work authorisations were issued. In 2004, 1,003 working visas and 314 work authorisations were issued.²⁴ Working visas and work authorisations are valid for 2 years and are issued to the employee, who has the flexibility of labour movement within the job sector.

In July 2004, the Enterprise Strategy Group, a think-tank established by the Government, proposed a skills-based migration policy.²⁵ This concept was endorsed in the Enterprise Action Plan developed by the Department of Enterprise,

Trade and Employment. The endorsement was formalised in the *Employment Permits Act, 2006*, which was enacted on January 24th, 2007. It includes four employment schemes:

- Green Cards (employment permits), which can be applied for in all professions if the salary is above €60,000 and in a restricted list of professions (mainly health, financial and IT) in the salary range of €30,000–€60,000.
- Work permits (also called employment permits), which can be applied for in respect of particular job sectors having satisfied a labour market test and commanding a salary of above €30,000, and, in some exceptional circumstances, a salary below €30,000. Some jobs are ineligible.
- Intra-company transfer for key staff and trainees in multinationals who have been based in the foreign office for at least one year and salary must be over €40,000.
- Students changing status after completing their course of studies. It will be possible for students to apply to the Irish Naturalisation and Immigration Service (INIS) for a 6-month residence permit following graduation to enable job-search and application for employment permit.

Under the *Employment Permit Act, 2006*, spouses and dependents (including children who are over 18, if they were here before they turned 18) will be permitted to work if they are legally resident in Ireland.

In 2005 there were about 28,000 non-EEA national students²⁶ registered with the GNIB (Garda National Immigration Bureau). The figure for 2004 was 21,270. Much of the increase is due to Chinese and other Asian students taking short-term English language courses. International students' access to the labour market was revisited by the Government following abuses by unscrupulous education providers and non-adherence by some students and indeed some employers to

21 IOM: *Managing Migration in Ireland: A Social and Economic Analysis. A Report by the International Organisation for Migration for the National Economic and Social Council of Ireland. No. 116 September 2006. National Economic & Development Office NESDO*

22 Lowry, H.: *Realising Integration: Creating the Conditions for Economic, Social, Political and Cultural Inclusion of Migrant Workers and their Families in Ireland* (Dublin: Migrant Rights Centre Ireland, 2006) (p.44).

23 Enterprise Strategy Group: *Ahead of the Curve: Ireland's Place in the Global Economy. July 2004* (p.25).

24 Source: Department of Enterprise, Trade and Employment. See www.entemp.ie

25 Enterprise Strategy Group: *Ahead of the Curve: Ireland's Place in the Global Economy. July 2004. See www.forfas.ie/publications/esg040707/pdf/esg_ahead_of_the_curve_full_report.pdf*

26 Department of Justice, Equality and Law Reform: *Immigration and Residence in Ireland: Outline Policy Proposals for An Immigration and Residence Bill – Discussion Document. April 2005*

the provision allowing students to work only 20 hours per week during the academic term and full time during holidays. The current arrangements are going to change in 2007 when students will be required to acquire employment permits before joining the labour force. It is unclear as to who will apply and/or pay for the work permits and what procedures will be in place for thousands of non-EEA students working part time in Ireland. The requirement for international students to acquire work permits in order to access the labour market is mentioned in *Towards 2016*.²⁷ Since August 2005, the Department of Education and Science publishes on a regular basis a Register of Programmes approved by the Minister for Education and Science for non-EU / EEA / Swiss students.²⁸

In Ireland there are currently no public discussions on irregular migration and, in the absence of available data, it is difficult to estimate the numbers of undocumented migrant workers. However, the Government has enacted in recent years legislation to combat irregular migration. The *Immigration Act, 1999* sets out a legal basis for deporting non-Irish nationals in violation of Ireland's immigration legislation. The *Illegal Immigrants (Trafficking) Act, 2000* bans the smuggling and trafficking of illegal immigrants. The *Employment Permits Act, 2003* provides a legal basis for the prosecution of employers and employees who do not comply with legislation pertaining to the employment of immigrants. The Migrant Rights Centre Ireland is currently carrying out research on irregular migration and has found that the vast majority of undocumented workers initially have full legal status in Ireland, but 'fall out' of the system due to a variety of reasons (often outside of their own control). Once undocumented migrant workers find themselves in increasingly vulnerable situations and are often at greater risk of workplace exploitation.²⁹ The increased level of legislation and deportations suggests that the

27 *Towards 2016: Ten-Year Framework Social Partnership Agreement 2006-2016*. Government of Ireland 2006. Published by the Stationery Office, Dublin (p.104)

28 See www.education.ie for details

29 Unpublished Migrant Rights Centre Ireland research on irregular migration - 2007

Government is expanding its efforts to combat irregular immigration.³⁰

1.4 Core Economic and Social Rights

1.4.1 Economic Rights

Finding a job commensurate with immigrants' skills and qualifications is often difficult.³¹ This results in underemployment, which in turn implies an "occupational gap". A number of claims have been put forward to explain this phenomenon, including lack of proficiency in the host society language(s), lack of recognition of qualifications acquired outside the state, immigration status, discrimination, lack of work experience in the host country, etc. This experience is not unique to Ireland and "the weak position of migrants in the labour market is largely a consequence of their immigration status, or lack of it, in countries of employment. Temporary status generally means explicit lack of entitlements to mobility in the labour market or gaining entitlement to benefits such as social security."³²

Accurate, timely and relevant information enables people to make informed choices about their lives and their actions. Migrants in particular can be especially vulnerable without access to information on their rights and entitlements, as they may not be familiar with the Irish system, what services are available to them and their entitlements to basic standards such as the minimum wage, holiday pay or to protection and redress in the face of exploitation. Groups working with immigrants have been for some time calling for increased provision and advertising of accessible, accurate information in a variety of

30 IOM: *Managing Migration in Ireland: A Social and Economic Analysis. A Report by the International Organisation for Migration for the National Economic and Social Council of Ireland*. No. 116 September 2006. National Economic & Development Office NESDO

31 Smith, S. and Mutwarasibo, F.: *Africans in Ireland: Developing communities*. African Cultural Project, December 2000

32 Office of the UN High Commissioner for Human Rights (2001): *International Migration, Racism, Discrimination and Xenophobia*, International Labour Office, International Organisation for Migration

languages on the rights and entitlements of all migrants in Ireland.³³ This could be achieved by providing increased resources to information providers in the statutory and non-statutory sector, including migrant support organisations. As well as this, advertising of such services should be increased and should be placed in appropriate fora, such as ethnic minority media. There is also a need for more pre-departure information to be made available to people in their countries of origin so they are aware of important issues such as the cost of living, social welfare and other entitlements, and access to family reunification or long term residency etc. before they arrive. The recent publication of *Living in Ireland* in English and Polish is a welcome development.³⁴

1.4.1.1 Barriers to economic inclusion

Employment is, according to the third Common Basic Principle on Integration, "...a key part in the integration process and is central to the participation of immigrants".³⁵ Migrant workers who are employed in more poorly paid jobs and in poorly regulated and unstable sectors are more vulnerable to exploitation, isolation and social exclusion. This is especially true of migrant workers on the "old" Work Permit Scheme carrying out essential work (typically the jobs that are not attractive to native workers). They also have difficulties in accessing life-long learning, employment services and training opportunities.³⁶ The Irish media has exposed on a number of occasions cases of exploitation of migrant workers by unscrupulous employers in the last couple of

years. High profile cases include the exploitation of Turkish workers in the Gama case, Beautician Salvacion Orge (Irish Ferries) and the mushroom pickers (Carrickacroy Mushrooms). Exploitation of workers, predominantly migrant workers, in the mushroom industry has been widely exposed and has been accepted as a serious problem even by leading players within the industry. In a recent publication, the Mushroom Workers Support Group (MWSG) has highlighted pay below the minimum wage, excessive working hours and ongoing health and safety concerns as some of their most common and pervasive concerns.³⁷ These cases highlighted the need to increase the number of labour inspectors. It is interesting to note that there are currently 31 labour inspectors designated in respect of over 1.6 million people in employment, compared with 41 health inspectors (to enforce the smoking ban), approximately 50 dog wardens, over 200 agricultural inspectors and 700 tax inspectors. In *Towards 2016* there are provisions to increase the labour inspectorate from 31 to 91 labour inspectors by the end of 2007.³⁸

1.4.2 Social Rights

1.4.2.1 Family Reunification

The Irish Constitution recognises the family as the "natural primary and fundamental unit group of Society",³⁹ and "the necessary basis of social order and as indispensable to the welfare of the Nation and State".⁴⁰ There are a number of dis-

33 *Immigrant Council of Ireland: Recommendations on Immigration and Integration to Inform Political Parties' Manifestos for the 2007 General Election*. July 2006 (unpublished)

34 *Emigrant Advice (2006): Living in Ireland: A Guide for the New Residents*. Available at www.emigrantadvice.ie

35 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union*. Available at <http://eur-lex.europa.eu>

36 Lowry, H.: *Realising Integration: Creating the Conditions for Economic, Social, Political and Cultural Inclusion of Migrant Workers and their Families in Ireland* (Dublin: Migrant Rights Centre Ireland, 2006) (p.49-50).

37 *The Mushroom Workers Support Group The Migrant Rights Centre Ireland Harvesting Justice mushroom Workers Call for Change* November 2006

38 *Towards 2016: Ten-Year Framework Social Partnership Agreement 2006-2016*. Government of Ireland 2006. Published by the Stationery Office, Dublin (p.93).

39 Article 41 of the Irish Constitution, provides that "The State recognises the Family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights antecedent and superior to all positive law". Further, Article 42 of the Irish Constitution acknowledges that "the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide according to their means, for the religious and moral, intellectual, physical and social education of their children"

40 Article 41 (2), Irish Constitution.

tinct ways in which family members of Irish citizens and other legal residents are entitled to, or may be permitted to come to Ireland. For a comprehensive review of policies and procedures in Ireland see Cosgrave (2006).⁴¹ However the law or policy that applies and the rights granted to family members when they are permitted to come to Ireland depends on the immigration or legal status of the family member who is already legally resident in Ireland. Under EU law, family members of EU citizens who move within the EU to work can join the EU citizen regardless of their own nationality. Under Irish law a refugee is entitled to be joined by their spouse and unmarried dependent children under the age of 18 or, in the case of a refugee who is a minor, by the refugee's parents. They lose these rights if they become naturalised Irish citizens. In relation to Irish nationals and other migrants resident in Ireland, there are currently no legislative provisions governing their right to have family members join them in Ireland and therefore no application for family reunification is guaranteed.⁴²

Unmarried couples are not legally recognised in Ireland and this lack of legal recognition of partnerships also poses considerable immigration difficulties for non-EEA partners of Irish citizens or residents who want to migrate to, or remain in, Ireland.⁴³ As the same visa application form applies to all types of visa applications no matter who applies, it can be difficult for applicants to clearly distinguish between situations when they simply wish to come to Ireland for a short-term visit and situations when they wish to join a family member in Ireland on a longer-term basis (family reunification). In addition, the fact that no information accompanies visa application forms means that applicants may have to go back and forth several times to the embassy dealing with the application in order to give them all the documentation required.⁴⁴ With the exception of certain applications for family members of

refugees and EU nationals, all family reunification applications are considered and granted at the absolute discretion of the Minister for Justice, Equality and Law Reform.⁴⁵

Even the recently published *Information Note on Family Reunification for Workers (Visa Requirements)* (2006) by the Department of Justice explicitly states that the requirements are "intended to act as a guideline only and do not limit the discretion of the visa officer in determining individual applications."⁴⁶ It is a peculiar feature of the Irish system that people who do not need a visa to enter Ireland cannot apply for family reunification before moving to Ireland – it is not possible for them to apply in advance like those who need a visa to enter the country. This often means that applicants must leave a very stable environment in their own country, where they may own property and be in employment, to apply for residency in Ireland. Due to the discretionary nature of the system and the fact that there is no permission to work while applications are considered, applicants are placed in a very precarious emotional and financial situation.⁴⁷ Family reunification applications are largely administrative in nature and many individuals find it a straightforward, if lengthy, process. However, family reunification applications can involve complex procedures and often require submissions to be made on complicated points of administrative, statutory and constitutional law. This means that it can be extremely difficult for applicants to advocate on their own behalf.⁴⁸

In addition to issues of access to legal services, there are also serious questions regarding access to effective legal remedies where family reunification applications have been refused.⁴⁹ If they are given a positive decision in their application for family reunification, family members of Irish citizens, refugees or other migrants are

41 Cosgrave, C. (2006): *Family Matters: Experiences of Family Reunification in Ireland ~ A Critical Analysis of Government Policy and Procedure*. Immigrant Council of Ireland

42 *Ibid* (p.17)

43 *Ibid* (p.24)

44 *Ibid* (p.37)

45 *Ibid* (p.41)

46 Available at: [http://www.justice.ie/80256E01003A21A5/vWeb/flJUSQ6LZJJ9-en/\\$File/FamilyAug06.pdf](http://www.justice.ie/80256E01003A21A5/vWeb/flJUSQ6LZJJ9-en/$File/FamilyAug06.pdf)

47 Cosgrave, C. (2006): *Family Matters: Experiences of Family Reunification in Ireland ~ A Critical Analysis of Government Policy and Procedure*. Immigrant Council of Ireland (p.42).

48 *Ibid* (p.44)

49 *Ibid* (p.45)

permitted to reside in Ireland. However, under present arrangements, the form of permission that is granted varies depending on the legal status of the family member already resident in Ireland and applicants do not always know in advance what conditions will be attached to the residence permit they are given. Although the Department of Justice, Equality and Law Reform is responsible for deciding who is admitted to Ireland, each government department is responsible for deciding what rights, benefits and services are to be made available to different categories of people in the country. It is therefore very difficult to state exactly what rights are conferred on migrants admitted under the family reunification system.⁵⁰ Given current levels of inward migration, predicted future flows in the coming years and the importance of family reunification for both migrants and wider society, there is an urgent need to develop a comprehensive and coherent policy to be implemented in this area sooner rather than later. It should not be developed on an ad hoc basis in response to individual cases.⁵¹

1.4.2.2 Health Care

Access to health care by all members of the society including migrant workers is very important; this is acknowledged in Article 28 of the UNMWC which sets out that “Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life and avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned”. Visits to general practitioner (GP) services require a fee unless the patient has a medical card. In order to avail of in-patient, specialist services, maternity and infant welfare services, patients need to have health insurance or a medical card and in the case of migrant workers category 2 status. Migrant workers and international students can apply for category 2⁵² status if they satisfy the health services that it is their

intention to remain in Ireland for a minimum period of one year.⁵³

Migration has had significant implications for Irish health policy and the provision of a range of health services. Health service developments have implications for effective and sustainable integration measures. Many of the new migrants to Ireland are vulnerable in the labour market and this vulnerability frequently impacts on equitable access to health services. In particular, migrants with an irregular or indeterminate status, women and young people, are particularly vulnerable to poverty, poor housing conditions and exclusion from society, and this in turn can affect their health status.⁵⁴

Although there have been some positive developments in the provision of culturally appropriate and competent health services, significant gaps still remain in provision, awareness and understanding regarding the experiences and situation of migrants in Ireland. There is a need to ensure that health services are provided in culturally appropriate ways that reflect the diversity of the Irish population. There is also a need for cultural awareness and equality training for front line health service providers, as well as specific measures for migrant women in areas such as childcare, maternity services, domestic violence and other support services. The work that is being done currently to develop a health strategy therefore needs to be extended to ensure that the specific needs and experiences of migrants in Ireland are considered and included. The development of the Health Service Executive’s intercultural health strategy is a welcome initiative.

Improving people’s access to health care is the subject of consultations that are taking place across the country by the Health Service Executive (HSE). The HSE provides health care (through hospital, GP and other community based services), and provides some resources for community

⁵⁰ *Ibid* (p.48)

⁵¹ *Ibid* (p.53)

⁵² *Category 2 status is offered to migrants who do not qualify to apply for category 1 i.e. the medical card*

⁵³ *Eastern Health Board: Eligibility for Health Services Guidelines on “Ordinary Residence”. Unpublished*

⁵⁴ *Pillinger, J.: Scoping paper on Health. Immigrant Council of Ireland - Unpublished*

based migrant groups. The National Intercultural Strategy aims to consult with people from ethnic minority communities. The HSE wants to find out what people from ethnic minority communities think needs to be done to improve their health and access to health services.⁵⁵ A HSE steering committee was set up to advise and to support the consultation process and the HSE's Intercultural Health Strategy will be published in the first half of 2007.

The Intercultural Strategy aims to improve the provision of health services so that they are equal, accessible, culturally sensitive and appropriate in meeting the needs of minority ethnic communities. This includes improving access to health services, and reducing the risks of social exclusion and health inequalities experienced by minority ethnic groups, including Travellers, asylum seekers, refugees and migrant workers. The Strategy will look at how minority ethnic groups can have improved access to health. This will include how services can be planned and developed so that they take into account the needs of minority ethnic groups within a framework of equality. Specific priorities will include the development of a national interpretation service, staff training and support, an ethnic identifier, ongoing consultation and participation with minority ethnic communities, and the provision of community based services run in partnership with ethnic minority groups and communities.⁵⁶

1.4.2.3 Social Security Systems

Access to social security by migrant workers, is covered by Article 27 of the UNMWC in the following terms:

"1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of ori-

gin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances."

Before the expansion of the EU in May 2004, in an effort to prevent what was referred to by some politicians and some media outlets as "welfare tourism", the Irish Government introduced the Habitual Residency Condition (HRC) in the *Social Welfare Consolidation Act, 2005*, which limited access to social welfare benefits to those deemed to be habitually resident. Section 246 of the Act states that "it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless he has been present in the State or any other part of the Common Travel Area for a continuous period of 2 years ending on that date."

Groups working with migrant workers were critical of the HRC. It did not take long for the effects of the legislation to become visible. Groups working with the homeless such as Focus Ireland⁵⁷ reported an increase in demand for their services. In December 2005, the following changes were introduced to the HRC:

- Supplementary welfare allowance (issued by Community Welfare Officers through local Health Centres - includes a basic allowance, rent allowance, emergency payments and medical cards): All EEA workers are able to access these payments if they have some work history in the State (the Community Welfare Officer will make the decision as to whether the work done can be considered as 'real and effective work'. It

⁵⁵ Unpublished HSE working document - 2006

⁵⁶ Unpublished HSE working document - 2006

⁵⁷ Increase in number accessing the coffee shop services reported by Focus Ireland in 2004 and 2005

may be understood that any work which had led to the payment of a Pay Related Social Insurance (PRSI) contribution can be considered as sufficient for this purpose).

- Child Benefit: All workers, both EEA and non-EEA, will be able to access Child Benefit. EEA workers will be able to get payment even if their children are not resident in the State. Non-EEA nationals will have to be resident in the State with their children to get payments. Asylum seekers will continue to have no entitlement to Child Benefit.
- One parent family payment: All EEA nationals working in the State will be able to apply for this if necessary as it is considered a family payment along with Child Benefit under European Law.

These changes do not affect non-EEA nationals or EEA nationals who have no work history in the State. These changes have no impact on EEA people who are newly arrived in the State and have been unable to find work. The only option open to them is to be referred to the Reception and Integration Agency who will give them room and board and arrange for their repatriation.

1.4.2.4 Education and Training

Migrant workers rights in relation to access to education and training are covered in Article 43.1(a), (b) and (c) and Article 43.2 of the UN-MWC. The Convention recommends that migrant workers should have “equality of treatment with nationals of State ... whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.” The rights of members of the families of migrant workers are covered by Article 45.1 (a) and (b).

While many migrants who come to Ireland are proficient in the English language, many others are not, and this can severely hinder their ability to participate in Irish society. It is well recognised that without the language of the receiving country, migrants can be very disadvantaged and face additional barriers to accessing work, information on their rights and services available to them, as well as appropriate health care. While

some statutory and non-statutory educational institutions and community groups currently provide language-training courses to migrants around the country, this work is not coordinated and not well funded. As a result, the cost, accessibility and quality of the training can vary greatly. There is an urgent need for more state-funded, high quality, accessible English language training courses to be set up for migrants in Ireland. These could take place in schools and colleges, as well as within community groups and NGOs. Employers could also be encouraged to provide English language training to their new employees, and consideration should be given to the state providing funding for such initiatives to increase their availability and success.

