



Guide to Undocumented Workers' Rights at Work under International and EU Law

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of organisations that seeks to advance social justice and human rights for undocumented migrants. Grounded in principles of social justice, anti-racism and equality, and with two decades of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their human rights and provides an essential link between local realities and the debates taking place at policy level. Founded in 2001 as an initiative of frontline organisations, today PICUM leads a diverse network of over 160 civil society organisations in more than 30 countries.

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Introduction

While undocumented migrant workers face significant challenges in asserting their rights in the workplace,¹ they do have rights and protections under a variety of legal frameworks. This includes international, regional and national human rights laws, including ILO Conventions, the European Convention on Human Rights (ECHR) and related jurisprudence from the European Court of Human Rights (“ECtHR”), and the EU Charter on Fundamental Rights. They are also covered by a range of other EU law and related jurisprudence from the Court of Justice of the European Union (“CJEU”). Similar, and in some cases additional, provisions may be reflected in national labour laws.²

¹ See e.g. PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020; Migrant Justice Institute, [Migrant Workers’ Access to Justice for Wage Theft: A global study of promising initiatives](#), 2021.

² For example, in France, the Labour Code is explicit about the rights of migrant workers employed irregularly. In particular, it specifies that they should be treated equally to regular workers with regards to: Provisions relating to prohibition of employment during prenatal and postnatal periods, and to breastfeeding; Provisions relating to hours of work, rest and paid holidays; Provisions relating to health and safety at work; Calculation of seniority in the company. It also guarantees the rights of workers, for the period of irregular employment to: Payment of wages and supplementary payments (e.g. overtime), in accordance with the applicable legal provisions and contracts, less amounts previously received for the period in question, with a presumption of 3 months of work in the absence of proof to the contrary; and Compensation and certain procedural rights in the event of termination of the employment relationship, dependent on the specific situation, but equal to at least three month’s salary. Code du travail, Article L. 8252-1-2. For more information see also: Gisti, [Les travailleurs sans papiers et les prud’hommes](#), Gisti: Paris, 2014. c.f. PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020.

Why This Guide?

This guide highlights rights of undocumented migrants in the labour context under international and EU law, and some important case law on violations of those rights. Some of the issues addressed are wage theft (including unpaid overtime and unpaid leave as well as systematic under- or non-payment of the applicable minimum wage), excessive working hours, confiscation of documents, workplace discrimination, unhealthy and unsafe working conditions and labour accidents, human trafficking, and forced labour. Overall, it shows that undocumented workers have a broad range of rights as people and as workers, in particular in terms of equal treatment and all entitlements and benefits stemming from past employment, as well as when they are victims of crime.

While recognising the enormous barriers to asserting rights through formal judicial and non-judicial complaints mechanisms, the guide seeks to support and promote increased use of the existing legal frameworks to claim the rights of undocumented workers, as well as work to reform problematic laws and gaps in implementation. Therefore, some potential avenues for litigation which could advance the rights of undocumented workers are also suggested.

While the guide includes important provisions and developments related to rights when undocumented workers are victims of crime, including criminalised forms of labour exploitation, it aims to stimulate, in particular, greater use and implementation of the range of rights that undocumented people have as workers and employees.³

³ The criminal legal framework is too limited to address the complexity of human trafficking, and continuum of labour violations and exploitation. A broader social agenda and intersectional approach is needed. The focus on criminal law can lead to investments in policing and restrictive policies that are ineffective in preventing abuse and providing remedy, or can even be harmful for over-policed and racialised communities, including undocumented migrants. For discussion on the opportunities, risks and challenges of using criminal legal frameworks to address systemic labour rights issues, please see e.g. the summary and recording (available until 31 October 2022) of Week 3 of the ETUC-ILO-PICUM Online Legal Seminar Series held in October 2021 here: <https://picum.org/legal-seminar-2021/>. See also PICUM, [PICUM Key Messages and Recommendations on Human Trafficking](#), 2020.

How to use it?

This guide is for lawyers, organisations and activists working to improve policies and practices related to undocumented workers through advocacy or strategic litigation, as well as those working directly with undocumented workers in addressing their labour-related issues and claiming their rights.

When supporting undocumented workers to assert their rights through formal complaints mechanisms and legal procedures, it is essential to verify and discuss with workers the risks and likely outcomes, in particular, risks that personal data will be transferred and used for immigration enforcement purposes. For more information on complaints mechanisms in the EU, see: PICUM (2020) [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#).

The guide firstly highlights two important cases with regard to undocumented migrant workers' rights. It then lists provisions from several EU directives that are clearly, or should be, applicable to undocumented workers. This section includes some conclusions stemming from the case law of the CJEU and suggestions for potential litigation. The next section highlights how provisions from the European Convention on Human Rights and case law of the ECtHR, in particular, related to Article 4, are relevant for undocumented workers. The guide then turns to the international level. It does not reproduce the whole international human rights framework, but summarises the overall approach to migrant workers' rights, including when undocumented, and highlights some key provisions from the United Nations human rights treaties and the Conventions and Recommendations adopted by the International Labour Organisation (ILO).

National law must conform with those EU, Council of Europe and international obligations to which states have committed themselves. EU regulations have direct effect while EU directives have to be transposed into law at the national level. Nevertheless, if transposition in national law is delayed or flawed, EU directives granting rights to workers can be relied on directly before national courts.

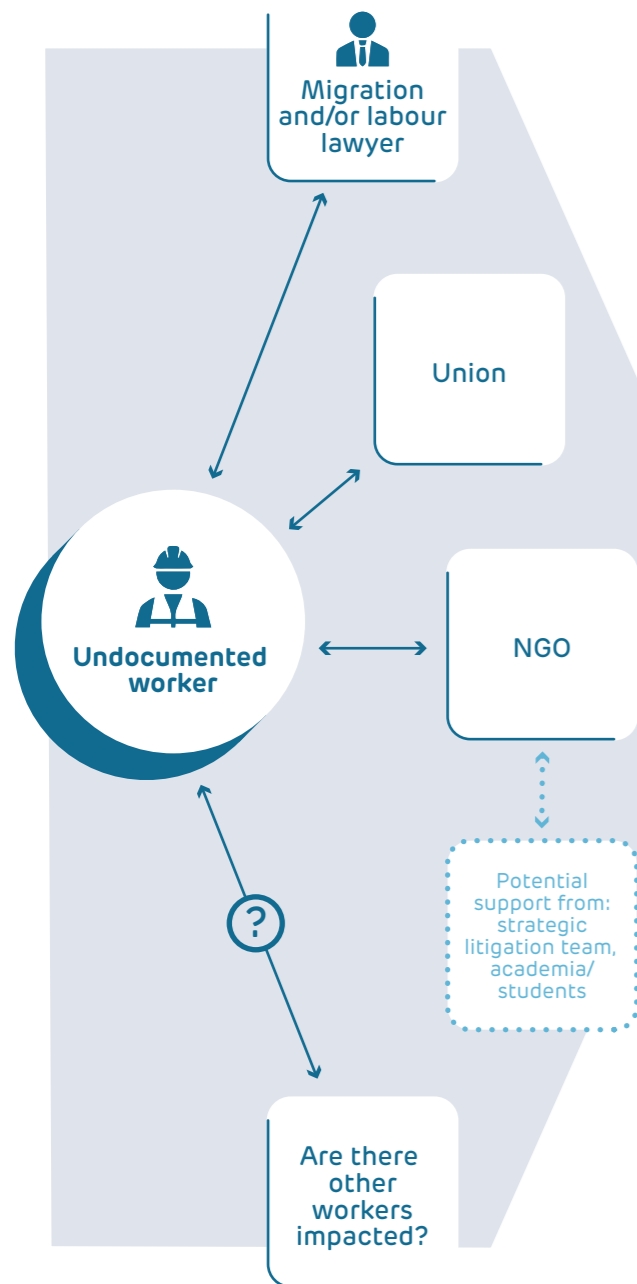
The regional and international obligations form a 'floor of rights below which national law and the actions of state authorities must not fall'.⁴ To meet their human rights commitments, states must not only refrain from violating rights but also adopt necessary laws, policies, other measures to ensure that rights are not violated by other parties (state or private) and that rights are implemented in practice.⁵ It is also important to note that these levels are inter-connected. You will see that EU law in many cases implements in the EU legal system the international human rights/ labour standards. While not all EU member states have ratified all relevant ILO conventions, EU member states are party to all of the core human rights, including labour, standards. In some cases, EU legal texts, CJEU rulings and EU policy documents refer to applicable ILO conventions directly. It is therefore possible to bring together the different legal frameworks and refer to international standards to which your country is party, when arguing for the development and interpretation of EU and national law.

⁴ Elspeth Guild, Stefanie Grant and Kees Groenendijk (editors), *Human Rights of Migrants in the 21st Century*, Routledge, 2018.

