

**Undocumented women migrants in the European Union**

**European Parliament resolution of 4 February 2014 on undocumented women migrants in the European Union (2013/2115(INI))**

*The European Parliament,*

- having regard to the United Nations Convention on the Rights of the Child, especially Articles 24 and 28 thereof,
- having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- having regard to the report of the UN Secretary-General to the UN General Assembly of 23 July 2013 entitled ‘Violence against women migrant workers’,
- having regard to Article 12 of the UN International Covenant on Economic, Social and Cultural Rights,
- having regard to General Recommendation No 26 of the UN Committee on the Elimination of Discrimination against Women of 5 December 2008 on women migrant workers,
- having regard to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- having regard to General Comment No 2 of the UN Committee on Migrant Workers on the Rights of Migrant Workers in an Irregular Situation and Members of their Families,
- having regard to the European Convention on Human Rights (ECHR),
- having regard to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,
- having regard to the International Labour Organisation (ILO) Convention Concerning Decent Work for Domestic Workers,
- having regard to the interpretation of Articles 13 and 17 of the European Social Charter by the European Committee of Social Rights,
- having regard to Articles 79, 153 and 168 of the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union, especially Articles 1, 14, 31, 35 and 47 thereof,

- having regard to the ‘Stockholm Programme – An open and secure Europe serving and protecting citizens’<sup>1</sup>,
- having regard to Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence<sup>2</sup>,
- having regard to Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals<sup>3</sup>,
- having regard to Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>4</sup>,
- having regard to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities<sup>5</sup>,
- having regard to the 2011 report of the EU Agency for Fundamental Rights entitled *Fundamental rights of migrants in an irregular situation in the European Union*,
- having regard to the 2012 guidelines issued by the EU Agency for Fundamental Rights entitled ‘Apprehension of migrants in an irregular situation – fundamental rights considerations’,
- having regard to the Clandestino European research project and the Undocumented Worker Transitions project, both funded by the Commission under the Sixth Framework Programme for Research and Technological Development,
- having regard to the Commission communication of 17 June 2013 entitled ‘4th Annual Report on Immigration and Asylum (2012)’ (COM(2013)0422),
- having regard to its resolution of 8 March 2011 on reducing health inequalities in the EU<sup>6</sup>,
- having regard to its resolution of 4 July 2013 entitled ‘Impact of the crisis on access to care for vulnerable groups’<sup>7</sup>,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Women’s Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A7-0001/2014),

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<sup>1</sup> OJ C 115, 4.5.2010, p. 1.

<sup>2</sup> OJ L 328, 5.12.2002, p. 17.

<sup>3</sup> OJ L 168, 30.6.2009, p. 24.

<sup>4</sup> OJ L 348, 24.12.2008, p. 98.

<sup>5</sup> OJ L 261, 6.8.2004, p. 19.

<sup>6</sup> OJ C 199 E, 7.7.2012, p. 25.

<sup>7</sup> Texts adopted, P7\_TA(2013)0328.