There are currently 600 language support teachers in primary and secondary schools across the country; 400 of these are working in primary schools supporting 6,000 international school. Support teachers are allocated to schools with 14 or more international children. There is a cap of a maximum of 2 support teachers no matter how many international pupils there are in any particular school. In Towards 2016, there is a commitment to add an additional 550 support teachers by 2009 and to reform the current limit of support teachers per school.⁵⁸ The lack of provision in the area of language tuition for parents of international pupils indirectly impacts on the performance of the pupils, as these very parents assist their children with homework.

Although there is “free access” to primary and secondary level education, access to third level education is another issue. There is a clear distinction made between Irish citizens, EEA nationals and non-EEA nationals. Once children of migrants reach 18 years of age, they must obtain independent status and are charged international student fees rather than the same fees as Irish college students, no matter how long they have been resident in the country. Many migrant children are then forced to drop out of education completely. There is a clear case for a review

⁵⁸ *Towards 2016: Ten-Year Framework Social Partnership Agreement 2006-2016.* Government of Ireland 2006. Published by the Stationery Office, Dublin (p.43).

to take place of third level education tuition fee requirements for people from a migrant background with an established migration history in Ireland. International student fees in Irish colleges are not within the reach of most migrant workers.

Access to third level education for children of migrant workers has implications for Irish society in the future in relation to social cohesion and the type of skilled workforce Ireland as a society would like to have. Irish society cannot afford to deny the descendants of migrant workers the benefit of third level education as Ireland moves more and more towards being a knowledge-based economy. This will go some way towards avoiding the alienation of descendants of migrants in the future. A number of organisations have highlighted these issues and published reports⁵⁹ highlighting the experiences of migrants in accessing third level education and getting recognition of qualifications acquired overseas. In order to deal effectively with “underemployment” and the “occupational gap” experienced by many migrant workers, there is a need to deal with the accreditation of skills and qualifications acquired outside the EU. Further research is also required to explore the possibility of providing refresher courses to enable migrants to adjust their skills to the Irish labour market.

The 5th Common Basic Principle on Integration makes a case for promoting access to education for migrants and their descendants.⁶⁰ The limited number of support teachers and the difficulties associated with access to third level education merit a review if Ireland as a nation is keen on achieving social cohesion both in the short, medium and long term for the diverse society it has become over a relatively short period of time.

59 Coghlan, D., et. al. (2005) *International Students and Professionals in Ireland: An Analysis of Access to Higher Education and Recognition of Professional Qualifications*. Dublin: Integrating Ireland

60 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union*. Available at <http://eur-lex.europa.eu>

1.4.2.5 Housing

Article 43.1 (d) of the UNMWC stipulates that migrant workers should “enjoy equal treatment with nationals of the State of employment in relation to ... access to housing, including social housing schemes, and protection against exploitation in respect of rents.”

In recent years, rapid economic growth, a rising population and reduction in the average household size have resulted in a significant increase in demand for housing in Ireland from migrants as well as indigenous Irish people. Questions arise, however, in relation to the amount of and quality of housing, particularly in the rental sector, that migrants who are more marginalised and in less well paid work can afford to access. When social welfare restrictions were introduced in May 2004, many people found they did not have sufficient finances to support them until they found a job. As a result, housing and homeless organisations reported an increased demand from migrants at risk of homelessness. Furthermore, some migrant workers in Ireland are living in accommodation provided by employers and research has shown that the conditions in these forms of accommodation are sometimes substandard, lacking in sufficient heating, insulation or furniture.⁶¹

There is a need for the housing conditions in the rental sector to be monitored and regulated more closely. There is also a need for migrants to be included in future housing strategies and programmes, which assist low-income groups, including those with social housing and special housing needs. This would mean increasing social and affordable housing, tackling homelessness and promoting the modernisation of the private rented sector. As part of the National Action Plan Against Racism, the National Consultative Committee on Racism and Interculturalism commissioned a research project on ethnic minorities housing. The aim of the study is to scope out the key issues that need consideration for neighbourhood planning, housing provision and estate management policy arising from in-

61 Kelleherassociates (2004): *Voices of Immigrants: The Challenges of Inclusion*, Dublin: The Immigrant Council of Ireland.

creased ethnic and cultural diversity in Ireland. The research will be completed by the end of May in 2007.

1.5 Civil and Political Rights

The civil and political rights of migrant workers are covered by Article 11; Article 12; Article 13; Article 14; Article 15; Article 16.1, 2, 4, 8; Article 17; Article 18; Article 22; Article 25; Article 27; and Article 31 of the UNMWC. These articles cover a wide range of areas including protection from slavery and forced labour; freedom of thought, conscience and religion; the right to hold opinions to freedom of expression; protection from arbitrary interference in privacy; the right to security of property; liberty and security of the person; protection against violence and physical injury; protection against collective or arbitrary arrest or detention; equality of treatment before the courts; protection against collective expulsion; consideration of individual merits of circumstances in the event of proceeding aimed at individual expulsion; equal treatment in respect of conditions of remuneration and employment; trade union membership and activity in support of collective bargaining; and the right to respect for cultural identity.

1.5.1 Labour Place Rights (membership of trade unions)

Although Irish employment legislation stipulates that migrants should not be discriminated against on the basis of race and country of origin, there is evidence that migrant workers experience difficulties in accessing their employment rights due to lack of knowledge of these rights, fears of challenging unscrupulous employers and lack of support in seeking legal redress. The fear of deportation makes undocumented migrants vulnerable to exploitation.⁶² Research⁶³

suggests that men and women migrant workers experience unethical recruitment practices and payment of recruitment fees and fees for work permits, absence of contracts of employment or employment contracts that do not provide for minimum entitlements to pay, holidays and other terms and conditions of employment, underpayment or non-payment of wages, including wages below the national minimum wage, and unfair dismissal. Women migrant workers specifically frequently experience both gender inequality and ethnic inequality.⁶⁴ The situation of migrant women employed in the private home has been highlighted with instances of long hours of work, lack of access to holiday and leave entitlements, lack of privacy, experiences of discrimination and problems in relation to pay and deductions from pay being documented.⁶⁵ The CERD follow up report expressed concern about the insufficient protection of large numbers of domestic workers residing in Ireland and recommended that the State should ensure better protection for members of this particularly vulnerable group of migrant workers.⁶⁶

The Irish trade union movement has been active in promoting the employment rights of migrant workers and where necessary the unions have represented cases of exploitation of migrant workers in the Labour Court. The Services, Industrial, Professional and Technical Union (SIPTU) has recruited 3 organisers (2 Polish and 1 Lithuanian) from migrant backgrounds to help in developing links. An agreement was signed between SIPTU and NSZZ Solidarnosc, Poland, which enables members of NSZZ Solidarnosc to transfer their membership to SIPTU once they come to work

Integration of Migrant Workers in Ireland (edited by Orla Parkinson, Dublin: Immigrant Council of Ireland, 2003)

⁶² Pillinger, J. (2006): *An Introduction to the Situation and Experience of Women Migrant Workers in Ireland. The Equality Authority. November 2006*

⁶⁵ Migrant Rights Centre Ireland (2004) *Private Homes A Public Concern: The experience of Twenty Migrant Women Employed in the Private Home in Ireland*

⁶⁶ Committee on the Elimination of Racial Discrimination 69th session 31 July – 18 August 2006 CERD/C/69/Misc.9 REPORT VISIT OF CO-ORDINATOR ON FOLLOW-UP TO IRELAND (21-23 June 2006)

⁶² Lowry, H.: *Realising Integration: Creating the Conditions for Economic, Social, Political and Cultural Inclusion of Migrant Workers and their Families in Ireland (Dublin: Migrant Rights Centre Ireland, 2006) (p.51-52)*

⁶³ For detail see MacÉinrí, P., and Walley, P. *Labour Migration into Ireland: Study and Recommendations on Employment Permits, Working Conditions, Family Reunification and the*

in Ireland.⁶⁷ SIPTU also entered a similar partnership with LIGA (Democratic Confederation of Free Trade Unions), Hungary, in August 2006. In a recent publication, the MRCI has highlighted a range of barriers facing migrant workers seeking to access legal redress as a result of experiencing workplace exploitation.⁶⁸

1.5.2 Migrants' active citizenship

Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives.⁶⁹ The ninth Common Basic Principle on Integration concurs with the Universal Declaration of Human Rights and argues that "the participation of immigrants in the democratic process and in the formulation of the integration policies and measures, especially at local level, supports their integration."⁷⁰ Unless every group in society is able to participate fully in the political process, real democracy is not possible.⁷¹ Political participation for migrants is challenging because of the clientelist⁷² nature of the Irish political system,⁷³ which often results in a differentiation between louder voices and others who are often ignored.⁷⁴ The

biggest challenge in the context of the political participation of migrants is the recognition that migration is both positive and a permanent feature of Irish life. As long as immigration is seen as a temporary phenomenon there will be no incentive for migrants to get involved and there will be less space for them in the Irish political sphere.

In Ireland, voting rights and registration procedures are covered in Part II, Second Schedule of the *Electoral Act, 1992*; the *Electoral (Amendment) Act, 1996* and Part VII, Section 76 of the *Electoral Act, 1997*. According to the *Electoral Act, 1992*, Part II, Section 10, "a person shall be entitled to be registered as a local government elector in a local electoral area if he has reached the age of eighteen years and he was, on the qualifying date, ordinarily resident in that area." The right to participate in local elections for non-Irish nationals has been in existence since 1963.⁷⁵ Irish and British citizens are eligible to vote in general elections and EU nationals are eligible to participate in European elections.

In the local elections of 2004, two Nigerian nationals who stood as independent candidates were elected as Town Councilors in Portlaoise (County Laois) and Ennis (County Clare). In order to vote, people must be registered on the register of electors in the local authority area in which they live. To register, the person has to have been living at his/her ordinary address since 1st September the year before the election. The city and county councils compile a register of electors each year. The final register comes into force on 15th February, however, late applications can be made until 15 days before polling day through registration on the supplementary electoral register.⁷⁶

67 Liberty. Vol. 5.4. December 2006

68 *The Migrant Rights Centre Ireland Accessing Redress for Workplace Exploitation: The Experience of Migrant Workers 2006*

69 Article 21(1) of the Universal Declaration of Human Rights

70 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union. Available at <http://eur-lex.europa.eu>*

71 *New Internationalist Issue 229 - March 1992: The Right to Real Political Participation* (see <http://www.newint.org/issue229/medals3.htm> - date of Access December 16th, 2006)

72 *The client's bond is a personal loyalty to the politician, and the party or larger goals which the politician represents is irrelevant for the client's support. In short, electoral support must be based on individualistic appeals rather than on appeals of shared interest or collective identity* (See Lee Komito below).

73 Komito, L. (1995): *Politics and Clientelism in Ireland: Information, Reputation, and Brokerage* - University Microfilms International 8603660 - www.ucd.ie/lis/staff/komito/thesis2.htm

74 *Irish Human Rights Commission (2005): Making Economic, Social and Cultural Rights Effective: An IHRCI Discussion*

Document (p.21). See www.ihrc.ie

75 Mutwarasibo, F.: *Participation of Third Country Nationals in the 2004 Local Elections: New dawn in the emergence of Intercultural Ireland. Paper presented at the European Science Foundation conference, Edinburgh 2-4 June 2005 (unpublished)*

76 *Information Note for non-Irish nationals on Local Elections in Ireland in 2004 - National Consultative Committee on Racism and Interculturalism and Integrating Ireland - 2003*

Following the launch of the Immigration and Residence Consultation Document by the Minister for Justice, Equality and Law Reform in April 2005, a joint submission was drawn up by 35 migrant led community organisations with the support of the Immigrant Council of Ireland. In the joint submission, these organisations argued that the lived experience of migrants should be central to the development of policies on immigration and integration. The signatories to the submission saw themselves as facilitators of dialogue between the immigration system and its users.⁷⁷ Ireland has yet to put in place local and national consultation structures for ethnic minorities. Consultative fora at local and national level have the potential to stimulate political participation by immigrants and to improve integration policies by communicating the views of immigrant representatives to governmental and other stakeholders.⁷⁸ In the last number of years a number of migrant groups have emerged, however many have been unable to develop beyond the formation stages because of lack of resources.⁷⁹ Migrants are also to some extent active in mainstream NGOs and other institutions. These difficulties highlight the needs for Ireland to embrace the seventh Common Basic Principle on Integration that makes a case for “frequent interaction of immigrants and member states citizens.”⁸⁰

The Taoiseach (Irish Prime Minister), Mr Bertie Ahern T.D. (Member of Parliament), announced the setting up of a Taskforce on Active Citizenship in April 2006. The aims of the Taskforce were to: (1) consider the extent to which people in Ireland play an active role as members of their communities and society; (2) identify factors affecting the level and nature of active citizenship in different areas of Irish life; and (3) suggest ways in which people can be encouraged and supported to play an active role. As part of the work of the Taskforce on Active Citizenship, consultation sessions were organised and individual and organisational submissions were invited. As part of this process, participants were asked to give ideas on what needs to be done to facilitate the participation of “newcomers”. There was considerable emphasis on the provision of language classes to assist with the integration of migrants. Other suggestions included proactive reaching out or targeting of new Irish communities by sports, youth and other voluntary groups and a number of respondents provided examples of such initiatives currently in place. The improvement of information and awareness and the provision of funding for organisations specifically targeting or including new communities; including funding for immigrant groups themselves, were also suggested. On a broader level, lack of employment was described as a significant barrier to citizenship and it was suggested that all migrants should be allowed to work as a means of assisting integration. Some submissions referred to the position of spouses of migrant workers as being particularly excluded and isolated.⁸¹

The lack of representation of migrants and ethnic minorities on the Taskforce on Active Citizenship was challenged by a number of those who attended the consultation sessions held by the Taskforce. There is no doubt that members of the Taskforce were committed, but often symbolic representation of migrants and ethnic minorities gives a strong message to the wider

77 *Joint Submission from Immigrant and Minority Ethnic Led Organisations in Ireland. July 2005*

78 Niessen, J. and Schriber, Y. (2004): *handbook on Integration for Policy-makers and Practitioners. Migration Policy Group on Behalf of the European Commission (Directorate General for Justice, Freedom and Security)* (p.42)

79 Mutwarasibo, F. (2004): ‘Setting Up, Managing and Sustaining a Refugee/Ethnic Community Led Organisation’. *Irish Refugee Council, 2004* and Feldman, A.; Ndakengerwa, D.L.; Nolan, A.; and Frese, C. (2005): *Diversity, Civil Society and Social Change in Ireland: A North-South Comparison of the Role of Immigrant/New/ Minority Ethnic-Led Organisations. Dublin: Migration & Citizenship Research Initiative, Geary Institute, UCD.*

80 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union. Available at <http://eur-lex.europa.eu>*

81 *Taskforce on Active Citizenship: Report on Active Citizenship Consultation Process. November 2006, (p.13). See www.activecitizenship.ie/UPLOADEDFILES/ConsultationDoc/Report_On_Consultation_Process.pdf*

public and goes some way in challenging those with strong anti-migrant views.

1.6 Integration Policies and Measures

Integration means the ability to participate to the extent that a person needs and wishes in all of the major components of society, without having to relinquish his or her own cultural identity.⁸² This definition by the Interdepartmental Working Group is well meaning but does not recognise the role of the State nor deal with the complexities associated with individual and communal identities within the context of core values and duties in a multicultural society. The first Common Basic Principle on Integration concurs with the Irish definition and suggests that, “integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of member States.”⁸³

In terms of combating racism and discrimination, there are many legal instruments in Ireland including the *Prohibition of Incitement to Hatred Act, 1989*; the *Employment Equality Act, 1998*; *Equal Status Act, 2000*. Most recently, in order to comply with the Race Directive 2000/43/EC, the Equality Act, 2004 was enacted. The *Employment Equality Act* and the *Equal Status Act* covers nine discriminatory grounds. These grounds are: gender, marital status, family status, sexual orientation, religion, age, disability, race, religion and membership of the traveller community. While clearly the equality legislation provides for non-discrimination across the 9 grounds and to some extent takes on board the provisions of Article 1.1 of the UNMWC which promotes non-discrimination of migrants on grounds such as “sex, race, colour,

language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”. It should be noted that some areas around the administration of the immigration system are exempted from the legislation. The *Public Order Act, 1994* can be used to combat racist acts on public order grounds. In the last couple of years there has been an increase in the number of cases taken under the Equality Legislation. In 2005 the Equality Authority reported 754 casefiles, 359 (48%) under the *Employment Equality Acts 1998 and 2004* and 358 (47%) under the *Equal Status Acts 2000 to 2004*.⁸⁴ Article 25.1(a) and (b) of the UNMWC argues that migrant workers should “enjoy treatment not less favourable” in the workplace. While the *Employment Equality Acts 1998 and 2004* are used in Ireland to combat discrimination in the workplace, migrant workers are often reluctant to complain because of fear of losing their residency. The lack of English language classes and the lack of information often make migrant workers vulnerable. The equality legislation in Ireland promotes the sixth Common Basic Principle on Integration, which argues that “access of immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration.”⁸⁵

In Ireland, there are a number of equality institutions in existence, including the Equality Authority, the Equality Tribunal and the Irish Human Rights Commission. In terms of anti-racism, specific institutions exist including the National Consultation Committee on Racism and Interculturalism (NCCRI) and the Garda (Irish Police) Racial and Intercultural Office. To promote cultural diversity, the Irish Government established The National Anti-Racism Awareness Programme in 2001, which was also known as the Know Racism

82 *Integration: A Two-Way Process. Report to the Minister for Justice, Equality and Law Reform by the Interdepartmental Working Group on the Integration of Refugees in Ireland (1999).*

83 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union. Available at <http://eur-lex.europa.eu>*

84 *The Equality Authority: Annual Report 2005 (p.22).*

85 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union. Available at <http://eur-lex.europa.eu>*

Programme. Through Know Racism, funding was made available for initiatives aiming at promoting diversity and combating racism. Following the Durban (South Africa) UN World Conference Against Racism Conference in 2001, the Department of Justice, Equality and Law Reform initiated a consultation process that resulted in the development of the National Action Plan Against Racism.⁸⁶ The intercultural framework underpinning the plan is based on five objectives: Protection, Inclusion, Provision, Recognition and Participation. The overview of these objectives is as follows:

- Protection: effective protection and redress against racism, including a focus on combating discrimination, assaults and threatening behaviour and incitement to hatred.
- Inclusion: to ensure economic inclusion and equality of opportunity, including a focus on employment, the workplace and poverty.
- Provision: accommodating cultural diversity in service provision, including a focus on common outcomes, education, health, social services and childcare, accommodation and administration of justice.
- Recognition: enhance recognition and awareness of cultural diversity, including a focus on awareness raising, the media, the arts, sports and tourism.
- Participation: enhance the participation of cultural and ethnic minorities in Irish society at political, policy and community levels.

There is a general consensus across all interested groups that immigration policy and social inclusion policies need to be integrated. Several government departments and agencies have a brief in this area. These include the Department of Justice, Equality and Law Reform, the Department of Enterprise, Trade and Employment, the Department of Education and Science, the Department of Social and Family Affairs, the Department of Community, Rural and Gaeltacht Af-

fairs, the Department of Foreign Affairs, and the Department of Environment and Local Government. To date, collaboration across departments and agencies is underdeveloped.⁸⁷

With so many departments and agencies involved there is an urgent need for future work on immigration and integration issues to be co-ordinated and carried out in the context of a clear, national, agreed strategy that is working to a set of agreed goals. A robust, high-level cross departmental process should be set up to co-ordinate the work of all statutory bodies that have a brief in the area of immigration and integration. It is crucial that those most affected by work on immigration and integration, including migrants and the receiving community as well as the social partners, NGOs and other stakeholders, be involved in planning, strategy development and decision-making at a national and local level.

Ireland has no integration policy. The recommendation by the Joint Oireachtas Committee on European Affairs that the government should publish a white paper on integration is a welcome development.⁸⁸ The limited integration provisions that are in place are reserved for people with refugee status, programme refugees and those granted humanitarian leave to remain. These groups are entitled to access language and induction programmes run by Integrate Ireland Language and Training. The poorly resourced voluntary groups as well as the Vocational Education Committees run language tuition programmes accessed by asylum seekers and other immigrant groups. These programmes are run by and large during working hours making them inaccessible to migrant workers. Often the English language tuition providers do not provide ancillary services such as childcare or transport to facilitate access for example for women with young children.