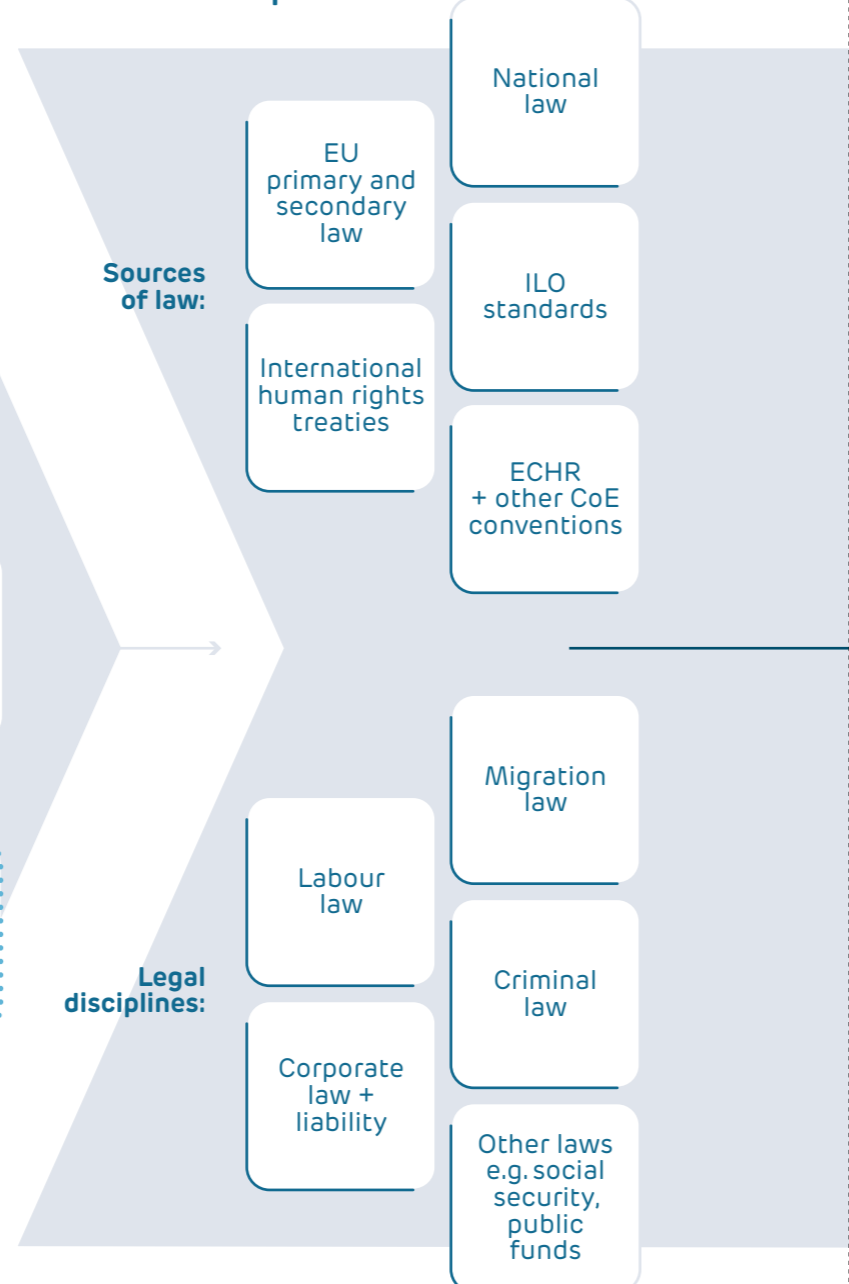
⁵ Claude Cahn, *The economic, social and cultural rights of migrants*, in Elspeth Guild, Stefanie Grant and Kees Groenendijk (editors), 2018, *Human Rights of Migrants in the 21st Century*, Routledge.

Key steps towards legal action

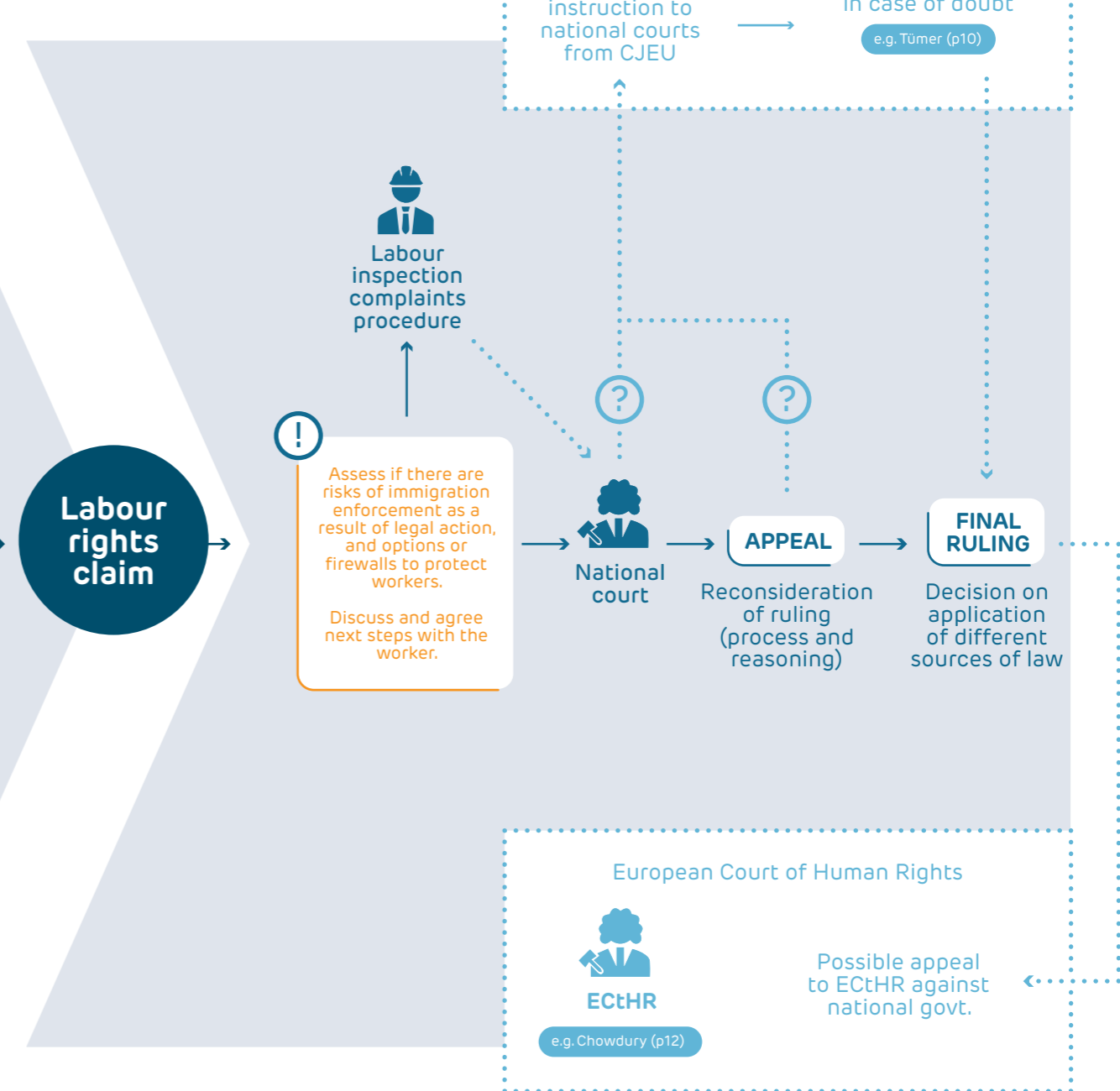
Step 1 Search for help and gather evidence



Step 2 Combine different sources of law and legal disciplines



Step 3 Filing a complaint



KEEP IN MIND:

Who can be held accountable?

- Main contractor (where applicable)
- Employer
- Sub-contractors/ labour intermediary (where applicable)

KEEP IN MIND:

EU law reverses the burden of proof re:

length of employment relationship - assumes min. 3 months unless there is proof otherwise (Dir 2009/52)

KEEP IN MIND:

Include EU law and human rights arguments.

The European Court of Human Rights requires that human rights violations are pleaded with reference to the applicable Convention articles already at the first instance.

Spotlight: Tümer and Chowdury

Tümer v. Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Court of Justice of the European Union (CJEU) C-311/13, 2014

This case involved a Turkish national (Tümer) living and working irregularly in the Netherlands. His employer did not pay his full salary, and then later went insolvent. Tümer tried to recuperate these wages.

Tümer applied for pay under the “Dutch Law on Unemployment” (WW). This is the Dutch law that transposed the provisions from Council Directive 80/987/EEC which gives protections to employees in cases of employer insolvency. This Directive has since been replaced by Directive 2008/94/EC, with identical provisions on this matter, so this judgement applies equally to the current Directive “para.8”).

