



Scandinavian Research Council for Criminology  
Nordisk Samarbejdsråd for Kriminologi

# MISUSE OF MIGRANT LABOUR

NSfK's 24<sup>th</sup> Contact Seminar  
Helsinki 26.9. – 27. 9. 2010

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## Foreword

The objective of the contact seminar in Helsinki was to increase the knowledge of misuse of migrant labour in the Nordic countries and to strengthen the exchange of information within and between these countries.

There has been a growth in both licit and illicit labour migration to and within Europe, including also to the Nordic countries. While documented cases of forced labour and related trafficking remain low, there is evidence of an increase in various forms of labour exploitation or misuse of migrant workers. However, there is very little information and data on this phenomenon.

This seminar discussed the following questions: 1) What kind of situations of misuse of migrant labour exist in the Nordic countries? Are there indications of forced labour situations and do these situations include elements of trafficking? 2) Which economic sectors are especially affected by misuse of migrant labour 3) What is being done to prevent and control such misuse and how can the responses be improved?

*Anne Alvesalo-Kuusi, Council member of NSfK*

# Programme

## Monday 27.9.

**12.30 -13.30 Lunch at Hotel President**

**13.30-13.45 Introduction (Anne Alvesalo)**

**13.45-14.15 Samuel Engblom (SWE)**  
Labour Law, Trade Unions and Irregular Migrant Workers

**14.15 -15.15 Peo Hansen (SWE)**  
More Barbwire or More Immigration, or Both? EU Migration Management in the Nexus of Security and Neoliberal Economic Growth

**15.15.-15.45 Anna Markina (EST)**  
Labour migration to/from Estonia: indicators and trends

**15.45-16.00 Coffee break**

**16.00-17.00 Ditte Jørgensen and Bo Rosschou (DK)**  
The misuse of migrant workers in the construction and building industry in Denmark/Copenhagen

**17.00 - 17.30 Anne-Mette Odegard (NO)**  
The misuse of migrant workers in the construction sector in Norway

**17.30-18.00 Unnur Sverrisdóttir (IS)**  
Rise and fall of foreign labour in Iceland

**19.30 Dinner & Discussion**

## Tuesday 28.9.

**9.00.-9.30 Helga Ólafsdóttir (IS)**  
Polish immigrants and the Icelandic media

**9.30-10.00 Zbigniew Lasocik (POL)**  
Migrant labour in Poland, context and reality

**11.00-11.30 Natalie Ollus and Minna Viuhko (FIN)**  
Exploitation of migrant labour in Finland: indicators of trafficking".

**11.00-11.30 Riku Rajamäki (FIN)**  
The inspections of workplaces using foreign labour

**11.30-11.45 Coffee break**

**11.45 -13.00 Summing up & discussion**

**13.00 Lunch at Hotel President**

# Labour Law, Trade Unions and Irregular Migrant Workers

**Samuel Engblom\***

First, I would like to thank the organisers of this conference for the invitation. I will speak to you in two capacities – as a trade unionist and as a labour lawyer – with the aim of highlighting some of issues that arise when trade unions and labour lawyers deal with undocumented migrants.

For a trade unionist, the exploitation suffered by many undocumented migrants in Europe today is a cause for concern. Wages amounting, if paid, to a few Euros a day, earned through long hours of work under difficult and sometimes dangerous conditions does not amount to decent work, fair labour standards, or any other expression we use to describe the minimum standards under which no one, nowhere should work.

At the same time, there is also an evident self-interest in fighting undercutting. If undocumented migrants are paid below the standards set by collective agreements or minimum wage legislation, work longer hours, and under worse health and safety conditions, other workers will see their wages and conditions threatened, as employers prefer the cheaper and more vulnerable undocumented migrants. Another common form in which this competition is played out is when firms using undocumented migrants (or who subcontract the work to such firms) win bids to provide services e.g. in the cleaning and construction industries.

Seen from this perspective, trade union intervention is necessary and natural.

But the debate seldom ends there. Two arguments *against* trade union intervention on behalf of undocumented migrants are particularly common, at least in a northern European context.

The first is that intervention on behalf of undocumented migrants amount to defending undocumented migration and work without a work permit. Most trade unions support the idea that migration should be regulated, and that work permits should be conditioned, in order to make sure that employers do not import labour in order to pay lower wages or offer worse working conditions. In some cases, there are also labour market tests, aimed at preventing labour migration in sectors where unemployment is high, supported by trade unions.

The second argument has to do with the fact that the work of undocumented migrants tend to be undeclared – in the informal sector. Fighting tax fraud and undeclared work is a priority for many trade unions, especially in industries such as construction and restaurants where undeclared work is more common. Employees who chose to take all or part of their pay in cash without declaring it, are commonly seen as crooks, cheating not only the state but their fellow workers as well.

Both arguments deserve to be taken seriously.

In the first case, the counter argument can be found in the primary role of a trade union – to defend workers interest in the relationship between them and their employer. Trade unions are not migration authorities. If the migration status of a person has the affect that they are

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denied labour rights and trade union assistance, exploitation will only worsen, producing exactly the result that labour migration regulation is supposed to prevent.

In the second case, it is important to make a distinction between what I would like to describe as “opportunity based” and “necessity based” undeclared work.<sup>1</sup>

If a native born 27-year-old male construction worker accepts an offer to work off the books, giving him a larger take home pay than if the work had been declared, this is based on an *opportunity* to make some extra money, while undercutting his fellow workers and not contributing to the common goods paid for by taxes and social security contributions. That worker will normally have forfeited his right to trade union support and representation.

The situation of an undocumented migrant, for whom the possibility of a job in the formal sector does not exist, is, it could be argued, qualitatively different. His or her undeclared work is based on “necessity”, why trade union intervention can be motivated. Whenever possible, such intervention should of course include demanding tax and social security payments from the employer.

An issue that both journalists and academics have had a tendency to focus on is that of trade union membership for undocumented migrants. From a legal a political perspective, this is an important question, which I will come back to below. But from a practical point of view, the low numbers of migrant workers that are members of a trade union earn more to the fact that they work in sectors and companies where trade union presence is low, to the perceived or real risks involved in contacting a trade union –in particular the threat of retaliation from the employer-, and to high-trade union membership fees, than to whether trade unions have explicitly said that they will accept undocumented migrants as members.

So even though welcoming undocumented migrant as trade union members can be important as a political statement, the crucial discussion is more often whether trade unions should help undocumented migrant workers despite the fact that they are not members. In other cases, trade unions are often taking measures to prevent free-riders, for example workers who join a union when a problem arises without having paid their dues on sunny day. Many will therefore question use of fee-paying members’ dues to help non-members.

The argument of those that believe that trade unions should intervene on behalf of undocumented migrant workers is, apart from the above mentioned self-interest in fighting low wages and bad working conditions wherever they occur, that undocumented workers should be seen as “not-yet-members” with an acceptable reason (their vulnerable position) for not having joined the trade union. A similar argument has been used in the context of young people who, particularly in the summers, often enjoy free services from trade unions and special phone services motivated by their recent entry into the labour market.

In 2008, a number of Swedish trade union organisations, together with an organisation for undocumented migrants, joined to form the Swedish Trade Union Centre for Undocumented Migrants. The purpose was to inform undocumented migrants about their rights in the labour market and if they so wished represent them vis-à-vis their employers.

Apart from a network of trade union organisations, the centre consist of a physical centre, open one afternoon-evening every week and staffed by trade union ombudsmen and officials

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<sup>1</sup> This distinction between opportunity and necessity has been inspired by the use of the concepts of *opportunity based entrepreneurship* and *necessity based entrepreneurship* in the study of small businesses. They are explored in Acs, Z.J. and Varga, A. (2004) “Entrepreneurship, Agglomeration and Technological Change. Discussion Papers on Entrepreneurship, Growth and Public Policy” *Max Planck Institute for Research into Economic Systems*. [ftp://papers.mpiew-jena.mpg.de/egp/discussionpapers/2004-06.pdf](http://papers.mpiew-jena.mpg.de/egp/discussionpapers/2004-06.pdf)

from the participating organisations and a phone service giving information and helping irregular migrants get in contact with a trade union.

Initially, the centre had many visitors. A great number came out of curiosity, or rather looking for hope. Their questions were more concerned with their migration status than labour matters. The trade unionists staffing the centre had to be extremely prudent not to raise any false hopes concerning the possibilities to receive residence or work permits, sticking to their expertise in labour matters.

Another, smaller, group of visitors sought information about their rights in the workplace. Often, they described their situation, without revealing the identity of their employer, asking for an assessment. Only a handful, however, chose to take the next step, and ask for trade union assistance against their employer. This is not strange. The extremely vulnerable situation of undocumented migrant workers makes it very difficult for them to claim their rights. Firstly, many fear that a dispute will make the employer report them and their whereabouts to the authorities which could result in expulsion. Secondly, they would be sure to lose their jobs and run the risk of being blacklisted by employers in the often tight-knit networks that provide jobs for undocumented migrants.

The centre has also played a role in spreading information about the 2008 Swedish labour migration reform. The reform included a possibility for former asylum seekers who had a job to apply for a work permit without having to leave Sweden, which raised the hopes of many undocumented migrants. In most cases, the hopes were shattered as the possibility to change track from asylum seeker to labour migrant is very limited in scope.

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I will now turn to my other role – that of a labour lawyer.

In a number of countries, the question what status to afford undocumented migrants under labour law has posed a problem.

In some cases, the arguments against affording employee status, and thus labour law protection, to undocumented migrant workers have been technical. Courts in England and Australia have taken the position that contracts, including employment contracts, must be for a legal purpose and performed in compliance with the law – thus denying undocumented migrants status as employees.<sup>2</sup>

In other cases – such as the *Hoffman Plastics*-case<sup>3</sup> of the Supreme Court of the United States – the argument has been one of policy. The *National Labour Relations Board's* order of back pay to undocumented migrants who had been unlawfully dismissed due to trade union activity was overruled, as it would “encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations”.

In many, European countries, the question whether irregular migrant workers are protected by labour law is untrodden ground. Neither legislators nor courts have explicitly dealt with the question whether a person who does not have the right to work, due to their lack of a work permit and/or residence permit, can claim labour law protection, for example if they are not paid, if their employer violates occupational health and safety legislation, or if they are subject to harassment or discrimination.

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<sup>2</sup> Guthrie & Taseff (2008) “Dismissal and Discrimination: Illegal Workers in England and Australia” 24(1) *International Journal of Comparative Labour Law and Industrial Relations* 31.

<sup>3</sup> *Hoffman Plastics Compounds, Inc v. NLRB* 535 U.S. 137 (2002).

Now, the question of whether irregular migrant workers are covered by labour law is on the agenda for two reasons. One is the hardening attitude of many European governments against irregular migrants.<sup>4</sup> Denying irregular migrants rights of various kinds, such as the right to health care and education for their children, has become a tool to discourage potential migrants and to increase incentives for irregular migrants already in Europe to return to their home countries. In that setting, denying irregular migrants labour law protection would be natural.

The other reason is the *Sanctions directive* (2009/52/EC). The directive, which full title is *Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*, does not contain any provision which explicitly touch on the subject of the applicability of labour law to irregular migrants. It is nonetheless likely that the issue will come up in the process of implementing the directive in the Member States.