⁸⁶ *Planning for Diversity: The National Action Plan Against Racism 2005-2008. Prepared by the Department of Justice, Equality and Law Reform, 2005*

⁸⁷ *Kelleher, P. and Kelleher, C. (2004): Voices of Immigrants: The Challenges of Inclusion, Dublin: The Immigrant Council of Ireland (p.82).*

⁸⁸ *Houses of the Oireachtas Joint Committee on European Affairs, Eleventh Report (April 2006): Report on Migration: An Initial Assessment of the Position of European Union Migrant Workers in Ireland post 2004. (p.7).*

No provision whatsoever is made for integration measures in the Department of Justice, Equality and Law Reform's *Outline Policy Proposals for an Immigration and Residence Bill*, released in April 2005, aside from mentioning the establishment of an Immigrant Integration Unit within the Irish Nationalisation and Integration Service (INIS) of the Department. The Integration Unit is to 'promote and coordinate social and organisational measures [...] for the acceptance of lawful immigrants into Irish economic and cultural life'.⁸⁹ What these measures might entail has not been specified. The Immigrant Integration Unit is to cater for all immigrants and not just refugees and people with leave to remain. The proposals highlight the importance of the combination of immigration policy with 'the necessary supporting infrastructure' though this seems to refer to controls rather than to integration.⁹⁰ The Department of Justice's *Scheme for an Immigration, Residence and Protection Bill*, released in September 2006, does mention the term integration several times but does not offer a working definition and does not contain any reference to the Immigrant Integration Unit, which appears to have been dropped.

In May 2006, the Department of Education and Science and the Reception and Integration Agency held a Working Seminar entitled 'Towards a National English Language Policy for Adult Newcomers' to develop policy in the area of English language tuition. The objective was simply 'to clarify the role of current stakeholders and to identify issues and challenges in provision.' As yet nothing concrete has emerged from the consultation. The report of the National Economic and Social Council (NESC) on migration policy, launched in September 2006, called for an active integration policy from the Irish Government, with language education as a corner-

stone of this policy.⁹¹ NESC also commissioned the International Organization for Migration (IOM) to analyse the management of migration in Ireland. The IOM pointed to problems with access to language teaching and information as a major problem, and considered English language proficiency as a prerequisite for participation in Irish society. The report recommended the provision of comprehensive orientation services to all migrants to ensure participation and prevent exclusion.⁹² Many more recent publications and reports have highlighted language and orientation for immigrants as a central concern.⁹³

Social Partnership in Ireland describes an approach to government where interest groups outside of elected representatives play an active role in decision taking and policy making.

91 National Economic and Social Council. "Migration Policy." NESC Report No. 115 (Dublin: National Economic & Social Development Office, 2006).

92 National Economic and Social Council and International Organization for Migration. "Managing Migration in Ireland: A Social and Economic Analysis." NESC Report No. 116 (Dublin, 2006), (p.141-2, 145).

93 Irish Department of Education and Science. "Promoting Anti-Racism and Interculturalism in Education - Draft Recommendations Towards a National Action Plan" (Dublin, 2002), (p.18); MacÉinrí, P. and Paddy Walley. P. *Labour Migration into Ireland: Study and Recommendations on Employment Permits, Working Conditions, Family Reunification and the Integration of Migrant Workers in Ireland* (edited by Orla Parkinson, Dublin: Immigrant Council of Ireland, 2003), (p.60); Kelleher, P. and Kelleher, C. *Voices of Immigrants: The Challenges of Inclusion* (edited by Orla Parkinson, Dublin: Immigrant Council of Ireland, 2004), (p.92); Smyth, K. and Whyte, J. *Making a New Life in Ireland: Lone Refugee and Asylum-Seeking Mothers and Their Children* (Dublin: Trinity College Dublin Children's Research Centre and Vincentian Refugee Centre, 2005), (p.66); Lowry, Helen. *Realising Integration: Creating the Conditions for Economic, Social, Political and Cultural Inclusion of Migrant Workers and their Families in Ireland* (Dublin: Migrant Rights Centre Ireland, 2006), (p.147); National Economic and Social Council. *NESC Strategy 2006: People, Productivity and Purpose* (Dublin, 2006), (p.140); National Economic and Social Council, *Migration Policy*, NESC Report No. 115 (Dublin: National Economic & Social Development Office, 2006), (p.190); Deasy, J. April 2006. "Eleventh Report, Report on Migration: An Initial Assessment of the Position of European Union Migrant Workers in Ireland post 2004" (Dublin: Houses of the Oireachtas, Joint Committee on European Affairs, 2006), (p.27).

89 Irish Department of Justice Equality and Law Reform. "Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill. A Discussion Document" (Dublin: Government Stationery Office, 2005), (p.122).

90 Irish Department of Justice Equality and Law Reform. "Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill. A Discussion Document" (Dublin: Government Stationery Office, 2005), (p.6).

This form of participative democracy enables the social partners to enter discussions with government on a range of issues and to reach a consensus on policy. Since 1987 Social Partnership has been an important basis for government planning and policymaking in Ireland. The origins of Social Partnership were in the extreme economic and social problems during the 1980s. In 1987, the unions, employers and farmers were called to meetings that led to the National Agreement, The Programme for National Recovery. This was followed by the Programme for Economic and Social Progress (PESP) in 1991; the Programme for Competitiveness and Work (PCW) in 1994; Partnership 2000 (P2000) in 1997; the Programme for Prosperity and Fairness (PPF) in 2000; and Sustaining Progress (SP) in 2003.⁹⁴ The recently concluded partnership negotiations that resulted in the Towards 2016 agreement in June 2006 recommended putting place an integration policy.⁹⁵ Consultations involving all the stakeholders in the integration process are mentioned in Towards 2016. This is a welcome development. It should be noted, however, that such a consultation process should be put in place as soon as possible in order to ensure a comprehensive and successful process. The participation in the Community and Voluntary Pillar of the partnership is by invitation only and so far no group specifically representing the interest of migrants is involved. Experiences from countries with a history of migration suggest that integration in a “new” country of immigration should be prioritised.

1.7 Conclusions

Ireland’s limited language and induction programmes for newly arrived immigrants, falls short of the recommendations of the second and fourth Common Basic Principle on Integration⁹⁶ because many migrants don’t get a

chance to learn the host society’s language, history and institutions and by extension the basic values of the European Union. Access to education for first generation as well as second-generation migrants is critical in fostering their integration. The initiative to increase the numbers of support teachers is welcomed, however this should happen sooner rather than later and the support should not be limited to two years. Access to third level education and support at second level should also be reviewed to ensure the equality of outcomes from the education system for migrants and their children.

Changes in the Habitual Residence Conditions are welcomed. There is still a case for flexibility in dealing with migrant workers from the new EU member States and migrant workers in general. This will go some way in ensuring that the homeless organisations are not left alone to pick up the pieces.

Although Ireland has clear legislation in the area of equality and many equality institutions have been put in place, the examples mentioned in the report suggest that exploitation of migrant workers is taking place. The recent changes to the employment permit scheme are welcome and will hopefully give the confidence to migrant workers to vindicate their rights. Putting in place legislation allowing migrants to access long term residence rather than the maximum five years would encourage them to take more responsibility on an equal basis with other members of society.

The participation of migrants in civic and political spheres in their country of residence provides migrants a platform for participation. The provision for migrants’ participation in the local elections in Ireland is a positive initiative. There are issues however around the availability of resources to allow meaningful participation of migrants in civil society. Lack of resources currently limits migrants and ethnic minority par-

⁹⁴ *Wheel: History and Context for Social Partnership in Ireland.* Available at www.wheel.ie/user/content/view/full/325.

⁹⁵ *Towards 2016: Ten-Year Framework Social Partnership Agreement 2006-2016.* Government of Ireland 2006. Published by the Stationery Office, Dublin (p.57)

⁹⁶ *Communication from the Commission to the Council, the European Parliament, the European Economic and Social*

Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union. Available at <http://eur-lex.europa.eu>

ticipation. Resourcing migrant groups will help in moving migrants' participation beyond tokenism and placation.

Access to housing, including social housing, plays an important role in the integration of migrants in a society. There are gaps in information about the housing experiences of migrant workers. The research commissioned by the National Action Plan Against Racism is a welcome development. More work needs to be done in relation to the housing needs of members of Irish society in general and migrant workers in particular.

Joined up government on the areas of immigration and integration will enhance mainstreaming integration policies outlined in the tenth and eleventh Common Basic Principles of Integration.⁹⁷ Recent changes introduced by the Employment Permit Act, 2006 are to be welcomed, however, there is still clearly a case for improving legislation to ensure equal access and equal participation of legally resident migrant workers, and the UNMWC provides a good template on this.

Finally, there is a clear need for political leadership in the area of integration. To date, political leaders have given mixed messages and have yet to state for example that migration is a permanent and positive reality in Ireland. As a result, some members of the public still think that migration into Ireland is short term rather than permanent. This is not helped by ad hoc legislation in the area of immigration.

97 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union. Available at <http://eur-lex.europa.eu>

V. The Rights of Migrant Workers in France

Patrick Mony*

1.1 Introduction

On November 2, 1945, an ordinance regulated the situation of foreigners and lasted for 60 years, although it changed several times following political alternations. On July 17, 1984, an important reform, unanimously approved by the Parliament, recognised a real right for foreigners to stay on the French territory, with a derogation based on a law and order motive. Indeed, it established a ten-years residence permit renewable by right and granting the right to practice the chosen profession throughout the whole territory. This permit was given to all foreigners who had been regularly on the territory for three years, and to those who could prove family or private ties in France. There seemed to be a general agreement that a stable residency was the necessary condition for a good integration.

Since 1986, successive governments have progressively reconsidered these provisions with a general trend to jeopardise the situation of foreigners living in France. The most recent modification was made by Law Nr. 2006-911, also called the «Sarkozy law II», from July 24, 2006. Meanwhile, the November 2, 1945, ordinance became the CESEDA,¹ which this new law then modified. It is not only a matter of one additional reform after numerous reforms over the past thirty years: it represents two main turning points.

1) *The French law officially points out as “forced immigration” that immigration which on universal human rights such as the right to family and private life or the right to asylum. In this view, people having strong links or even family ties with France are not meant to stay because they fuel “forced” immigration and would therefore stand in the way of a migration policy grounded on economic needs. So, the law puts more obstacles to immigration based on family reunification or marriage between a foreigner*

and a French national; and more generally to so-called “undesirable” immigration. The right to get a residence permit is cancelled for undocumented people living in France. The ten-years residence permit becomes the exception, whilst precarious status are manifold. Whilst meeting the “integration” condition is a prerequisite to obtain or renew a residence permit, integration requires a stable residence.

2) *The law tends to favour a “chosen” and disposable immigration. Highly skilled workers are attracted through a “competences and talents” residence permit while students who are finishing their studies on matters of economic interest could stay and work in France. The other newly available track for immigration is for migrant workers selected according to economic needs.*

Immigration of foreign workers had officially been closed since 1974. Actually, until 2007, legal access to the labour market mainly came from residence permits grounded on “private and family life.” The granting of residence permits bearing the title “salaried worker” was very restricted, because of the “opposable employment” rule (priority to French and EU workers). The July 24, 2006, law opens up legal immigration of foreign workers for specific labour activities and geographical areas that are suffering from recruitment difficulties. At the writing of this report, precise regulations are still unknown. It is, however, obvious that these foreign workers will mainly work on short-term precarious contracts and with a short-term residence permit. Linking this approach with the continued recruitment difficulties, means that we can speak of a *disposable immigration*.² Furthermore, restricting the right to residency for the so-called “forced” immigration and at the same time increasing the number of “disposable” workers, will lead to an increase in the number of undocumented migrants.

¹ Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile (Code of foreigners' entry and residence and of the right to asylum).

² “United against a disposable immigration,” around 800 political parties, trade unions and organisations struggled together against the new immigration policy focussing on this disposable immigration.

* Expert in International Human Rights Law and Member of GISTI (France)

A close look at the French laws and their implementation also shows that the gap with the international human rights instruments, such as the UN Migrant Workers Convention, is widening.

Police raids and violence

At the same time of the introduction of the new immigration legislation, the French government also decided that it would aim to escort back over the border 25000 illegal aliens. This target has almost been reached, with heavy consequences concerning human rights: numerous police raids, charters (e.g. of Romanians shortly before the entry of the country in the EU). A February 21, 2006 written regulation³ issued by the Home Office and by the Department of Justice advised police checks in (or in the neighbourhood of) hostels for foreigners. The regulation also included “legal traps” aimed at catching undocumented migrants. This creates a dangerous and potentially violent climate.

This report does not address the rights of EC nationals and members of their family based on European Union law. Therefore, “foreigner” or “migrant” always means “national from a third country”.

1.2 Access to Residence, Deportation and Admission to the Labour Force

1.2.1 The Right to Residency

1.2.1.1 *The different categories of residence permits*

a) The ten-years residence permit [carte de résident]

This permit, which is valid for ten years, is renewable de jure and allows its holder to live in any part of the territory and to

practice the profession of her/his choice. It is issued in most cases on the condition of “republican integration”, and it becomes more and more difficult to obtain it. The permit can be granted under the condition of a five-year lawful and uninterrupted residence in France. The following periods are excluded from the five years: regular residence periods as a student, seasonal or “detached worker” [travailleur détaché], as well as refugee under the subsidiary protection. Moreover, various resource and integration requirements have to be met. This five-year period is reduced to three years for people who have family ties in France or for nationals of particular countries linked to France by bilateral agreements.⁴

Only the following categories of residence permit holders are not submitted to the republican integration condition:

- the foreign child of a French national if this child is under 21 years old or if she/he is depending on her/his parents, as well as the dependent relatives in the ascending line of a national and her/his spouse - a long-term visa delivered in the State of origin is required;
- the foreigner entitled to an accident in the workplace or occupational disease allowance or the legal successors of the foreigner enjoying such an allowance, granted by a French agency;
- the foreign war veteran;
- the foreigner who has obtained refugee status as well as her/his spouse and minor children if the wedding took place prior to the asylum application, or if it has been in force for at least a year;
- the parents of a foreigner who entered as a non-accompanied minor and has obtained refugee status;
- the stateless person who can prove that she/he has lived for at least three years in France, as well as her/his spouse and minor children.

³ *Conditions de l'interpellation d'un étranger en situation irrégulière.*

⁴ *Benin, Burkina Faso, Cameroon, Central Africa, Congo, Ivory Coast, Mali, Morocco, Mauritania, Niger, Senegal and Togo.*

b) The EU long-term residence permit [carte de résident longue durée - CE]

This new permit is the transposition into the CESEDA of the Directive on EU long-term resident status for third-country nationals in one of the EU Member States. It grants rights to the third-country national who has been living in a regular and uninterrupted way for five years on the territory of another Member State. The CESEDA has integrated these measures. The issuing of a residence permit to a long-term resident in another EU Member State is subject to the same conditions as those for other foreigners, although there is no long-term visa requirement. The above mentioned ten-years residence permit (see under a), which can be issued after five years of lawful residence in France, also gives the EU long-term resident status.

c) The temporary residence permit [carte de séjour temporaire] left to the administration's discretion

Apart from rare exceptions, the temporary residence permit has a maximum length of one year and can bear different meanings, depending on the motives for the attribution:

- *Visitor*: Issued to foreigners who can prove that they have sufficient financial resources. They commit themselves not to engage in any professional activities.
- *Student*: Issued to foreigners who study in France, conditioned on the submission of a registration, inscription or pre-inscription certificate in a school and on proof of sufficient financial resources. For some students selected in the state of origin this permit is by right. It grants the right to practice a professional activity for a maximum of 60% of the annual work time.
- *Intern*: Issued to foreigners who take part in an official training course programme in France; they must prove sufficient financial resources.
- *Scientific*: Issued to foreigners who live in France to carry out research or teach at a

university. In this case, the procedure is simplified. It suffices to show that at the time of the application one's situation was regular, and to present a protocol from a French scientific institute or university.

- *Artistic and cultural profession*: Issued to foreigners who signed a contract for more than three months with a company or organisation whose main activity deals with creation or exploitation of cultural works.
- *Salaried worker*: Issued to foreigners who have a work contract endorsed by the departmental labour direction (see section 2.1). If the contract's duration is for less than 12 months, then the permit will carry the reference *temporary worker*.
- *Commercial and industrial*: Issued to those who practice these types of activities.
- *Seasonal worker*: Issued to workers who undertake seasonal work six months per year. It is issued for a maximum renewable period of three years. The holder commits her/himself to maintain her/his principal residence outside of France.
- *Employee in mission*: Issued to workers who are temporarily detached [travailleurs détachés] from an employer established outside of France. It is valid for three renewable years.

N.B. In most cases, several conditions need to be met before these permits are granted. For example: hold a long-term visa issued in the state of origin; not to be a threat to law and order. Moreover, the application has to be made when the concerned person is in a lawful residence situation.

d) The « private and family life » permit

This is a one-year residence permit, which also grants the right to any available work. It is issued by right to the following categories of people:

- Children and spouse of a foreigner holding a residence or temporary permit who came to join her/him in the context of family reunification.

- The foreigner who can prove she/he has her/his principal residency with at least one of her/his legitimate, natural or adoptive parents, since at least the age of thirteen, in France.
- The foreigner who has been placed under the care of the child social services since at least the age of sixteen.
- The foreigner of whom one of the parents or the spouse holds a permit "competence and talents" or a permit for temporary residence with the title "employee in mission". It is not requested from them that they enter under the family reunification procedure.
- The foreigner married with a French national, on the condition that the common life has not ceased since the wedding. A long-term visa is required.⁵
- The foreigner parent of a French minor child on the condition that she/he has contributed effectively to the child's care and education (since her/his birth or for at least two years).
- The foreigner whose personal and family ties are such that the refusal to authorise her/his stay would affect her/his fundamental right to respect for private and family life in a disproportionate manner with regards to the motives for refusal.⁶ Foreigners who have concluded a PACS⁷ since more than a year, can claim this permit.
- The foreigner born in France, who has lived there in a continuous way for eight years and attended a French school for at least five years (after the age of ten). The application has to be made between the age of sixteen and twenty-one years old.
- The foreigner entitled to an industrial in-

jury or occupational disease allowance.

- The foreign war veteran.
- The foreigner who has obtained the stateless person status as well as her/his spouse and children.
- The foreigner regularly living in France whose health condition requires medical care, without which exceptionally severe consequences could occur; and if he cannot effectively benefit from an appropriate treatment in his country of origin.
- The spouse and children of a foreigner who obtained the status of long-term resident in another EU Member State; the spouse will only be allowed to work after one year.
- The foreigner who is entitled to subsidiary protection (refugee) as well as her/his spouse and children when the wedding took place before the status was obtained, or has been in force for at least a year.

Since the 24 July 2006 law, this private and family life permit can be granted in two additional cases, after an administration's assessment: in the case of "exceptional residence admission" and in the case where a foreigner denounces procuring or human trafficking offences.

e) The "competences and talents" residence permit

The competences and talents permit is a creation of the July 24, 2006 law. Its aim is to attract to France highly skilled persons who will likely contribute to France's economic development or radiance. It is granted for a period of three years to the concerned persons, their spouse and children.

f) The "retiree" residence permit

It is granted to foreigners who, having held a ten-years residence permit, decide to stay outside of France after their retirement. This card is valid for ten years and renewable. It allows for visits to France for a maximum duration of one year, but without visa requirement. Spouses can benefit from this card as

⁵ *Foreigners who have been living in France for more than six months since the wedding can apply for a visa at the prefecture.*

⁶ *The 24 July 2006 law specifies that the personal and family ties taken into account must be assessed with regards to their intensity, their duration, their stability, to the person's living conditions, to her/his integration into French society as well as to the nature of the ties maintained with the family left behind in the country of origin.*

⁷ *Pacte civil de solidarité (civil partnership)*

long as they themselves previously held a residence card. The holder is not authorised to work in France and she/he cannot benefit from any welfare payments in France. She/he, however, has access to health care in case of unexpected illness.

g) The provisional residence authorisations

Such authorisations usually last for six or three months. The main grounds for granting provisional residence authorisations are the following:

- Asylum seekers receive a one-month provisional residence permit to allow them to introduce their application to the OFPRA.⁸ They will then receive a certificate with an authorisation to stay which is valid for three months and renewable until the completion of the application procedure.
- Foreigners who wish to work as volunteers with associations or foundations may obtain it.
- Students who completed their studies may obtain a provisional residence permit for a non-renewable period of six months in order to look for a job; subject to the economic value of the job, they might then get a one-year residence permit.
- Foreigners requiring health treatment in France, on the ground of a medical certificate issued by a physician; this authorisation is not granted by right. Such authorization can also be granted to one of the parents of minor children who must receive treatment in France.