Under Article 61 of WW, an employee is entitled to an insolvency benefit if they have a claim relating to pay, holiday pay or holiday allowances against an employer who has been declared insolvent or if they are liable to suffer financial loss because that employer has failed to pay to third parties amounts owed in respect of the employment relationship with the employee. Tümer claimed that as an employee with wages unpaid from his insolvent employer, he was entitled to insolvency benefit related to this pay, from the Employee Insurance Schemes Implementing Body.

The Directive defers to the definition of “employee” used by each Member State. The District court dismissed the case after the Dutch authorities argued that, under WW, Tümer was not an “employee” due to his migration status, so he could not sue for back pay under the statute. Nonetheless, the Dutch authorities claimed that under civil law, his relationship with his employer was a contract, and he could bring legal claims on the basis of his contract of employment. The highest Dutch court for administrative disputes (Centrale Raad van Beroep) stayed the case and referred it to the CJEU to clarify whether or not the Directive allows for the definition of an “employee” under national law to exclude undocumented migrant workers and therefore exclude them from the protections in the Directive, including in cases where there are alternative methods to recovery under civil law.

The CJEU had two main holdings. First, it ruled that the purpose of the Directive was to provide minimum protections across the EU in the event of employer insolvency, and that Member States could not define “employee” so as to circumvent this purpose. In this case, the Netherlands could not exclude Tümer based on his migration status from their definition of employee. Therefore, all protections under the Directive applied to Tümer.

Secondly, the Court ruled that even though other legal protections existed for Tümer under the national civil law, this did not mean that the Netherlands adequately complied with the Directive. In other words, even if there are alternative means to recuperate wages, undocumented migrant workers are still afforded statutory protection under the Directive.

Chowdury and Others v. Greece

European Court of Human Rights (ECtHR) Appl. No. 21884/15, 2017

A case from the ECtHR, *Chowdury and Others v. Greece*, implies that Article 4(2) of the European Convention on Human Rights (“ECHR”), which prohibits slavery and forced labour, can apply to substandard working conditions for undocumented migrants more broadly. The factual circumstances of *Chowdury* are unlike those of the cases previously brought before it.

The case concerned 42 migrant workers on a strawberry farm in Greece who had been denied wages after several months of working in substandard conditions (paras. 1–3, 7–8). The ECtHR held that this rose to the level of both “forced or compulsory labour” and “trafficking” (para. 101).

This case was groundbreaking, both because the workers had initially consented to the arrangement, and because they could move freely, having the opportunity to leave, go out and go shopping when they were not at work.

Although the workers could theoretically have left the strawberry farm, they did not, in part because they knew that if they left, they would never receive the wages owed to them (paras. 7, 94). In finding “forced labour,” the Court emphasized the fact that the workers were undocumented, remarking that the workers’ irregular status put them at heightened risk of being removed from Greece if they left the farm (paras. 95, 97). The Court considered that the workers’ vulnerability and risk of being arrested, detained, or deported meant that their conditions could not be characterized as voluntary (paras. 96, 97).

Additionally, the Court reaffirmed that Member States have various positive obligations under Article 4 (para. 86). The Court outlined three major positive obligations for Member States:

1. An obligation to adopt criminal law provisions which penalize and prosecute forced labour practices;
2. An obligation to protect potential victims by taking on various operational measures; and
3. A procedural obligation to investigate potential trafficking situations (paras. 86–89).

EU Legislation Applicable to Undocumented Workers

Rights of undocumented workers relevant to labour and employment are covered by several areas of EU law. The following section highlights many provisions⁶ from legal frameworks on employment, including health and safety, non-discrimination, migration and victims of crime, as applicable in December 2021.⁷ Some EU policy documents particularly relevant to understanding and framing the legal texts are also included.

Legal frameworks governing corporate responsibility, EU funding and public procurement can also be relevant for undocumented workers where they include specific obligations and liability for companies and employers (including along supply and sub-contracting chains) regarding labour rights, as well as sanctions and complaints mechanisms in the case of violations.⁸

Below are three tables:

- **Directives that definitely apply to undocumented workers:** they refer to ‘people’, ‘any person employed’, or the legal text or related case law explicitly refers to ‘workers’ or ‘victims’ with irregular migration/ residence status.
- **Directives that should apply to undocumented workers:** they refer to ‘worker’ without

⁶ Additional Directives that should apply to undocumented workers, but have been excluded here due to their specific scope, include the Transfers of Undertakings Directive (2001/23/EC), Sectoral Working Time Directives for Air (2000/79/EC), Rail (2005/47/EC), Sea (1999/63/EC) and Road (2002/15/EC). With many undocumented workers working in the fishing and road transport sectors in Europe, these sectoral working time directives may be of use. The Sectoral Directive on working time in road transport will also become part of an EU Mobility Package, which will come into force in early 2022, to prevent abuse and to improve social standards of road transport workers. The three key instruments of the Mobility Package are Regulation 2020/1054/EU, Regulation 2020/1055/EU, and Directive 2020/1057/EU (on Posting of transport workers).

⁷ Under trialogue negotiations, so not yet included here, is the [Proposal for a directive on adequate minimum wages in the European Union of 28 October 2020](#) (2020/0310 (COD)). The purpose of the directive is to ensure both that minimum wages are set at adequate level and that workers have access to minimum wage protection, in the form of a statutory minimum wage or of wages set by collective agreements (Article 1). The proposed personal scope is similar to other recent EU employment laws, referring to ‘workers who have an employment contract or an employment relationship as defined by the law, collective agreements or practice in each Member State, with consideration to the case-law of Court of Justice the European Union’ (Article 2). Therefore, when adopted and in force, it should apply to undocumented workers. The Council has also adopted a decision “guidelines for the employment policies of the Member States” (2020/1512 of 13 October), which encourages the effective involvement of social partners in a transparent and predictable manner in setting wage standards through statutory minimum wages or collective agreements, and that member states and social partners ensure that all workers have adequate and fair wages that enable a decent standard of living. The European Commission has also announced that it will publish an initiative to address the precarious work of platform workers, which will most likely also have relevance for (undocumented) migrant platform workers.

⁸ For example, the Non-Financial Reporting Directive (2014/95/EU) and forthcoming proposal for mandatory human rights and environmental due diligence, have potential to improve implementation of labour rights and access to remedy in case of violations, including for migrant workers. The Common Agricultural Policy (2023–2027) adopted on 21 October 2021, includes for the first time “social conditionality”, which will be applied on a voluntary basis from 2023–2025 and then become mandatory. National labour inspectorates will feed information about farms where they have detected violations of labour rights under three EU directives on transparent and predictable working conditions and health and safety to the national CAP Paying Agencies, who will have the power to cut CAP subsidy payments based on the severity of the violations. Firewalls in inspections will be crucial to ensure implementation is beneficial in practice for undocumented workers.

any definition or apply to anyone in an employment relationship according to national law. The newer directives also refer to relevant case law from the CJEU. Read together with other labour law and CJEU case law (in particular *Tümer*), undocumented workers should by the same reasoning be included, but there is not yet specific CJEU case law confirming this (see more in Conclusions stemming from the case law).

- **Treaties and Charters:** core EU legal texts confirming EU competence in such matters and fundamental rights.

EU Directives that definitely apply to undocumented migrants

These directives refer to ‘people’, ‘any person employed’, or the legal text or related case law explicitly refers to ‘workers’ or ‘victims’ with irregular migration/ residence status.

EU Directive	Important rights granted relevant to labour rights
<p>“Employers’ Sanctions Directive”</p> <p>Directive 2009/52/EC</p>	<p>This directive provides minimum standards on sanctions and measures against employers of undocumented migrants. It also provides rights to undocumented migrants.</p> <p>These rights include:</p> <ol style="list-style-type: none"> (1) Employers or subcontractors are required to pay undocumented migrant workers outstanding remuneration, at a level of at least the minimum wage for at least three months (based on the presumption set out in point (3) below). The employer must also pay any costs related to sending the money to another country, if the worker has returned or been deported (Article 6). (2) Member States shall put mechanisms in place to ensure that undocumented workers can reclaim remuneration and associated transfer costs, including if they have been returned or deported. Undocumented workers should be able to introduce a claim which will result in a judgement or, when provided for by national law, call on competent authorities to start procedures (Article 6). (3) Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise (article 6(3)) (shifting the burden of proof) <p style="text-align: right;">>>>></p>

EU Directive	Important rights granted relevant to labour rights
<p>“Employers’ Sanctions Directive”</p> <p>Directive 2009/52/EC</p>	<ol style="list-style-type: none"> (4) Member States shall ensure there are effective mechanisms and legal procedures in place for undocumented migrants to lodge complaints against employers, either directly or through an association, union or competent authority. Third parties should be able to engage in proceedings without risking being accused of facilitating irregular migration (Article 13). (5) In cases of exploitative working conditions, Member States may grant, on a case-by-case basis, residence permits of limited duration under comparable arrangements to Council Directive 2004/81/EC (see below) (Article 13). <p>A 2021 Communication from the European Commission on the directive⁹ recognises that undocumented workers face challenges to file complaints and pursue legal procedures, as is their right under the Directive, due to risks of immigration enforcement, including as a result of inspections.</p> <p>The Commission calls for governments to:</p> <ul style="list-style-type: none"> • support trade unions and civil society organisations in providing information and advice, legal assistance and other services to irregular migrant workers. • establish safe reporting, so workers can engage with law enforcement and exercise their rights, without risks due to their immigration status. • make sure that complaint mechanisms are easily accessible and take into account confidentiality that can encourage lodging complaints from irregular migrant workers and unveiling cases of exploitation. <p>The Commission also confirms that direct participation in criminal proceedings by victims of particularly exploitative working conditions is not required to access a permit under the Directive.</p>

⁹ Communication on the application of Directive 2009/52/EC (COM (2021) 592 final, 29 September 2021). See also the EU Fundamental Rights Agency (FRA) report of June 2021, [Protecting migrants in an irregular situation from labour exploitation: Role of the Employers’ Sanctions Directive](#), 2021.

