



P.O.Box 22113, 1517 Nicosia, Cyprus
Tel.:+ 357 22 878181, Fax:+ 357 22 773039,
E-mail: kisa@cytanet.com.cy, Web site : www.kisa.org.cy

Undocumented Migrants - Problems and Recommendations

1. The Situation in Europe and Internationally.

The rapid increase of migrants, refugees and asylum seekers on an international level, as a result of the worsening of the economic crisis and conflicts in the 'third world' and the former 'eastern block' countries, in combination with the closing of the borders and stricter immigration policies in most countries, and especially in the member states of the EU, have led to a great increase in the numbers of migrants without papers or 'illegal immigrants', to use a well known xenophobic term.

On a world scale, every year 200 million people migrate – of whom 30-40 million are 'irregular' - a number equivalent to the fifth most populated country in the world! In Europe around 7-8 million 'irregular' migrants are employed by the shadow market, accounting for as much as 16% of the EU GNP. In their majority, they are employed in the sectors of construction, farming, nursing, and cleaning.

It is obvious that the criminalization of 'irregular migration' and the strict oppressive measures and deportations, the guarding of borders with high technology and military equipment, do not seem to solve the problem. As long as hunger, destitution, military conflict, ethnic cleansing, etc., continue, millions of human beings are bound to step out towards the imaginary social wealth, regardless of the barbed wires, radars and military boats, and despite the danger of death by frost or hunger. Moreover, no law and no penalties would be able to stop them from easily moving from 'legality' to 'illegality'.

As it has already been mentioned, the EU countries maintain a steady number of 7-8 million migrants without papers, despite the existence of the strictest migration policy in recent years. On the contrary, the difficulty in obtaining 'legal' right of entry, residence and employment permits in a country, is a factor that pushes people to irregularity rather than deter them. It is for

this reason that a number of countries, notably from southern Europe - including Greece, have adopted measures and followed policies of regularization of migrants without papers, in an attempt to minimize the problems that 'irregularity' inevitably creates, that is: marginalization, abuse, and violations of their rights, as migrants without papers are usually treated as modern slaves, as they are forced to live daily in fear of deportation, in uncertainty about obtaining the necessities for survival, without any legal protection, without rights in health, housing, education, social welfare etc, and without the empowerment inherent in organizing, be it in a trade union, an organization for the protection of human rights or self-organization.

2. The Situation in Cyprus

Migrants without papers in Cyprus concern, in their majority, migrants whose status changed because of the specific strict and inflexible immigration and third country nationals employment policy and practice of consecutive governments since the beginning of the 1990's. The main cause is the temporality of resident permits (nowadays 4 years), strict connection of employment and resident permit (loosing employment leads simultaneously to loosing resident permit) since third country nationals do not have the right to seek new employment, dependency on a particular employer (nearly impossible to change freely from one employer to the other) , weak protection systems, inability to provide justice, etc. These policies, lead migrants very often, in order to avoid the deportation, in cases of conflict in labour relations, to the abandonment of the work place by the migrant and thus his/her crossing into irregularity . The Ombudswoman, has, at times, publicized examples that prove the existence of a very thin line which separates legality from irregularity in the case of the employment of migrant workers. This worsens due to the fact that migrant workers are unaware of the legal procedures and their rights, or/and they do not trust the laws and the practices that are followed.

Moreover, a sizeable number of migrants without papers concern people who entered as students or visitors, hoping that they would be allowed to work (only recently students have been given very restrictive access to part-time work to unskilled & unfavorable to Cypriots jobs), later to find out that this is not so. Another category is that of rejected asylum seekers who cannot be deported for factual or legal reasons, so they become 'irregular ' migrants since the state denies them a right to residence permit even on humanitarian grounds. The state also created a sizeable

number of «irregular migrants» since 2005, in its effort not to implement its community law obligations on the rights of long term residents. Migrants with a residence permit that were legally in the country for 5 years or more, since 2005 are systematically left without a residence permit on the basis of various policies decided since then, so that they could not apply for the long term residence status deriving from Directive 2003/109/EC. Finally, Cyprus does not use naturalisation as a means for the integration of migrants. Not only the majority of naturalisation applications of migrants are rejected without any justification (the only categories of migrants normally naturalised are the white, Christian orthodox ones), but for the whole period an application is under examination, which may from two to four or more years, those migrants are left without a residence permit and basically with no rights.

In many cases 'irregular' migrants are victims of traffickers & smugglers. They pay enormous, for their means, sums to come to Cyprus on false information and promises, to find themselves dumped by the traffickers & smugglers. In many cases concerning women, 'irregularity' leads inevitably to prostitution.

The number of people trying to enter Cyprus 'irregularly' from the official points of entry or from the coasts of the south part of the island is negligible. Even during 1998-2000, when there was a widespread hysteria about a so-called danger of an invasion of thousands if not hundreds of thousands of 'irregular immigrants', only a few hundred entered the country and these were, in their majority, castaways. The reduction in recent years of the numbers of boats running aground with 'irregular immigrants' in Cyprus is partly due to the stricter policing of the shores with radars, coastguard vessels, etc. What has actually happened, though, is that the migrants, and especially the traffickers & smugglers, have turned to an easier and cheaper way to enter Cyprus, and that is, of course, through the areas not under the control of the Government in the north. Even this number, which is estimated around 1.000 yearly (another 4,000 enter in a similar way in order to apply for asylum), does not account for the majority of cases of migrants without papers, whose number, although difficult to calculate, may have reached as much as 30.000 to 40.000.