I have already mentioned the key arguments against the application of labour law to undocumented migrants. The arguments in favour can be found both in labour law itself and in international law.

#### *Labour Law*

From a labour law perspective, denying irregular migrants labour law protection is problematic. The fact that an employer violates one set of rules, those of migration law, would have the effect of granting him immunity or at least reduce the consequences of breaking another set of rules – those of labour law.

Treating undocumented migrants as anything other than employees effectively denies labour law the possibility of fulfilling its task. In most countries, the concept of employee, which effectively defines the personal scope of Labour law, is a mandatory concept. This entails that it is the relationship between the employer and the person performing the work that is to decide whether a person is an employee or not. If a category of persons performing subordinated work was to be excluded for reasons outside the relationship between them and their employer labour law would lose its autonomy.

#### *International law*

The necessity of applying labour law to migrant workers, regardless of their legal status, has been acknowledged by the International Labour Organisation (ILO).

The ILO's *Committee on the Freedom of Association* (CFA), which interprets the two most important conventions of the ILO, no 87 and 98 on the right to organise and bargain collectively, has on repeated occasions ruled that also irregular migrant workers are entitled to fundamental trade union rights. In Case 2121, concerning Spain, the CFA reached the following conclusion:<sup>5</sup>

*With the regard to the denial of the right to organize to migrant workers in an irregular situation, the Committee recalled that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87.*

When the CFA a few years later ruled on the earlier mentioned Hoffman-case from the United States it urged the US Government “*to explore all possible solutions, including amending the legislation to bring it into conformity with freedom of association principles,*

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<sup>4</sup> Sergio Carrera and Massimo Merlino (2009) *Undocumented Immigrants and Rights in the EU: Addressing the Gap Between Social Sciences Research and Policy-making*. CEPS. <http://www.ceps.eu/book/undocumented-immigrants-and-rights-eu-addressing-gap-between-social-sciences-research-and-polic>

<sup>5</sup> Case 2121 (Spain). This and other cited cases can be found in the Libsynd database: <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&hdroff=1>

*in full consultation with the social partners concerned, with the aim of ensuring effective protection for all workers against acts of anti-union discrimination.*”<sup>6</sup> Currently, the CFA is dealing with a case concerning the freedom of association for undocumented migrant workers in South Korea.<sup>7</sup>

Also *ILO Convention 143 on migrant workers* contains provision that give rights to irregular migrants. This convention, which has only been ratified by four EU member states<sup>8</sup>, asserts that the human rights of all migrant workers must be respected, regardless of their status under migration law. Further, ILO 143 grant equality of treatment to those in irregular status in respect of rights arising out of past employment as regards remuneration, social security and other benefits. They are also entitled to equality of treatment in working conditions.

Recently (March 2010), the ILO published an ambitious report on labour migration.<sup>9</sup> The report discusses several important legal issues, including the extent to which irregular migrants are covered by international labour standards and human rights instruments. The ILO points out that “Migrant workers, whatever their status, are always entitled to human rights, as are all members of the human family in every part of the world”.<sup>10</sup> Two out of three instruments that together comprise the International Bill of Human Rights – the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, contain provisions that lend support to the idea of including irregular migrant workers in the scope of labour law.

In the *Universal Declaration of Human Rights*, Articles 23, 24 and 25 specifically address work and employment, granting e.g. just and favourable conditions of work, equal pay for equal work without any discrimination, just and favourable remuneration, the formation and membership of trade unions and rest and leisure, including reasonable limitation fo working hours and periodic holidays with pay.

The *International Covenant on Economic, Social and Cultural Rights*, which is legally binding on those States that have accepted it by ratification or accession, include, among economic rights, the right to just and favourable conditions of work, fair wages and equal remuneration for work of equal value, to safe and healthy working conditions, to rest, leisure and reasonable limitations of working hours, to forma and join trade unions and to take strike action (Articles 6-8).

As labour law can be said to constitute the practical implementation of the above mentioned rights in national legislation, denying irregular migrants labour law protection could be seen as not respecting the country’s international commitments.

Even though the Sanctions directive (2009/52/EC) do not mention anything about the labour law status of irregular migrant workers, it is likely that implementation process will raise the issue in at least some Member States. In countries where neither legislators nor courts have had to tackle the issue before, the implementation of the Sanctions directive could there come to have important effects also in this respect. Hopefully, the implementation of the directive will lead to more countries explicitly acknowledging that irregular migrant workers are protected by labour law. It can, however, not be excluded that the effect will be the opposite, with legislation or statements that explicitly denies irregular migrants workers labour rights.

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<sup>6</sup> Case 2227 (United States).

<sup>7</sup> Case 2620 (Republic of Korea).

<sup>8</sup> Cyprus, Italy, Portugal and Sweden. The convention is nevertheless defined as an up-to-date convention by the ILO.

<sup>9</sup> ILO (2010) International Labour Migration – A rights-based approach. In particular pp 31f, pp 79f, pp 99ff and pp. 117ff.. [http://www.ilo.org/public/english/protection/migrant/download/rights\\_based\\_approach.pdf](http://www.ilo.org/public/english/protection/migrant/download/rights_based_approach.pdf)

<sup>10</sup> Ibid, p. 118.

It could be argued that Article 6 of the directive, which contains provisions regarding back pay, implicitly acknowledges that irregular migrants have the right to remuneration for their work. As this right typically arises from the contract of employment, this entails that irregular migrant workers should be considered as employees. (Law makers could, however, solve this by legislation that grants irregular migrant workers the right to back-pay without being considered as employees.)

The arguments in favour of the application of labour law to irregular migrants presented above can all be used when arguing that part of the implementation of the Sanctions Directive should be an explicit acknowledgement that also irregular migrants are employees.

# Making Sense of a Neoliberal Fortress? EU Migration Policy in the Nexus of Economy, Security and Rights

*Peo Hansen*<sup>11</sup>

Since the late 1980s a growing number of scholars, journalists, and NGOs have been employing the metaphor ‘fortress Europe’ to depict what are allegedly disastrous migration policies enacted within the framework of the European Union. Today, fortress Europe has matured into a politically footloose charge, which means that Brussels and member state governments no longer enjoy the luxury of brushing it aside as the mere cry of the idealistic and hyperbolic do-gooders on the left. Rather, the portrayal of the EU as a fortress, dead set on repelling migrants from the less fortunate places of the world, now also holds sway within much of the global news media’s neoliberal punditry.

On one level, the fortress Europe charge is both understandable and laudable. It represents a moral and political refusal to retreat into complacency before the almost daily news images of capsized refugee boats in the Mediterranean, and the equally frequent reports of drowned Africans floating ashore on the beaches of Spain, Malta or Italy. It also represents a sobering response to the EU’s twenty-year-old assertion that the migration crisis somehow can be solved, or at least alleviated, by throwing more security measures at the problem; that is, more militarized border controls, barbwire, thermocameras, patrol boats, helicopters, external camps, and cooperation with countries such as Morocco and Libya<sup>12</sup> to combat so-called illegal immigration.<sup>13</sup> After all, the EU’s sustained investment in security-oriented migration measures has coincided with the steady increase of migrant casualties in the Mediterranean and elsewhere.

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<sup>11</sup> Peo Hansen is Associate Professor at REMESO, Linköping University. His publications include *Migration, Citizenship, and the European Welfare State*, co-authored with Carl-Ulrik Schierup and Stephen Castles (Oxford University Press, 2006); and *The Politics of European Citizenship*, co-authored with Sandy B. Hager (Berghahn Books, 2010). A slightly different version of this paper was published as an article in *The Whitehead Journal of Diplomacy and International Relations*, Vol. 11, No. 1, 2010, pp 89–102.

<sup>12</sup> On the EU’s migration policy cooperation with Libya, see e.g. Human Rights Watch, *Pushed Back, Pushed Around* (New York, 2009); *Euronews*, “Libya: EU agrees cash to combat illegal immigration,” February 11, 2009. Available at: <http://www.euronews.net/2009/02/11/eu-agrees-cash-for-libya-to-combat-illegal-immigration/> (Accessed October 6, 2009).

<sup>13</sup> I write “so-called” to mark my critical distance from the term illegal immigration/illegal immigrants. For reasons that will become obvious in what follows, illegal immigration/immigrants should not be seen as a neutral or descriptive term, simply denoting a juridical fact and condition. Rather, it must be approached for what it is; that is to say, an ideological and political term that EU institutions, EU governments and other political forces employ for the purpose of justifying and enabling certain migration policies and discourses. As Elspeth Guild (one of the most renowned scholars on EU migration law) and Sergio Carrera argue, “the European Commission and Council’s insistence on using the term ‘illegal’ to refer to people is objectionable and discouraged in international fora. People are not illegal; their presence on a territory may not be authorised or their status as an immigrant may lack proper documentation, but that does not put them in a category where their very existence constitutes illegality.” See Elspeth Guild and Sergio Carrera, “Towards the Next Phase of the EU’s Area of Freedom, Security and Justice,” *CEPS Policy Brief* no. 196 (2009): 4. Available at: <http://www.ceps.be/book/towards-next-phase-eus-area-freedom-security-and-justice-ecs-proposals-stockholm-programme> (Accessed March 23, 2010). It is worth mentioning too that a European Parliament resolution in 2009 called “on the EU institutions and Member States to stop using the term ‘illegal immigrants’, which has very negative connotations, and instead to refer to ‘irregular/undocumented workers/migrants’.” See “European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008,” P6\_TA-PROV(2009)0019. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0019+0+DOC+XML+V0//EN> (Accessed March 23, 2010). In the following I will use the term irregular immigration/immigrants in those cases where I am not directly citing or paraphrasing EU institutions and governments.

For all its merits, however, I have to confess my growing unease with the unreserved employment of the fortress Europe metaphor. The concern is how we would make empirical and theoretical sense of the fact that the steady reinforcement of fortress Europe, from the mid-1980s onwards, has gone in tandem with an equally steady growth in precisely that which the fortress is intended to prevent, namely illegal immigration, or better, irregular immigration? Current EU estimates put the number of illegal – or irregular – migrants in the EU-25 at about 8 million.<sup>14</sup> This increase in irregular migration is largely resulting from a labor market demand, as in many EU countries the cheap and flexible labor provided by irregular migrants has become a structural necessity. More precisely, irregular migration has been enabled by the past decades' neoliberal transformations of the EU's social relations and political economy.<sup>15</sup> At first sight, there is a glaring contradiction between the EU's *stated* objective of fighting illegal migration on the one side, and its neo-liberal economic objectives on the other. That is to say, the latter objective's translation into more flexible labor markets, which often are made to rely on a steady increase of cheap and casual migrant labor, has acted to offset the former objective. In the early 1990s, research started to attend to this condition and was able to demonstrate that many EU governments that claimed to be fighting illegal immigration, were in actuality quite aware of and even content with the fact that their economies were profiting from the cheap labor performed by illegal or irregular migrants.<sup>16</sup> In this sense, what we are dealing with may not be so much of a contradiction after all. Instead we are better off conceptualizing the connection between migration and political economy – between fortress Europe and neoliberal Europe – in terms of a dynamic relation, thus acknowledging and accounting for the fact that migration cannot be understood in isolation from the wider political economic orientation of European integration.

