

European Master's Programme in Human Rights and Democratisation
Academic Year 2008/09

Defenceless workers?

**– The protection of irregular migrant workers in Europe
with a focus on the situation in France and Spain**

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Acknowledgements

First of all I would like to thank Professor Fabrizio Marrella, E.MA Programme Director of the academic year 2008/09, representative for all those responsible for the success of the European Master's Programme in Human Rights and Democratisation. The participation in this very special post-graduate programme has enhanced my knowledge in human rights and democratisation processes enormously as well as it has given me the chance to take part in enriching discussions with experts and wonderful fellow-students from all over the world.

In particular, I would like to thank my supervisor Caroline Picheral from the Institut de Droit Européen des Droits de l'Homme of the University of Montpellier 1 for her advice and critical remarks that guided me throughout this research project.

Equally, I am very grateful to Professor David Moya and his colleagues from the Institut de Dret Públic of the University of Barcelona, who kindly hosted me for several days, helped me in my research and – through fruitful discussions – sensibilised me for the key issues in the protection of irregular migrant workers in Spain.

I would also like to thank my family who has supported me throughout my academic studies and always encouraged me in my plans even though they had to accept that I have been staying sometimes far away from them.

Last but not least I would like to thank all my friends near and far for their company and support during the last months. Particularly I would like to thank those who helped me in undertaking research for this thesis and with whom I could discuss my ideas. A special mention is meriting Idene for his great native speaking assistance.

Un grand merci!

Abstract

This thesis analyses what kind of protection by human rights and labour law irregular migrant workers enjoy in Europe. After giving a general overview on the protection by international instruments, the thesis presents the policy of the Council of Europe and the European Union with regard to irregular migrant workers. In this context an apparent lack of protective measures for irregular migrant workers is diagnosed within the legal framework of both organisations. While the European Union seems to focus its policy mainly on the fight against irregular migration, the Council of Europe has, however, in recent years started to put more effort on the precarious situation of irregular migrant workers. In the second part the thesis analyses the concrete legal protection on the basis of the national legislations in France and Spain, putting into consideration three basic labour-related rights (the right to work and the protection against unjustified dismissal, the right to social security and union's rights) as well as non-labour related health care aid. The thesis concludes that irregular migrant workers enjoy a basic legal protection in Europe but that legal entitlements are often unclearly regulated and that the concrete protection is still insufficient. In particular it would be desirable that the European Union is developing common standards of protection for all irregular migrant workers on the territory of its Member States.

Ce mémoire analyse le type de protection dont les travailleurs migrants irréguliers peuvent bénéficier en Europe. Après une brève introduction sur la protection offerte par des instruments internationaux, le mémoire présente la politique du Conseil de l'Europe et de l'Union Européenne concernant les travailleurs migrants en situation irrégulière. Dans ce contexte, il apparaît que le cadre normatif des deux organisations accuse une manifeste carence en termes de mesures protectrices. Tandis que l'Union Européenne semble focaliser sa politique principalement sur la lutte contre l'immigration irrégulière, le Conseil de l'Europe commence depuis quelques années à porter plus d'attention à la situation précaire des travailleurs migrants irréguliers. Dans la deuxième partie du mémoire, la protection qui leur est concrètement offerte va être analysée en se fondant sur les systèmes législatifs en France et en Espagne, au regard de trois droits fondamentaux directement liés à l'emploi (droit au travail et protection contre le licenciement injustifié ; droit à la sécurité sociale ; droits syndicaux) ainsi que de l'aide médicale non-contributive, indépendante de l'emploi. La conclusion est qu'il existe une protection légale de base en faveur des travailleurs migrants irréguliers en Europe mais que souvent, les conditions n'en sont pas clairement définies et que la protection concrète est encore insuffisante. Il serait particulièrement souhaitable que l'Union Européenne développe un standard commun de protection des travailleurs migrants irréguliers présents sur le territoire de ses États membres.

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