

PROTECTING THE RIGHTS OF UNDOCUMENTED WORKERS:

EU PARLIAMENT HEARING CALLS FOR STRONGER COMMITMENT TO LABOUR RIGHTS ENFORCEMENT IN THE EU EMPLOYERS' SANCTIONS DIRECTIVE

BRUSSELS, 2 December, 2014 –The Platform for International Cooperation on Undocumented Migrants (PICUM) and the Polish organisation Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention) today call on the EU to prioritise the enforcement of the labour rights of undocumented migrant workers, on the occasion of a public hearing at the European Parliament on the impact of the 'EU Employers' Sanctions Directive'.

The 'Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals' (Directive 2009/52/EC)* entered into force in July 2009 as part of the EU's migration policy to prevent irregular migration. Considering irregular employment a "pull factor" for migrants to irregularly stay in the EU, the Directive establishes sanctions for employers who hire undocumented workers.

Article 6 of the Directive establishes several safeguards to protect the labour rights of undocumented workers, including a requirement for the employer to pay any outstanding wages to the worker, and the possibility to issue residence permits of limited duration in cases of particularly exploitative employment conditions. However, five years after the Directive's adoption, the EU Commission's monitoring of its implementation in member states indicates that there is very little evidence of enforcement of labour rights in cases of exploitation.

Jean Lambert, MEP (Greens/European Free Alliance) and co-host of the event stated:

"While governments have moved to punish those employing irregular migrants, it is disappointing to see that they have been less enthusiastic about ensuring the rights of those workers. Exploited workers often have no clear way to report their plight, systems to protect informants are weak and many are not helped to claim money owed to them by those employers who have benefitted from their labour. We need member states to protect workers, whatever their migration status."

The hearing also presents the findings of the project "[For Undocumented Migrants' Rights in Central Europe](#)", which has monitored the implementation process of the Directive in Poland, the Czech Republic, Hungary, Romania and Slovakia. The project results indicate that the directive has had little or no impact on the protection of labour rights of irregular workers in the five countries**.

In fact, labour inspectors in many member states are often obliged by national law to immediately report undocumented migrant workers to the migration authorities which takes precedence over their duty of protecting workers' rights.

Philippe Vanden Broeck, Director of the Belgian Social and Labour Inspectorate emphasised:

"The Belgian federal labour inspectorate encounters problems by monitoring compliance of the directive 2009/52/EC. As employment of undocumented third-country nationals should always be reported to the official immigrant services, with the risk of detention by the police and expulsion of the worker and although penal prosecution of the employer being high on the priority list for the Ministry of Justice, labour inspectors are often unable to give injunctions to the employer for the back payment of due wages by lack of evidence concerning the contractual status and volume of work, especially when the worker has been taken away from the workplace."

As confirmed by the EU Commission's own assessment, "Member States' transposition efforts have often resulted in weak or non-existing mechanisms to facilitate the enforcement of the irregular migrants' rights" ***.

All workers, irrespective of immigration status, should be able to file complaints against exploitative employers and make claims for redress without fearing immediate arrest and deportation. The guidelines developed by the EU

Agency for Fundamental Rights (FRA)**** demand the establishment of a ‘firewall’ - a clear separation between accessing labour protection mechanisms and means of immigration enforcement such as apprehension.

Trade unions across the EU should also increase outreach to undocumented workers to empower and assist them in enforcing their labour rights and seeking redress in cases of violations.

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*To read the ‘Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals’ (Directive 2009/52/EC), click [here](#).

** See the project’s final report: “[Unprotected. Migrant workers in an irregular situation in Central Europe](#)”.

*** [Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC](#), 2012.

****To read the EU Agency for Fundamental Rights’ (FRA) guidelines “Apprehension of migrants in an irregular situation – fundamental rights considerations”, click [here](#).

To read PICUM’s report “Ten Ways to Protect Undocumented Migrant Workers”, click [here](#).

To view a documentary with testimonies of undocumented migrant workers’ experiences go to: <http://www.undocumentary.org/en/> (work).

About PICUM:

PICUM - the Platform for International Cooperation on Undocumented Migrants, is a non-governmental international organisation (NGO) that promotes respect for the human rights of undocumented migrants within Europe. PICUM provides a direct link between the grassroots level, where undocumented migrants’ experience is most visible, and the European level, where policies relating to them are deliberated. PICUM provides regular recommendations and expertise to policy makers and institutions of the United Nations, the Council of Europe and at EU level. In 2009, PICUM was awarded participatory status with the Council of Europe. www.picum.org

Media Contact:

Elisabeth Schmidt-Hieber
Communications Officer
+32 2 210 1780
elisabeth.schmidt-hieber@picum.org

About Stowarzyszenie Interwencji Prawnej, SIP (Association for Legal Intervention):

Association for Legal Intervention (SIP) is a human rights and watchdog organization based in Poland. Its mission is to ensure social cohesion by promoting equality of all people before the law. SIP offers support to (inter alia) migrants, asylum seekers and refugees through legal and social counseling, but also engages in advocacy and strategic litigation in relation to immigration policies in Poland. www.interwencjaprawna.pl

Media contact:

Karolina Mazurczak
Communications Officer
+48 500 599 648
k.mazurczak@interwencjaprawna.pl