- A. whereas the term ‘undocumented migrant’ is defined as a third-country national whose presence on the territory of a Member State does not fulfil or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State<sup>1</sup> and whose detection by the immigration authorities would lead to a return decision or an expulsion;
- B. whereas the complex circumstances brought about by wars and exacerbated by worldwide humanitarian crises are contributing to the growth in refugee flows, which include large numbers of undocumented women and children;
- C. whereas a Member State has the right to decide on its own immigration policies; whereas, however, immigrants’ fundamental rights must be protected and guaranteed in accordance with EU and international law, by which Member States are bound;
- D. whereas undocumented migrants often lack financial resources, which places them at risk of malnutrition and deteriorating health, and means that they have to seek unacceptable solutions to secure the means of subsistence; whereas, furthermore, women are often accompanied by children for whom they must care, which acts as an additional spur to their seeking out possible ways of subsisting and surviving;
- E. whereas on account of their legal status, undocumented migrants are frequently denied access to decent housing, basic and emergency healthcare services, and schooling; whereas their undocumented legal status prevents them from being protected against labour exploitation in the workplace or from physical and mental abuse; whereas that legal status does not allow them to seek access to justice;
- F. whereas undocumented women migrants and their dependants are particularly vulnerable to the risks arising from their legal status, as they are exposed to a greater extent than men to the possibility of physical, sexual and mental abuse, poor working conditions, labour exploitation by employers and double discrimination based on both race and gender;
- G. whereas undocumented women migrants may be particularly vulnerable to traffickers and may subsequently become victims of trafficking;
- H. whereas undocumented migrants have limited access to social housing and remain dependent on the private housing market; whereas undocumented women migrants are at greatest risk of abuse in the form of physical or sexual violence perpetrated by private landlords;
- I. whereas undocumented women migrants are more likely to suffer violence and abuse, including sexual abuse, and are liable to fall prey to sexual exploitation and to trafficking in human beings in general; whereas access to state-run women’s shelters is subject to the requirement for a legal form of ID or a residence permit and whereas victims consequently have no choice but to remain in an abusive situation or flee to the streets; whereas they risk deportation if they contact the police;
- J. whereas gender stereotypes are more deeply rooted in immigrant communities and migrant women are more often victims of the various types of violence against women, especially forced marriages, female genital mutilation, so-called ‘honour crimes’, ill-treatment in close

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<sup>1</sup> Article 3 of Directive 2008/115/EC.

relationships, sexual harassment in the workplace and even trafficking and sexual exploitation;

- K. whereas Member States differ greatly in the level of access to healthcare services they grant to irregular migrants and the conditions they impose on healthcare providers as regards the reporting or otherwise of undocumented migrants;
- L. whereas the urgent healthcare needs of undocumented women throughout their lives place them at disproportionate risk of receiving extremely high bills for hospital care in countries where they are ineligible for subsidised care; whereas the fear of receiving such bills leads a number of undocumented women to give birth at home without medical support;
- M. whereas access to the most basic healthcare services, such as emergency care, is severely limited, if not impossible, for undocumented migrants on account of the identification requirement, the high price of treatment and the fear of being detected and reported to the authorities; whereas undocumented women migrants are especially at risk, since they are not provided with gender-specific care such as antenatal, natal and postnatal services; whereas some undocumented migrants are not even aware of their health entitlements in the country of destination;
- N. whereas the fear of being detected and reported to the authorities effectively bars undocumented women migrants from seeking help in abusive situations, even from NGOs specialising in legal advice for immigrants; whereas, consequently, these migrants are effectively deprived of knowing their rights and having them guaranteed; whereas, for the same reasons, it is difficult for civil society organisations to offer help and support;
- O. whereas the prostitution markets and industry in Europe feed to a large extent on the vulnerability of migrant women and girls, and whereas many women in prostitution are undocumented, which adds to the abuse and vulnerability already inherent in the prostitution industry;
- P. whereas migrant children, including girls, from undocumented families are prevented from going to school owing to fear of detection and the inability to provide official documents for enrolment; whereas undocumented adolescent girls face significant barriers to access to higher/tertiary education and training;
- Q. whereas the increased demand for workers in the domestic and care sectors is attracting a large number of women migrants, many of whom are undocumented; whereas the undocumented women working in this sector are most vulnerable to low pay, mental abuse, withholding of wages and passports and sometimes even physical abuse at the hands of their employers; whereas undocumented women are unlikely to seek redress in court;
- R. whereas employed undocumented migrant women have hardly any remedies available for claiming fair working conditions and wages, owing to their economic and social isolation, ignorance of their basic rights and fear of deportation;

- S. whereas undocumented migrants are in a situation of *legal limbo*<sup>1</sup>;
- T. whereas undocumented women migrants are especially vulnerable to physical, mental and sexual abuse at the time of arrest and in detention centres;