My main objection to the fortress Europe metaphor thus lies in its risk of providing further sustenance to such isolationism, thereby obscuring and confusing more than it reveals. To be sure, the fortress metaphor may work quite well with regards to the EU asylum policy, as its objective is unequivocal; the EU does not want asylum seekers on its territory and thus does its utmost to keep them out.<sup>17</sup> When it comes to the quest for cheap migrant labor, however, the economic forces within neoliberal globalization do not allow militarized borders to slow them down. They tend to work around such obstacles. In this pursuit, which involves regular migrants as well, they are not without their *political* partners. As Stephen Castles explains:

Policies that claim to exclude undocumented workers may often really be about allowing them in through side doors and back doors, so that they can be more readily exploited. [...] This can mean that politicians are content to provide anti-immigration rhetoric while actually pursuing policies that lead to more immigration, because this meets important economic or labour market objectives.<sup>18</sup>

To complicate the picture a bit further, we must also situate the metaphor of fortress Europe in the more novel context of the EU's ongoing request for a huge increase in "legal" labor immigration to the rapidly ageing Union, which marked an about-face on labor

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<sup>14</sup> European Commission, *Preparing the next steps in border management in the European Union, Impact Assessment*, SEC(2008) 153 (Brussels, February 13, 2008), 6.

<sup>15</sup> See Carl-Ulrik Schierup, Peo Hansen and Stephen Castles, *Migration, Citizenship, and the European Welfare State: A European Dilemma* (Oxford: Oxford University Press, 2006).

<sup>16</sup> Ibid. See also Henk Overbeek, "Towards a new international migration regime: globalization, migration and the internationalization of the state," in Robert Miles and Dietrich Thranhardt, eds., *Migration and European Integration: The Dynamics of Inclusion and Exclusion* (London: Pinter, 1995), 31–2.

<sup>17</sup> There is an abundance of research corroborating this point; see e.g. Schierup, Hansen and Castles, *Migration, Citizenship, and the European Welfare State*, supra note 3; Jef Huysmans, *The Politics of Insecurity: Fear, migration and asylum in the EU* (London: Routledge, 2006); Sandra Lavenex, *The Europeanisation of Refugee Policies: Between human rights and internal security* (Aldershot: Ashgate, 2001).

<sup>18</sup> Stephen Castles, "Why migration policies fail," *Ethnic and Racial Studies*, vol. 27, no. 2 (2004), 223, 214.

migration policy when it was first made public at the turn of the millennium. For the elites who have always denied the fortress Europe charge – but for completely different reasons than those I have presented here – this development has come in handy. It provides a much-needed back-up for hollow-sounding counterclaims about, for instance, the EU’s “unconditional respect for refugee rights.” But the EU’s official turnaround on the matter of labor migration has also induced a more general sentiment among critical voices as to the sustainability of the EU’s security-oriented migration policies. Would it not be reasonable to assume that the EU’s enormous demand for new labor migrants, driven by economics and demographics, will make security-oriented migration policies irrational and thus unsustainable, giving rise to “a far more rational immigration policy, in which supply and demand, not security and barbed wire fences, deal with the inevitable push-pull dynamics engendered by global economic integration.”<sup>19</sup> This is an important question to be addressed in the remainder of this paper.

While further illustrating the various tensions and contradictions within EU migration policy, I also address some of the ways in which the EU seeks to manage and eventually resolve such tensions. In contrast to common wisdom, I argue that what the EU seems out to accomplish is the feat of generating a productive, or win-win dynamic between security and economic growth. This dynamic is between a security-oriented migration policy fighting “illegal migration”, on the one side, and a growth-oriented migration policy enabling a large-scale circulation of “legal” third country labor migrants to and from the EU, on the other side. In this connection, I discuss some of the implications that the EU’s developing migration policy regime may have for the issues of rights and citizenship, in general, and for the prospects of migrants’ access to (social) rights in the EU, in particular.

### **Old Europe Opens Door to New Labor Immigration**

The EU claims to have a dire need for labor migrants. Starting in the late 1990s, this message has today become a mantra that is reiterated almost daily by many institutions and actors: the European Commission, various think tanks, corporate lobbies, employers’ associations, as well as numerous scholars and commentators in the global media. EU governments also embrace the message, however, for reasons that I will come back to, governments are usually less persistent in their endorsement, particularly during election campaigns.

But the issue is not about just any increase. According to UN and EU estimates the Union would require tens of millions of migrants, some say even more, over the next decades in order to mitigate its huge deficit in certain demographics, and thus be able to sustain growth and competitiveness. As a consequence, economic growth and migration have become two sides of the same coin in the EU’s economic and political ambitions – a condition that was accentuated in the EU’s relaunched Lisbon Strategy in 2005. As stated by the European Commission in its *Green Paper on an EU Approach to Managing Economic Migration*:

In fact, even if the Lisbon employment targets are met by 2010, overall employment levels will fall due to demographic change. Between 2010 and 2030, at current immigration flows, the decline in the EU-25’s working age population will entail a fall in the number of employed people of some 20 million. Such developments will have a huge impact on overall economic growth, the functioning of the internal market and the competitiveness of EU enterprises. In this context [...], more sustained immigration flows could increasingly be required to meet the needs of the EU labour market and ensure Europe’s prosperity.<sup>20</sup>

“Immigration is an important part of the solution”, the then EU External Affairs Commissioner, Benita Ferrero-Waldner, verified. “It will help us make the transition to a new

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<sup>19</sup> Adrian Favell and Randall Hansen, “Markets against politics: migration, EU enlargement and the idea of Europe,” *Journal of Ethnic and Migration Studies*, vol. 28, no. 4 (2002), 598.

<sup>20</sup> European Commission, *Green Paper on an EU Approach to Managing Economic Migration*, COM(2004) 811 final (Brussels, January 11, 2005), 3–4.

economic situation, and maintain a certain level of growth. [...] For Europe, with its falling, ageing population that will inevitably mean attracting brains and labour from outside.”<sup>21</sup>

Whether or not the economic crisis and mass unemployment currently afflicting the EU will bring about a revision of the official migration demand remains to be seen. This was what happened during the crisis in the early 1970s, when practically all countries in Western Europe issued a formal ban on the enrollment of labor migrants from poorer parts of the world. Changes for the short-term have already taken place, but at the time of writing the long-term projections are still left unmodified. However, it is probably wise not to make too many assumptions about what the future may hold. The advances made by the extreme right offer one good reason for such caution. But it is also bound up with the growing inclination on the part of governments and traditional parties to foment and exploit anti-immigration sentiments and exclusive ethno-cultural identity politics in order to appease or appeal to the extreme right’s constituency.

So far, the policy line of significantly increasing labor migration to the EU holds firm. This was confirmed when the European Parliament, at the height of the financial turbulence in the fall of 2008, overwhelmingly approved the European Commission’s so-called Blue Card proposal, which aims to facilitate the increase of high-skilled labor migrants to the EU. According to the then EU Commissioner responsible for justice, freedom and security (migration policy sorting under this Directorate General), Jacques Barrot, the Parliament’s approval demonstrated, “that Europeans are open to immigration flows and that we are welcoming to nationals from outside Europe.” Barrot continued, “I hope we will show through this policy that Europe is not inward-looking.”<sup>22</sup>

### **Managing the Legacy and Myth of “Zero Immigration”**

Barrot was seeking to convey an image of today’s EU, not of a fortress, but of a cosmopolitan EU opening up to the world. As noted above, this re-branding of the EU has gained attention within both media commentary and research, as seen in statements such as the following: “The Commission’s Blue Card initiative demonstrates that the EU is no longer a ‘fortress’; it is opening itself up to talent, and creating the right conditions for migrants to obtain a legal job in Europe.”<sup>23</sup> Clearly though, the EU’s real objectives should not be mistaken for a cosmopolitan conversion, but are firmly rooted in economic imperatives. As the quote from the Commission’s *Green Paper* above indicates these objectives are not something the EU is trying to conceal.

In order to tease out something more worthy of consideration from the proud EU proclamations about a Europe “open to immigration” we should consider them in a historical context. They are to be understood foremost in relation to the EU’s previous official policy concerning non-OECD labor immigration. The EU clung to this previous policy until the late 1990s. In the period from the early 1970s to the late 1990s the official policy in Brussels meant zero labor immigration from any country outside the OECD. This formula, pronounced the only realistic one at the time, acquired a status almost like that of a sacred promise to EU citizens. As such, it made up a primary rhetorical tool in Brussels’ endeavor to win popular support and legitimacy for the neoliberal transformation that the EU went

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<sup>21</sup> European Commission, “Migration, External Relations and the European Neighbourhood Policy,” Commissioner Ferrero-Waldner, SPEECH/06/30 (Brussels, January 21, 2006). Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/30&type=HTML&aged=0&language=EN&guiLanguage=en> (Accessed October 23, 2009).

<sup>22</sup> Quoted in Renata Goldirova, “MEPs back foreign worker ‘blue card’ plan,” *EUobserver.com*, November 21, 2008. Available at: <http://euobserver.com/9/27155> (Accessed October 11, 2009).

<sup>23</sup> Katerina-Marina Kyrieri, “Demographic Changes, Immigration Policy and Development in the European Union,” *EIPASCOPE*, no. 3 (2007), 24. Available at: [http://www.eipa.eu/files/repository/eipascope/20080304164523\\_KKY\\_SCOPE2007-3\\_Internet-3.pdf](http://www.eipa.eu/files/repository/eipascope/20080304164523_KKY_SCOPE2007-3_Internet-3.pdf) (Accessed October 12, 2009).

through during the 1980s and 90s.<sup>24</sup> In Brussels the assumption was that EU citizens were negatively inclined towards immigration (from the east and south) and the Commission thus rarely missed an opportunity to ensure that liberalization within the framework of a single market by no means would be allowed to lead to an increase in immigration.<sup>25</sup> Quite the contrary, the EU made sure to flaunt liberalization and the move to eliminate internal borders as walking hand in hand with powerful measures to strengthen external border controls and step up the fight against illegal immigration, fraudulent asylum-seeking, and international crime and terrorism.<sup>26</sup> Owing to this, large chunks of asylum and migration policy were removed from their traditional policy domains of human rights and labor market policy, and instead integrated into security and crime prevention policy. But this also made the Commission and EU governments complicit in the legitimation and fomentation of hostile attitudes towards immigration and asylum. Brussels and EU governments' populist guarantees to shut the external borders to immigrants and other security threats, as migration now increasingly was being framed, were promoted as essentially synonymous with the EU citizens' legitimate entitlement to security in times of great change. As stated in a Commission booklet specifically addressing the EU citizens, "The problems of immigration and asylum, drug trafficking and other aspects of international crime [*sic*] are matters of increasing concern to the citizens of Europe."<sup>27</sup>

In addition, the Commission also presented its restrictive migration policy as a necessary precondition for the successful integration of already resident migrants and minorities with migrant backgrounds – that is, those migrants and minorities defined as non-European/non-western. Everything else was simply deemed "unrealistic".<sup>28</sup> However, no explanation was provided as to how the integration of already present migrants would become more realistic by being made contingent on a policy perception that identified migrants primarily as a nuisance and security problem. Already in the early 1990s there were a few voices from within the European Parliament who called the bluff on this equation, arguing that "[a]ssociating migrants and refugees with police and national security could well feed racist ideas and could be used to legitimize certain forms of racist behaviour."<sup>29</sup>

This provided, it is first and foremost in relation to what Brussels today refers to as the era of zero immigration, meaning the early 1970s–late 1990s, that we should assess the confident statements about a Europe that welcomes migrant workers from around the world. Indeed, since around the turn of the millennium the Commission's calls for a clean break with zero immigration policies have increased exponentially. All of a sudden, Brussels would start issuing statements such as, "The Commission considers that the zero immigration mentioned in past Community discussion of immigration was never realistic and never really justified."<sup>30</sup> Furthermore, "it is clear from an analysis of the economic and demographic context of the Union and of the countries of origin, that there is a growing recognition that the 'zero' immigration policies of the past 30 years are no longer appropriate."<sup>31</sup> Or more bluntly, "the

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<sup>24</sup> For comprehensive accounts on the EU's neoliberal transformation, see e.g. the contributions in Alan W. Cafruny and Magnus Ryner, eds., *A Ruined Fortress? Neoliberal Hegemony and Transformation in Europe* (Lanham: Rowman and Littlefield, 2003).