1.2.2 Deportation and Retention of Foreigners

1.2.2.1 *Obligation to leave the French territory for foreigners whose residence permit is refused*

Since the beginning of 2007, the administration rejecting an application for the delivery or renewal of a residence permit may – and will generally

– also notify an “obligation to leave the French territory”⁹ within a month. After this period, the foreigner can be subject to criminal sanctions (up to three years of imprisonment and a ten-year re-entry ban), and to the “automatic” execution of his forced deportation. So, the OQTF is a decision linked to the explicit refusal to issue a residence permit.

1.2.2.2 *The prefectoral order of escort back over the border for illegal aliens*

The foreigner who has no residence permit (and whose delivery or renewal of a residence permit has not been rejected since 2007-1-1) is exposed to criminal sanctions (up to one year of imprisonment, a fee of €3,750 and a three-year re-entry ban), and to an administrative sanction: APRF.¹⁰ This authorises the administration to carry out the foreigner’s deportation, by force if necessary. It also authorises the placement in administrative retention (see below). It is the mildest of the deportation measures: once carried out (i.e. once the foreigner is deported outside of France), this decree becomes extinct and does not impede an eventual return based on the adherence to the legal procedures.¹¹

The APRF can be put into effect quickly, unless a written appeal is rapidly presented before an administrative tribunal. The appeal is suspensive (the foreigner is not escorted to the border), until the judge’s decision.¹² Some factual and legal arguments can lead to reconsidering the APRF; for example: the foreigner is protected against deportation, the deportation would endanger her/his life, liberty or physical integrity; the deportation would impair in a disproportionate way the foreigner’s right to respect for private and family life or could lead to severe consequences for him. In case of non-execution of the valid APRF or refusal to embark, the foreigner is exposed to

9 *Obligation de quitter le territoire français (OQTF)*

10 *Arrêté Préfectoral de Reconduite à la Frontière (Prefectoral decree of escort back over the border)*

11 *E.g. mandatory visa requirements, etc ...*

12 *The judge must in principle decide in the next seventy-two hours, under the condition that the appeal was presented within forty-eight hours.*

8 *Office français de protection des réfugiés et apatrides (French Office for the Protection of Refugees and Stateless Persons)*

up to three years of imprisonment and up to a 10-year re-entry ban.¹³

1.2.2.3 Expulsion of foreigners threatening law and order

Foreigners holding a residence permit can be subject to an administrative expulsion procedure in case of harm to law and order. A re-entry ban to the French territory can be imposed on all foreigners (in regular or irregular residence) who have been condemned for certain offences by a criminal jurisdiction.

The expulsion decree is an administrative measure that can be pronounced by either a prefect¹⁴ or by the Home Office.¹⁵ The return to France is impossible as long as the measure has not been abrogated or cancelled. The expulsion order can be subject to an appeal (which does not suspend the enforcement of the measure) before the administrative tribunal in a two-months delay following its notification. The expulsion decrees are reconsidered every five years from the date at which they have been pronounced, with consideration of the actuality of the threat to public order as well as the evolution of the personal, familial, social and professional situation of the concerned persons.

1.2.2.4 Interdiction from the French territory of foreigners prosecuted for a criminal offence

The interdiction from the French territory (IFT) is pronounced by the judiciary judge during a criminal trial as a sanction to an offence. It can be pronounced against any foreigner, for the mere fact that he/she is a foreigner. It can, therefore, affect people in a regular situation, who have all their ties in France. This leads to terrible situations of "double penalty" [double peine]. The ITF can be

pronounced as a unique or principal punishment, but is in most cases a complementary penalty to imprisonment. Its length varies from one year to a permanent re-entry ban.¹⁶ The return to France is impossible, unless the measure is released or considered done. The legal remedy against the ITF is the appeal (within a ten-day period for criminal matters) or the remission petition [requête en relèvement] before the tribunal of the jurisdiction that condemned the foreigner. When a foreigner sentenced to an ITF penalty is not imprisoned, the request for house-arrest before the Ministry of Internal Affairs is a prerequisite to any other action. It consists of asking the administration to suspend the execution of the deportation by asserting the impossibility of return to the country of origin. Minors and severely ill foreigners are protected against these deportation measures.

1.2.2.5 Administrative retention

These deportation measures, when enforceable (i.e. when they have not ceased to exist), can lead to a placement in administrative retention in view of a forced deportation from the French territory. It means a deprivation of liberty "in premises that do not depend on the penitentiary administration" of a foreigner who has been sentenced to a forced deportation measure and who "can not immediately leave the French territory" "only for the strictly necessary time for his departure," and in any case for a maximum period of thirty two days.¹⁷ The retention is neither imprisonment nor detention (both criminal system). It belongs to the administrative system; i.e. it is decided upon by the prefect and controlled by the judiciary judge.

Foreigners placed in retention have the possibility to communicate with any person of their choice, with the consular authorities and with a lawyer. They have free access to phone booths (and can in general keep their mobile phone, as long as it

¹³ *Interdiction du territoire français (ITF)*

¹⁴ *Prefectorial expulsion decree [arrêté préfectoral d'expulsion] adopted for "severe threat to law and order" after consultation of the departmental expulsion commission, which is composed of administrative and judiciary magistrates.*

¹⁵ *Ministerial expulsion decree [arrêté ministériel d'expulsion] adopted in case of "absolute emergency" or "imperious necessity for the State's safety or for public order" [nécessité impérieuse pour la sûreté de l'Etat ou la sécurité publique].*

¹⁶ *Permanent Interdiction of the French Territory*

¹⁷ *The first period of forty eight hours is decided by the administration, a first prolongation of fifteen days can be authorised by the judiciary judge and a second prolongation authorised by the judiciary judge for a maximum of five or fifteen days depending on the situation.*

cannot take pictures) and they can meet visitors during the scheduled time slots.

In retention centres some services are provided by external actors:

- a medical team, composed of nurses and doctors from a general hospital which has signed an agreement with the prefecture, is there for sanitary questions and for the implementation of the legal protection against deportation of foreigners who are ill;
- the National Agency for the Reception of Foreigners and for Migrations (ANAEM) is in charge of the reception, information, psychological support, support for the material preparation of the departure: reclamation of luggage, administrative formalities, purchases, contact with persons in the return country;
- Cimade, the national association for the support of foreigners, has as its mission helping them exercising their rights. It provides the information and the support to enable retained persons asserting their rights;
- in some retention centres, the penitentiary administration deals with the day-to-day management (laundry, accommodation, sanitary hygiene).

Article 7 of the UN Migrant Workers Convention, declares that States should respect and ensure migrant workers' rights without any distinction based, notably, on race, colour, ethnic or social origin. But in France, the systematic identity controls in places where many of the migrants live are discriminatory and can therefore be seen as in breach of the article of Convention. Furthermore, the controls can be seen as dragnets that lead to collective deportations, which is in conflict with article 22 of the Convention: "Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."

The new "obligation to leave the territory", because of its expeditious nature and because of the difficulty to get an effective legal review, is also far

from in line with the content of this article of the Convention. The main effect of such conditions of deportation is that undocumented migrants can hardly claim their rights in matters of salary, annual leave, social security, retirement pension, etc... It could be argued that this constitutes another violation of article 22 of the Convention, which states that "In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities". In France, undocumented migrants often cannot take their goods and savings with them when being deported.

1.2.3 The Right to Asylum

The Geneva Convention (July 28, 1951) and the New York Protocol (January 30, 1967), ratified by France and its partners, are two texts supposed to protect any person who fears of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Until the 1970's, the protection was applied without restrictions. Progressively, this protection became more and more restrictive. It became more difficult for applicants to provide the required evidence. Nationals from EU Member States as well as those from a list of « secure states »¹⁸ will have their file considered as a priority. It will be submitted to a quick study, and there is very little hope to receive a positive answer. The reception system was toughened. Everything has been done to deter potential applicants even from accessing the French territory or that of its European partners. Currently, the asylum seeker is barely listened to, everything she/he says is put into question, regardless where she/he comes from or whatever the persecutions she/he suffered from are. In France, the rejection rate for asylum requests is close to ninety per cent. Can we still speak of a "right to asylum"?

1.2.3.1 Asylum request

The first difficulty for an asylum seeker arrested by the police while crossing the border will be to

¹⁸ Established in France by two decrees on 2005-6-30 and 2006-5-26

prove, when arriving at the border, that her/his request is not manifestly groundless. The decision to let her/him enter France will be taken by the Home Office after a short interview with an OFPRA¹⁹ representative. He/she must then go to the Prefecture of her/his place of residence, where her/his application for a right to stay in France during the asylum procedure will be registered. This demand can be rejected by the prefecture if it considers that the situation in the country of origin does not justify the asylum status; if the asylum seeker is a national from a country considered by France to be safe; if her/his presence can constitute a threat to law and order; or if her/his request is fraudulent or considered to be a means for escaping a deportation measure, or if another application is being considered by another EU Member State. If the demand is registered by the Prefecture, he/she will receive a provisory one-month authorisation to stay and a form he should use to file her/his application in French to the OFPRA within the next twenty one days. The receipt given by the OFPRA upon the filing of the application, allows the asylum seeker to obtain a three-month receipt renewable during the full the duration of the procedure.

Depending on the situation, the asylum seeker might obtain:

- either the constitutional asylum, based on the 1946 constitution's indent which protects the persons persecuted because of their action in favour of freedom;
- either the refugee status in application of the Geneva Convention and the New York Protocol;
- or the subsidiary protection which concerns all those who risk to be subjected in their country to the death penalty, torture or degrading or inhuman treatment, as well as civilians whose life, in a context of generalised violence, is directly threatened.

1.2.3.2 Residence permit

Throughout the duration of the procedure, the asylum seeker receives three-month receipts

that will not be renewed once his application is rejected. In this case, he has to leave the territory. The refugee recognised by the OFPRA gets a *de jure* ten-year residence permit, also renewable *de jure*. The beneficiary of the subsidiary protection gets a one-year temporary card bearing the title private and family life; the protection and the residence permit only last for as long as the situation in his country, for which he got the protection, lasts.

1.2.3.3 Right to work

The asylum seeker is not allowed to work during the application procedure. He/she might request a work authorisation on the basis of an actual work contract, but has little chances to obtain it, because the employment situation (see section 2.1) is opposable to her/him. The refugee as well as the beneficiary of the subsidiary protection, of course, benefit from the right to work.

1.2.3.4 Social protection

The asylum seeker can, as soon as she/he has filed his application, benefit from health insurance without any conditionality. On the contrary, the right to family payments, housing benefits and professional training will not be granted. He/she will receive a daily allowance of €10,40 for the period of the procedure unless he/she is admitted to the "national reception structure" [le dispositif national d'accueil], which provides accommodation and in principle should support her/his stay.

1.2.4 Access to the Labour Market

The principle is that a foreigner cannot work without having first obtained an authorisation. It is forbidden to employ a foreigner without this authorisation under penalty of sanctions. The reference texts are the CESEDA and the Labour Code.

Several residence permits, described in section 2.1, do provide the authorisation to practise any kind of profession.²⁰

¹⁹ French Office for Refugees and Stateless Persons

²⁰ They are: the ten-year residence permit, the temporary

The specific residence permit for salaried worker is issued to the foreigner who has a work contract subject to the employment situation; it carries the title “salaried worker” if the contract’s duration is at least one year long and the title of “temporary worker” if it lasts for fewer than 12 months. The card can be limited to specific regions and activities. An undocumented foreigner has no access to such a worker’s residence permit. The salaried worker’s permit is renewed if the worker has a valid contract or, if she/he lost her/his employment involuntarily.²¹ The “temporary worker” has a temporary contract and no protection when the contract and the residence permit of the same duration end. The “Sarkozy II” law only provides for a renewal in case of dismissal before the end of the contract and during the last two months.

As mentioned before, the delivery of this worker residence permit is endorsed by the departmental labour authority in charge of checking the legal conditions of the contract. The unemployment of French or EU workers in the same field of activities and the same region are opposable criteria to the recruitment of a foreign worker. The July 24, 2006 law exempts from this employment opposability a list of geographic areas and specific activities faced with recruitment difficulties. Hence, the government gives itself the option to facilitate work authorisations depending on the economic needs in those professional fields that are facing specific labour force demands. The list of professions will be decided upon in an administrative way. The procedure will be quicker but the residence permit will then very likely be “temporary”. This approach reinforces the link between the employee and the company hiring him by making it possible to authorize the work in one region or for one profession only. It also widens the

possibility for temporary work contracts linked with temporary residence permits, which are only valid for the duration of the contract signed with the company. The aim is probably to facilitate and multiply this kind of contracts, which obliges beneficiaries to leave the territory at the expiration of their contract.

The link between a work contract and the right to residency, which is re-established by the July 24, 2006 law, considerably weakens residence stability. Migrants are at the mercy of employers since their discharge may terminate their right to residency. Moreover, strict conditions to renew residence permits, which slows procedures, as well as the multiplicity of precarious status obstruct the access to the work market. Finally, this law and the administration practices create situations where migrants obtain a right to residence but are not allowed to work. It can be argued that these measures are in breach of the principle of equality with nationals included in article 25 of the UN Migrant Workers Convention.

3. Core Economic and Social Rights

1.3.1 Economic Rights/ Rights at Work

1.3.1.1 The principle of equal treatment and its limits

A non-discrimination principle is laid down in article L.122-45 of the Labour Code. Consequently, foreign employees must benefit from the same rights and same working and protection conditions as French employees, notably concerning: remuneration, sanctions, discharge, dismissal, participation in the firm’s profits, professional training, qualification, posting, reclassification, professional advancement, etc. This principle is reinforced by the ILO Convention no 111 concerning discrimination (employment and occupation), the European Social Charter and the European Convention on Human Rights. It is also at the heart of the UN Migrant Workers Convention, which can be used as an additional international benchmark (even if France is not a State Party).

residence permit bearing the title “private and family life” (except for the spouses of EU long-term residents; they are not allowed to work during the first year) and the residence permit bearing the title “competences and talents”. The residence permits bearing the title “scientific” and “artistic and cultural profession” allow the cardholder to engage in a professional activity as long as it falls within the agreed category.

²¹ *The permit is renewed for as long as the unemployment benefits last.*

The non-renewal or the expiration of the authorisation to work does not constitute a case beyond control but a real and serious motive for dismissal: it should lead to a dismissal procedure by the employer, with the payment of compensation because of a breach of contract. There is, however, a limit: the employee who cannot fulfil the term of notice because of this non-renewal cannot claim any compensation for this notice.

Providing the evidence in cases of discrimination for nationality reasons remains a fundamental issue. A High Authority for the Fight against Discriminations and for Equality (HALDE)²² has been set up in 2005. Most of the complaints concern employment; and the questions are mostly linked to the true or alleged belonging to a nationality other than French.

Moreover, despite a long struggle, access to some professions is still linked to an applicant's nationality; those professions are referred to as "positions closed to foreigners" [emplois fermés aux étrangers]. Most government jobs are closed. Also, qualifications obtained in foreign countries (e.g. doctors and nurses) are not valid in France hence closing the access to the corresponding profession, unless a specific bilateral convention provides for their validity.

1.3.1.2 *The protection of the foreign worker without a residence and/or work permit*

An illegal work contract does not withhold the employee from the right to a minimal protection. The notion of illegal work covers several different offences that should not be confused.

- Moonlighting [travail au noir] or illegal work, called « hidden work » in the Labour Code. In this case, the employer did not declare the activity to the administration, and did not pay the social and fiscal taxes. This can only be held against an employer or an independent worker, but never against an employee, even if he was aware of it, or gave his consent. The employee

²² Haute autorité de lutte contre les discriminations et pour l'égalité

is always considered as a victim and as such protected. This infraction, therefore, does not merge with the employment of undocumented workers (even if it often overlays it); the infractions observed concern for 90% French nationals or foreigners in a regular situation.

- The employment of a foreigner without work authorisation. Here too,²³ only the employer, is responsible for hiring an undocumented worker. The law sets up a whole range of guarantees in favour of the irregularly hired foreigner. The aim is to sanction the employer who took advantage of the situation (low salary, absence of social taxes, excessive work hours...), supported illegal immigration and took part in a parallel labour market outside of the protection of the Labour Code.

Thus, if one or several work conditions have not been respected, only the employer incurs sanctions. By way of a legal action, the employee can obtain, additionally to the respect of his rights, damages and interests. His/her rights must be restored; and this, starting from the beginning of the work relation, by referring the matter to the industrial tribunal [prud'hommes].²⁴

At the end of 2003, on the occasion of the reform of "law on foreigners' residence",²⁵ the Parliament tried to take away this protection. Because of the mobilisation of civil society, this step backward could finally be reversed. But, in 2006, the government managed to put in place the deportation for those foreigners who work, and only have a valid residence permit but no work authorisation (students, asylum seekers...).

Another sign of the weakening of this protection is the evolution in the case law. Increasingly,

²³ Article L 341-6 of the Labour Code

²⁴ Article L 341-6-1 of the Labour Code. She/he can claim the actual salary (which can not be under the SMIC), the payment of extra hours, bonuses provided for in the collective labour agreement applicable in the sector, compensation for paid leave and/or a severance allowance which cannot be less than a month's salary, in the case of absence of a work authorisation and/or six months in case of "hidden work".

²⁵ "Loi Sarkozy I" from November 26, 2003

tribunals tend to consider that undocumented workers (in particular those working from home) are actually independent workers. As such, they would not be protected anymore but directly condemnable.

In any case, the implementation of this protection remains delicate. It principally runs up against the difficulty to prove the existence and duration of the work relation. Although the evidence can be provided by all means (for example testimonies), possibilities remain limited. Bringing together the employees who are victims of the same employer or same principal, getting support from an association and advice from unions can be necessary, if not indispensable.

In case of deportation (see above), some judicial steps are available for the employees to assert their rights from afar, after their return (forced or voluntary) to the country of origin. There are, however, few examples of the implementation of these procedures.

Nonetheless, it has to be noted that unions do not need a mandate from an illegally hired employee to represent her/him before a tribunal²⁶. Associations that have been set up (for at least five years) for the struggle against discrimination can refer the matter to unions, so that they can act on their behalf.²⁷

1.3.1.3 *The protection against industrial injury*

When a worker has an accident because of or during his/her work, he/she can be reimbursed for the health care costs through the social security (as industrial injury insurance). The employer must declare the accident within forty-eight hours to the social security authorities who are, in principle, bound by professional secrecy. However, it is very likely that the employer chooses not to declare it, primarily because of the irregularity of the victim's residence and work status. In this case, the victim (or her/his legal successors) has a two-year period from the date of the accident to proceed himself with the declaration.

²⁶ Unless the employee explicitly opposes it.

²⁷ Articles L.341-6-2 and 3 of the Labour Code

This period allows her/him to consider the arguments pro or contra proceeding with the procedure.

Neither the fact of being a foreigner, nor to be lacking a residence and/ or work authorisation are obstacles to the implementation of the industrial injury insurance by the social security authorities.²⁸ What matters is that one works as an employee and is subordinated to an employer.²⁹

It is this aspect that in practice can be complicated to implement as the undocumented workers may have difficulties with proving the "salaried" character of their work (and not the independent activity) as well as the link between the work and the accident.

In case of illegal work (work without authorisation or declaration), only the employer can be held liable. In addition to being responsible in a criminal and civil way, he has to pay for health care and compensatory damages. Allowances paid by the social insurance for the industrial injury when the victim is in an irregular situation have to be entirely reimbursed by the employer.³⁰

A severe work accident can give the right to regularisation if the undocumented worker has a permanent incapability to work equal to or higher than 20%.³¹ It can also allow a foreigner with a temporary residence permit to receive a residence card (see above).

1.3.2 Social Rights

1.3.2.1 *Family reunification*

a) General regime

The family reunification procedure only applies to a small number of categories of foreigners:

²⁸ Bill DSS/AAF/A1 95-11 from 17/02/1995, BOSS n°95-12

²⁹ Article L.411-1 of the Social Insurance Code

³⁰ Articles L.374-1 and L.471-1 indent 3 from the Social Insurance Code

³¹ Article L.313-11-9° of the CESEDA

- The French national's spouse and children who can obtain a residence permit by right.
- The spouse and children of a statutory refugee and of a "scientist", "competences and talents" or "employee in mission" permit holder.
- The family of a long-term resident in another EU Member State holding a French residence permit, subject to a lawful residence with him in the Member State and to resource and insurance conditions; the spouse is not allowed to work during the first year.