EU Directive	Important rights granted relevant to labour rights
<p>“Residence Permits Directive”</p> <p>Directive 2004/81/EC</p>	<p>This directive defines the conditions for granting short-term residence permits to third-country nationals who are victims of human trafficking, above the age of majority and who cooperate with proceedings against human trafficking. Member States can also choose to apply the directive to victims of smuggling and to children.</p> <p>Rights provided include:</p> <ol style="list-style-type: none"> (1) When competent authorities in a Member State determine that a person falls under this Directive, they shall provide information about the possibilities under the Directive to the victims (Article 5). (2) Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and decide on whether to cooperate with the competent authorities. (3) When deciding whether to grant a residence permit to a person covered by the Directive, Member States shall consider (Article 8): <ul style="list-style-type: none"> - The opportunity presented by prolonging the migrant’s stay for the investigations or judicial proceedings - Whether the victim has shown a clear intention to cooperate, and - Whether the victim has ended all relations with those suspected of human trafficking or smuggling. (4) During the reflection period and when holding a residence permit, Member States shall ensure access to emergency medical treatment, including psychological treatment, and provide free legal aid, interpretation and translation services and grant standards of living capable of ensuring subsistence (Articles 7 and 9). Holders of residence permits should also be granted access to education, vocational training and the labour market (Article 11) as well as programmes aimed at recovering a normal social life (Article 12). (5) Such permits must be of at least six months duration (Article 8). These permits shall be renewed if conditions for granting the permit (see above) continue to be satisfied and the proceedings have not been terminated by a final decision (Article 8).

EU Directive	Important rights granted relevant to labour rights
<p>“Victims’ Directive”</p> <p>Directive 2012/29/EU</p>	<p>This directive provides rights to victims of crime including access to services, protection measures, and courts. This Directive specifically mentions in the preamble and in Article 1 that the rights should be ensured by the Member State in a non-discriminatory manner, including on grounds of residence status, citizenship, or nationality.</p> <p>These rights include:</p> <ol style="list-style-type: none"> (1) Member States shall provide victims with information on their rights and the protections, compensation, and various support and services available to them from first contact (Article 4). (2) Member States shall ensure that victims can file the complaint in a language they understand and get a written receipt of their complaint which should be translated at request (Article 5). (3) Member States shall ensure victims receive information on their case (Article 6). (4) Victims shall be provided with an interpreter (upon request) in accordance with their role in the criminal proceedings, at least during any interviews or questioning, during police hearings, and during their active participation in court proceedings. Interpretation shall be free of charge (Article 7). (5) Member States shall ensure that victims and their family members have access to free confidential victim support services, which may include shelters (Article 8 and 9). (6) Victims have the right to be heard and provide evidence in criminal proceedings (Article 10). (7) Member States shall ensure that victims have access to legal aid when they are parties to criminal proceedings. The procedural rules and conditions of access to this aid shall be established by national law (Article 13). (8) Member States shall afford victims reimbursement of expenses created by their participation in criminal proceedings (Article 14). (9) Victims have a right to a decision on compensation from the offender in the course of criminal proceedings within a reasonable time, or through other legal proceedings provided for by national law (Article 16). (10) Member States shall ensure that their competent authorities minimise the difficulties faced where the victim is a resident of a Member State different to where the offence was committed (Article 17). <p style="text-align: right;">>>>></p>

EU Directive	Important rights granted relevant to labour rights
<p>“Victims’ Directive”</p> <p>Directive 2012/29/EU</p>	<p>(11) Member States shall take measures to protect victims from repeat victimization (where a person falls victim to crime repeatedly) and secondary victimization (where additional harm is experienced by victims, including due to conduct by police officers, doctors, civil servants, society, etc.) This includes measures during questioning and testifying, and procedures to provide physical protection (Article 18). Measures also include information and shelter or other appropriate interim accommodation (Article 9), safeguards in relation to restorative justice services (Article 12) and individual assessments (Article 22).</p> <p>(12) Member States shall ensure that competent authorities take appropriate measures to protect the privacy of the victim in criminal proceedings. This includes protecting personal characteristics of the victim and pictures of them and their family (Article 21).</p> <p>The EU’s first Strategy on victims’ rights (2020-2025) has a pillar on “empowering victims of crime”, and includes undocumented people among the “most vulnerable victims” for whom access to support and protection should be improved. The strategy reiterates the non-discriminatory application of the directive to undocumented victims and recognises challenges in reporting and accessing justice, including risks of facing immigration enforcement.</p> <p>Under the strategy, the EC commits to assessing available tools at the EU level to “improve reporting of crime and access to support services for migrant victims of crimes, independently of their residence status”; and to promote good practices among member states.</p>

EU Directive	Important rights granted relevant to labour rights
<p>“Anti-Trafficking Directive”</p> <p>Directive 2011/36/EU</p>	<p>This directive grants rights to trafficked persons.</p> <p>These rights include:</p> <ol style="list-style-type: none"> (1) Member States shall ensure the following is punished: <i>“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”</i> (Article 2). (2) Member States shall ensure competent authorities do not prosecute or punish victims for any crimes the victim was compelled to commit as a consequence of the trafficking (Article 8). (3) Member States shall take necessary measures to ensure assistance and support is provided to victims. Such support must not be dependent on whether or not the victim agrees to testify. It should at least cover safe accommodation, medical treatment, psychological assistance, counselling, information and interpretation (Article 11). (4) Member States shall provide victims with access to legal representation in accordance with the role of victims in the national justice system (Article 12). (5) Child victims shall be provided with additional assistance and support, and treated in accordance with the best interest of the child (Articles 13-16). (6) Member States shall ensure victims have access to existing compensation schemes for victims of violent crimes of intent (Article 17). <p>The EU Strategy towards the Eradication of Trafficking in Human Beings 2021-2025 invites EU governments to create safe environments for victims to report crime without fear of prosecution for acts they were forced to commit, or being exposed to secondary victimisation, intimidation or retaliation. It cross-references the Victims’ Strategy on this point (see above).</p>

EU Directive	Important rights granted relevant to labour rights
<p>“Employer’s Insolvency Directive”</p> <p><u>Directive 2008/94/EC</u></p>	<p>This directive provides rights to employees in the case of employer insolvency. The Directive defers to the definition of “employee” under national law, although certain groups cannot be excluded (i.e. part-time, temporary, and fixed-term workers) (Article 2). The CJEU has ruled undocumented workers also cannot be excluded (<i>Tümer</i> C-311/13, 2014).</p> <p>These rights include:</p> <ol style="list-style-type: none"> (1) Member States shall take the necessary measures to ensure that guarantee institutions take over outstanding claims resulting from contracts of employment or employment relationships in cases of employer insolvency (Article 3). (2) While liability of guarantee institutions can be limited in time and the total amount to be paid, they must cover at least remuneration for the last three months (within a reference period of at least six months) or eight weeks (within a reference period of at least eighteen months) (Article 4).