<sup>25</sup> See further Peo Hansen, "'European citizenship', or where neoliberalism meets ethno-culturalism: Analysing the European Union's citizenship discourse," *European Societies*, vol. 2, no. 2 (2000).

<sup>26</sup> For more on this logic, see e.g. Andrew Geddes, *The Politics of Migration and Immigration in Europe* (London: Sage, 2003).

<sup>27</sup> European Commission, *European integration: The origins and growth of the European Union* (Luxembourg: Office for Official Publications of the EC, 2005), 62.

<sup>28</sup> See European Commission, *On immigration and asylum policies*, COM(94) 23 final (Brussels, February 23, 1994).

<sup>29</sup> European Parliament, *Report drawn up on behalf of the Committee of Inquiry into Racism and Xenophobia*. Session Documents, Doc. A3–195/90 (Brussels–Luxembourg, July 23, 1990), 133.

<sup>30</sup> European Commission, *Proposal for a Council Directive on the right to family reunification*, COM(1999) 638 final (Brussels, December 1, 1999), 2.

<sup>31</sup> European Commission, *On a Community Immigration Policy*, COM(2000) 757 final (Brussels, November 22, 2000), 3.

Commission believes zero immigration to be, quite simply, unrealistic.”<sup>32</sup> A minor revolution, to say the least, from which the Commission has been quick to score cheap cosmopolitan points. This is a message that too many scholars and media pundits seem to have swallowed hook, line, and sinker. The points are cheap for the simple reason that Brussels’ turnaround on labor immigration has not given rise to any public self-examination. Instead, the Commission has been trying to make it appear as if it had never itself sanctioned the past policy of zero immigration, when in fact it was one of the policy’s staunchest advocates.

Even more important is that the Commission also withholds the truth concerning the real meaning of the so-called zero immigration policy. Because as concerns the EU area, the 1980s and 1990s were certainly not characterized by zero labor immigration. On the contrary, several million new labor migrants from around the world arrived during these decades. Most of these, however, were not legal or regular labor migrants. They were irregular, undocumented, or “illegal,” the latter being the EU’s established designation. As much research has demonstrated, the great demand for this type of cheap labor must be understood as contingent on the deregulation and increasing flexibility of the EU economies and labor markets that followed in the wake of the neoliberal transformation taking place during the 1980s and 1990s. Weakened labor unions and labor laws, pressure for low-skilled production and low-wage and temporary employment, in conjunction with a fast growing informal economy and labor market of outsourced, subcontracted, and sweated labor have all encouraged the EU’s growing demand for irregular labor migrants; that is, the type of labor often most suited for such economic and labor market conditions.<sup>33</sup>

In the official rhetoric, however, Brussels and EU governments do not acknowledge promoting an economy and labor market dynamic that feeds on the work conducted by irregular migrants. So far, it is only the EU’s great demand for “legal” labor migrants that is being openly acknowledged. Instead of going public with what they know, the EU’s political establishment persists in broadcasting its hostile attitude towards the illegal immigrants while simultaneously advancing policies that are conducive to illegal immigration. The term illegal immigrants, consequently, constitutes one of the most flagrant misnomers of our times. It is precisely those 8 million illegals that constitute key cogs in the EU’s so hotly coveted flexible labor market. It is their contribution to the labor pool that lowers production costs, which keeps consumer prices down on construction, tourism, agriculture, child care, etc.

### **Managing Public Relations Post “Zero Immigration”**

Nonetheless, the new policy also contains a certain measure of candor. Thus, when the Commission launched its new official approach to labor immigration it was fairly obvious that the Commission recognized how it was breaking a promise to the citizens of the EU. It was clear that the Commission felt it had been saddled with a tough public relations challenge. Brussels thus appeared to be apprehensive that EU citizens would respond negatively to the abrogation of “zero immigration,” possibly interpreting it as portending less restriction and an uncontrolled inflow of immigrants. After all, the EU had gone from an official policy firmly resolved to uphold “zero” labor immigration from non-OECD countries to a policy forecasting the entry of millions of new labor migrants almost over night. In order to obviate a possible public disapproval of this rather abrupt shift, the Commission soon came up with a series of public relations measures to be adopted by elite actors. “A shift to a proactive immigration policy,” the Commission asserted, will “require strong political leadership to help shape public opinion.”<sup>34</sup> In its detailed opinion on the Commission’s new approach to migration, the EU’s consultative body, the European Economic and Social Committee, voiced similar concerns: “It will not be easy to persuade public opinion to take a

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<sup>32</sup> European Commission, “Asylum and immigration debate,” Communiqués de presse de l’UE, IP/00/1340 (Brussels, November 22, 2000), 4.

<sup>33</sup> See further Schierup, Hansen and Castles, *Migration, Citizenship, and the European Welfare State*, supra note 3; see also, e.g., the contributions in Erik Berggren et al. eds., *Irregular Migration, Informal Labour and Community: A Challenge for Europe* (Maastricht: Shaker Publishing, 2007).

<sup>34</sup> European Commission, *On a Community Immigration Policy*, supra note 19, 22.

favourable view of the more open immigration policy now being proposed, but far-reaching work to this end is now urgently required.”<sup>35</sup>

So, in the face of the broken promise for zero immigration, what has been the EU’s main tactic for saving face? The answer is simple; by making a new pledge to EU citizens to implement even harsher measures against illegal migration, so-called bogus asylum seeking, and international crime and terrorism:

Europe’s citizens rightly expect the European Union [...] to take a more effective, joint approach to cross-border problems such as illegal immigration and trafficking in and smuggling of human beings, as well as to terrorism and organised [sic] crime.<sup>36</sup>

As part of this new pledge, the Commission also points to the merits of “the forced return of illegal residents,” arguing that this can “help to ensure public acceptance for more openness towards new legal immigrants against the background of more open admission policies particularly for labour migrants.”<sup>37</sup> Important to mention too is that this was soon followed up with a pledge to make integration policy more stringent, toughening the stance against the EU’s Muslim minority in particular. As the EU’s then Commissioner in charge of justice, freedom and security (also Vice-President of the European Commission) spitefully remarked, while stressing the importance of having Muslims adapt to European “core rules” and hinting his support for a ban on the Muslim headscarf, “We are not governed by sharia, after all.”<sup>38</sup>

Instead of being a catalyst for a gradual reversal of the EU’s security measures and militarized migration control policy as many had predicted, the new policy of working to increase labor immigration created a development in the exact opposite direction. Between 1993 and 2003, according to the International Centre for Migration Policy Development in Vienna, more than 10,000 migrants and refugees died in and around the Mediterranean while trying to reach the EU, many of them in search of work.<sup>39</sup> There is widespread agreement that this catastrophe has everything to do with the EU’s ever-increasing investment in militarized migration control in the Mediterranean. Since then, all estimates point to a steady increase in migrant casualties in the Mediterranean, which is partly due to the EU’s militarized border controls forcing migrants and refugees to opt for ever-more perilous waterways. As a consequence of the over-abundance of immigration controls in and around the EU, the European Council of Refugees and Exiles estimated in 2004 that roughly 90 per cent of asylum seekers are forced to utilize irregular channels in order to gain entrance to the EU.<sup>40</sup>

What we are witnessing, to put it incisively, is a development where the EU’s endeavor to increase labor immigration coincides more and more with migrants dying in their endeavor to meet this demand. As I noted in the beginning of this paper, this has struck many as appallingly irrational, bound to yield to a more expedient regime that would regulate labor migration more in accordance with, for instance, balanced mechanisms of demand and supply. For why roll out more barbwire carpet for those you say you desperately need?

Surely, this seems appallingly irrational and contradictory. I should add too that both Brussels and individual EU governments acknowledge that the reduction of North-South

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<sup>35</sup> Economic and Social Committee, “Opinion of the Economic and Social Committee on the ‘Communication from the Commission [...] on a Community immigration policy’”, *Official Journal of the European Communities*, No C 260 (2001/C 260/19) (September 17, 2001), 111.

<sup>36</sup> Council of the European Union, *Presidency Conclusions*, 14292/1/04 (Brussels, December 8, 2004), 4.

<sup>37</sup> European Commission, *Green Paper on a Community Return Policy on Illegal Residents*, COM(2002) 175 final (Brussels, April 10, 2002), 8.

<sup>38</sup> Lucia Kubosova, “EU has limits in respecting Muslim traditions, says Frattini”, *EUobserver*, October 9, 2006. Available at: <http://euobserver.com/9/22591> (Accessed October 14, 2009).

<sup>39</sup> International Centre for Migration Policy Development, *Irregular transit migration in the Mediterranean* (Vienna, 2004).

<sup>40</sup> European Council on Refugees and Exiles, *Broken Promises – Forgotten Principles* (London: ECRE Secretariat, 2004), 17.

inequalities constitutes the single most important issue to come to terms with so-called forced migration from Africa and elsewhere. As numerous scholars and NGOs have shown, however, the EU lacks both the political will and the viable economic instruments to assume such a far-reaching project, a project that, needless to say, hardly could be initiated short of a sweeping transformation of the current political and economic world order. With this option effectively precluded, the EU proceeds by embracing a non-obliging rhetoric about global inequality reduction while simultaneously committing to establishing a regime for migration management intent on making militarized migration control one of the primary guarantors for the supply of the EU's demand for migrant labor. In other words, it is more barbed wire, not less, that is seen as the rational means to increasing labor immigration to the EU.

### **Managing Migration in Euro-African Relations**

The EU's current relation with Africa illustrates this rationality to the point. In a series of high level Euro-African meetings focusing on migration, Brussels and EU governments have made it plain to its African partner that the EU has a great demand for migrant labor in many economic sectors, and that it is willing to increase "legal" labor migration from unemployment-ridden countries in Africa. But Brussels has been equally clear in pointing out that the EU will call the shots as to who will be admitted and when and where the migrant labor will be needed. This is reflected in the Commission's concrete proposals which all emphasize "circular migration", temporary work permits and seasonal labor.<sup>41</sup> Among other things, Brussels has put forward that an unspecified number of unemployed Africans may, in the near future, be granted temporary work permits in the EU to carry out seasonal work in agriculture, fill positions in the medical service, and to work as maids in European households.<sup>42</sup> To make this feasible, however, the EU has seen itself forced to invest most of its efforts into the further strengthening of the militarized guarding of the frontier in the Mediterranean and the Atlantic, as well as into closer cooperation on security with African countries in order to better combat illegal immigration.