### ***Recommendations***

1. Recalls that the need to protect the fundamental rights of undocumented migrants has been repeatedly underlined by international organisations such as the Parliamentary Assembly of the Council of Europe, and in UN international human rights instruments and EU law; refers, in this connection, to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which prohibits discrimination based on sexual orientation, gender identity, or migrant or refugee or other status;
2. Points out that immigration policy and the management of migratory flows are the common and joint responsibility of the Member States;
3. Highlights that lesbian, bisexual and transsexual immigrants without legal documents are the victims of double discrimination, and that their fragile condition as foreigners without papers adds to their complicated situation;
4. Emphasises that immigration is a very topical issue and that a common legal framework on migration policies is needed in order to protect migrants and potential victims, especially women and children, who are vulnerable to various forms of organised crime in the context of migration and human trafficking;
5. Condemns the fact that many migrant women are misled in their countries of origin with promises of employment contracts in developed countries, and that some are even kidnapped to be sexually exploited by organised crime and human trafficking networks; calls on the Member States to step up their efforts to combat these abusive and inhuman practices;
6. Encourages the Member States to apply the Facilitation Directive in a manner that does not curtail the possibility of undocumented migrants renting housing on the free market, in order to reduce the risk of exploitative or abusive situations;
7. Recalls Article 8 of the ECHR concerning respect for a person's physical integrity, and therefore encourages the Member States to waive, for undocumented migrants in the most vulnerable situations, the requirement to provide documentation in order to access state-run shelters, with particular consideration for the special needs of pregnant women, women with young children and women caring for others;
8. Insists that account be taken of the particular vulnerability of people with special needs, such as children and adolescents, the elderly, the disabled, the illiterate, members of minorities, immigrants persecuted in their countries of origin for their beliefs, sexual orientation, physical characteristics, etc., and female victims of gender violence;

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<sup>1</sup> Where undocumented migrants are arrested and identified by the immigration authorities and issued with a removal decision which is then postponed, but do not have any documents attesting to the postponement of the removal decision.

9. Points out that the right to health is a fundamental human right and therefore encourages the Member States to delink health policies from immigration control, and consequently to refrain from imposing on healthcare practitioners the duty to report undocumented migrants; also encourages the Member State to ensure the provision of appropriate care and assistance geared to gender-specific needs; similarly, encourages the Member States to provide special training on gender issues to officials dealing with undocumented women migrants, and to refrain from requiring schools to report attending children of undocumented migrants;
10. Encourages the Member States to provide undocumented women with proper psychological, health and legal support;
11. Recalls that the rights set out in the Victims Directive are not conditional on the victim's residence status<sup>1</sup>; strongly encourages the Member States, therefore, to uncouple the prosecution of violence against undocumented women migrants from immigration control so that victims can safely report crimes;
12. Condemns all forms of violence, human trafficking, abuse and discrimination against undocumented women; stresses the need to provide access to the help on offer in such situations, without any need to fear that this will directly result in measures to terminate residence;
13. Calls for the implementation of ILO Convention No 29 on forced labour; calls for consideration to be given to the special situation of women involved in forced labour – encompassing not just forced prostitution, but all involuntary work, including in the domestic sphere – and for protection to be given to the undocumented migrant women concerned;
14. Calls on the Member States to take the requisite steps to prevent the proliferation of prostitution and forced labour among women migrants;
15. Calls on the Member States to ensure the correct implementation of the safeguard contained in Article 6 of the Employer Sanctions Directive, which requires the Member States to make available mechanisms enabling undocumented migrant workers to lodge claims against an employer for any remuneration due; calls on the Member States, NGOs and all other civil society organisations working with undocumented migrants to run awareness campaigns informing undocumented migrants of this right;
16. Calls on the Member States to put an end to discriminatory practices, to combat undeclared work and labour exploitation, inter alia by means of labour inspections and allow access to basic health services;
17. Calls on the Member States to establish suitable training courses, for their police forces and other state services that may be asked to deal with undocumented migrant women, on the gender violence and sexual exploitation to which these women can fall victim;

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<sup>1</sup> Recital 10 of Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime.