EU Directive	Important rights granted relevant to labour rights
<p>“Framework Directive on Health and Safety at Work”</p> <p><u>Directive 89/391/EEC</u></p>	<p>This directive deals with the health and safety of workers within the EU. It applies to all sectors, except certain specific public service and civil protection services, such as the armed forces or the police.</p> <p>Under this Directive, a “worker” is defined as “any person employed by an employer, including trainees and apprentices but excluding domestic servants.” (Article 3).</p> <p>Requirements on employers include:</p> <ol style="list-style-type: none"> (1) Ensure the health and safety of workers, including for enlisted external services or persons (Article 5); (2) Take necessary measures to ensure the health and safety of workers, including prevention of risks and provision of training, organisation and means (Article 6); (3) Designate one or more workers to carry out activities related to the protection and prevention of occupational risks (Article 7); (4) Take the necessary measures and arrange contacts for first-aid, firefighting, and evacuation of workers (Article 8); (5) Take appropriate measures so that workers receive all the necessary information concerning safety and health risks and measures taken to meet these risks (Article 10) (6) Consult workers regarding health and safety measures (Article 11); (7) Ensure all workers receive proper training to safeguard their health and safety (Article 12). (8) Sensitive risks groups must be protected against the dangers which specifically affect them (Article 15).¹⁰

¹⁰ According to EU-OSHA, evidence suggests that migrant workers are a group of workers at increased risk, and that their working conditions require special attention. Undocumented workers are also mentioned in the section on migrant workers (European Agency for Safety and Health at Work, [Workforce diversity and risk assessment: Ensuring everyone is covered](#), p.16)

EU Directive	Important rights granted relevant to labour rights
<p>“Pregnant Workers Directive”</p> <p>Directive 92/85/EEC</p>	<p>This directive sets out measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.</p> <p>The directive does not include a definition of a ‘worker’ but is derived from the “Framework Directive on Health and Safety at Work”, which refers to ‘any person employed’. Therefore, this directive applies to undocumented workers.</p> <p>This directive applies to pregnant workers, workers who have recently given birth within the meaning of national legislation and/or national practice, and workers who are breast-feeding within the meaning of national legislation and/or national practice.</p> <p>In each case, the worker needs to inform their employer of their condition in accordance with national law and/or national practice.</p> <p>Rights for these workers include:</p> <ol style="list-style-type: none"> (1) If their work activities are liable to involve a specific risk to their health and safety (a non-exhaustive list is provided in an annex), there should be an assessment of the risks and a decision on measures to be taken, and the worker should be informed about the outcomes. If there is a risk, the employer must adjust working conditions and/or hours accordingly, or if this is not possible, move the worker to another job or grant leave (Articles 4 and 5). (2) An exemption from night work, upon provision of a medical certificate saying it is necessary, during pregnancy and for a period following childbirth (Article 7). (3) A continuous period of maternity leave of a least 14 weeks, of which at least two weeks are compulsory (Articles 8) (4) Time off, without loss of pay, to attend ante-natal examinations if they have to take place during working hours (Article 9). (5) Protection from dismissal during the period from the beginning of their pregnancy to the end of the maternity leave, save in exceptional cases not connected with their condition and under specific conditions (Article 10) <p style="text-align: right;">>>>></p>

EU Directive	Important rights granted relevant to labour rights
<p>“Pregnant Workers Directive”</p> <p>Directive 92/85/EEC</p>	<ol style="list-style-type: none"> (6) If granted leave to avoid specific health and safety risks as described in point 1 and 2 above, continued employment rights and pay, or an adequate allowance. <p>Continued employment rights and income compensation during maternity leave at least at the level of national sick pay.</p> <p>Member States may set out eligibility conditions for the allowances, but cannot exclude a worker who has worked for more than 12 months prior to the onset of labour (Article 11).</p> <ol style="list-style-type: none"> (7) Judicial remedy, in accordance with national laws and/or practices for violations of rights under the directive (Article 12).
<p>“Employment Equality Directive”</p> <p>Directive 2000/78/EC</p>	<p>This directive prohibits discrimination in employment, in private and public sectors, based on religion or belief, disability, age or sexual orientation. It does not cover discrimination or differential treatment based on nationality or immigration status.</p> <p>It applies to third country nationals insofar it does not concern entry, residence and access to the labour market (Article 3).</p> <p>‘Discrimination’ occurs when a person is treated less favourably than someone else or when a neutral practice or rule puts a person at a particular disadvantage. It applies when the difference in treatment or outcome is connected to one of the prohibited grounds for discrimination, unless objectively justified as pursuing a legitimate aim, through appropriate and necessary means. It also includes harassment and instructions to discriminate (Article 2).</p> <p>Rights provided include:</p> <ol style="list-style-type: none"> (1) There shall be no discrimination on the grounds of religion or belief, disability, age, and sexual orientation (Article 2). (2) Member States shall ensure judicial and/or administrative complaint procedures are available for those who consider themselves to have been affected (Article 9). (3) Member States shall take measures so that when a person who considers themselves wronged in relation to the non-application of the principle of equal treatment, and is able to establish facts, the burden of proof shifts to the respondent (article 10).¹¹ (4) Member States shall introduce legal measures that protect employees from negative employment effects for bringing a complaint aimed at enforcing the principle of equal treatment (Article 11).

¹¹ This does not apply to criminal procedures (Article 10.3)

EU Directive	Important rights granted relevant to labour rights
<p>“Race Equality Directive”</p> <p>Directive 2000/43/EC</p>	<p>This directive forbids discrimination on the basis of race or ethnicity. It does not cover discrimination or differential treatment based on nationality or immigration status.</p> <p>It applies to third country nationals insofar as the issue does not concern entry or residence (Article 2).</p> <p>It applies in the private and public sectors, with regards to employment-related matters, social protection, social advantages, education, and goods and services (Article 3).</p> <p>Rights provided include:</p> <ol style="list-style-type: none"> (1) Discrimination on the grounds of race or ethnicity is not permitted (Article 2). (2) Member States shall ensure judicial and/or administrative complaint procedures are available for those who consider themselves to have been affected (Article 7). (3) Member States shall take measures so that when a person who considers themselves wronged in relation to the non-application of the principle of equal treatment, and is able to establish facts, the burden of proof shifts to the respondent (article 8).¹² (4) Member States shall introduce into their legal systems measures that protects employees from negative employment effects for bringing a complaint aimed at enforcing the principle of equal treatment (Article 9).

¹² This does not apply to criminal procedures (Article 8.3)

Directives that should apply to undocumented workers

These directives refer to ‘worker’ without any definition or apply to anyone in an employment relationship according to national law.

The newer directives also refer to relevant case law from the CJEU. Read together with other labour law and CJEU case law (in particular *Tümer*), undocumented workers should by the same reasoning be included, but there is not yet specific CJEU case law confirming this (see more in Conclusions stemming from the case law).

EU Directive	Important rights granted relevant to labour rights
<p>“Working Time Directive”</p> <p>Directive 2003/88/EC</p>	<p>This directive regulates minimum standards for working hours in the EU. The directive does not include a definition of a worker. It refers to the “Framework Directive on Health and Safety at Work” related to its sectoral application, additionally excluding seafarers, and allowing derogations to some of the rights for several types of activities and workers.</p> <p>As the “Framework Directive on Health and Safety at Work” refers to ‘any person employed’ and considering the international labour law and CJEU case law, in particular the finding in <i>Tümer</i> that undocumented workers cannot be excluded from the definition of the employee such that it would undermine the purpose of setting minimum standards across the EU, this directive should apply also to undocumented workers.</p> <p>Rights set out include:</p> <ol style="list-style-type: none"> (1) Every worker is entitled to a daily rest of 11 consecutive hours per 24-hour period (Article 3) (2) If the working day is longer than six hours, every worker is entitled to a rest break (Article 4) (3) Every worker is entitled to a minimum uninterrupted rest period of 24 hours per week (Article 5). (4) The average working time per week should not exceed 48 hours (Article 6). (5) Every worker is entitled to paid annual leave of at least four weeks (Article 7). (6) Night workers should not be required to work more than an average of eight hours per every 24-hour period (Article 8). (7) Night workers should have access to regular health assessments (Article 9). (8) Night and shift workers should have appropriate safety and health protection (Article 12). <p style="text-align: right;">>>>></p>

EU Directive	Important rights granted relevant to labour rights
<p>“Working Time Directive”</p> <p>Directive 2003/88/EC</p>	<p>Note that there are also sectoral working time directives, with specific provisions for workers in civil aviation (2000/79/EC), rail (2005/47/EC), fishing and maritime (1999/63/EC) and road (2002/15/EC) transport sectors.</p>
<p>“Written Statement Directive”</p> <p>Directive 91/533/EEC</p> <p>(Will be repealed on 1 August 2022)</p>	<p>This directive sets out obligations for employers to inform their employees of their working conditions. It applies to every paid employee having a contract or employment relationship as defined by the law in force in a Member State and/or governed by the law in force in a Member State. This Directive will be replaced by the Transparent and Predictable Working Conditions Directive (below) on 1 August 2022.</p> <p>Considering international labour law and CJEU case law, in particular the finding in <i>Tümer</i> that undocumented workers cannot be excluded from the definition of the employee, this directive should apply also to undocumented workers.</p> <p>It sets out the following requirements:</p> <ol style="list-style-type: none"> (1) An employer shall be obliged to notify an employee of essential information on the contract or employment relationship. This includes e.g. place of work, working hours and payment (Article 2). (2) This information should be provided in writing within two months of the commencement of the employment (Article 3). (3) The employee shall be informed of changes to the employment within a month and in writing (Article 5).