Only the spouse and minor children under eighteen can benefit from family reunification. The spouse must be married and aged eighteen at least. Polygamy in France is an obstacle to family reunification. Only minor children born within or outside marriage or adopted can benefit from it. Foster and dependent children are excluded from this procedure. Children born from a first marriage can benefit from it if the ex-spouse is deceased or has been deprived of her/his parental rights. Reunification must occur for the spouse and all admissible children. Partial reunification is only possible under exceptional circumstances, for reasons linked to the child's best interest.

The applicant must hold a residence permit in France for at least eighteen months. She/he must prove she/he has sufficient and stable resources.³² She/he must have housing considered as normal for a comparable family living in the same geographical region.³³ She/he must also comply with the "fundamental principles of the Republic".

Family members must undertake a medical check up, with obligation, if necessary, to be treated once arrived in France. They must live outside of France and not constitute a threat

³² This should be equal to at least the SMIC; i.e. the minimum salary in France. This is currently €8,7 per hour.

³³ This is set according to the region. It ranges from 22m² to 28m² for two persons, with an extra 22m² per additional person.

to law and order. Regularisation once arrived in France is exceptional. A foreigner who lets her/his family come outside of family reunification procedure will not be able to obtain regularisation, except for derogations in very rare situations. Moreover, if the administration discovers her/his family's illegal presence, it can revoke the residence permit.

b) Procedure

Foreigners who want their family to join them must present their applications to the ANAEM³⁴ services. The file is then appraised by the prefect who checks the required conditions of regularity and duration of stay. The mayor then controls the family's housing conditions and resources. He can also give his opinion on the foreigner's compliance with the "fundamental principles recognised by the laws of the Republic". The opinion is presumed favourable if the mayor does not reply within the following two months. The prefect is not bound by the mayor's opinion. The Consulate of France checks civil status documents, and the ANAEM verifies the file according to the elements gathered, then transmits it to the prefect, who decides. In case of a positive decision, the family must apply for visas at the Consulate of France in the following six months. In case of a negative decision, a motivation is required. If the prefect does not reply within the six months of the submission, then the application is considered as rejected. Following a positive reply, applicants must deposit a payment of €265. The file is then transmitted to the French consulate in the country where the family lives, which calls in the family for a medical check-up.

c) Residence permits for the family member

As soon as she/he arrives in France, the spouse must file an application for a residence permit. Once they have reached adult age, children will have to present their own application during the following year. If they want to have a professional activity, they will have to apply be-

³⁴ Agence Nationale de l'Accueil des Etrangers et des Migrations (National Agency for the Reception of Foreigners and for Migrations). This was formerly the OMI (Office des migrations internationales).

tween the age of sixteen and eighteen. They will get a one-year residence permit bearing the title private and family life which allows them to work. After three years, and provided that they comply with the “republican integration” condition, they might get a ten-years residence permit if the parent they joined was holding this permit when he applied for family reunification. Nationals of countries having special bilateral agreements with France can benefit immediately from the ten-years residence permit if the parent they join holds it.³⁵

If the common life ceases within the first three years, the residence permit can be withdrawn, except in the case of domestic violence.

Family reunification is dealt with by the UN Migrant Workers Convention under Article 44: “ State parties shall take measures that they deem appropriate (...) to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.”

The latest changes of the procedures applied to documented migrants’ family members tend to restrict possibilities for migrants to have their family members come from their State of origin, as well as for French citizens married to migrants. These barriers are insuperable for family members as grandparents or brothers and sisters do not even obtain a visitation right. These dispositions are clearly in contradiction with the UN Convention, but also with the European Convention on Human Rights as well as the Convention on the Right of the Child.

1.3.2.2 Social insurance

Since the law on the entry and residence of foreigners from 24 August 1993, the entitlement to almost all components of social protection/so-

cial insurance is made conditional on a lawful residence status. Foreigners in a regular situation have access to the common law system. However, the required residence permit obstructs access to benefits for foreigners in a precarious situation, except for the health insurance (« CMU ») for which any residence permit is enough to have access to the benefits. Undocumented migrants can only benefit from “discounted” rights. There is a special system set up for them that covers health care costs: the AME.³⁶

a) Medical care for lawful foreigners

The health insurance

Foreigners in a lawful situation can benefit from the health insurance [l’assurance maladie] that is part of the general social insurance system:

- either because of their professional activity or social security contributions;
- either because they are family members of a person covered as mentioned in the first case above;
- or, when they are not covered on the basis of the socio-economic status, as an eligible party or by maintenance de jure in one of several categories (see below), because of their residence in France.

People engaged in a salaried or comparable activity can be insured on the condition that they are in a lawful residence situation. This condition is considered fulfilled when the person holds one of the residence permits from the limitative list.³⁷ This list includes the receipt “certifying the deposition of an asylum application” and most of the residence permits as well as the authorisations of more than three months with a work permit.

Family members of an insured person can be covered as an “eligible party” “when they are under the insured person’s total, permanent and effective care”.³⁸

35 Algeria, Benin, Burkina Faso, Cameroon, Central Africa, Congo Brazaville, Ivory Coast, Gabon, Mali, Morocco, Mauritania, Niger, Senegal, Togo and Tunisia.

36 Aide médicale d’Etat (State Medical Aid)

37 Article D115-1 of the Social Insurance Code.

38 Articles L 313-3 and L 161-14 of the Social Insurance Code: the spouse, which means the legitimate husband or wife,

The adult “eligible party” must be in a lawful situation,³⁹ based on the limitative list of residence permits that has been set. It comprises most of the residence permits including temporary residence permits (whatever the validity period is and even without work authorisation). No condition linked to residence or entry can be imposed on the minor eligible party (for example within the family reunification framework). There is, furthermore, no waiting period: the acceptance of financial liability is valid regardless of the length of stay in France of the person concerned.

The “universal health coverage”

The basic « universal health coverage » or « couverture maladie universelle » (CMU) seeks to cover those who are eligible through one of the above-mentioned systems (e.g.: insured person, “eligible party”, “maintenance de jure”). It covers them on the basis of residence criteria and is a subsidiary coverage. For the person covered on the basis of the residence criteria (basic and complementary CMU), the law sets a double condition of a stable and lawful residence:

- The residence’s stability comes down to a three-month uninterrupted residence in France.⁴⁰ It is worth noting that asylum

seekers⁴¹ are exempted from this condition.

- In the absence of a strictly speaking residence permit, it is possible to prove that the residence is lawful by any valid document emanating from the French authority.⁴²

Indeed, in the CMU system, meeting the condition of a lawful residence is not linked to a limitative list of residence permits as is the case for the eligibility on the ground of socio-economic criteria. The following, therefore, meet the condition of lawful residence: foreigners under house arrest, asylum seekers as soon as they have a “safe-conduct” delivered at the exit of the waiting zone or when a summons or appointment by the prefecture of the residence area has been issued.

Basic CMU benefits are free, as long as the conditions regarding the availability of financial resources have been met.⁴³

Article 43 of the UN Migrant Workers Convention sets a principle of equality between documented migrant workers and nationals, notably regarding “access to social and health services, provided that the requirements for participation in the respective schemes are met”. It could be argued, that in France this principle of equality of treatment is put in jeopardy. For example, when family members live abroad, they cannot benefit from a medical treatment in France and family allowances

even estranged but not divorced, if they do not benefit themselves from a mandatory social insurance regime or if they do not practice any professional activity; the common law spouse; the partner linked by a PACS; legitimate, natural, recognised or not, adopted or fostered children under the insured person’s care (or their spouse’s before the law or common law, or PACS partner), until the age of sixteen or twenty if they study, or if they can not work because of an impairment or chronic disease, or until the end of the school year during which they turn twenty one if they interrupted their studies because of sickness; ascendants, descendants, relatives by marriage and collateral relatives until the third degree, under the condition that they live in the insured person’s household and that they are dedicated to the household’s occupations and to the education of at least two children under fourteen under the insured person’s care; the cohabitant who has been living at the insured person for at least twelve months. Only one person can be an insured person’s eligible party on this account.

³⁹ Article D161-15 of the Social Insurance Code

⁴⁰ Articles L.380-1, R.380 1-I CSS for the basic one, art. R.861-1 for the complementary one, and circular DSS/2A-2000/239 from

May, 3 2000.

⁴¹ Refugee status and subsidiary protection

⁴² Articles L.380-1, R.380 1-II CSS for the basic one, art. R.861-1 for the complementary one, and circular DSS/2A-2000/239 of May 3, 2000

⁴³ The concerned person’s resources have to be strictly under 6,965 euros per year [amount as of 01/06/2006], and this whatever the composition of the household is. (Articles L.380 2 and D.380-1 of the Social Insurance Code). Beyond this, an annual contribution (8%) is reclaimed on the part exceeding the ceiling. If the annual income is under a certain ceiling (variable depending on the household’s composition), the concerned person can also claim a complementary CMU benefit (CMU-C). (Article R.861-2 and following of the Social Insurance Code)

are reduced or even cancelled whereas the migrant worker contributes the system in the same way as a French citizen does.

b) Medical care for the undocumented migrants

Foreigners who had a lawful residence but whose residence permit is not renewed can have their right to health insurance extended⁴⁴ if they gained the right to health insurance (see above) prior to their irregular residence.

The State Health Aid (AME) accepts the financial liability for health costs for persons who cannot (or not anymore) benefit from health insurance.⁴⁵ It covers the situation of foreigners with an irregular residence status, that is to say undocumented persons. The treatments covered are the same as those for the people covered under the health insurance: medical consultations by general practitioners, acts performed in health establishments (principally hospitals), and all prescriptions pertaining to it (including those following an external consultation), pharmaceutical costs, laboratory examinations, dental care, abortion... The AME reimburses costs in the same way as the « 100% social insurance », meaning without any financial contribution from the beneficiary (basic care is free). There is no reimbursement beyond the social insurance rate⁴⁶. There is, for the moment, no patient's contribution [ticket modérateur].⁴⁷

The AME is accessible to undocumented persons,⁴⁸ but the applicant must prove five elements:

- her/his identity and his legal successors' identity;
- her/his address;
- her/his financial resources:⁴⁹ they should

not be above the ceiling allowed in terms of CMU.⁵⁰ The insured person's undocumented spouse can benefit from the AME without any criteria linked to the former's resources,⁵¹

- the list of persons he has to pay an alimony to;⁵²
- her/his residence in France: it is required to have lived in France for more than three consecutive months, in conditions that are not purely occasional and that show a minimum of stability.⁵³ The applicant must produce any document proving that this condition is met.⁵⁴ The only people excluded are those passing through France without any intention to settle, or who came for medical care.

Foreigners who are in France for more than three months and who are not holders of the AME can benefit from financial support only for "urgent care [provided for by a hospital] and of which the absence would endanger the patient's life or could lead to a severe and lasting impairment of the health condition" If the process to obtain health protection is blocked, initial treatment should be provided for free through the "reception for the access to health care" at the public hospitals.⁵⁵

Article 28 of the Convention states: " Migrant workers and their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health

absence of any official documentary evidence, an explanatory document summing up her/his living conditions in the last twelve months.

⁵⁰ Euro 587,16 per month for one person, in 2006.

⁵¹ Article 4 §c of the State- CNAM Convention from October 17, 2000

⁵² Close parents not living in the applicant's household, estranged spouse, PACS partner, child, ascendants...

⁵³ Opinion of the Conseil d'Etat, January 8, 1981.

⁵⁴ Notably a rent quitittance or an electricity, gas or telephone bill bearing the applicant's name, older than three months, when the applicant is gratuitously housed by a natural person. He/she can also produce a certificate from a health professional or a recognised association.

⁵⁵ Permanence d'accès aux soins de santé (PASS)

⁴⁴ Article L 161-8 from the new Social Insurance Code.

⁴⁵ Article L 251-1 from the Social Action and Families Code. See above.

⁴⁶ That means that glasses and prosthesis (notably dental prosthesis), and other individual medical devices are excluded

⁴⁷ A decree implementing it could, however, be adopted soon.

⁴⁸ Article L 111-2 3° of the Social Action and Families code

⁴⁹ To prove her/his resources, the applicant can produce, in the

on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused to them by reason of any irregularity with regard to stay or employment.” Although the French system seems to be in accordance with this article, access to health care is seriously complicated by the increasingly restrictive laws and practices, which have become more like police controls. We are far from the spirit of this article. It is really worrying for the under aged whose access to healthcare is not really guaranteed. This matter led the European Council and its experts’ committee in charge of the application of the Social Charter to question the French government about the ways it applies the provisions of both the Charter and the Convention on the Rights of the Child.

In the same way, article 27 of the UN Migrant Workers Convention states that “with respect to social security, migrant workers and members of their family shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation(...)”. Otherwise, States shall “examine the possibility of reimbursing interested persons the amount of contributions made by them (...)”. But, in France, undocumented migrants are not entitled to social insurance anymore since 1993, even if they contribute to it.

1.3.2.3 Family allowances

Family allowances [prestations familiales] are intended to compensate for a child’s care and education costs. Several categories exist: family benefit [allocation familiale], family supplementary benefit [complément familial], young child’s reception allowance [prestation d’accueil du jeune enfant], etc. Conditions for the allocation of these payments and the amounts paid vary from one allowance to the other, depending on resources, number of children, children’s age, on the fact whether or not the parent is a single parent, etc. They are paid until the child reaches a certain age. Some payments require for regular health check-ups to be carried out (e.g.: during pregnancy...)

Access to family payments depends on a double conditionality set by French law:

- a condition of lawful residence for the adult who has the effective and permanent charge for the child and who files the application for the payment⁵⁶
- a condition linked to the child’s residence: the child for whom the family payment is claimed must be either born in France, entered through the family reunification framework or, be the child of a foreigner who is in possession of a specific residence permit⁵⁷

This double condition is in breach of many international texts ratified by France, such as the European Convention on Human Rights and the Convention on the Rights of the Child. According to the latter, children cannot be deprived from their rights because of their parents’ administrative situation and primary attention has to be given to the child’s interests in all the decisions concerning them. On the basis of these texts, some judicial decisions have granted access to these allowances to undocumented parents,⁵⁸ or to children entered outside the family reunification framework⁵⁹.

Certain family allowance offices tend to refuse applications on the grounds that they emanate from persons having no family relationship with the child. This argument is invalid: allowances can be granted to any person who has effective and permanent charge of the child, and this, whatever the conditions are⁶⁰ and whatever the person’s juridical situation with regard to the child is.⁶¹

In other words, can claim the benefit of family payments: a parent, the one who has parental

⁵⁶ Article R 513-1, L 512-2 and D 511-1 of the Social Insurance Code

⁵⁷ Art. L. 512-2 from the Social Insurance Code, from the 2006 Finance Law on Social Insurance, art. D. 512-1

⁵⁸ (TASS - Tribunal for Social Insurance Matters - of the Department of Vienne, March 13, 2000, *Époux Rahoui c/ CAF de la Vienne*)

⁵⁹ *Cour de cassation, Social Chamber, April 16, 2004 and November 16, 2004*

⁶⁰ Article L 513-1 from the Social Insurance Code

⁶¹ *Judgement « Époux Manent », Cour de cassation, May 5, 1995*

authority, the one to whom the child's care has been entrusted to by a Kafala judgment,⁶² and the one who has the child's custody without any legal act or without transfer of the parental authority.

1.3.2.4 Education

In principle, all minor children present on the French territory must be sent to school without any condition linked to their parents' or legal tutors' lawful residence, or any condition of entry through the family reunification framework.

School in France is divided between different institutions, each with their own admittance criteria:

- Kindergarten⁶³ on the request of the family but without obligation (law from July 10, 1989): no condition of nationality can be imposed and foreign children cannot be discriminated⁶⁴
- Primary school which receives children from six years old, the age from which schooling is compulsory,⁶⁵ from the first grade to the entry into secondary school: non-discrimination of foreign children is expressly reminded by the Education Ministry.⁶⁶
- Secondary school (until the general certificate of secondary studies - "brevet des collèges") and high school (until the "A levels" - baccalauréat) that receive youngsters - often minors (under eighteen years old) - whose registration is not an issue, as foreigners in France are required to have a residence permit only from the age of eighteen on (see above). The Education Ministry has reminded that the registration of foreign students in a school, whatever his age is, cannot be conditional on the display of a residence permit (afore mentioned circular). Adult students should not

have difficulties to register either: it is not the role of the Education Ministry's services - in the absence of any competence conferred by the lawmaker - to control whether their administrative situation is regular or not.

- Sectors with traineeship or apprenticeship can receive youngsters from the age of fifteen on: foreign students with an academic status, whatever their administrative situation with regards to residence is, must be allowed to carry out traineeships and training periods that are scheduled in their education programmes.⁶⁷ However, because the apprenticeship is a particular form of work contract, foreign apprentices must hold a work authorisation and therefore the residence permit that goes with it (see above). In this case: (1) either they meet the conditions to claim a residence card delivered de jure if they were eighteen⁶⁸ (see above) or (2) they apply for a temporary work authorisation that will be valid only for the training considered. But obtaining this authorisation is not a right and leads only very rarely to the issuing of a residence permit.

So, for the registration, the only facts to prove are: the child's identity,⁶⁹ the parents' identity;⁷⁰ a residence permit can also validly be shown but cannot be required;⁷¹ the address; and that the child's vaccinations are up to date.

In spite of the numerous texts that confirm the right to education for all as well as the absence of discrimination with regards to nationality or the parents' residence situation, it is not uncom-

⁶⁷ The circular from March 20, 2002 specifies that, in this case, "the company can not control the regularity of the residence".

⁶⁸ They can obtain such a residence card in advance, which gives them the authorisation to work from the age of sixteen.

⁶⁹ Family book or birth certificate's extract

⁷⁰ Passport, consular identity card, drivers' license

⁷¹ It should be noted that for the child living in France without his parents, it cannot be required from the person who registers the child to present a certificate of parental authority delegation. The proof that the child is legally under this person's responsibility can be provided by all means (circular of March 20, 2002)

⁶² A type of adoption according to Algerian and Tunisian laws.

⁶³ Which receives children from three years old and above

⁶⁴ Art. L 113-1 from the Education Code and circular from the Education Ministry from June 6, 1991.

⁶⁵ Article L 131-1 from the Education Code

⁶⁶ Circulars from June 6, 1991 and March 20, 2002

mon for mayors to require the display of the parents' residence permit as part of the necessary documents to register a foreign child.

In case of refusal or when the registration runs into obstacles, appeals can be carried out.⁷²

A network called "Réseau éducation sans frontières (RESF)" has been set up for a number of years, bringing together several sectors (teachers unions, human rights associations, etc.). The network intervenes on the ground to defend young students who are threatened with deportation, be they children of undocumented persons or undocumented adults themselves.

For school trips, a collective travel document exists for school groups. Its aim is to facilitate school trips for foreign minors inside the EU.⁷³ This document guarantees the right to entry in France when returning, whatever the foreign minor or her/his parents' conditions are with regards to the residence legislation. It is also used as a collective passport; except for travel to the United Kingdom and Ireland, for which an individual passport is still required. Heads of schools can apply for this document at the prefecture. Only a parental authorisation and the list of concerned children with their identity picture is required.

1.3.2.5 Housing

There is no real right to housing in France, hence this appeal from several French organisations: "housing, an emergency and a right: make the right to housing enforceable." FEANTSA, the European Federation of National Organisations working with the Homeless, has presented a collective complaint against France before the Council of Europe for non-compliance with article 31 of the Revised Social Charter.

a) Some figures

France has more than three million people who are either homeless or live in poor hous-

ing conditions. 86,000 are without a permanent residence. 780,000 live in a precarious habitat. 610,000 live in overcrowded places. 100,000 live on campsites. Over the last two years, several people, immigrants for the most part, especially children, have died in arsons in their timeworn rooms. According to firemen, 100 homeless people die each year in the Ile de France region. 85,000 children are threatened with intoxication, that is to say severely lead poisoned. A lot of immigrant' children live in slums. 1,3 million people are waiting for social housing. These few figures show the severe housing crisis in France. It is in this particularly harsh context that foreigners must find their place.

At the national level, more than half of the households own their living place, 20% are tenants in the private area and the rest in the social housing area. But, concerning immigrant households, 37% are owners, 31% are tenants in the social housing area and 24% in the private area. Immigrants are more numerous in the social housing sector because their income is lower than the average one. Individual financial aid for housing plays an important role in the access to social housing. This aid is accessible only to foreigners in a regular residence situation and is not available for irregular foreign residents. At this point, it could be said that there is equality between foreigners and French nationals. Difficulties arise because of the severe housing crisis in France. In this context, priority is given to nationals with "purely French roots." Immigrants are subject to severe discrimination in the allocation of housing.

