
Undocumented migrants: Halting the traffic of human beings while protecting fundamental rights

Migratory movements have always happened and today they have become a permanent global phenomenon. European countries have been, and continue to be, places not only of mass immigration, but also emigration even today. The roots of migration are diverse in nature, from war, conflict and persecution to abject poverty, exclusion, ignorance and natural disasters. However, we must consider migration in terms of 'pull' factors as well as 'push' factors. The explosion of the consumer society in west European countries and the spread of European and American entertainment and products through globalisation have played a major role. This is coupled with the continued need for low-wage, low-status workers in the world's wealthiest regions.

Therefore, migration must be considered from a holistic perspective looking at our policies on development, trade and arms exports. The natural result is not necessarily open borders, but could rather be humane, transparent and fair asylum and immigration policies.

Over the last 15 years most Member States have seen a dramatic increase in the number of both asylum seekers and clandestine migrants. This can be attributed at least in part to the 'zero immigration' policies of European countries which were put in place in the 1970s. These policies dictate that virtually the only means to get legal residence and rights in the EU is by claiming asylum. The figures are staggering. More than 4.4 million people have applied for asylum in the last 10 years, with only 20% on average being granted protection. What have all these other people done?

The political debate on the situation of undocumented migrants has long been taboo. At root we must not forget that we are dealing with human beings and their lives. People may arrive in Europe by a legal route (e.g. student visas, or as asylum seekers) but find themselves in an irregular situation (e.g. if war breaks out at home); they may arrive by illegal means without documents (e.g. via human smugglers or traffickers), in search of a refuge or to improve their lot. All too often they find themselves in the uncomfortable position of being vilified by politicians (of all persuasions) and by the mass media. They have become our folk devils. However, these are human beings, who are at high risk of violence, discrimination and exploitation. Much of the food we eat is the result of hard labour in European fields by undocumented migrants. Undocumented domestic workers clean European homes and evidence demonstrates that sweatshops in the textile sector still exist in Europe. Often only churches and voluntary organisations are willing to provide the essential support and resources that these people need.

No one can be sure of the exact number of irregular migrants in Europe, but it is clear that we are talking about a lot of people. In recent years a number of countries have offered amnesties to undocumented migrants, according to specific rules (e.g. a certain number of years' residency). When Belgium launched a regularisation scheme in January 2000, an unexpectedly high total of 33,000 applications were filed; including families this amounted to about 60,000 people. In France's 1997 regularisation around 90,000 individuals were given a legal status, and strikingly between 1997 and 2000 Greece regularised over 100,000 people (from 300,000 applications). Mass regularisations have also happened in Italy (around 250,000) and in Spain (over 125,000).

The ease by which people fall into the precarious position of being undocumented migrants is increasing, as a result of new changes to asylum procedures and rules and the tightening of border controls. The Spanish and Italian immigration authorities estimate that in 2000 alone 3,000 people drowned in the Mediterranean trying to reach the EU. As the European Council for Refugees and Exiles highlight: *'There has been a significant emphasis in the EU's work on the fight against illegal immigration to the detriment of the development of adequate safeguards for refugee protection or measures and procedures on admission and legal migration to the EU. The situation is now one whereby the act of seeking asylum in Europe has effectively been criminalized.'* (ECRE, June 2004)

This is in shocking contradiction to the declaration by the national governments at the European Council in Tampere (1999), which declared that harmonisation of European asylum and immigration policies would be based on an 'absolute respect of the right to seek asylum'.

EUROPEAN EFFORTS TO REDUCE IRREGULAR MIGRATION

According to the Commission, Community efforts are aimed at stopping irregular migratory flows at the source, through aid and support to projects in the country of origin and transit countries. The aims are stated as being to improve the situation for potential migrants, and to undermine and destroy the networks of human traffickers and smugglers.

On 28 February 2002, the Council of Ministers adopted a plan to combat illegal immigration and the trafficking of human beings in the European Union. This plan, which is due to be fully implemented by 2005, identifies a number of areas where action is deemed necessary:

➤ **Visa policy**

The European Commission and Member States are working on a common European visa scheme, but in the meantime, both the requirements to attain a visa and cooperation between consular authorities have been the subject of harmonisation legislation.

➤ **The exchange and analysis of technical information to improve action against illegal immigration**

A number of policies have been initiated to improve the exchange and analysis of technical information. Moreover legislation on short-term residence permits issued to people who have been victims of activities to facilitate illegal immigration or trafficking in human beings and who cooperate with the competent authorities, has been proposed by the Commission and formally adopted by the Council in April 2004 (COM(2002)71 final). This can be seen as an attempt to gain access to information increasing the likelihood of prosecutions and latterly an attempt to protect human rights.

➤ **Readmission and repatriation policies:**

At the Tampere Summit in 1999, the European Council agreed to call for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to effectively combat trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States. The Amsterdam Treaty conferred powers on the Community in the field of readmission. The European Council invited the Council of the European Union to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries.

Consideration should also be given to rules on internal readmission. Thus, migration has been integrated into the standard negotiations on aid and trade, in which the EU has overwhelmingly the stronger negotiating position. Moreover, EU legislation has been adopted to support common policies on removal by air (Council Directive 2003/110/EC) and Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third- country nationals.

➤ **Pre-frontier measures:**

There have been successive attempts to create a series of migrant camps in various border regions or areas of large-scale migration, for instance on the North African coast, to process asylum seekers trying to reach Europe. British minister, Jack Straw, first proposed the idea in 2003, and although rejected then, the idea has gained strength. Italy and Germany are working on a joint plan following the events of summer 2004, which were revealed at a meeting of the big five (Italy, Germany, France, UK and Spain) in Florence in mid-October 2004.

➤ **Penalties on carriers and those who aid and abet:**

In 2001 a Directive was adopted intending to combat illegal immigration through the harmonisation of the financial penalties imposed by the Member States on carriers (i.e. rail companies, lorry drivers etc.) of migrants without proper documents. Under the new provisions, carriers must ensure that third-country nationals who intend to enter Member States possess the necessary travel documents and, where appropriate, visas.

Many organisations (refugee rights groups, trade unions etc.) have criticised these rules as they risk placing the responsibility for assessing an individual's asylum case on people who have no training or expertise in the area. Thus, they directly undermine the universal right to a fair asylum procedure.

Furthermore, in December 2002, a Directive was adopted (to be implemented by December 2004) making the following offences:

- Directly or indirectly aiding the unauthorised entry, movement or residence of nationals of third countries;
- Participating as an accomplice or instigator in the preceding offence.

These offences must be punishable by effective, proportionate and dissuasive penalties. The provisions are aimed at punishing gangmasters and trafficking networks, with exemptions available only for close family of the migrant. The knock-on effect could be that church and voluntary support of those finding themselves in an irregular position would be effectively criminalized. This is a worrying situation.

There are also policies relating to border management, police cooperation and the strengthening of the role of Europol (the European Police Agency).

To counterweight these aggressive policies against human traffickers and the beneficiaries of illegal migration to the benefit of the undocumented migrant, as mentioned above, a Directive was adopted in April 2004 providing short-term residence permits for victims of human trafficking who cooperate with the authorities (COM(2002)71 final).

For more information:

- European Commission's virtual documentation centre on asylum and immigration - http://www.europa.eu.int/comm/justice_home/doc_centre/intro/doc_intro_en.htm
- Platform for International Cooperation on Undocumented Migrants (PICUM) - www.picum.org
- European Council for Refugees and Exiles (ECRE) - www.ecre.org