EU Directive	Important rights granted relevant to labour rights
<p>“Transparent and Predictable Working Conditions Directive”</p> <p>Directive 2019/1152</p>	<p>This directive aims to improve the working conditions of employees in precarious work situations. The deadline for national governments to comply is 1 August 2022. It applies to every worker who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice.</p> <p>With the explicit reference to CJEU case law, the directive should equally apply to undocumented workers, in particular, in light of the <i>Tümer</i> judgement (C-311/13, 2014).</p> <p>Provisions include:</p> <ol style="list-style-type: none"> (1) Employers are required to inform workers of the essential aspects of the employment relationship, including a job description, remuneration and working hours (Article 4). (2) Probationary periods should not exceed six months (Article 8). (3) Workers with unpredictable working hours should not be required to work unless the work takes place within predetermined reference hours and days and the worker is informed by his or her employer of a work assignment within a reasonable notice period (Article 10). (4) Member states have to take measures to prevent abusive practices associated with on-demand and similar contracts (Article 11). (5) A worker with at least six months' service with the same employer may request a form of employment with more predictable and secure working conditions (Article 12). (6) When an employer is required by law or collective agreements to provide training to a worker, such training should be provided to free of cost, count as working time and shall take place during working hours (Art 13) (7) A worker who has not received information on his or her employment conditions in due time should have the possibility to submit a complaint and to receive adequate redress in a timely and effective manner (Art 15) (8) Workers, including former workers, should have access to effective and impartial dispute resolution and a right to redress in the case of infringements of their rights arising from this Directive (Art 16). (9) Workers who file such a complaint mentioned above against their employer should be protected from adverse treatment (Art 17). (10) Dismissals on the grounds of exercising the rights set out in this Directive shall be prohibited. The onus is on the employer to prove that this was not the reason for the dismissal (Art 18).

EU Directive	Important rights granted relevant to labour rights
<p>“Parental Leave Directive”</p> <p>Directive 2010/18/EU</p> <p>(Will be repealed on 2 August 2022)</p>	<p>This directive gives effect to a revised Framework Agreement between EU social partners setting out the minimum requirements on parental leave. It applies to all workers who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State. This Directive will be replaced by the Work-Life Balance Directive (below) on 2 August 2022.</p> <p>Considering international labour law and CJEU case law, in particular the finding in <i>Tümer</i> that undocumented workers cannot be excluded from the definition of the employee, this directive should apply also to undocumented workers.</p> <p>Key rights provisions include:</p> <ol style="list-style-type: none"> (1) The individual right to at least four months of parental leave, to take care of their child until a given age as defined on national level, up to 8 years. MS may make this entitlement dependent on a minimum period of service or work of a maximum of one year (Clause 2 and 3). (2) The right to maintain the acquired rights until the end of their parental leave (Clause 5.2). (3) Protection against less favourable treatment or dismissal due to apply to take, or taking, parental leave entitlements (Clause 5.4). (4) The right to request changes to their working hours and/or patterns for a set period of time when returning to work from parental leave (Clause 6). (5) The right to take time off for ‘force majeure’ for urgent family reasons, in cases of sickness or accident making their immediate presence indispensable (Clause 7).

EU Directive	Important rights granted relevant to labour rights
<p>“Work-Life Balance Directive”</p> <p>Directive 2019/1158</p>	<p>This directive lays down minimum requirements related to paternity leave, parental leave and carers’ leave, and to flexible working arrangements for workers who are parents or carers. The deadline for national governments to comply is 2 August 2022.¹³ The aim of the directive is to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents or carers.</p> <p>The directive applies to all workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice. With the explicit reference to CJEU case law, the directive should equally apply to undocumented workers who are parents or carers, in particular, in light of the <i>Tümer</i> judgement (C-311/13, 2014).</p> <p>Rights provided include:</p> <ol style="list-style-type: none"> (1) The right of paternal leave of 10 working days for fathers, or equivalent second partners recognised by national law (Article 4). (2) The individual right to at least four months of parental leave, to take care of their child until a given age as defined on national level, up to 8 years. MS may make this entitlement dependent on a minimum period of service or work of a maximum of one year (Article 5). (3) The right to carer’s leave of five working days per year for each worker (Article 6). (4) The right to time off from work on grounds of force majeure for urgent family reasons for each worker (Article 7). (5) The right to payment or allowance during the minimum period of parental leave at an adequate level. Payment or allowance during carers’ leave is encouraged but not obligatory (Article 8). (6) The right to request flexible working arrangements for caring purposes for workers with children of a specified age, and carers (Article 9). (7) The right to maintain the acquired rights until the end of their leave or time off from work for workers and carers (Article 10). (8) The right for workers to request duly substantiated reasons for their dismissal from their employer, in case of presumption of dismissal based on the grounds they have applied for, or after having taken a leave based on, Article 4, 5, or 6, or a working arrangement based on Article 9.

¹³ Until this date, the ‘Parental Leave Directive’ will apply.

EU Directive	Important rights granted relevant to labour rights
<p>“Young people at work” Directive</p> <p><u>Directive 94/33/EC</u></p> <p>(last amended on 26.07.2009)</p>	<p>This directive aims to guarantee a minimum level of protection of young people at work. The directive applies to “any person under 18 years of age” having an employment contract or an employment relationship defined by the national law in force. The directive protects young people against economic exploitation and against any work likely to harm their safety, health or psychical, mental, moral or social development or jeopardize their education (Articles 1 and 2).</p> <ol style="list-style-type: none"> (1) In all circumstances their vulnerability and special risks existing due to their lack of full maturity must be considered (Article 7). (2) There rests a general obligation on employers to protect the safety and health of young people (Article 6). (3) Member States must prohibit the work exercised by children under 15 years of age, but exceptions are possible under strict conditions for children of at least 14 years of age dealing with their working time, night work, rest period and annual rest (Articles 8, 9, 10 and 11). (4) Work exercised by adolescents, young people between 15 and 18 years of age, must be strictly regulated and protected (Article 13).

EU Directive	Important rights granted relevant to labour rights
<p>“Temporary Agency Workers’ Directive”</p> <p><u>Directive 2008/104/EC</u></p>	<p>This directive aims to guarantee a minimum level of effective protection of temporary agency workers, to ensure that the principle of equal treatment is applied to temporary agency workers, and to recognise temporary-work agencies as employers (while contributing to the development of the temporary work sector).</p> <p>It applies to workers with a contract of employment or employment relationship with a temporary-work agency, who are assigned to user undertakings to work temporarily under their supervision and direction.</p> <p>The definition of ‘worker’ is any person who, in the Member State concerned, is protected as a worker under national employment law. Considering international labour law and CJEU case law, in particular the finding in <i>Tümer</i> that undocumented workers cannot be excluded from the definition of the employee, this directive should apply also to undocumented workers employed by temporary work agencies.</p> <p>It sets out the following rights:</p> <ol style="list-style-type: none"> (1) Equal treatment/ non-discrimination regarding the essential conditions of work and of employment, between temporary workers and workers who are recruited by the user undertaking (Article 5) (2) To be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment (Article 6) (3) Not be charged any recruitment fees (Article 6.3) (4) Equal access to amenities and collective services at work (Article 6.4) <p>Member States should also seek to improve access to training and to child-care facilities in the temporary-work agencies for temporary workers (Article 6.5).</p>

EU Directive	Important rights granted relevant to labour rights
<p>“Part-Time Work Directive”</p> <p>Directive 97/81/EC</p>	<p>The directive establishes a framework agreement on part-time work between EU employers and trade unions (UNICE, CEEP and the ETUC).</p> <p>It applies to part-time workers as defined in law, collective agreements, or practice of Member States.</p> <p>Relevant provisions include:</p> <ol style="list-style-type: none"> (1) In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds (Clause 4). Particular employment conditions may be subject to a period of service, time worked or based on the level of earnings, following consultation between EU social partners. (2) A worker’s refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment alone (Clause 5.2).

EU Directive	Important rights granted relevant to labour rights
<p>“Health and Safety in Fixed-term and Temporary Employment Directive”</p> <p>Directive 91/383/EEC</p>	<p>This directive ensures that fixed-term¹⁴ and temporary employees have the same level of safety and health protection at work as other employees. The directive does not include a definition of an ‘employee’.</p> <p>It applies to employment relationships governed by fixed-term contracts and to temporary employment relationships. A fixed-term contract is an employment contract entered into directly between an employer and a worker where the end of the employment contract is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event. Temporary employment relationships are where temporary employment businesses are the employer, and where the worker is assigned to work for and under the control of an undertaking and /or establishment making use of his services.</p> <p>Where undocumented workers have an enforceable fixed-term contract or are employed by temporary employment agencies, this Directive should apply.</p> <p>It sets out the following rights:</p> <ol style="list-style-type: none"> (1) Before an employee starts working, he or she should be informed of all risks connected to the work (Article 3). (2) Each worker should receive sufficient training appropriate to the particular characteristics of his or her job (Article 4). (3) Special medical surveillance should be provided when required (Article 5).

¹⁴ The Fixed-term Work Directive ([Directive 1999/70/EC](#)) gives effect to a similar framework agreement between EU level social partners as the ‘Part-Time Work Directive’. It applies to ‘fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State’ and forbids employers to treat fixed-term workers less favourably than comparable permanent workers, solely because they have a fixed-term contract or relation and unless different treatment can be justified on objective grounds.