According to the GELD,⁷⁴ obstacles met by certain groups of immigrants to find housing in the private sector leads them to the social housing sector. Immigrants are faced with more difficulties to access social housing and have to deal with much longer waiting periods. 27% applied without success. Many are deterred from applying because of the numerous documents required to submit an ap-

⁷² Submission for an out-of-court settlement, disciplinary complaint to the prefecture, then before the administrative tribunal.

⁷³ Circular from the Inner Ministry from January 2, 1996

⁷⁴ Groupe d'études et de lutte contre les discriminations

plication. In addition, a one-year residence in the department or commune is also required. Moreover, the way housing associations act shows an intentional and quasi systematic approach that leads to obstruct a foreign households access to social housing.

b) Housing facilities for people in precarious situations

Housing facilities are available for people in social distress, the homeless, and those who cannot get sufficient support from their entourage. The housing costs are covered for foreigners without lawful residence.⁷⁵ Different types of housing exist:

- Emergency housing centres offer a temporary reception (one night renewable depending on the availability).
- Social hotels, and housing and reinsertion centres provide accommodation for a varying length of time (a fortnight to six months renewable) to single people, couples and families. They are often specialised in the reception of a specific public, notably people who left prison or women who are victims of domestic violence.
- Mother/child reception centres accommodate single pregnant women or mothers with one or more children of which the youngest is under three years old. They have a multidisciplinary team offering education, social, psychological and financial support.

Admission modalities depend on the type of facility.⁷⁶ Apart from the emergency centres, these facilities work towards the social and professional re-integration of the applicant, in order to prepare the move to an independent housing. Therefore, the absence of a residence and work permit seriously jeopardises the admissibility of undocumented, because of the “lack of an integration project”.

We cannot talk about the right to housing since access to social housing is not available

to undocumented migrants. The only possibility for them is emergency housing, which is overpopulated. In the private domain, housing is not really available because of the high rents. Furthermore, home owners are often scared of being sued for helping illegal immigration, so many of them refuse to lease accommodations to undocumented migrants.

1.4 Civil and Political Rights

Apart from EU nationals who can vote and are eligible to participate in local and European elections, foreigners do not have the right to vote in France. In 1981, the presidential candidate Mitterrand committed himself to grant the right to vote to foreigners. But this promise was not kept. Since then, campaigns have been organised, supported by many organisations as well as some left and right wing politicians who consider that this right should be granted to foreigners, at least for local elections. Opinion polls are much more favourable. Left wing parties are now more in favour too, but, as far as known, none of the parties on the right. In a certain number of left wing municipalities, committees representing foreign communities have been set up. Their impact varies greatly. On the contrary, only few nationals with a foreign background take up important positions in political parties and are rarely in an eligibility position on the local and national ballots. This is the case with all political families.

In France, the right to be active in a committee, an association or a union is not linked to nationality, not even to the regularity of the residence and/or the work status. Therefore, there is no risk for this to lead to, for example, a re-assessment of the right to residence. Thus, a foreigner can represent employees, either through a union, or without label. He/she can therefore be a union delegate, a staff delegate, or a member of the work council. Although the French Labour Code is not very clear about the possibilities for a foreigner in an irregular situation to be elected, the ILO Conventions on union rights are clear and can support such an action. But, even if the right to form associations and trade unions is recog-

⁷⁵ Article L 111-2 from the *Social Action and Family Code*

⁷⁶ Dispatch of a social brief, interview, letter from the applicant, phone call.

nised by law, it is not the case in practice because of undocumented migrants' fear and the "cold" welcome they experience in trade unions. Also, for the documented migrants, if the right to join freely any trade union or any association is respected, it doesn't mean that these organisations will automatically consider the specificities of migrants and of their families.

In the 1980's, undocumented workers employed in the clothing industry, unionised within the CFDT (Confédération française démocratique du travail), defeated the government's policy and made the political authorities to accept regularisation. In 1991, asylum seekers whose application failed and who were unionised within the CFDT, CFTC (Confédération française des travailleurs chrétiens) and CGT (Confédération générale du travail), compelled these unions to take a position in favour regularisation. In 1993, the foreign spouses of French nationals or foreign parents of French children pressed the movement for family rights to take a position on the immigration policy and on the right to respect for family life. Since the occupation of the Saint Ambrose church in March 1996, several unions supported the movement of undocumented ("sans papiers").⁷⁷ The solidarity with the undocumented has enabled the movement to reach out and to force the political powers into backing away from their repressive policy.

But, in 2006 unity was not enough. More than 800 NGOs, associations of undocumented foreigners, trade unions, political parties gathered in a movement called "United against a disposable immigration" struggled together against the new trends in French immigration policy. However, this did not prevent the adoption of the law of July 24, 2006, closing the way for regularisations of "forced immigration" and opening the way for an immigration of "disposable workers."

Associations cannot be sued for helping undocumented migrants as long as the support given is, because of an imminent or current danger,

⁷⁷ CGT, CNT (Confédération nationale du travail), FSU (Fédération syndicale unitaire) and SUD (Solidaires, Unitaires et Démocratiques).

necessary for the protection of the foreigner's life or physical integrity. This is on the condition that there is no imbalance between the means used and the severity of the threat or direct or indirect consequences.⁷⁸

1.5 Integration Policies and Measures

The emphasis put by the European Commission on the importance of integration in the EU's immigration policy was formally acknowledged by France starting in 2003. In its legislation regarding residency, the word "integration" appeared in the November 26, 2003 law while the July 24, 2006 law's title refers to "immigration" and "integration". Yet, accessing the integration process has never been so difficult. Why is there this paradox? How does French integration policy and practice contradict the Common Basic Principles for the integration of third-country nationals?⁷⁹

1.5.1 The « integration and reception contract »

CBP 4 states that "*Basic knowledge of the host society's language, history and institutions is indispensable to integration.*" *The Commission proposes that, at national level, the integration component be strengthened through pre-departure measures and introduction programmes offering courses at several levels organised and that, at European level, trans-national actions and innovative integration models be supported.*

Some "départements"⁸⁰ have implemented this integration and reception contract (contrat d'accueil et d'intégration) since 2003. Under the July 24, 2006 law, preparing integration by committing to this agreement becomes mandatory for "all foreigners who obtain a residency card for the first time with the intention to durably settle". This concerns any permit which grants residency

⁷⁸ Articles L. 622-1 and following of the Code for Foreigners' Entry and Residence and for the Right to Asylum.

⁷⁹ COM(2003), COM(2005) 389 quoted in slanting characters – Principles, in between quotation marks.

⁸⁰ Administrative entities

for at least a year, with the exception of temporary and seasonal workers, students and some refugees who only benefit from “a subsidiary protection”⁸¹. The contract is drawn up between the foreigner and the State, through a national agency for the reception of foreigners and for migrations.⁸² Access to free linguistic (200 to 500 hours) and civic (6 hours) courses is thereby granted as well as a training day entitled “life in France” on practical rights regarding school, employment, accommodation and health (only 6 hours despite the obvious crucial interest). The contract can be broken if the ANAEM notices that the foreigner does not or no longer attend, without legitimate motives, any mandatory course.

This enactment may appear generous to foreigners but contradicts on several grounds the Common Basic Principles.

According to the first principle, “*Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.*” While the word “contract” in French actually implies this “two-way” agreement, it turns out to be completely inadequate when the contracting parties are a State and a migrant whose choices are limited to either sign the contract, leave the country or live as a clandestine.

The European Commission recommends “*programmes offering courses organised at several levels.*” This new mandatory programme absorbs most financing allocated to the integration process. Thus, many previously existing educational programmes (that were offered at any step of the migration process) have had their grants severely cut. Although it is indeed really important to address these educational needs (e.g. language courses) in order to fully participate in everyday life in France, it is not effective to make them mandatory at such an early stage in the integration process. One should first become aware of the importance of integration in French

society, before one can commit to and benefit from these programmes. The person furthermore needs to have the time to participate in the programmes. This is very difficult when a migrant is struggling with precarious or illegal work conditions and also needs to take care of his/her dependent family.

1.5.2 Integration or how to jeopardise the residence⁸³

In 1984, the 10-year residence permit was supposed to promote integration; but over the years, access to this stable situation has significantly been reduced. The express inversion of the integration and the stability of the residence goes back to the law of 26 November 2003. Indeed, according to this law, a prerequisite for ten-year residence permits is the “republican integration, especially regarding the personal commitment to respect the basic principles of the French republic, the effective respect of these principles and the knowledge of the French language.”⁸⁴ The respect of the Integration and Reception Contract and the mayor’s opinion are then taken into account.

Since the 2006 reform, when the one-year residence permit renewal is asked, the disrespect of the Integration and Reception Contract can be taken into account. This trend of reversal severely threatens the fundamental European principles recognised both by European law and by the UN Migrant Workers Convention.

The transcription of the 8th article of these bounds are now evaluated subject to « their strength, their duration and their stability, the resources of the person concerned, her/his insertion in the French society and the nature of her/his bonds with the country of origin. »⁸⁵

The right to family reunification. Before 2003, the joining family benefited from the same residence permit as the person already living on the French

81 Art. L 311-19 of the CESEDA; articles 3 311-19 to 30 for the detailed regulation.

82 Agence nationale de l'accueil des étrangers et des migrations, ANAEM

83 Cf. : Danièle Lochak, *L'intégration, alibi de la précarisation, Plein droit*, n°59-60, mars 2004

84 Art. L341-2 of the CESEDA

85 Art. L313-11-7° of the CESEDA.

territory. In most cases, considering the legal conditions, it was a 10-year residence permit. Since 2003, this has turned into a temporary one-year residence permit with the possibility, after three years, to get the 10-year residence permit subject to the republican integration. In 2006, the residency conditions were strengthened, adding the « conformity to the fundamental principles of the French republic ». A recent report from a member of parliament close to the current Minister of the Interior, indicates that there are plans to make family reunification also conditional on an integration test, based on the knowledge of the French language and the French republican values, and taken at the French embassy in the country of origin.⁸⁶

1.5.3 Xenophobia versus Integration

In October 2005, the death of two young boys chased by the police triggered very violent reactions from the youth in the Parisian suburbs, French or not, who had in common the geographical isolation of the disadvantaged people and the high levels of unemployment. The foreigners were of course targeted. GISTI reacted as follows: "For the one who wants to avoid the crushing responsibility of years of a calamitous policy on the recent kindling in the disadvantaged suburbs, any way is good. Once more, foreigners are pointed out as those responsible for the troubles whereas the official figures show that only 6 to 8% of the people placed under arrest were foreigners. As we were afraid of, the current situation is being used and is going to legitimate new restrictions on the foreigners' rights. Indeed, (...) it is obvious that the race started by some campaigners for the presidential election will lead to an escalation and to the designation of scapegoats. The Home Secretary, applauded by the most extreme right party, has already his own: the foreigners."⁸⁷

⁸⁶ Art. L411-5 of the CESEDA; Thierry Mariani, *Rapport d'information sur les politiques d'intégration des migrants dans l'Union européenne, assemblée nationale, 6 décembre 2006*

⁸⁷ *Envolée xénophobe sous prétexte de révoltes banlieusardes*, Gisti, 17/10/2005. <http://www.gisti.org/doc/actions/2005/banlieues/envolee.html>

Introducing the legislative initiative on immigration and integration before the parliament, Nicolas Sarkozy went on with the same confusion: « the truth is that the 27 nights of riots are directly caused by the breakdown of our integration system. » In order to deny to the « suffered » migrants the application of the universal human rights, the official voice often handles two images: immigration linked with criminality and the smuggler migrant (suspicion of using fake documents, mixed marriages are suspected to be fake...).

In effect, this approach closes the ways to integration in the name of a "breakdown of our system of integration"... The following comes from Louise Arbour⁸⁸ and notably questions the French system: "The deliberate association of migration and migrants with criminality is an especially dangerous trend, one which tacitly encourages and condones xenophobic hostility and violence. This very serious phenomenon deserves attention at all levels. All States have a responsibility to protect migrants against these manifestations of discrimination, to encourage the respect for their rights and counter all forms of discrimination".

1.6 Conclusion

Looking at the rights asserted in the CESEDA and other texts referring to the rights to education, to social protection, to housing and civil rights, one could have the impression that the French policy is quite close to the principles outlined in the UN Migrant Workers Convention and the other international texts about migrants rights or human rights. The principle of equality between nationals and foreigners is claimed in several regulations regarding labour law, the right to form associations and the right to social security. There is a constant allusion to the respect of the European Convention on Human Rights, the Geneva Convention, and the International Convention on the Rights of the Child. However, a closer look shows that the gap between French laws and their implementation and international law is growing wider and wider.

⁸⁸ UN High Commissioner for Human Rights, interview for Radio 1812, 2006

The implementation of the European Convention on Human Rights is put in jeopardy; the Geneva Convention for Refugees is emptied of its content; and the International Convention on the Rights of the Child is flouted. The UN charters are dead-letters, the ILO's conventions are not taken into account anymore and the bilateral conventions ratified by France with respect to circulation and social security are intentionally ignored. We can't go in depth in this report, but it's enough to go to the courts (at every level of jurisdiction and in every field of law) to observe that France's international commitments are only applied after long and expensive procedures. That they are only reachable for those who are aware of the rights guaranteed by these international conventions, and who can afford to pay a lawyer so that the appeal procedures can be used. This everyday violation of the rights guaranteed by international conventions and the difficulty for migrants to claim these rights constitute in itself a violation of the UN Migrant Workers Convention.

Article 69 of the UN Migrant Workers Convention requires from State Parties to take appropriate measures to ensure that undocumented migrants and their family members do not stay in this situation. The last modification of the CESEDA renders any regularisation almost impossible by suppressing the residence permit, which used to be granted after 10 years of stay in France. This restrictive measure occurs at the same time as the French immigration policy bounds access to stay for those who have good reasons to remain in France (right to live with their family, right to stay for medical reasons, right to asylum...). Added to this should be the fact that the number of undocumented migrants will continue to increase because many regular migrants won't have their residence permit renewed, because of the more restrictive conditions and the prefectures' practices.

In conclusion it can be argued that all the recent restrictions of rights aim to discourage migrants to settle in France, tend to fuel an illegal/irregular labour market, and are in breach of the provisions contained in the UN Migrant Workers Convention.

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VI. The Rights of Migrant Workers in the United Kingdom

Don Flynn*



1.1 The Rights of Migrant Workers in the United Kingdom

Current debate about the rights of migrant workers in the UK is framed by two separate sets of concern. The first of these are those of the government and the Home Office - the main state department charged with the task of managing migration. Their concern is to ensure that migrant workers are admitted in accordance with the perceived needs of the British economy and remain only so long as these needs are being met. The second set of concerns relates to a growing awareness of migrant workers as vulnerable workers. This is born out of the recognition that there are significant features of the contemporary labour market in the UK which expose a range of workers (including migrant workers) to exceptional hazards.¹

The Trades Union Congress (TUC) has expressed concern that "migrant workers are subject to exploitation, and are often denied even their legal rights."² In this review of the situation with regard to the rights of migrant workers in the UK we emphasize the fact that concerns arise not only from the formal exclusion of migrant workers from certain rights, but perhaps more pertinently, from effects generated by weakly regulated labour markets in which migrant workers are particularly poorly equipped to make use of the rights which do exist in law. It might be considered that the appropriate remedies to this exceptional vulnerability will be legislation which addresses the systemic weakness of migrants by equipping them with rights which take into account their special position and which allows participation in work and society on the same basis as other workers. There are a number of examples of attempts to legislate for the protection of migrants in international law to achieve this end, of which the regu-

lations of the International Labour Organisation (ILO) have the advantage of being well-established and relevant to the situation in Britain by virtue of the fact that the government is party to most (but not all) of the main instruments.

The most comprehensive expression of migrant rights is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by the United Nations General Assembly on 18 December 1990. (Hereafter the UN Migrant Workers Convention, or UNMWC), to which the UK, along with all other European Union (EU) states, is not signatory. Despite the formal non-application of the Convention it is still nevertheless useful to regard the rights it delineates as a bench mark for what an important part of the international community regards as being the rights which should pertain to the situation of migrant workers. For this reason, the standard of migrant worker rights in the rest of this report means the rights set out principally in the UNMWC and ILO regulations and where indicated, other international instruments.

1.2 Definition of Migrant Worker

There is no single, clear definition of the status of migrant worker in law in the UK. The practice of the National Office for Statistics is to count as a 'migrant' any foreign national intending to reside in the UK for twelve months or more. This definition is not continuous with the status of 'migrant worker' however because it will preclude people admitted on a number of labour migration schemes which restrict residence rights to less than 12 months.³

For the purposes of national insurance, the National Insurance Number Survey (2004) explains that a migrant worker is a "overseas national allocated a NINo" (National Insurance number). (DWP 2004) This will include both workers whose residence is for less than 12 months, but

¹ For discussion on the position of 'vulnerable workers' see the strategy paper produced by the Department for Trade and Industry in March 2006, 'Success at Work: protecting vulnerable workers, supporting good employers', and the Trades Union Congress report, 'The Hidden One-in-Five: Winning a Fair Deal for Britain's Vulnerable Workers', September 2006.

² TUC press statement, 'One in five is a vulnerable worker', 9 September 2006.

³ See Hansard February 2006 for a written reply from a question from Lord Hwyl Williams from Karen Dunnell on this point.

also foreign nationals with a permanent settled status who might have lived and worked in the country for decades. It will however exclude most undocumented migrant workers. There is also a significant time delay in registering with the national insurance authorities, with many migrants taking at least a year to complete the procedure. A further measure is provided by the International Passenger Survey (IPS), which includes all persons who remain in the UK for over 12 months following their arrival. By this standard a British citizen who is normally resident abroad will be counted as a migrant if they remain in the country for longer than one year. The IPS also records only the main reason for the traveller's entry into the UK and will miss recording as migrant workers those whose right to access employment is incidental to their immigration status, such as students or dependent family members.

A consequence of the appearance of all these different types of migrants in various official statistics, and the almost universal exclusion of undocumented migrants from consideration, is that the knowledge of the numbers of people who might have migrant status and therefore covered by the provisions of the UN Convention on Migrant Workers (UNMWC), ILO regulations, and Council of Europe agreements is very unclear. In the absence of a clear official definition it is necessary to define the term 'migrant worker' in an operational context, which will depend on the purposes of each study.

In this account the term will be taken to mean all persons without the status of full British citizenship⁴ who are residing in the UK without the 'right of abode'. A person without the right of abode is potentially subject to immigration control, even if they have been granted a 'settled status'. Settled status can, in specific circumstances, be withdrawn and the former

holder excluded from the country on the basis of a deportation order. The key to migrant status in this report is therefore the fact that the individual is, potentially or actually, subject to immigration control at the current moment in time.

To be more precise, the main categories of migrant in the UK are:

1. Persons admitted under the provisions of the UK immigration rules in a category which permits them access to employment or self-employment, either on a permanent or temporary basis; and the dependent members of the family of such a person.
2. Persons entitled to enter, reside and work in the UK either as an employed worker or a self-employed service provider under the terms of the European Economic Area (EEA) immigration regulations, and persons who are Swiss nationals residing under the terms of the Switzerland free movement of persons regulation.
3. Persons residing in the UK pending a decision on an application for asylum, whose wait has extended for 12 months or more and have thus acquired a right to work under the provisions of the European Union directive on minimum standards for the reception of asylum seekers (Council Directive 2003/9/EC).
4. Persons without an official immigration status but who are nevertheless active in the UK labour market either as a worker or as a person seeking work; and members of their family.

1.3 General Policy Approach to Labour Migration

During the past ten years the British government has adopted an approach to labour migration which acknowledges its value to the UK economy in general terms. A Home Office strategy paper published in July 2006, links the management of migration to prosperity in the context of a globalised world economy.

⁴ *British nationality law distinguishes between different types of British national, using such categories as 'British citizen', 'British Overseas Citizen', 'British National (Overseas)', 'British Protected Person', and 'Citizen of a British Dependant Territory'. Of these only 'British Citizen' provides full exemption from immigration control in all its aspects*

"Britain has ridden the wave of globalisation successfully. Over the next two decades, stronger international links will be vital to our continuing prosperity. We will need legal migration to fill gaps in our labour market and ensure that we are connected to new markets of the future, especially in China, India and Brazil." (Home Office 2006).