18. Strongly recommends that the Commission, as part of a future revision of the Employer Sanctions Directive, introduce the possibility of mechanisms enabling irregular migrants to lodge anonymous formal complaints against an abusive employer;
19. Urges all the Member States to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) and to apply its provisions correctly, particularly Article 59 thereof, which clearly states that the Parties should take the necessary measures to suspend expulsion proceedings and/or to grant an autonomous residence permit in the event of a dissolution of marriage to those women migrants whose residence status depends on their spouse;
20. Recommends that the Member States look for means of acknowledging the value of the work done by women who provide worthwhile services and contribute to the functioning of the host society;
21. Calls on the Member States to ensure that all migrant women, including undocumented migrant women, who have been victims of abuse or gender-based violence, including migrant women exploited in the prostitution industry, are provided with protection and support and considered to have particular reasons to be granted asylum or residence permits on humanitarian grounds;
22. Calls on the Member States to implement the Returns Directive fully and to issue certification of the postponement of removal, as required by the directive, in order to avoid the situation of legal limbo;
23. Underlines the importance of collecting data on the specific experiences of undocumented women and strongly emphasises the need for reliable, accurate, timely and comparable data on the gender-related vulnerabilities of undocumented women and their lack of access to justice and services in the EU, so as to assist in the development and management of coherent public policies;
24. Calls on the Commission, in evaluating the Returns Directive, to revise it by strengthening the protection of the basic rights of detained migrants;
25. Stresses that the detection aspects of immigration enforcement policies must never undermine human dignity and fundamental rights or place women at increased risk of violence and abuse; calls on the Commission, therefore, to amend the Returns Directive so as to ensure respect for the human rights of irregular migrants, especially pregnant women and children;
26. Recalls that, under the Returns Directive, Member States have an obligation to treat third-country nationals in detention centres in a 'humane and dignified manner' which fully respects the detainees' basic human rights; deplores reports of violence against women in detention centres; calls on the Member States, therefore, to investigate any claims of physical abuse directed at detainees;
27. Urges the Member States to take account of any signs that undocumented migrant women are being subjected to coercion or inhuman treatment;
28. Calls on the Member States to strengthen their collaboration with NGOs and civil society organisations working on this issue in order to find alternatives to detention centres, and to

strive to ensure that undocumented women migrants need not be afraid to interact with the people who should be providing them with support;

29. Calls on the Commission to ensure that the standards established by the UN Convention on the Rights of the Child remain at the heart of any action on child rights, and therefore calls on the Member States to cease, completely and expeditiously, the detention of children on the basis of their immigration status, to protect children from violations as part of migration policies and procedures and to adopt alternatives to detention that allow children to remain with family members and/or guardians;
30. Calls on the Commission and the Member States, through more extensive and integrated research, to close the gaps in reliable data and existing knowledge regarding the number and situation of undocumented people in the EU, to draw the attention of the European Foundation for the Improvement of Living and Working Conditions (Eurofound) to the situation of undocumented women, and to take greater account of women in this category when implementing the inclusion targets of the Europe 2020 strategy;
31. Calls on the Commission and the Member States to develop EU-wide awareness campaigns to educate undocumented migrant women about their rights;
32. Calls, in the context of efforts to prevent migration by providing development aid to the migrants' countries of origin, for the focus to be placed on women's education and rights;
33. Calls on the Commission and the Member States to provide sufficient female contact staff, care professionals, officials, assessors and other staff; calls for such measures out of respect for other religions and cultures and the need to protect against discrimination;

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34. Instructs its President to forward this resolution to the Council and the Commission.