The EU thus wants to import labor from Africa in order to service economic growth and competitiveness. At the same time, the EU wants full liberty of choice in deciding who and how many to admit so as to effectively calibrate migration to those sectors presently suffering from labor shortages. In order to assume such control of the migration flows, Brussels considers it an absolute necessity to step up the fight against illegal immigration and bogus asylum seeking. By this means, the EU is to guard itself against the importation of unemployment and poverty, as well as against various perceived security threats and the socio-economic burden of processing and housing asylum seekers. Given that labor demand in many sectors may fluctuate quite rapidly the EU also wants to guard itself against a situation where newly arrived labor migrants all of a sudden are out of work, with all that this involves in terms of social and economic costs. As a result of the current economic crisis and the rising unemployment in the EU, this logic – often fraught with xenophobic sentiments – is already kicking in, with some EU governments devising (EU sponsored) policies to have labor migrants leave their countries.<sup>43</sup> It is by recommending the issuing of temporary work permits, as well as preparing for an active return policy if jobs should dry up, that Brussels wants to obtain instruments to avert such a situation from occurring. In this way member states may well be spared from shouldering the socio-economic responsibility that permanent residence would entail.

Taken together, the EU's migration policy towards Africa is emblematic of how Brussels, in a practical sense, believes itself capable of generating a win-win dynamic between the security-oriented fight against illegal migration, on the one side, and the neoliberal fight for

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<sup>41</sup> See e.g. European Union, *Joint Africa-EU Declaration on Migration and Development* (Tripoli, 22–23 November 2006), (November 23, 2006) Available at: <http://www.unhcr.org/refworld/docid/47fdff010.html> (Accessed October 22, 2009).

<sup>42</sup> See Kerstin Brostrand, "Afrikanska unionen överväger EU-förslag", *Ekot* (Swedish Radio), October 2, 2006. Available at: <http://www.sr.se/cgi-bin/ekot/artikel.asp?artikel=957597> (Accessed October 16, 2009).

<sup>43</sup> See e.g. Sarah McInerney, "More foreign workers choose to return home", *The Sunday Times*, February 15, 2009.

growth and competitiveness, on the other. Since this has become the dominant line of policy it provides more than one clue as to why the migration crisis in the Mediterranean region has been allowed to continue unabated.

### **Conclusion: The Crucial Question of (Migrants') Rights**

As already indicated, the development discussed above must be understood in direct relation to the diminishing scope of both social citizenship rights and human rights in the EU – a change that for obvious reasons has been particularly painful for labor migrants from poorer countries and asylum seekers. Substantial rights are considered costly and fit badly with the neoliberal doctrine (of liberalization, flexible labor markets and reduced welfare provisions) that has been the EU's guiding norm for more than 20 years. Governments in the EU have thus become much more hesitant to commit themselves to social rights provisions for new labor migrants. This partly explains why governments do their utmost to avoid the granting of permanent residence to new labor migrants. As the Swedish Minister for Migration made clear at the Euro-African Ministerial Conference on Migration and Development, held in Paris in 2008: "In this context, we must recognize that the old paradigm of migration for permanent settlement is increasingly giving way to temporary and circular migration."<sup>44</sup> Despite the continued hollowing out of national citizenship rights in the EU, permanent residence – whether obtained through employment, refugee protection, for family reasons, etc. – still provides migrants and refugees with a set of basic social, civil, and political rights, and thus goes to make up the gateway to full formal citizenship. As Castles and Davidson underscore, "[t]he pivotal right [for migrants] is clearly that of permanent residence, for once a person is entitled to remain in a country, he or she cannot be completely ignored."<sup>45</sup>

When the Commission now undertakes to establish a common EU framework for labor migration it is easy to spot the compatibility between the member state reluctance towards migrants' permanent residence and social incorporation, on the one side, and the concepts and arrangements around which the Commission suggests an EU framework be developed, on the other side. These concepts and arrangements include circular migration, temporary residence, seasonal labor and return migration. Even though specifically designed for high-skilled labor migrants, the EU's Blue Card scheme also testifies to this development. At best, the Blue Card is very vague on the prospects of permanent residence for future card holders. What characterizes such arrangements, which all member states have individually adopted to a greater or lesser extent, is that they entail few social commitments on the part of the host state and thus leave little room for substantial rights for the migrants. Such rights are for the most part tailored exclusively for permanent residents.

To migrate to the EU with one's much sought-after labor has ceased to be synonymous with the simultaneous migration into a regime of social rights of citizenship, which eventually became the case in Western Europe during the postwar period's great labor migration boom. This also means that the precarious and rightless position that has made "illegal" labor migrants so popular on the EU labor market in some important respects now forms the model for how the EU is to go about managing its great demand for new "legal" labor migrants. As a consequence, the very same people on whom the EU's future economic growth and prosperity are said to depend are offered nothing in return. It seems as if the EU wants the poor world's labor, but not its people, at least not in the form of prospective rights-bearing citizens. This points to an attempt to further disembed migration policy from policies of social incorporation, an attempt which is structurally interlinked with a simultaneous effort to capitalize even further on the international division of labor by way of establishing this division more firmly and tangibly in the heart of Europe itself. This course of action will not only risk exacerbating ethno-racial exclusion and adding further tiers to the EU's already multi-tiered labor market; with a militarized migration control serving as its ultimate regulator it will also risk worsening the migration crisis at the EU's external borders. If this

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<sup>44</sup> Tobias Billström, Speech, Euro-African Ministerial Conference on Migration and Development (Paris, November 25, 2008). Available at: <http://www.regeringen.se/sb/d/7621/a/116756> (Accessed October 19, 2009).

<sup>45</sup> Stephen Castles and Alastair Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging* (London: Routledge, 2000), 94–5.

demonstrates the importance of addressing how current migration policy expresses and feeds on the political economy of unequal global, regional and international relations, it should also highlight the importance of restoring the matter of social rights on the migration policy and research agenda. Pipe dreams about the arrival of a benevolent, post-political and self-regulating migration market just won't do the job.

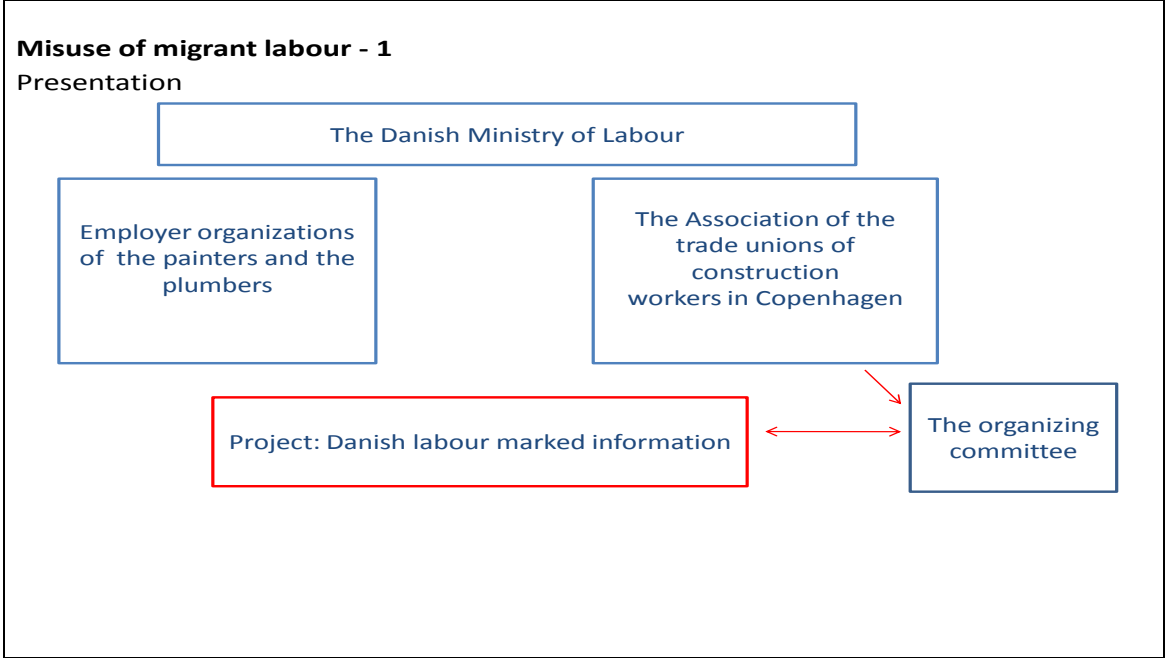
# Misuse of Migrant Labour in the Construction Industry

*Bo Rosschou & Ditte Jørgensen*

### Introduction:

The two complimentary presentations take point of departure in the Danish context of misuse of migrant labour mainly in the construction industry. This includes the matrix between the misuse and trafficking of slave labour. Furthermore the significant role of the trade unions will be addressed both practically and politically. Subsequently the presentation will bring economic analyses into the discussion, depicting the cynical profits of the misuse of labour.

### Presentation:



The project which I (Ditte Jørgensen) manage is mainly financed by the ministry of labour in Denmark in corporation with trade unions and employer organizations in the construction industry.

The project office is placed in the painters union in Copenhagen giving the benefit of a close and active work relation with the chairman of the painters union Bo Rosschou and the member organizations of the organizing committee of the Associations of the trade unions of construction workers in Copenhagen.

## Presentation continued:

### Misuse of migrant labour - 2

Presentation cont'd



Method: Building site / workplace visits etc.

Purpose: Recruitment for information seminars

Aim: Awareness raising among non Danish workers and employers ( EU) about the Danish Labour marked model  
-integration vs. xenophobia and hostility between labour marked actors (workers, employers etc.)  
-Fight against social dumping

The objective of the project is to make sure that migrant workers have the relevant knowledge on Danish labour marked issues. This contains both the democratic processes and the agreement system founding the Danish labour market. Furthermore contains information on worker rights as well as obligations and the very important issues on safety and occupational health.

Another very important objective of the project is the integration between Danish and non Danish workers and employers. This is both in order to empower migrant workers and their right to work under decent conditions as well as it is about the inclusion of non Danish workers and employers into the labour market and thus the frames of society. This is essential to evade the deepening of the gorge between parallel labour markets where misuse may occur undisturbed and xenophobia nourished.

The project is based on active outreaching work, which is why the point of departure is visits to construction sites around Copenhagen and the surrounding suburbs. These visits seek dialogue with non Danish workers and their employers as well as they encourage participation in the information seminars the project offers on abovementioned topics.

The seminar are completed with instructors from employer organisations, trade unions and the Danish working environment authorities and supports the necessity of an operational cooperation between actors of the labour marked and the authorities.

When in dialogue at the worksites, cases of very doubtful work constellations appear and give reasons to believe that a grey zone area between some kind of coercion and fraud is entered. Thus also giving reason to why aspects of trafficking and forced labour have been included in the project.

It has become evident through the approx. two year project period that issues related to trafficking or forced labour in our societies are not often included in the assessments of cases where labour marked regulations are breached when in relation to migrant workers and therefore rarely considered in the search for sustainable solutions.