Policy has evolved since the late 1990s in the direction of what is termed 'managed migration'. This system is characterised by control mechanisms operating at a number of levels, principally in the issuing of visas, permitting of border crossings, issuing of residence permits, regulating entry into the workforce, and allowing the use of public services. The purpose of these measures is to identify those prospective migrants most likely to generate value for the British economy and who might be admitted under the terms of one of the different managed migration schemes. The first indication that policy was moving in this direction came from changes to the long-standing work permit scheme (WPS) in 1999. This extended the skills range eligible to benefit from this programme to include categories of workers with experience in a trade but without formal qualifications, and generally improved the procedures to facilitate faster decision-making and expeditious issuing of work permits. Over the course of the next few years the WPS increased the flow of eligible migrants from around 40,000 per year to around 90,000. (Clarke and Salt 2003)

A major review of the immigration control system in 2001 resulted in the publication of a government White Paper in February 2002 setting out further proposals for the development of the managed migration system. The most important of these was the adoption of a 'Highly Skilled Migrants Programme' (HSMP) to facilitate the entry of professionals who, unlike workers eligible for the WPS, had not been offered a specific job in the UK; and the elaboration of a new 'Sector-Based Scheme' (SBS), covering the hotel and restaurant trades and food processing thereby permitting entry of a limited number of workers into what were termed 'low-skill' jobs. (Home Office 2002)

These initiatives took their place in a managed migration system which, by 2002, contained an estimated 80 different schemes which permitted the entry of persons with the legal possibility for entering employment or self-employment. The volume of migrants entering the labour force rose considerably over this period, with an estimated quarter of a million migrants eligible to work in the UK through one of these schemes each year.

In addition to this group the impact of European Union enlargement on 1 May 2004 needs to be taken into account. While nationals of Malta and Cyprus were granted full free movement rights across the entire EU nationals of the A8 accession countries⁵ generally had their rights restricted under transitional arrangements. Only the UK, Ireland and Sweden opened their labour markets to accession nationals, although the UK made this subject to nationals registering under the workers registration scheme for 12 months of legal employment before residence permits can be applied for. Nonetheless, as a result of this some 382,000 nationals of the eight accession countries were registered in total over the period 2004-2006. (DWP 2006)

The final major group of migrants to consider is that of undocumented workers. Until recent times the incidence of irregular migration and residence had been considered negligible on the grounds that visa and border controls had made unauthorised entry more difficult than is the case with other European countries with extensive land frontiers. The main route to irregular residence came from persons legally admitted but who had then overstayed their periods of leave to remain. By 2004 it was becoming clear that the advent of managed migration, by increasing the numbers entering in a capacity which permitted employment, had produced an increase in the numbers remaining beyond their period of leave. In addition, failings within procedures for managing asylum reception and the determination of refugee claims had also produced a significant increase

⁵ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

in the numbers living and working without official permission. The size of the undocumented migrant community has been estimated to be 430,000⁶ people, of whom the largest proportion are believed to be people who have gone through asylum procedures but have not been returned abroad after a decision to refuse protection.

To conclude this introduction, the essential point is that over the past decade the UK has made considerable adaptations to its immigration control with the effect of increasing the proportion of its employed workforce who are migrant workers. It has been estimated the percentage of migrants in the labour force amounts to 9% (TUC 2003). Further, the managed migration procedures which have evolved to regulate this component of the labour force have taken extremely complex forms, with multiple categories and hierarchies ordering the status and entitlements of these migrants. This has important implications for any discussion of the rights of migrant workers in the UK, because they are unequally distributed across the ranges and categories of control. Some groups of migrant workers are relatively well provided for while others are in deficit in terms of the standard measures of the international conventions (Morris 2004).

Further, even when rights for migrant workers are formally present there remains the issue of their assertion in the practical circumstances of the workplace. Managed migration has devolved onto employers very considerable responsibilities for ensuring that immigration regulations are complied with. The effect of this has been to increase the power of companies to discipline migrant labour forces through the threat of unfavourable consideration of immigration status. This approach to the enforcement of controls also leads to an emphasis on process rather than outcomes, with the employers and the authorities being more concerned with technical issues of compliance with the

regulations rather than the broader benefits which be obtained from particular instances of migration.

The implications of each of these factors for the rights of migrants are considered in detail in the following sections. Though the UK is not signatory to the UN Convention on the Rights of Migrant Workers, it is a party to other major conventions whose provisions are reflected in the provisions of the UN instrument. The Convention is not generally considered to create new rights for migrants, but rather brings into a single instrument forms of rights protection already accepted by states party to the International Covenant on Civil and Political Rights, adopted by the United Nations in 1966 and in force since March 1976, to which the UK is signatory. The UN Convention also has the advantage of being comprehensive, its provisions will be cited as defining the international standard for rights in each area of migration, and, where they exist, the ways in which these rights are anchored in conventions to which the UK is signatory being indicated in footnotes.

1.4 Access to residence and entry into the labour force

1.4.1 Visa policy

The UN Convention does not set out a requirement for migrant labour recruitment to take a particular form, but the effect of Art. 1.1 is that, whatever procedures are adopted, they should operate “without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”⁷

UK immigration procedures require migrant workers coming from abroad to obtain visas prior to travel. Visa issuing procedures contain

⁶ See “Legal work for illegal workers could raise £1 billion”, Institute for Public Policy Research, 31 March 2006, <http://www.ippr.org.uk/pressreleases/?id=2041>.

⁷ No other international convention on migration to which the UK is signatory contains such extensive provision on non-discrimination across all aspects of immigration procedures.

no explicit provisions which mandate discriminatory action on the grounds forbidden by the Convention. However, the principle of indirect discrimination is well-established in UK law, forbidding administrative procedures which produce a discriminatory effect even if this was not intended by the authorities. The scope for indirect discrimination in the UK's visa system is vast. Reports produced by the government-appointed Independent Monitor suggest that, against world-wide average refusals rates of around 15% across all nationalities, refusal rates Asian and African and European countries outside the EU the figure are considerably higher. The main visa issuing post in the Moldovan city of Chisinau, for example, reported a refusal rate of 67% in 2005. (Independent Monitor 2006). In the same year, in the African cities of Kampala, Asmara, Lagos, Pretoria, Accra, Abuja, Nairobi and Yaounde, visa post refusal rates varied from between 49 and 35% of all applicants.

The further development of managed migration procedures is expected to place greater emphasis on the role of visa officials in deciding who may enter the UK in the migrant worker categories.⁸ (Home Office 2006) One managed migration scheme, the Working Holidaymakers Scheme, (WHS), already places responsibility for decision-making on visa officials. The WHS permits citizens of all Commonwealth states aged 17-30 to live and work in the UK for up to two years. In practice it has shown a very substantial bias in favour of nationals of the mainly white countries of Australia, Canada and New Zealand and against people from African, Caribbean and South Asian Commonwealth members. The concern is that similar patterns of bias will be reproduced within the work permit and other schemes if visa officials become the principal decision-makers determining who is and is not permitted entry.

8 *At the present time principle responsibility for the issuing of permits facilitating entry as a worker lies with 'Work Permits UK', a section of the Home Office. Based in Sheffield, Work Permits UK receives applications from employers wishing to employ overseas workers under the terms of the various managed migration schemes. Its leading role in this operation will be reduced in the near future as decision-making authority on the issue of work permits is shifted to visa officials based in UK missions abroad.*

1.5 Core economic and social rights: access to health care, social security systems, education and housing, labour place rights

1.5.1 Economic rights

Economic and social rights of migrants in the UK are largely dependent on their status under the managed migration scheme on which they entered the country. For those admitted under the skilled migrant programmes the general situation is one of a larger degree of long-term security, which brings with it the opportunity to maximize the benefits to be obtained from the point of view of the individual migrant. The (Work Permit Scheme) WPS and the Highly Skilled Migrants Programme (HSMP) provide the security of a residence permit which usually extends for five years, after which the worker may be eligible for a settled status.

The HSMP provides the highest level of benefits in terms of security. Under this scheme workers are not required to have an offer of employment before arriving in the country. However, they are expected to establish themselves in either a high skilled post as an employee or in business as self-employed service provider within their first year of residence. Those in employment are permitted to change jobs within highly-skilled categories of work. Those in the WPS on the other hand are required to remain in the employ of the company to whom the permit was granted. It is possible to change employer, but only to a company prepared to apply for a fresh work permit in the same category as the one which secured the original entry, and with the permission of the immigration authorities. This has been criticised for producing a tendency to bind workers to the employer to whom the original work permit was granted. Consequently attempts to move between companies will generate uncertainties and this limits job changing to all but the most pressing of necessities, such as when dealing with redundancy from the first employment.

Critics of schemes which tie migrant workers to a specific employer have argued that this leads to disadvantages and vulnerabilities in the workplace which can be exploited by unscrupulous employers. (Ryan 2005) Under the immigration regulations an employer is expected to inform the Home Office immigration authorities whenever a worker employed under the terms of a managed migration scheme leaves the approved job. Unless a new employer willing to apply for a new permit is found quickly, the migrant's residence permit will be curtailed and she will be expected to leave the country. This risk, arising from the tying of immigration status to a particular post, will often mean that a worker is less inclined to challenge practices on the part of her employer which are unacceptable, dangerous, or unlawful. Participation in trade union activity, whilst not formally restricted by any part of immigration policy, is made more difficult if an employer is in a position not only to dismiss a worker insisting on her rights, but also to initiate procedures which could lead to expulsion from the country.⁹ (TUC 2003).

The Working Holidaymaker Scheme (WHS) admits in the region of 50,000 people each year and permits access to employment, contains provisions which limit economic rights as members of the workforce. Participants in this scheme are permitted to enter employment and to change employers without restriction during the two year period of residence permitted by the scheme. However, the total period of their employment across this time is not permitted to extend beyond 50% of the individual's time. This might be measured either by part-time employment throughout the entire period of residence, or by full-time employment for not more than 50% of the time in the country, meaning lengthy periods of enforced non-employment if the conditions of the scheme are to be met.

The Home Office justifies this restriction on the grounds that the WHS is intended to function

primarily as a cultural exchange programme for young people from Commonwealth countries whose stay in the UK should mainly be seen as an extended holiday. WHS workers typically seek employment in sectors with opportunities for part-time and short contract employment. Many work in the hospitality sector, as bar staff or in events catering. For those with the appropriate qualifications there are opportunities to work on locum contracts in the health and care sector, for local authority social services, or as supply teachers. The casual nature of this work can mean insecurity and lack of rights in the workplace. Yet WHS workers are at least able to make use of the right to change employers to avoid entrapment in particularly exploitative workplaces, in contrast to migrants on the work permit scheme, who are expected to remain with a designated employer throughout the entire period of their residence.

Amongst other managed migration programmes the position of workers on the Sector Based Scheme (SBS) should be mentioned. Originally established to facilitate the admission of migrant workers into the hospitality and food processing sectors, this is one of the few examples of a quota limited scheme operating in the UK. A quota of 20,000 people to enter each year when it was set up in 2003 this was reduced to 15,000 in subsequent years. On 1 January 2007 the scheme was made eligible to citizens of Bulgaria and Romania only in the expectation that nationals of these two new entrants to the EU would, for the time being, meet the demand for migration from the food processing sector.

The SBS permits migrants to enter for twelve months to take employment with a firm in food processing. No extension to this period is permissible from within the UK, and applications from outside the country will only be considered after the worker has been absent from the country for at least two months. Workers are permitted to change employer, but only within the food processing sector. It has been seen by groups supporting the rights of migrants as one of the most problematic programmes in the Home Office's portfolio of managed migration schemes. (Ryan 2005). Contracts governing such issues

⁹ *The right to participate in trade union activity is guaranteed in Art. 26 of the UNMWC and Art. 6.1(a)(ii) of the ILO Migration for Employment Convention (No. 97) to which the UK government is signatory.*

as remuneration and accommodation are sometimes found to be very different on arrival in the UK than when offered in the country of origin. As a result workers can find themselves in circumstances where their earnings are less than anticipated and costs considerably higher. (CAB 2005) The “right to be fully informed by the State of origin or in the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they engage” which is provided in Art. 37 of the UNMWC. It is arguable that this right compromised by the susceptibility of the SBS to dubious recruitment practices in countries of origin.

The requirement that migrant workers “shall enjoy treatment not less favourable” in respect of conditions and terms of employment with nationals of the state of residence which is set out in Art. 25 of the UNMWC is inconsistently adhered to in employment jurisprudence in the UK. Employment law generally operates on the principle that ‘illegal’ contracts of employment are not enforceable, and on this basis irregular immigration status is capable of rendering an employment contract unenforceable. The mere, undispelled suspicion of immigration irregularity is sufficient to render lawful an employer’s decision to dismiss an employee without honouring conditions of the contract regarding wages – even if this suspicion is subsequently discovered to be unfounded. UK immigration law imposes on employers the responsibility to check the immigration status of employees not only at the time of engagement but throughout their employment. Yet a migrant worker has no adequate protection in law if an incorrect interpretation of immigration status leads to loss of employment through dismissal. The concern has been expressed that the aversion to risk which leads many employers to err on the side of caution, inevitably exposes many migrants to dismissal which, in other contexts would be regarded as unreasonable in UK employment law.

Other economic rights set out in the international conventions cover protection from forced labour, set out in Art. 11 (1) and (2) of the UNMWC, and Art. 4(2) of the European Convention

on Human Rights, which is directly enforceable in UK law. Forced labour has been defined in ILO Convention No. 29 as “all work or service which is exacted under the menace of any penalty and for which the said person has not offered himself voluntarily.” It is acknowledged to exist by the UK authorities in the context of persons trafficked or smuggled for the purpose of sexual exploitation, but is not prosecuted as a breach of basic human rights law by the exploitative employer.¹⁰

Groups supporting migrant rights believe that forced labour is more widespread in the UK than is acknowledged by the government. It extends to areas like domestic service, construction, farm labour and the hotel and catering trades. (Skrivankova 2006) Anecdotal evidence suggests that it exists most frequently in circumstances where employers are able to exploit vulnerabilities due to irregular immigration status. The implication that action against trafficking requires support for the rights of vulnerable migrants has been resisted by the UK authorities to date and this has been reflected in reluctance on the part of the government to accede to the Council of Europe Convention on Action Against Trafficking. The view of officials has been that a regime affording any level of protection to trafficked workers would run the risk of increasing illegal activity in this area, as the status of trafficked worker came to be perceived as a route to attaining a regular residence status¹¹. Whilst this viewpoint has been modified by a recent decision to ratify to anti-trafficking convention¹² the view remains entrenched within the UK government that the task of enforcing immigration controls requires limitations on the rights available to migrant workers rather than their extension..

¹⁰ Prosecution may however take place under the provisions of Section 145 of the Nationality, Immigration and Asylum Act 2002 as a matter pertaining to domestic UK law.

¹¹ See ‘Call to sign trafficking treaty BBC website 15 May 2005, <http://news.bbc.co.uk/1/hi/uk/4548931.stm>. These objections in relation to the anti-trafficking convention were finally overcome at the end of January 2007, when the government announced that it would sign up to the anti-trafficking convention.

¹² See Freed sex slaves to get temporary right to stay in the UK, *The Guardian*, 22 January 2007.

To summarise the situation with regard to economic rights, the picture sketched out above shows several areas where migrants are made vulnerable to exploitative employment practices in the sectors where they are concentrated. The ability of the migrants to counter exploitation is in many cases reduced by the immigration control regime, which is responsible for generating a complex array of statuses which are often poorly understood by the migrants with the consequence that they is a lack of clarity about the rights and protections available under the law. In these circumstances the promotion of the economic rights of migrant workers in the UK would be assisted by the rationalisation of managed migration procedures with a view to obtaining greater simplicity and clarity on the rights and obligations entailed by the status of migrant worker.

1.5.2 Social rights

1.5.2.1 Family reunification

Family reunification is permitted for the main categories of managed migration, with the important exception of the SBS and a scheme recruiting young people to work in agriculture, the Seasonal Agricultural Workers Scheme (SAWS). In both cases workers are permitted to enter on their own for the duration of the scheme only, in the case of the SAWS, this is six months. Family reunification is permitted on the WHS only if both married partners qualify for participation in the scheme in their own right. Dependent children might accompany parents admitted under on the WHS, but only if under the age of two at the time of arrival. This prevents their becoming eligible for education in the UK, where school attendance is compulsory for all resident children resident beyond the age of five.

Family members who might join a migrant worker on the schemes where this is permitted are the spouse or, with qualifying conditions, the unmarried partner of either sex, dependant children up to the age of 18, dependent parents over the age of 65. In exceptional cases, other family members who are wholly dependent on the migrant worker, living alone in their country of origin and, for reasons of ill-health or disability,

unable to support themselves on their own may also be allowed entry. In all cases the worker is required to demonstrate that she can support all dependent members of her family from her own financial resources, without recourse to public funds. The public funds restriction will be discussed in more detail below. Spouses and partners, and dependent family members admitted at the same time as spouse or partner, will be granted residence permits valid for two years¹³ In theory migrant workers who are citizens of a Council of Europe country which is signatory to the European Social Charter 1961, should be entitled to consideration for inclusion for family reunification dependent children up to the age of 21, as indicated by the Charter's appendix which elaborates on family reunification rights available under the provisions of Art. 19.6 of the main text.¹⁴ In practice nationals of these countries are not given the benefit of such consideration and the age limit for children is fixed at 18, as with other non-EU nationals.

- Notwithstanding the exceptions under the terms of the SBS, SAWS and WHS the principle of family reunification appears to be maintained in UK law and policy, though it is less generous than the rights available to migrants who are citizens of EU member states. For those exercising free movement rights as workers, the spouse (but not unmarried partner) of an EU national worker has a right to live and worker in the member state of their partner's residence, even if they do not live with that partner. Children are admitted unconditionally up to the age of 21, and beyond that if age if dependent on the EU national migrant. Dependent relatives in the ascending line (parents, grandparents, etc) are also entitled to enter and reside, as are other dependent family members in the collateral lines. In contrast to these more extensive

¹³ With the exception of spouses and partners whose marriage/relationship has subsisted for five or more years outside the UK, in which case the spouse/partner and dependent children will be granted settlement immediately on arrival in the UK

¹⁴ This would include nationals of Croatia, Macedonia and Turkey alongside the EU countries.

rights, the possibilities for family reunification under national regulations appear more meagre.

1.5.2.2 Entitlement to health care

Art. 28 of the UNMWC sets out that “Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned.” The obligation to provide urgent health care is defined in UK regulations as:

- treatment provided in a hospital accident and emergency department (or NHS ‘walk-in’ centre) up to the point of being accepted as in-patient;
- the provision of family planning services;
- treatment for a range of diseases listed in NHS regulations, which include cholera, relapsing fever, smallpox, amoebic dysentery, diphtheria, malaria, measles, meningitis, mumps and infections likely to cause food poisoning;
- treatment for sexually transmitted diseases;
- services provided to persons detained under the Mental Health Act 1983; and
- psychiatric treatment required by a court order as part of a probation order. (NHS 2005).

In each of these cases treatment will be without reference to immigration status and will be provided on the same basis as to a British citizen.

The regulations further exempt those lawfully present in the UK for employment or self-employment from charges for NHS services, meaning that migrant workers (with the exception of the undocumented) are eligible for treatment for routine ailments as well as emergency treatment, by general practitioners or as hospital patients.

1.5.2.3 Social security systems

Access to social security is required within the terms of the UNMWC at Art. 27 in these terms:

“1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

“2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.”

The ILO Migration for Employment Convention No. 97, at Art. 6.1(b), to which the UK is signatory, further requires treatment no less favourable than that provided to own nationals in respect of,

“social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme) [...]”¹⁵

Social security benefits in the UK are divided into three types: ‘means-tested’ (income-related) benefits, paid on the basis of last resort where the individual has no income or resources for their support; ‘non-means-tested’, paid on the basis of entitlement regardless of personal cir-

¹⁵ Limiting conditions concerning “appropriate arrangement” in respect of the maintenance of “acquired rights and rights in course of acquisition” and “special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension” are deemed permissible under this Article. (Art. 6.1(b) (i) & (ii)).

cumstances; and 'contributory benefits', paid on the basis of sufficient national insurance contributions of the part of the worker. Examples of the first kind include: Income-based Jobseekers Allowance, State Pension Credit, Housing Benefit and Council Tax Benefit; of the second: Disability Allowance, Child Benefit, and Incapacity Benefit; and examples of the third kind include: Contributions-based Jobseekers Allowance, Contributions-based Incapacity Benefit, Maternity Allowance, and Retirement Pension .