Numbers alone are a living confirmation that criminalization and strict controls do not provide an answer to the problem. In essence, the criminalization of migration has achieved in end effect to increase the earnings of the smugglers and to nurture xenophobia and racism in Cypriot society.

Despite all these, and despite the fact that so many thousands of people live 'deep' in a life 'underground' , with all the tragic consequences described above, the State, which otherwise rushes to imitate other European member states in formulating policies, has not taken any steps to regularize migrants without papers.

3. Problems for the Migrants – Problems for the Society

Undocumented migrants do not hold the right to work due to their lack of an official work permit. Nevertheless, it is relatively easy for them to find employment, not only in Cyprus which faces a shortage of labour in many sectors, but in almost all Member States of the EU, as is corroborated by PICUM, the Platform for International Cooperation on Undocumented migrants, a network of organisations providing assistance to undocumented migrants in Europe. The main reason for their attraction lies in their flexibility, availability, and in the fact that they are cheap to employ.

By denying fair working conditions to undocumented migrants, employers are able to respond to the growing demands of consumers to have inexpensive goods and services accessible at any time. To ensure a good profit margin, companies often resort to cutting costs by lowering the standards of working conditions. Nationals are not always willing to accept such work, and according to the logic of supply and demand, such jobs are often filled by undocumented migrants who are forced to accept substandard working conditions. In many cases, employers refuse even to pay the very low salaries to undocumented migrants, exploiting their fear of arrest and deportation if they demand their rights. This state of affairs unavoidably leads to a general pressure towards lowering of workers' salaries and rights and, as a consequence, provides a basis for negative attitudes to migrants and for racism.

Furthermore, the fact that they are not covered by insurance, results in human tragedies when accidents occur, especially in cases where incapacities are caused. There are even cases where migrants with severe injuries avoid hospital treatment fearing arrest and deportation.

Irregular work causes problems not only for migrant workers but also for society at large, in the sense that the Social Insurance Fund is deprived of many millions of Euros in contributions. (The figure is difficult to calculate but, based on 30.000 migrant workers, the minimum salary of 750 Euro and 15% contribution the number could exceed 30 million per year). Thus the integration of undocumented workers into the labour market through regularization could contribute substantially to the viability of the Social Insurance Fund, which will face enormous problems in the future, mainly because of the ageing population, a phenomenon faced by all the European countries.

'Irregularity' breeds problems, also, in all spheres of life: Undocumented migrants are exploited by landlords, who demand excessive rent for substandard lodgings. Thus they are forced to live in overcrowded conditions, lacking basic hygiene, with all the resulting consequences for themselves and their neighbourhoods. They are also driven to live in ghettos, in the case of Nicosia and other cities, in the old town. The high concentration of migrants in substandard conditions, also breeds xenophobia and racism.

Irregular migrants sometimes, in order to remain "invisible", keep their children out of the educational system. Even if they do attend the educational system, children with irregular parents are deprived very substantial rights and are not in a position to participate fully in the school activities.

Poverty and marginalization cause problems that may not be easily identifiable. One such problem is that of road safety and accidents. Thus, it is worth studying the contribution to road accidents of old and unsafe vehicles, driven by marginalized migrants who, in addition, have little access to insurances, driving lessons, road safety codes, police announcements etc (in most cases all these are directed to the Cypriot community and the language is Greek).

4. Recommendations

Considering all the above, KISA proposes the following:

- 1 Legalization of all migrants in a way that all procedures are simple and accessible to all.
- 2 Introduction of the following measures to ensure that undocumented migrants can effectively enjoy their fundamental and more specifically their labour rights as outlined in the Charter of Fundamental Rights, the European Convention of Human Rights , the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Conventions N° 143 and N° 97, the European Convention on the Legal Status of Migrant Workers (Council of Europe), and the European Convention on Human Rights:
 - 2.1. Informal workers should always be covered by labour legislation. As soon as there is an employment relation, the legal status of the worker should never be an impediment to respect workers' rights.
 - 2.2. The repressive approach in dealing with undocumented migrants appears to have failed. Incentives for hiring this 'easily exploitable' workforce could also be reduced by undertaking a **supportive approach**. Such an approach could entail stimulating the legal assertiveness of informal workers and empowering them in their ability to deal with conflicts.
 - 2.3. Legislation and policies should be formulated with special focus on the needs of **undocumented women and children**, who are particularly vulnerable.
 - 2.4. The legal status of migrants should never be an obstacle for them to enjoy fundamental rights and right to equal treatment.
- 3 The development of a comprehensive migration policy that includes the replacement of the present model of 'temporary' employment of migrants with the issue of work/residency permits of initially indefinite duration and with the provision to issue permanent residence permits.

- 4 The work permit not to be dependent on a specific employer. A migrant, as any worker, must enjoy the right to select and to change his/her employer, according to the Convention 143 of the International Labour Office, which has been ratified by Cyprus. The separation of the resident permit from the work permit of a migrant. According to the 143 ILO Convention, a migrant who loses his/her job does not lose his/her resident permit.

- 5 **Reasonable time should be foreseen to look for new employment when the first contract has ended.** It is important not to create risks for “illegalisation”: a migrant worker who has been working and living in a Member State for some time might have developed social ties and a network that will impede him/her from going back immediately, and that would allow him/her to find new employment within a reasonable time.

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KISA – Action for Equality, Support, Antiracism