## Scope of the Danish Context:

### Misuse of migrant labour – 3

Scope of the Danish context:

44.000 eastern european workers in Denmark

Approx. 10 % covered by collective agreements

39.600 outside the system

(Source: the Danish Employment Relations Research Centre)

### Estimation:

**39.600 persons with an hourly pay of 50 DKK(6,7 EUR)  
working hours per week 58**

The Danish employment relations research centre FAOS recently estimated that 44.000 migrant workers originating in the new EU membership countries are working in Denmark. Out of the 44.000 only 10 % is estimated to work within or similar to collective agreements. This leaves 39.600 persons outside the regulated system.

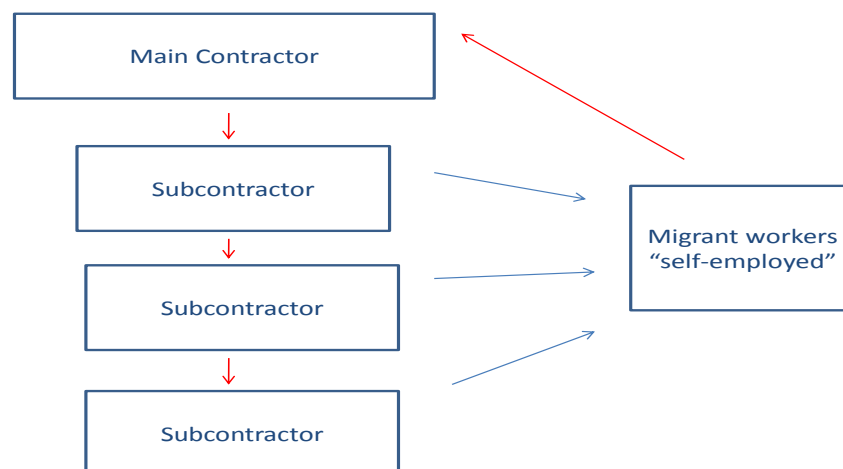
As there are no legislative minimum wages in Denmark etc. the 39,600 are easily subjected to very poor working conditions by perpetrators misusing the (Wages and other work related conditions are regulated by the bargaining partners of the agreement system).

The most common scenario met on working places and building sites in this relation, are migrant workers working 58 hours per week with an hourly pay of 50 DKK equivalent to 6,5 EUR.

## Example of working conditions of misuse in the construction industry:

### Misuse of migrant labour – 4

Example of working conditions of misuse in the construction industry



The companies in the construction industry most often set themselves up in creative and favourable ways when misusing migrant labour. We often see a construction chain of several subcontractors.

The real life example depicted in the slide, show a main contractor with no employees. Instead the assignment was sold off to the subcontractors.

In this case migrant workers were initially hired by the first and the second subcontractor but when the trade union came into the picture enforcing the collective agreement, a third subcontractor was added to the constellation.

To avoid the responsibilities aligned to hiring employees, the assignment was subcontracted to the migrant workers themselves while at the same time they were set up as self-employed single man businesses. However, the main contractor was still in charge of the planning and managing of the work. Furthermore the main contractor provided materials and tools. The third subcontractor administrated the establishment of the single man businesses as well as administrating the accounts and tax payments of them while the first subcontractor ensured that the daily work, planned by the main contractor was done.

The migrant workers were contracted by all three subcontractors, signing contracts in Danish which they were unable to understand.

The criteria of being self-employed are, according to Danish customs and tax authorities, that a self-employed both plans, manages and supervises the work him or herself. Work in at least two contracts at a time. Have earnings from more than one client. Provide own materials and possess the equipment and tools that are needed to accomplish the contract.

So the example shows that the migrant workers were actually working as employees for the main contractor but registered under the Danish Central Business register as self-employed single man business. – The profit made by the main contractor on this constellation in 2009 was approx. 8.000.000 DKK = **1. 100.000 EUR**

### **Common ILO human trafficking/ labour exploitation indicators:**

#### **Misuse of migrant labour – 5**

#### **Common ILO Human Trafficking /Labour Exploitation indicators**

- Not be dressed adequately for the work they do e.g. lack of protective equipment
- Have no labour contract
- Work excessively long hours
- Depend on their employer for a number of services, including work, transportation and accommodation
- be subjected to insults, abuse, threats or violence
- Lack basic training and professional licenses
- There are no health and safety notices
- There is evidence that labour laws are being breached
- There is evidence that workers must pay for tools, food or accommodation or that those costs are being deducted from their salary

This slide lists some of the most common indicators we meet in relation to migrant workers. Seen in relation to the prior example, the migrant workers also were provided with accommodation by the main contractor, living at times up to eight people in a 75 m<sup>2</sup> apartment and paying 400 EUR a month per person – providing the main contractor an additional monthly profit of 2800 EUR.

## The Skisma:

Misuse of migrant labour – 6

### The Skisma

**Misuse - search for a better life**

structural Problem?

The misuse of migrant labour is obviously taking place – But most of the eastern European migrant workers may undermine or maybe even ignore the misuse in favour of the possibility for a better life for themselves and their families at home. They do not necessarily perceive themselves as victims of misuse as they to some extent engaged in the doubtful work relations that they are subjected to.

However it still leaves the question of how to approach the problem when the incitements of misuse are somewhat inherent in the structures of the European Community and its economic model of growth relying i.e. on cheap labour.

## Trade Unions and the misuse of migrant labour:

Misuse of migrant labour – 7

Trade unions and the misuse of migrant labour

1) Awareness raising and advocacy:  
internally and externally  
Political pressure and demands

2) inter operational cooperation:  
Actors on the labour marked nationally and internationally  
Authorities: TAX, Police, occupational health institution  
NGO's  
INGO's  
Intergovernmental institutions  
Supranational institutions (EU, UN)

**Global effort to prevent and abolish misuse and trafficking**

The trade unions play a very significant role in preventing the misuse of migrant labour. First of all they have access to the migrant workers and are specialized within the field they organize – They recognize irregularities very fast and still (at least in DK) have legal tools to bloc a workplace if labour laws or collective agreements are breached. However that does not necessarily stop the problems of misuse as a perpetrating company may set itself up under a different name and continue the business of misuse. The migrant workers being misused may

also continue to work under doubtful and arbitrary conditions and will not have been lifted out of the misuse situation and into a decent work. This is why Trade unions must act from a victim centred response to the problem making those affected feel confident that if they come forward to the authorities they will be properly assisted.

The trade unions with their expert knowledge however are crucial to public awareness raising and advocacy of migrant workers rights to create the necessary political pressure and demands ensuring that national legislation fully comply with the standards of the ILO ratifications prohibiting forced labour and trafficking.

Actors of the labour market must take on the assignment to prevent misuse and trafficking and encourage the cooperation with the relevant authorities and institutions both nationally and internationally. Furthermore the expertise of NGO's and INGO's must be insured to be implemented in the victim based approach in the efforts to abolish the misuse and trafficking of migrant workers.

**Economics and profits of misuse:**

<b>Misuse of migrant labour – 8</b>	
Economics and profits of misuse	
Annual loss of income taxes:	1.990.533.600 DKK = <b>267.203.651 EUR</b>
Annual loss of VAT:	5.971.680.000 DKK = <b>801.621.585 EUR</b>
Annual profits	11.943.360.000 DKK = <b>1.603.243.170 EUR</b>

The Danish Employment Relations Research Centre FAOS estimates that 44.000 migrant workers originating in the new EU membership countries are working in Denmark. Out of the 44.000 only 10 % is estimated to work within or similar to collective agreement. This leaves 39.600 persons outside the regulated system.

The following calculates the consequences in relations to income taxes, VATs and profits.

**Loss of income taxes in Denmark:**

**Prerequisites:** migrant workers wages are typically between 40 – 60DKK per hour. Work hours are typically 10 hours Monday through Friday and 8 hours on Saturdays. All detected cases so far have involved a Danish perpetrator, which is why all allegations of the migrant workers being posted as under EU directives – Paying taxes in the country of origin e.g. in Poland – are considered false. Thus the payroll taxes should be deducted in Denmark.

The payroll taxes are set to net 33.3%.  
 Working hours per week are set at 58 hrs.  
 Wages per hour is set to 50 DKK.

**Calculation:** 50 DKK /hour X 58 hours / week X 52 weeks = 150,800 DKK.  
 33.3 % tax of 150,800 = DKK 50,266 DKK

**Annual loss income taxes** (50,266DKK times 39,600 persons):  
**1.990.533.600 DKK / 267.203.651 EUR**

**Loss of VAT in Denmark:**

**Prerequisites:** In addition to the above-mentioned prerequisites a "mestertimeløn" in cases where undeclared migrant workers perform the job is typically between 150 – 250 DKK paid by the assignor (the client) to the Danish perpetrator (contractor). Thus the turnover factor is set at 200 DKK per hour.

**Calculation:** 200 DKK/hr. X 58 hrs/week X 52 weeks = 603.200 DKK  
25 % VAT of 603.200 DKK = 150.800 DKK

**Annual loss of VAT** (150.800 DKK X 39.600 persons):  
**5.971.680.000 DKK / 801.621.585 EUR**

**Profits made by perpetrators:**

**Prerequisites:** in addition to previously mentioned key numbers the administrative turnover is set at 50 DKK per work hour: company (contractor) price 200 DKK/hr. subtracted wage /hr (50 DKK) and administrative costs / hr. (50 DKK.) = 100 DKK / hr. profit in favour of perpetrators.

**Calculation:** 100 DKK/hr. X 58 hrs/week X 52 weeks = 301.600 DKK

**Annual profits** (301.600 DKK X 39.600 persons):  
**11.943.360.000 DKK / 1.603.243.170 EUR**

**Consequences of misuse:**

**Misuse of migrant labour – 9**

**Consequences of misuse**

**Low risk**  
**High Profit**

**Sanctions against misuse ?**

**None!**

**Accountability ?**

**No one!**

**Methods of the trade unions in the construction industry in Denmark:**

**National level:** Focus on and public exposure of the actors perpetrating misuse

**International level:** Supremacy of social rights – a social protocol (EU)

## Example of public exposure of an actor perpetrating misuse:

### Misuse of migrant labour – 10

C

#### Fitness World bruger illegal arbejdskraft



*Henrik Rossing, hovedaktionær i Fitness World A/S er ligeglad.*

Fitness World A/S bruger illegale, underbetalte polske bygningsarbejdere. Det sker i forbindelse med, at Fitness kæden søger en kraftig ekspansion på det danske marked.

I Valby, Værløse og Ringsted er der således bygget i gang, hvor Fitness World A/S etablerer nye fitness centre. Det sker ved brug af illegal og underbetalt polsk arbejdskraft.

En illegal og underbetalt polsk arbejder får tyssik 40 kr. i timen og arbejder 58 timer om ugen.

Fagforeningen ønsker en aftale med Fitness World A/S, der sikrer lige vilkår = dansk overenskomst. Ulige vilkår er ikke fair for polske arbejdere og danske arbejdere og det er også unfair overfor det danske samfund.

Både direktør og hovedaktionær i Fitness World A/S afviser at indgå i dialog med Malernes Fagforening om en normalisering af arbejdsforholdene.