People deemed to be 'subject to immigration control' - which will include all migrant workers on managed migration schemes - are restricted by the immigration condition that they should have no entitlement to a 'public funds' benefit. The same restriction applies to tax credits paid to workers in employment whose income is deemed insufficient for the needs of their families. There are some exceptions to this exclusion, which includes nationals of states which have ratified either the European Convention on Social and Medical Assistance (ECSMA) of the Council of Europe Social Charter and who are legally resident in the UK, and people whose admission had been based on an undertaking from a named sponsor that they would not become a charge on public funds where that sponsor has died.¹⁶

The effect of these provisions is to exclude migrant workers from social security entitlement across a wide range of benefits with the exception of those who are citizens of the ECSMA and Social Charter states mentioned above.

Workers on managed migration schemes whose leave extends beyond two years (essentially the WPS and the HSMP) may acquire an entitlement to Contributions-based Jobseekers Allowance on the basis of having paid sufficient national insurance contributions. However, because the conditions of their leave to remain require that

they be in employment (or, in the case of the HSMP, possibly in self-employment) the effect of making a claim because of unemployment will bring to the attention of the authorities the fact that the claimant is not, at that point in time, working. This will be likely to trigger revocation of leave to remain and a demand that the person concerned should leave the country.

Migrant workers who are citizens of a member state of the EEA or Switzerland are entitled to receive all social security benefits on the same basis as British citizens with the exception of nationals of the A8 countries, and the A2 countries (Bulgaria and Romania) which acceded on 1 January 2007. In the case of the former the UK government has excluded this group from receipt of all benefits other than those paid to supplement low income whilst the worker is actually in work (e.g. Housing Benefit or Council Tax Benefit) for the first 12 months of their employment in the UK. After this initial 12 month period the A8 national's entitlements revert to all social security benefits on the same basis as UK citizens. Citizens of the A2 states are subject to transitional arrangements in relation to access to employment in the UK and may only enter employment on the basis of special work permit schemes application to nationals of Bulgaria and Romania. They are, however, permitted unrestricted rights to reside on the basis of self-employment and therefore eligible for the range of benefits paid to self-employed workers on the same terms as British citizens.

Even where the 'no recourse to public funds' condition does not apply to a migrant worker, she may still experience difficulty in access a benefit on the basis of the 'habitual residence' rule. The habitual residence test requires that a worker demonstrate that she is (a) lawfully resident; (b) has the intention to remain permanently settled; and (c) has been resident for an 'appreciable period' (such a period being longer or shorter depending on other factors concerning the individual claimant).¹⁷ The habitual residence test therefore presents a substantial obstacle to mi-

¹⁶ For the full list of exceptions see regulations 2, 12 and the Schedule to the Social Security Immigration Regulations, regulation 3(1) of the Tax Credits Immigration Regulations, and regulation 16 of the Social Security (Incapacity Benefit) Regulations 1994.

¹⁷ See the case of *Nessa v Chief Adjudication Officer* [1999] WLR 1937, (R/S) 2/00 (HL).

grants otherwise exempt from public funds restrictions but who are deemed not to have sufficiently close connections with the UK by virtue of their length of residence. It has been judged that the appropriate length of time should not be fixed by regulation, but considered in each individual case by a balancing test involving consideration of other facts about the applicant's circumstances. The Social Security Commissioner has set out the view that the requirement to demonstrate a period a period of residence would normally be discharged after presence in the UK for three months or more.¹⁸

In respect of the issues raised in Art. 27.2 of the UN-MWC, that the state should consider "reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances", no provision exists in UK law that would permit such consideration of reimbursement of tax and national insurance contributions paid to migrant workers who are excluded from the benefits of receiving assistance from the social security system

1.5.2.4 Education

The right of access to education and vocational training for the worker is provided for in Art. 43.1 (a), (b) and (c). This right exists whenever their terms of stay "meet the appropriate requirements." (Art. 43.2). The right to education for other members of the migrant's family is dealt with in Art. 45.

School attendance is compulsory for all children who are resident in the country for anything other than a short stay, who are aged between five and 16. This requirement exists without reference to immigration status. However, the Home Office encourages head teachers who are considering registering a child for school attendance to seek the advice of the immigration authorities if they believe that the child or its parents or guardians might have an irregular immigration status. Because of this there is a disincentive on parents with an irregular immigration status to

enrol their children even if they have a nominal entitlement to free schooling.

With regard to adults, migrants on the managed migration schemes will be able to enrol on part-time educational courses where attendance does not conflict with work obligations under the contract of employment. Access to such courses will be on the same basis as nationals of the UK.

Enrolment on full time education courses is more problematical. With the exception of EEA nationals, unless the worker has been resident for more than three years in the country prior to the commencement of the course and has been granted a settled immigration status by the 1st September immediately preceding commencement they will be treated as an 'overseas student' and pay the full cost of the course as a fee. Workers on a managed migration scheme will be excluded from education by standard conditions which require them to be engaged in active, full-time employment (with the exception of people on the WHS). Migrant workers from countries not on the UK compulsory visa list could, in principle, give up their employment to switch into full-time studies with a student residence permit. Nationals of compulsory visa countries would find this more difficult, being required by the immigration regulations to return abroad to make a fresh visa application if they want to switch into student status.

With regard to vocational training, the system of entitlement to state-subsidised courses is largely associated with assistance for people out of employment and seeking a return to work. The managed migration schemes do not permit migrants to remain for lengthy periods if they lose the employment by which they were originally permitted entry, so entitlement is unlikely to arise. For workplace-based vocational training, the initiative for running courses is usually left to employers in the UK and the conditions for granting participation to migrants in each company's workforce would be left to the discretion of each employer. If a refusal by an employer to allow members of her migrant labour force to participate in training that had been organised for UK citizen workers in the workplace and if there was no objective justification for such exclusion (i.e. the 12 months

¹⁸ See Commissioner's Decision CIS/4474/2003.

permitted to the worker to live and work in the UK meant investment in her training was not worthwhile, then the employer might be vulnerable to the charge of discrimination for one of the reasons outlawed in British employment law.¹⁹

Spouses and partners who have been permitted to enter the UK and reside as dependent members of the family of a migrant worker have unrestricted rights to access education, though they will be treated as overseas students if they enrol on full-time courses in state sector colleges.

1.5.2.5 Housing

Access to housing and social housing schemes on terms of equal treatment with nationals of the state is guaranteed in the UNMWC under the terms of Art. 43.1(d).

UK immigration regulations expect responsibility for obtaining accommodation lies with the worker, except in a small number of managed migration schemes such as the SAWS, which expects that employers will assume this obligation. Migrants on managed migration schemes are expressly forbidden access to social housing, with social housing being designated as being part of the 'public fund' prohibitions.

A non-EEA migrant worker who became homeless and, because of the presence of children in the household, or a health condition which qualified them as a vulnerable person, and therefore potentially eligible for emergency assistance from a local authority under homeless persons legislation would be regarded as being in breach of immigration conditions and eligible for removal from the UK.

1.5.2.6 Conclusions on social rights

There are a number of areas where the UK does not come up to the standards for the protection of social rights provided in the UNMWC. These lie principally in the area of lack of access to social

security systems and social housing. However, even where the possibility of enjoyment of a right exists, practical access is often limited by tensions arising from immigration status and the possibility of being judged to have fallen as a burden in public funds. The question of the social rights of migrants needs to be addressed in a more systematic fashion with a view to ensuring that all barriers to practical access are removed.

1.6 Civil and Political Rights

The civil and political rights of migrant workers are dealt with in provisions of the UNMWC which deal with such issues as protection from slavery and forced labour (Art. 11); freedom of thought, conscience and religion (Art. 12); the right to hold opinions to freedom of expression (Art. 13); protection from arbitrary interference in privacy (Art. 14); the right to security of property (Art. 15) to liberty and security of the person (Art. 16.1); to protection against violence and physical injury (Art. 16.2); to protection against collective or arbitrary arrest or detention (Art. 16.4); if arrested and detained in accordance with the law, the right to a fair trial (Art. 16.8); to treatment with dignity and respect if arrested and detained (Art. 17); to equality of treatment with UK nationals before the courts (Art. 18); to protection against collective expulsion (Art. 19); to consideration of individual merits of circumstances in the event of proceeding aimed at individual expulsion (Art. 22); equal treatment in respect of conditions of remuneration and employment (Art. 25); the right to trade union membership and activity in support of collective bargaining (Art. 27); and the right to respect for cultural identity (Art. 31).

In general these rights are secured for migrants in domestic law in the UK. Issues with regard to access to these rights in the practical circumstances in which many migrants live and work, owing to vulnerable status on the labour market, as discussed above, and there is concern that many migrants with rights indicated above will be unable to avail themselves of its benefits because of the risk of loss of employment and consequent withdrawal of immigration status.

¹⁹ Possibly a complaint of discrimination might arise on grounds of racial or national origin, gender, disability or age bias.

Issues concerning the right to respect for cultural identity have also arisen in recent years as UK immigration has moved in the direction of insisting of greater conformity with 'British values' as a condition for entry and continued residence. Whilst falling short of legislation actively prohibiting the expression of cultural or religious identity in the workplace a discourse has emerged in recent times, fostered by leading members of government, which have implied that the wearing of the hijab by Muslim women conflicts with core British values which, if not legislated against, should be discouraged by other forms of pressure.²⁰

Migrant are actively involved in the formation of community associations in the UK and opportunities exist for collective viewpoints to be represented to the UK authorities on matters of crucial interest. Citizens of Commonwealth countries who are residing in the UK as migrants are eligible to enrol on the electoral register and to participate in elections at all levels, including as candidates. This right extends to EEA nationals and Swiss citizens at the level of local government. Non-Commonwealth and non-EEA nationals are, however, excluded from such rights until they obtain the status of full British citizenship.

1.7 Integration of Migrant Workers

A right of integration is not directly referred to in the UNMWC. However its core objective of establishing equality of treatment between migrants and citizens is a theme which reoccurs in many key policy statements on this subject. The European Union's 'Common Basic Principles (CBP)', adopted by the Justice and Home Affairs Council in November 2004,²¹ precipitated a line of thinking on integration in which efforts in employment, social affairs and equal opportunities are regarded as critical.²² The Convention's

rights-based approach to securing equality of treatment for migrant workers in the field of employment and social policy is therefore highly relevant to any discussion about advancing the integration agenda across all the countries of the EU.

The situation in the UK is marked by the lack of a formal policy on the part of government aimed at the integration of migrant workers. This contrasts with the attempt to achieve a comprehensive approach to the integration of refugees, which has been set out in various official documents.²³ The reason for this absence lies in the fact that UK immigration policy considers that only a proportion of migrant workers, at the most skilled end of the spectrum, are considered to be destined for long-term settlement. The points-based approach to the recruitment of migrants (Home Office 2006(a)) is expected to develop selection criteria which identifies candidates equipped with English language skills and a commitment to upholding 'British values' prior to their entry to the UK. Migrants without language skills and an understanding of British society might be eligible for specified employment under categories of the managed migration schemes, but they will have no prospect of obtaining long-term residence rights.

This approach to integration has two problematic effects. Firstly, it makes the attainment of language skills and knowledge of British society the responsibility of candidate migrants, with the expectation that high standards are achieved before they commence residence in the UK. Whilst the EU CBP approach emphasises integration as a process of mutual adaptation by the migrant and host society to new realities of multi-cultural co-existence, the points-based system stresses the individual obligation of the migrant to equip herself with a capacity for integration even before admission to the country.

20 See "Muslims must feel British – Straw", BBC News, 2 November 2006, http://news.bbc.co.uk/1/hi/uk_politics/6110798.stm

21 Council Document 14615/04 of 19 November 2004.

22 See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on A Common

Agenda for Integration: Framework for the Integration of Third-Country Nationals COM(2005) 389 final for a review of the EU's work in the area of integration up October 2005.

23 See 'A New Model for Refugee Integration Services in England – a consultation paper, Home Office 2006 for an example of UK policy in the area of refugee integration.

Secondly, the association of integration with long-term settlement has the effect of ignoring the dimension of equal treatment for migrants whose residence in the country is likely to be for a period of less than five years, this being the point at which privileged migrants become entitled to settlement rights. As has been demonstrated above, equality of treatment in the labour market and in the application of social policy is explicitly withheld from migrant workers until they reach the five year point and become eligible for settlement. The absence of a rights-based approach therefore removes a crucial driving dynamic from the social processes which underpin integration, which depends on the existence of a social and legal space in which migrants can exercise a degree of autonomy and have the authority to assert their interests against those of other stakeholders acting in the realm of migration. Without this dynamic integration ceases to be a process of mutual adaptation and instead becomes a list of demands placed on the migrant worker and enforced through the mechanisms of immigration control.

1.8 Summary and Conclusions

The system in the UK is generally characterised by the formal presence of rights for migrant workers, at the level the workplace, social life, and the integrity of the individual. The notable exceptions to this concern the special vulnerability of migrants in an irregular situation, whose access to rights contained in contracts of employment and to effective consideration of their individual predicament is severely compromised by the effect of law and policy.

However, the formal availability of rights is compromised by a reality of exceptional vulnerability in the practical circumstances of the workplace, labour market, and society at large. Supporters of migrants, in considering these issues, have criticised the current situation as too focused on formal processes, without sufficient consideration being given to actual outcomes.

In advocating stricter adherence to the norms of international conventions, and the UK becoming

signatory to the UNMWC, the argument is that the opportunity to engage more confidently in the assertion of rights, both pressure and lobby activities in the context of civil society action, and through action to obtain enforcement through the courts, would greatly clarify the issues which arise for migrants in their daily lives and move the system of managed migration in a more equitable and progressive direction.

The evidence of key government policy papers, such as the White Paper 2002 and the more recent perspective for the development of a 'points-based system' (ref) suggests that the current government has no intention of moving policy in this progressive direction. In setting its face against explicit recognition of migrant worker rights the authorities have provoked a lively response from key parts of civil society, which would favour a move in that direction. It will have to be seen how the public policy debate on these issues develops in the months and years immediately ahead.

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TUC press statement, "One in five is a vulnerable worker", 9 September 2006.

See Hansard February 2006 for a written reply from a question from Lord Hwyl Williams from Karen Dunnell on this point.

British nationality law distinguishes between different types of British national, using such categories as 'British citizen', 'British Overseas Citizen', 'British National (Overseas)', 'British Protected Person', and 'Citizen of a British Dependant Territory'. Of these only 'British Citizen' provides full exemption from immigration control in all its aspects Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

See "Legal work for illegal workers could raise £1 billion", Institute for Public Policy Research, 31 March 2006, <http://www.ippr.org.uk/pressreleases/?id=2041>.

No other international convention on migration to which the UK is signatory contains such extensive provision on non-discrimination across all aspects of immigration procedures.

At the present time principle responsibility for the issuing of permits facilitating entry as a worker lies with 'Work Permits UK', a section of the Home Office. Based in Sheffield, Work Permits UK receives applications from employers wishing to employ overseas workers under the terms of the various managed migration schemes. Its leading role in this operation will be reduced in the near future as decision-making authority on the issue of work permits is shifted to visa officials based in UK missions abroad.

The right to participate in trade union activity is guaranteed in Art. 26 of the UNMWC and Art. 6.1(a)(ii) of the ILO Migration for Employment Convention (No. 97) to which the UK government is signatory.

Prosecution may however take place under the provisions of Section 145 of the Nationality, Immigration and Asylum Act 2002 as a matter pertaining to domestic UK law.

See "Call to sign trafficking treaty" BBC website 15 May 2005, HYPERLINK "<http://news.bbc.co.uk/1/hi/uk/4548931.stm>" <http://news.bbc.co.uk/1/hi/uk/4548931.stm>. These objections in relation to the anti-trafficking convention were finally overcome at the end of January 2007, when the government announced that it would sign up to the anti-trafficking convention .

See "Freed sex slaves to get temporary right to stay in the UK", The Guardian, 22 January 2007.

With the exception of spouses and partners whose marriage/relationship has subsisted for five or more years outside the UK, in which case the spouse/partner and dependent children will be granted settlement immediately on arrival in the UK

This would include nationals of Croatia, Macedonia and Turkey alongside the EU countries.

Limiting conditions concerning 'appropriate arrangement' in respect of the maintenance of 'acquired rights and rights in course of acquisition' and 'special arrangements concerning benefits or portions of benefits which are payable

wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension' are deemed permissible under this Article. (Art. 6.1(b) (i) & (ii)).

For the full list of exceptions see regulations 2, 12 and the Schedule to the Social Security Immigration Regulations, regulation 3(1) of the Tax Credits Immigration Regulations, and regulation 16 of the Social Security (Incapacity Benefit) Regulations 1994.

See the case of *Nessa v Chief Adjudication Officer* [199] WLR 1937, (R/S) 2/00 (HL).

See Commissioner's Decision CIS/4474/2003.

Possibly a complaint of discrimination might arise on grounds of racial or national origin, gender, disability or age bias.

See "Muslims must feel British – Straw", BBC News, 2 November 2006, http://news.bbc.co.uk/1/hi/uk_politics/6110798.stm

Council Document 14615/04 of 19 November 2004.

See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals COM(2005) 389 final for a review of the EU's work in the area of integration up October 2005.

See "A New Model for Refugee Integration Services in England" – a consultation paper, Home Office 2006 for an example of UK policy in the area of refugee integration.

The European Platform for Migrant Workers' Rights

The European Platform for Migrant Workers' Rights (EPMWR) was set up on 1st October 2004 in Brussels, bringing together civil society organisations with an interest in working towards ratification of the U.N. Migrant Workers Convention in the European Union. The EPMWR has 19 organisations/platforms from 13 different EU Member States, some working at the national level and others at the European level.

The aim of the EPMWR is to advocate for a better promotion and protection of the human rights of all migrant workers and members of their families. More precisely, the Platform seeks to share information on and harmonise whenever possible national-level campaigns and activities across Europe in favour of the Convention.

The Platform also promotes the Convention as the international benchmark against which the European Union and its Member States should be measured.



- 1 *Members: Agir ici, Amnesty International (section française), ACORT - Assemblée citoyenne des originaires de Turquie, ATF - Association des tunisiens de France, ATMF - Association des travailleurs maghrébins de France, CADTM - Comité pour l'annulation de la dette du tiers monde, Confédération paysanne, CIMADE – Service œcuménique d'entraide, GISTI - Groupe d'information et de soutien aux immigrés, FTCCR - Fédération des Tunisiens citoyens des deux rives, LDH - Ligue des droits de l'homme, MRAP - Mouvement contre le racisme et pour l'amitié entre les peuples, Service national de la pastorale des migrants, Solidarité Laïque*
- 2 *Members: Càritas Diocesana Barcelona, CITE-CONC, Associació de Veïns pel Benestar Ciutadà (AVBC), Institut de Drets Humans de Catalunya, Comissió Defensa Drets Humans Col·legi Advocats, MigraStudium, Portal de solidaritat OneWorld, AMIC - UGT Catalunya, Associació Sociocultural Ibn Batuta, Pagesos Solidaris (Unió de Pagesos), Benestar Social - Diputació de Barcelona, Associació Salut i Família, Consell Municipal de la Immigració de Barcelona, Federació de Asociaciones Americanas en Catalunya (FASAMCAT), SOS Racisme Catalunya, Casal Argentí, Servei Immigració i Refugiats de Creu Roja, ASMIN.*



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National Level

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Cyprus	KISA
Czech Republic	Multicultural Centre Prague Counselling Centre for Citizenship mixEurope
Denmark	Legal Information Centre on Human Rights
Estonia	Collectif pour la ratification de la convention des Nations Unies sur les Droits des Migrants ⁷
France	Hellenic Forum of Migrants
Greece	Migrant Rights Centre Ireland
Ireland	Immigrant Council of Ireland
Italy	ARCI
Netherlands	Projectgroep Migrantenweek
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Sweden	Immigrant-institutet
United Kingdom	Migrants' Rights Network

European Level

Amnesty International – EU Office
Association Européenne pour la Défense
des Droits de l'Homme (AEDH)
Churches' Commission for Migrants
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Platform for International Cooperation on
Undocumented Migrants (PICUM)



European Platform for Migrant Workers Rights

c/o December 18 vzw

EPMWR

164 rue Gaucheret • 1030 Brussels • Belgium

Tel: +32-2-2741435 • Fax: +32-2-2741438 • E-mail: epmwr@december18.net