EU Directive	Important rights granted relevant to labour rights
<p>“Victims’ Compensation Directive”</p> <p>Directive 2004/80/EC</p>	<p>This Directive allows people who fall victim to violent intentional crime in a country different to where they are habitually resident, to claim state compensation in the Member State where they reside. It also requires that all EU countries have a state compensation scheme which provides fair and appropriate compensation to victims of violent intentional crime.</p> <p>There is no reference to third-country nationals or residence status, so this Directive should apply also to undocumented victims of crime of violent intentional crime, when read together with more recent EU law and policy on victims of crime (as described above).¹⁵</p> <p>The victim’s rights include:</p> <ol style="list-style-type: none"> (1) The victim should have a right to apply for compensation in the Member State where he or she is resident (Article 1). (2) The victim, and potential victims, should receive information and guidance on how to apply (Articles 4 and 5). (3) The applicant should receive a decision from the deciding authority as soon as possible after the decision is taken (as well as it being sent to the assisting authority) (Article 10).

¹⁵ In her 2019 report [“Strengthening victims’ rights: from compensation to reparation,”](#) the Special Adviser to President Juncker on compensation for victims of crime, Joëlle Milquet, recommends that there is legislative change to extend the definition of “victims eligible for compensation” to victims of intentional violent acts committed in the EU, irrespective of their nationality or residence status, so that they are fully covered by the 2004 Compensation Directive, pointing to arbitrary variation in the eligibility of persons based on their residence status in the EU (Recommendation 19, page 50)

Treaties and Charters

These are core EU legal texts confirming EU competence in such matters and fundamental rights.

Treaties and Charters	Important rights granted relevant to labour rights
<p>EU Charter on Fundamental Rights</p>	<p>The EU Charter on Fundamental Rights applies to all EU institutions and Member States when legislating, and whenever a Member State applies EU law (Article 51). The Charter applies to undocumented migrants unless stated otherwise (see for example Article 34(2)). When a right in the Charter has a counterpart in the ECHR, the scope of the provision of the Charter should have at least the same meaning and scope as the corresponding right of the ECHR (Article 52(3)).</p> <p>Article 12: Freedom of assembly and of association</p> <p><i>“Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.”</i></p> <p>Article 21: Non-discrimination</p> <p><i>“Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”</i></p> <p>Article 27: Workers’ right to information and consultation within the undertaking</p> <p><i>“Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.”</i></p> <p>Article 28: Right of collective bargaining and action</p> <p><i>“Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.”</i></p> <p style="text-align: right;">>>>></p>

Treaties and Charters	Important rights granted relevant to labour rights
EU Charter on Fundamental Rights	<p>Article 30: Protection in the event of unjustified dismissal</p> <p><i>“Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.”</i></p> <p>Article 31: Fair and Just Working Conditions</p> <p>(1) <i>“Every worker has the right to working conditions which respect his or her health, safety and dignity.”</i></p> <p>(2) <i>“Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.”</i></p> <p>Article 47: Right to an effective remedy and to a fair trial</p> <p><i>“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.</i></p> <p><i>Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.</i></p> <p><i>Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”</i></p>

Treaties and Charters	Important rights granted relevant to labour rights
<p><u>Treaty on the Functioning of the European Union (TFEU)</u></p>	<p>The TFEU is a part of the EU's 'constitution'. It divides competences to regulate on different matters between the EU and its Member States. The below highlight how the EU has the competence to develop laws and policies in the areas of migration and employment policy that impact on labour rights of undocumented workers.</p> <p>Article 79:</p> <p>(1) Requires the European Parliament and the Council to adopt measures for a common European immigration system. It shall adopt measures in the following areas:</p> <ul style="list-style-type: none"> - Conditions of entry and residence, and standards on issuing long-term visas and residence permits by Member States - Definition of rights of third-country nationals legally residing in a member state, including the conditions on freedom of movement and residency in another member state - Irregular immigration and unauthorised residency, including removal and repatriation - Combating trafficking in persons. <p>(2) The EU may make agreements with third countries for readmission to the country of origin for third-country nationals who do not or no longer fulfil conditions of entry, presence, or residence into the Member State.</p> <p>(3) The European Parliament and Council may establish measures to provide incentives for Member States' actions that promote integration of third-country nationals legally residing in Member States.</p> <p>(4) This does not affect the rights of Member States to determine the volume of admission of third-country nationals entering to seek work.</p> <p>Title X: Uniform social policy:</p> <p>(1) Member States and the EU shall implement measures that account for diverse forms of national practice and pertain to the need to retain a strong economy. They shall have as their objective promoting employment and good living and working conditions (Article 151).</p> <p style="text-align: right;">>>>></p>

Treaties and Charters	Important rights granted relevant to labour rights
<p>Treaty on the Functioning of the European Union (TFEU)</p>	<p>(2) The EU will support Member State's activities in working environment and condition improvements, social security and protection of workers, protection of workers upon employment termination, the information and consultation of workers, representation and defence of interests of workers, employment conditions for third-party nationals, integration of persons excluded from the labour market, equality in the labour market between men and women, combating social exclusion, and modernizing social protection systems. To achieve this, the EU may adopt Directives to implement these activities (Article 153).</p> <p>(3) Member States shall ensure equal pay between men and women. The European Parliament and Council (after consulting the Economic and Social committee) shall adopt measures to ensure equal treatment of men and women in employment and occupational matters, including equal pay (Article 157).</p> <p>While a non-binding policy, the European Pillar of Social Rights (2017) can be a useful reference, for a contextual interpretation of legally binding instruments, when seeking to strengthen application of social rights in the EU legal context.¹⁶ The strategy sets out 20 guiding principles for a strong social Europe that is fair, inclusive and full of opportunity.</p> <p>These principles include:</p> <p>Principle 2: gender equality (including regarding participation in the labour market, terms and conditions of employment, career progression and pay) (ref: Employment Equality and Work-Life Balance Directives)</p> <p>Principle 3: everyone has the right to equal treatment and opportunities regarding employment and social protection (among others), regardless of gender racial or ethnic origin, religion or belief, disability, age or sexual orientation (ref: Employment Equality and Racial Equality Directives).</p> <p>Principle 6: workers have the right to fair wages that provide for a decent standard of living. Adequate minimum wages shall be ensured (ref: proposed Minimum Wages Directive).</p> <p>Principle 7: information about employment conditions and protection in case of dismissals (ref: Transparent and Predictable Working Conditions Directive).</p> <p>Principle 9: work-life balance (ref: Work-Life Balance Directive).</p> <p>Principle 10: healthy, safe and well-adapted work environment and data protection (ref: Framework Directive on Health and Safety at Work" and Working Time Directive).</p> <p>The European Pillar on Social Rights Action Plan develops headline targets for 2030 and specific actions to implement the principles.</p>

¹⁶ While the Preamble to the European Pillar on Social Rights refers to Union citizens and regularly residing third-country nationals, it clarifies that references to workers concern all persons in employment regardless of their employment status, modality and duration. Furthermore, read together with international human rights law, the Charter on Fundamental Rights, and jurisprudence of the CJEU, several principles of the policy must be understood to also apply to persons with an irregular residence status.

A note on the European Labour Authority

The European Labour Authority (ELA) is an agency of the European Union tasked with coordinating and supporting the enforcement of EU law on labour mobility and social security coordination. Its activities started in October 2019, with the official opening in Bratislava, Slovakia on 9 November 2021.

The [Regulation](#) establishing the ELA (2019/1149/EU) makes reference to a limited personal scope for the Authority's activities, "individuals who are subject to the Union law within the scope of this Regulation, including workers, self-employed persons and jobseekers. Such individuals should include citizens of the Union and third-country nationals who are legally resident in the Union."

Nonetheless, third-country nationals who have a regular status in one EU member state may be working irregularly in another EU member state and as such, fall directly within the scope of the ELA's mandate. Indeed, the ELA [work programme 2022-2024](#) recognises that migrant workers may be in vulnerable situations and states that, 'While legislation concerning the status of and procedures related to third-country nationals is not in the remit of ELA, the activities of the Authority may also touch upon issues such as intra-EU posting of third-country nationals'. The plan includes a study on intra-EU mobility of third-country nationals, on which work has begun.

In addition, most activities of the ELA, in particular providing information for individuals and employers, coordinating and supporting joint inspections, analyses and risk assessments, and support of member states in tackling undeclared work (hosting the [European Platform tackling undeclared work](#)¹⁷), will inevitably relate in some ways to undocumented workers in practice.

European trade unions underline that all activities of the European Labour Authority should promote the full application of the EU employment and social acquis to all workers, regardless of status, in line with international and EU labour law and jurisprudence.

¹⁷ The European Platform against undeclared work published in 2021 a [study](#) on exploitation of third country-national workers in undeclared work. The study was discussed in the plenary meeting of 24-25 March, which led to the establishment of a sub-working group of the platform to exchange on related challenges and policy solutions. The scope of this work specifically includes migrant workers with regular status, working irregularly, and those with irregular residence status. Challenges related to the conflict between roles for labour inspectorates when involved in immigration enforcement, and good practices to ensure effective enforcement of labour rights, complaints mechanisms and regularisation are included in the study.