**Støt vores danske model!**

**NEJ til unfair vilkår i Fitness World!**

**Støt vores aktion for lige vilkår!**

Malernes Fagforening 40425196

# Migrants in Poland

**Zbigniew Lasocik, prof.**

## Basic information

- Population of Poland is around 38 mln.
- Territory 312.000 sq. km
- Administrative division – 16 regions
- Neighboring countries: Germany, Czech Republic, Slovakia, Ukraine, Belarus, Lithuania, Russian Federation
- Length of the borders – 3.511 km
- Non-Schengen – 1.163 km

## Background

- Poland has relatively short history of immigration, after 1989
- Poland is not considered very attractive destination country
- Until Schengen Polish visa regime was rather liberal
- Polish migration policy was reactive
- Poland is still lacking consistent policy

## General picture

- Due to economic situation of POLAND there have been more emigration than immigration
- Significant outflow from POLAND, around 2.000.000 since 2004 (est.)

## Legal immigrants in Poland

- Share of immigrants 0,15% of the population
  - Until 1989 – 2.000 foreigners granted permanent residence permit (yearly)
  - After 1989 – 10.000 (yearly)
  - After 1989 – 25.000 foreigners granted temporary residence permit
  - Citizens of: Ukraine 7.300, Belarus 2.000 Vietnam 1.500, Armenia 1.200, Russia 1.200
- Who are the foreign nationals (legal status)

## Who are the foreign nationals (legal status)

Men		Women	
Country	%	Country	%
Germany	21	Germany	20
Ukraine	7	Ukraine	12
Vietnam	5	Russia	8
Austria	4	Sweden	5
Russia	4	Belarus	4
Greece	3	Vietnam	2

## **Irregular immigration to Poland**

- Official estimations:
- aprox. 220.000 immigrants
- most of them Ukrainians
- aprox. 60.000 stays longer than 1 year
- Media estimation:
- Aprox. 600.000 immigrants
- Share of the population 1,5%

## **Illegal entrance**

- Illegal entrance: around 5.000 yearly
- Expulsions in 5 years by countries:

Ukraine	12.000
Bulgaria	2.500
Armenia	1.500
Russia	1.000
Vietnam	850

## **„Illegal” employment**

- In last years around 9.000 cases of illegal employment were detected
- 7.000 Poles
- 2.000 foreigners

# Trafficking for labour exploitation to/from Estonia

**Anna Markina**

## **Method**

- Interviews with experts
- Interviews with victims
- Media analysis
- No court cases

## **Trafficking to Estonia**

- Experts evaluate the problem as nearly non-existent
- However, the number of illegal immigrants coming to Estonia is growing
- There are some changes in the source countries: from former Soviet countries before to Afghanistan and some African countries now.
- Only few cases mentioned by experts where labour exploitation was involved: a massage parlor (Thai people) and a restaurant (Armenian).

## **Officials, who deal with the problem:**

- Citizenship and migration division of police
  - Check for documents (legal or illegal immigrant)
- Centre for extradition
- No involvement of Labour inspectorate, NGOs, trade unions etc was mentioned.
- To some extent co-operate with police, but control is directed toward the illegal immigrant.

## **Main vulnerabilities of victims:**

- Illegal status – are treated as perpetrators
- Lacking knowledge of local context
- Insufficient language skills

## **Actors involved:**

- Traffickers – facilitators (forged documents), border crossing
- Local communities (e.g. Armenians)
- Employers (recruit directly in the source country)

## **Elements of exploitation**

- Inadequate salary
- Illegal status (allows employer to threaten employees)
- No contract

## **Trafficking from Estonia**

- Estonia as a source country.
- Main destination countries are: Finland, Sweden, Norway, UK
- In recent years popularity of Ireland, Portugal has decreased
- Ukraine and Russia are sometimes destination countries for construction workers.
- 

## **Main sectors involved:**

- Construction sector
- Service (cleaners, housekeepers etc)
- Low-skilled work at the factories (food-processing)
- Agricultural sector

**Main vulnerabilities of victims**

- Low economic status at home, usually unemployed, no savings to start life in another country and therefore depend on facilitators/employers for transport or housing.
- Lack of language skills
- Low awareness about contracts, working conditions, regulations etc
- 

**Elements of exploitation**

- Labour facilitating firms often charge money for nothing (entering data into database, help with CV, etc) – IMPORTANT ACTOR
- There is no work at the destination country
- The work promised is not what they actually get
- Living conditions are below standard (8 persons in a room, 18 km from work place with no transport provided)
- 

**Elements of exploitation**

- Work without contract or contract is done to show for labour inspectorate only and does not reflect the actual agreement between employer and employee.
- Salary is not paid/partly paid or payment postponed
- Salary is below min standard
- Documents are taken from the employee
- Employee is threatened

**Who is dealing with the problem?**

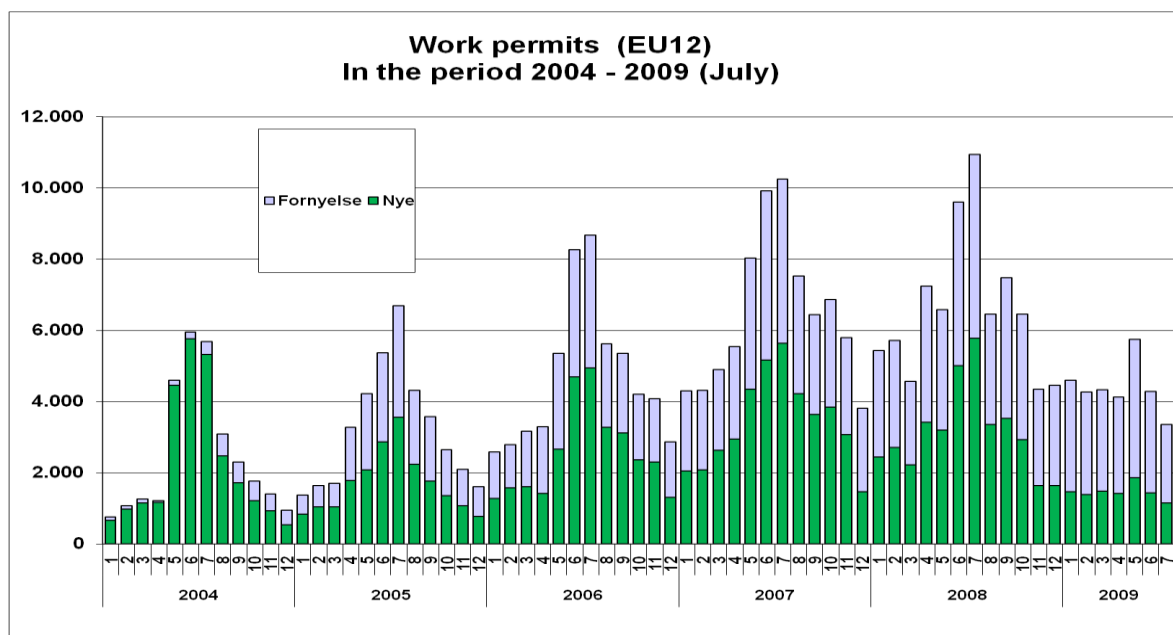
- Police – awareness is low, cases are “non-perspective”, no regular data
- Prosecutors - cases are “non-perspective”, no regular data
- Labour inspectorate – awareness is low, no regular data
- Labour unions – non existing

# The misuse of migrant workers in the construction sector in Norway - A case study in the hiring business

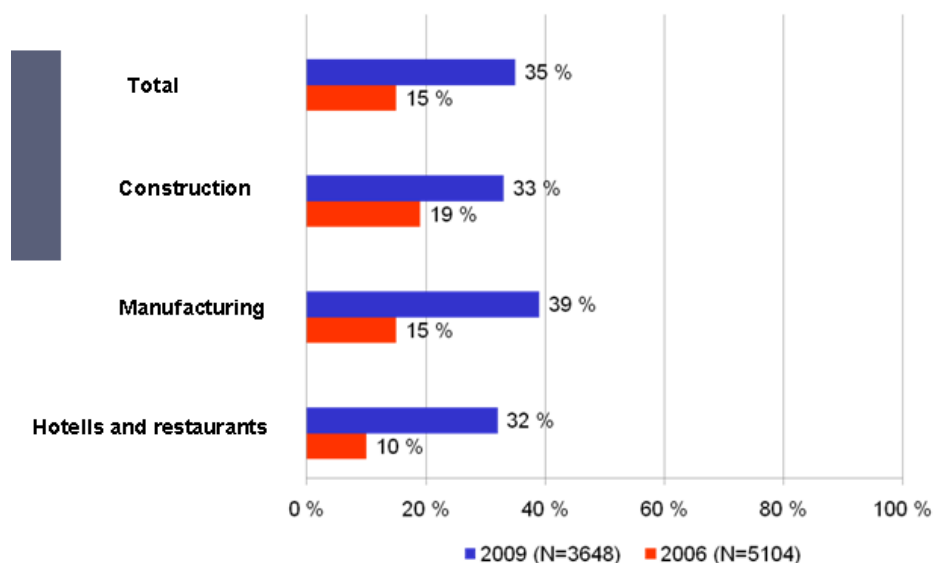
*Anne Mette Ødegård*

## Background and research question

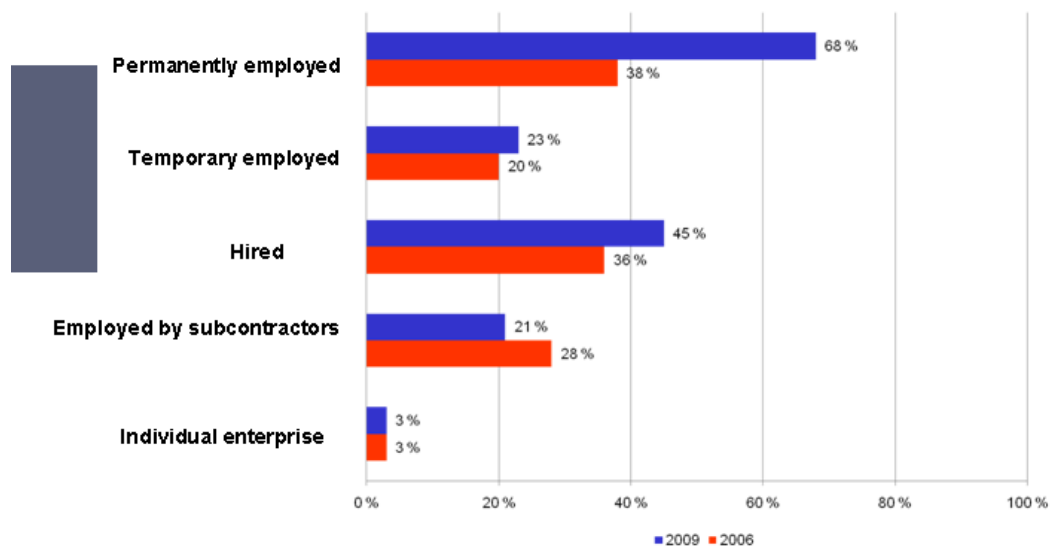
- Dramatically increase in the volume of temporary agency work.
  - Deregulation of the manning business in 2000
  - EU enlargement and high inflow of migrant workers since 2004
  - Substantial and growing use of hired employees in construction
- A diverse industry. Our focus is on the more informal part of the industry.
- Our questions: What is the situation for the migrant workers in the more informal part of the hiring industry?



## Survey among companies about the use of Eastern European Labour 2006-2009



## How are the CEE-workers employed in the Norwegian companies?



### The diversity of temporary agencies in combination with construction

- More than 2000 temporary agencies registered in 2009.
  - Approx 700 Ltd, 750 NUF and 500 one-man businesses
  - 1550 companies were registered in the Norwegian Labour Inspection Authority's register.

- Not possible to give an exact number of firms that operate in the informal and undeclared part.
- Parts of the construction sector are characterized by grey economy, and social dumping.

#### **Four cases: Alfa Agency**

- Organized as a Ltd
- 100 workers of different nationalities
- Assignments from public and private sector
- Good terms for the workers
  - Attracts skilled and competent workers
    - Popular among the entrepreneurs
- Tax evasion on a large scale.

#### **Four cases: Beta Agency**

- Organized as a Ltd, registered in the Norwegian Labour Inspection Authority`s register and a member of the Confederation of Norwegian Enterprises
- First and foremost migrant-workers from Poland
- Paid by the hour according to the Norwegian standards for the industry.
  - Not compensated for overtime
- Employed on a two weeks basis – only paid for the time they are on assignments.

#### **Four cases: Charlie Agency**

- Company from Poland
  - Employs Polish migrant-workers
- Terms: 12 hours a day, six days a week, paid between 5 – 7 Euros per hour.
- Living in apartments owned by Charlie Agency
- The contract
  - Has to pay 1900 Euro to leave the company within the first six months.
  - Restrictions on the opportunity to apply for a job with customer or contractor

#### **Four cases: Delta Agency**

- No own employees
  - A team of self-employed workers
  - The workers are not aware of this

- All workers are migrants from the former Eastern-European countries.
- Their status as self-employed result in strong restrictions on their rights.
  - No minimum levels regarding payments.
  - No possibility to file for joint and several liability
  - Not entitled to paid sick-leave

**What is the situation for the workers in the more informal part of the hiring industry?**

- First and foremost migrant-workers from the new member states that suffers from the worst working conditions.
- The worst part: The uncertainties
  - Amount of work and income
  - Housing situation
  - Obtainment of entitlements (such as unemployment benefits)
  - Training, protective equipment and safety

# Exploitation of migrant labour in Finland: indicators of trafficking

*Natalia Ollus & Minna Viuhko & Anniina Jokinen*

## EU DG JLS co-funded project

- “Trafficking for Forced Labour and Labour Exploitation (FLEX) - towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland” (JLS/2009/ISEC/AG/051)
- Partners
  - Finland: European Institute for Crime Prevention and Control (HEUNI)
  - Estonia: University of Tartu, School of Law
  - Poland: Human Trafficking Studies Centre at the University of Warsaw

## Objectives of the project

- To develop and test a joint methodology for collecting qualitative and quantitative data on trafficking for forced labour
  - concrete tools for national actors, such as the National Rapporteur or equivalent
- To increase the knowledge of trafficking for forced labour in Estonia, Finland and Poland
  - three national reports on trafficking for forced labour in local language
  - raising awareness → better identification of victims and demystification of the phenomenon of trafficking
- To strengthen cooperation and exchange of information nationally and internationally
  - a joint report on characteristics of forced labour within the three countries

## Our starting point in Finland

- No court judgements for trafficking for forced labour in Finland so far
- 3/4 of all adult victims assisted by the official State-run support system have been victims of labour exploitation
- Our assumption: trafficking for forced labour in Finland is most likely to occur within the continuum of various forms of exploitation of foreign workers in Finland
- Not all exploitation of foreign labour constitutes trafficking but by looking at a broad range of exploitative situations, we can uncover the most exploitative situations and discuss whether it is trafficking

## Some figures

- 3 convictions for trafficking for sexual exploitation so far
- Between 2004–2009 a total of 25 pre-trial investigations for trafficking (incl. sexual exploitation)
- Many cases of exploitation of foreign workers are investigated as extortionate/usury-like work discrimination
- The number of cases of extortionate work discrimination has increased
  - 2004: 2
  - 2006: 16
  - 2009: 22

### **Research questions**

- Which economic sectors are affected by labour exploitation, trafficking in human beings and related crimes?
- Who are the victims and where are they from?
- What are the forms of exploitation and the phases of "human trafficking process"?
- Where to draw the line between trafficking for labour exploitation and other forms of work-related exploitation?
- Which elements constitute "forced labour"?

### **Data**

- Expert interviews (19 persons)
- Victim interviews (7 persons)
- Court judgements
- Police pre-trial investigations
- Media reports
- Labour inspection reports
- Information from the national expert meetings
- (Statistics)

### **Preliminary results: sectors of exploitation of migrant workers**

- Construction industry, including metal and electric works
- Service sector, including cleaning work, transport industries (especially bus drivers) and massage work (bordering also to sexual exploitation)
- Ethnic restaurants
- Agricultural sector, especially greenhouse work, seasonal work and picking of wild forest berries
- Domestic work and caretaking

### **Preliminary results: source countries**

- Estonia, Russia, Poland (construction business and in electric works)
- China, Vietnam (cleaning work, restaurant business)
- Thailand (berry-picking)
- In addition some victims from e.g. India, Latin America, Middle East

### **Preliminary results: indicators of exploitation (following ILO 2005)**

#### Work contracts:

- The employee has two separate contracts, one in his or her own language, which states the de facto salary, and another one with a much higher salary to be shown to Finnish authorities in the event of an inspection
- Only oral work contract
- The employee is made to believe he/she is tied to one employer only
- Work contract has strange stipulations

#### Salary:

- The pay is significantly below the minimum salary as stipulated in the collective labour agreement
- Employees are forced to pay back some or all of their salary in cash to their employer in order to make the company's bank transactions look like the employer has paid the workers a correct salary
- Unreasonable deductions are made from the salary for food, accommodation, transport

### **Preliminary results: indicators of exploitation (following ILO 2005)**

#### Debt:

- The employee is indebted already when arriving in Finland because of high mediation fees or travel costs
- If debt cannot be paid back while working in Finland, will have to return again

#### Poor living conditions:

- Employees are forced to live in the employer's apartment while paying high rents
- Employees are forced to live in the same premise where they work
- Employees are made to live in caravans, barracks, or facilities not suited for accommodation, with several employees sharing one small room

### **Preliminary results: indicators of exploitation (following ILO 2005)**

#### Dependency on the employer:

- Employees who do not know the language or are unaware of his/her rights
- The dependency often becomes aggravated if the employee is a relative of the employer
- Debt of gratitude to the employer for arranging job in Finland
- Dependency due to debt

### **Threats and violence:**

- Some examples of direct physical violence
- Mostly various forms of psychological violence:
  - Threatening with firing or not extending the work contract, with non-payment of wages
  - Forbidding contacts to the outside world
  - Threats to family in the country of origin
  - Threatening with sending worker back to country of origin or with denunciation to Finnish authorities

## **Trafficking for forced labour?**

Extortionate work discrimination is bordering to trafficking when foreign workers have to do unreasonable amounts of work without due consideration for labour and occupational safety (Finnish police)

Forced labour” encompasses activities which are **more serious** than the mere failure to respect labour laws and working conditions” (ILO 2005)

## **See the totality of the situation**

In cases of exploitation of migrant workers, often only separate indicators of work discrimination are identified

Need to see the totality of the situation of the person

Control of movement and freedom as key indicators

Dependency on employer another key indicator

Move away from a strict interpretation or focus on ”forced labour” and from the idea that ”trafficking” is something which cannot happen in our society

## **Need to rethink trafficking?**

- Trafficking for forced labour could refer to a situation where a person:  
has been recruited or forced to work  
in circumstances of which he/she has been misled or deceived  
in which he/she is exploited  
from which he/she cannot leave due to threats, violence or other use of a position of power

## **In the news**

**March 2010:** Restaurant owner suspected of using slave labour in Pietarsaari  
The Vietnamese owner allegedly brought relative into country through sham marriage

**May 2010:** Finnish employers exploit Vietnamese workers and Estonian electricians  
Male employees earned EUR800 monthly and female employees only EUR500, working week double of normal working week, no annual leave.

Estonian electricians have been working in Tampere for only EUR10 per hour which is far below the minimum agreed upon in the national collective agreement for electricians' work.

## **September 2010:** Thai Berry Pickers Face Bleak Working Conditions in Finland

Each summer, thousands of berry pickers arrive in Finland with the hopes of earning a bundle of cash. Although Finnish berry companies depend heavily on the workers, their wages and conditions are substandard.

# 'Inspection of employers using foreign labour in Southern Finland' – practical observations and experiences

*Riku Rajamäki*

## **Supervision**

- Since 2005: nine inspectors in Finland concentrating on supervising foreign labour
- Supervision is directed towards employers using foreign labour – both Finnish and foreign employers
- The supervision concentrates on minimum working conditions and employment rights

## **Supervision of foreign labour**

- 5 full-time foreign labour inspectors
- In 2010, approx. 450 foreign labour inspections
- Most of the inspections in the following industries:
  - construction, metal, transport, restaurants and cleaning

## **Background of this presentation**

- Based on the inspections made by foreign labour inspectors to the construction sites and to the companies met on the sites
- Approximately 140 inspections to the sites and companies this year
- Most of the construction sites located in the Helsinki capital region

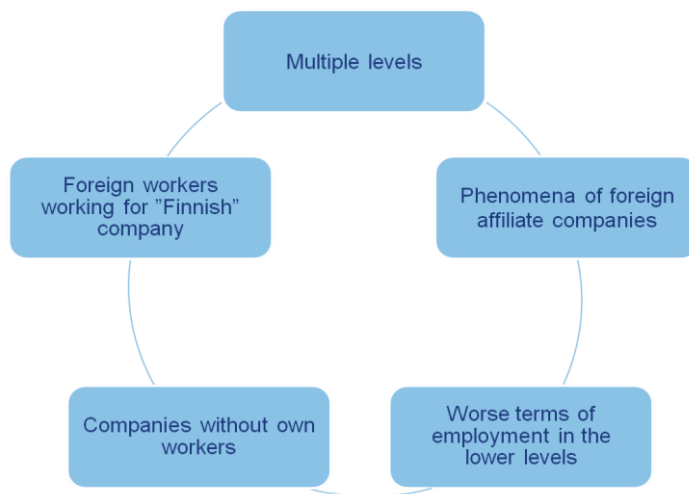
## **Practical experiences and observations from the construction industry**

- Percentage of foreign labour nowadays about 30
  - Drastic change after 2004,
  - Increasing steadily for last 6 years
- About 2/3 foreign workers are nowadays posted workers
  - Posted workers mainly from Baltic countries (especially Estonia)

## **Practical experiences and observations from the construction industry**

- Most of foreign workers are working for a company located on the lower levels of subcontracting chains
- Subcontracting is very common nowadays: at many sites only the supervision of the work is done by main constructor's own employees

## Characteristics of subcontracting chains



### Terms of employment of foreign workers

- Terms of employment of foreign workers are usually worse
  - Especially with the posted workers
- Salary:
  - Low basic salary
  - In many cases, foreign workers do not get any compensation for overtime or Sunday work
- Long working hours
- Neither accident insurance nor occupational health service

Difficulties related to terms of employment:

- Finnish main constructors and contractors are many times uninterested about what is happening in the chains
  - No will to know about terms of employment
  - Not necessarily have many means
- Often foreign workers do not know their rights
- Foreign workers do not claim what they are ought to receive
- Supervision of foreign companies can be extremely difficult
- Problems in getting reliable documentation