Court of Justice of the European Union: Conclusions stemming from case law

Undocumented migrant workers are to be considered “employees” for the purposes of Council Directive 80/987/EEC and can rely on the right to back pay in cases of employer insolvency.

- In *Tümer v. Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, an undocumented migrant worker (Tümer) in the Netherlands applied for back pay because his employer declared bankruptcy, under the Dutch law enacting provisions from Council Directive 80/987/EEC (now replaced by Council Directive 2008/94/EC). This Directive gives rights to employees in the case of employer insolvency. Under this Directive, “employee” is defined by each Member State, although certain groups (i.e. part-time, temporary agency workers,¹⁸ and fixed-term workers) cannot be excluded. The Directive does not mention immigration or residence status or undocumented migrants. The Dutch authorities argued that since undocumented workers were expressly excluded in the Dutch definition of employee, Tümer was not entitled to back pay. The CJEU ruled that Member States cannot exclude undocumented migrant workers from the definition of employee for laws enacted under this Directive. Therefore, Tümer was entitled to back pay.
- In *Tümer*, this right was held to apply even where other equivalent protections could be available to undocumented migrant workers, including remedies under civil law.

While there is no specific CJEU case confirming it for the other EU directives that make reference to the definition of a worker in national law, undocumented workers should by the same reasoning be able to derive and claim rights from all EU directives that set minimum standards for everyone with a contract or in an employment relationship.

- While there is no EU definition of an ‘employee’, several CJEU rulings point to a broad concept to define the term “worker” under the free movement of workers of Article 45 TFEU. In particular, in *Lawrie-Blum* the CJEU ruled that a worker is a person that ‘for a certain period of time, provides services under the direction of another in exchange for remuneration’.¹⁹

¹⁸ Regarding temporary agency workers, see also C-216/15 *Ruhrlandklinik*, ECLI:EU:C:2016:883, in which the CJEU interpreted a ‘temporary agency worker’ broadly and assigned it equal meaning as ‘worker’ in *Lawrie-Blum*.

¹⁹ C-66/85 *Lawrie-Blum*, ECLI:EU:C:1986:284. These criteria have been repeated and applied to different circumstances in subsequent judgements (see e.g. C-94/07 *Raccanelli*; C-456/02 *Trojani*; C-692/19 *Yodel*).

- Furthermore, the CJEU ruled that Tümer could not be excluded from the definition of “employee” because the purpose of the Directive is to provide minimum protections across the EU in the event of employer insolvency, and Member States could not define “employee” so as to circumvent this purpose. The CJEU thus limited the discretion of the Member States when defining a definition of “employee” by requiring due regard to the legislation’s objectives and effectiveness.²⁰
- **Potential Areas for Litigation:**
 - » There are no CJEU rulings on the inclusion or exclusion of undocumented workers in relation to other EU legislation on employment, but this reasoning seems equally applicable for some other laws. Targeted litigation, for example in respect of other Directives regulating minimum standards for workers in the EU should confirm that undocumented migrant workers are able to rely on other worker protections under EU law. While enforceability will remain a challenge, it might strengthen the understanding of undocumented workers’ labour rights and the legal avenues open to undocumented workers. The table above (EU Directives that should apply to undocumented migrants based on jurisprudence but not yet confirmed in any case related to the specific directive) details some rights that, if *Tümer* were expanded, undocumented migrants could assert.
 - » Before national courts, undocumented migrant workers can claim rights under all such EU directives, even if national implementation in their member state does not make reference to the Directive being applicable to them, and there is no specific CJEU case law to that effect. In case of doubt, national courts must bring a preliminary reference procedure before the CJEU to clarify the EU directives’ relevance for undocumented migrant workers, as the Dutch courts did leading up to the *Tümer* judgement.²¹

²⁰ C-393/10 *O’Brien*, ECLI:EU:C:2012:110.

²¹ Provided for in Article 267 of the Treaty on the Functioning of the European Union (TFEU), if national courts refuse to do so, they must provide reasons, failure of the highest national court to do so is a violation of Article 6(1) ECHR, ECtHR 13 February 2020 *Sanofi Pasteur*, <https://hudoc.echr.coe.int/eng/?i=001-200818>.

While the 'Employers' Sanctions Directive' (Directive 2009/52) explicitly grants rights to undocumented migrant workers, these are seldomly claimed in practice.

- **Potential Areas for Litigation:**

- » More use can be made of provisions in the directive, especially those (1) that shift the burden of proof to the employer: the legal presumption of an employment relationship of at least three months (article 6, para 3)²² and (2) that explicitly establish liability for the direct contractor of the employer – in addition to or in place of the employer – to pay any due wages unless they can show they have undertaken due diligence obligations, as defined by national law. The main contractor and other intermediate contractors can also be held liable if they knew of the employment of the undocumented worker by a sub-contractor (Article 8).
- » In case of an absence of effective complaint mechanisms, including firewalls between those complaint mechanisms and immigration enforcement, it could possibly be argued that the statute of limitations for wage claims must be suspended or expanded to allow for a salary claim under this directive.
- » It may be possible to further clarify the need for safeguards such that complaints mechanisms and legal procedures are actually accessible and effective when workers are undocumented, by taking to court cases where an undocumented worker has been subject to immigration enforcement following a labour inspection, and not been able to file a complaint and receive due wages as per their rights under the directive²³ (see also box on page 62).

²² From practical experience, for example of FAIRWORK Belgium in Belgium and of FairWork in the Netherlands, the legal presumption is used successfully to negotiate out-of-court settlements and ensure a minimum level of wage recovery through administrative or judicial complaints mechanisms, though it often remains much less than the wages due. In the Netherlands, this legal presumption has been extended to 6 months. Nonetheless, challenges to prove the existence of the employment relationship remain and further measures to re-balance the burden of proof are needed. Another legal presumption is present in the directives on equal treatment, saying that when some facts can be established, it may be presumed that there has been direct or indirect discrimination. The respondent – in both cases an employer – would have to prove otherwise.

²³ For more on effective complaints mechanisms and the Employers' Sanctions Directive, see EC Communication 2009/52/EC (COM (2021) 592 final, 29 September 2021); EU Fundamental Rights Agency (FRA), [Protecting migrants in an irregular situation from labour exploitation: Role of the Employers' Sanctions Directive](#), 2021; PICUM's [blog](#) and [submission](#) to the consultation on the Employers' Sanctions Directive, April 2021 (prior to the EC Communication being published); PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020; and PICUM, [Undocumented Migrant Workers: Guidelines for Developing an Effective Complaints Mechanism in Cases of Labour Exploitation or Abuse](#), 2017. The European Platform against undeclared work [study](#) on exploitation of third country-national workers in undeclared work (2021) also discusses how immigration enforcement resulting from engagement with labour inspectorates conflicts with their role and primary duties to enforce labour standards, with reference among others to ILO Convention 81.

European Convention on Human Rights

This section focuses on the relevance and application of Article 4 of the European Convention on Human Rights to undocumented workers' rights, including through the jurisprudence of the European Court on Human Rights.²⁴

European Convention on Human Rights ("ECHR")	Important rights granted relevant to labour rights
Article 1	The ECHR is designed to protect the rights of everyone within a State's jurisdiction, irrespective of that person's immigration status. While there is no specific mention of residence or immigration status or undocumented migrants, Article 1 makes clear that rights under Section 1 apply to every person, and undocumented migrants have successfully relied on the ECHR before the European Court of Human Rights (EctHR) (See e.g. <i>C.N. v. the United Kingdom</i> ; <i>C.N. and V. v. France</i>). EctHR judgements are legally binding on every EU Member State.
Article 4	(1) <i>"No one shall be held in slavery or servitude."</i> (2) <i>"No one shall be required to perform forced or compulsory labour."</i>

²⁴ There are several other Council of Europe Conventions, and related monitoring mechanisms and bodies, that are relevant for undocumented workers but not included here. These include the [European Social Charter \(revised\)](#) (ETS No. 163), [Council of Europe Convention on Action against Trafficking in Human Beings](#) (CETS No. 197), the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (CETS No. 210), [European Convention on the Compensation of Victims of Violent Crimes](#) (ETS No. 116), as well as the work of the European Commission against Racism and Intolerance (ECRI).

European Convention on Human Rights ("ECHR")	Important rights granted relevant to labour rights
<p>Definitions under Article 4:</p> <ul style="list-style-type: none"> • Slavery: defined by the 1926 Slavery Convention. Slavery is "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." This definition has been upheld in recent case law (see <i>Siliadin v. France</i> para. 122). • Servitude: an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of slavery (<i>Siliadin v. France</i> para. 124). Additionally, the victim must feel that his or her condition is permanent, and that the situation is unlikely to change (<i>Chowdury and Others v. Greece</i> para. 99; see also <i>C.N. and V. v. France</i> para. 91). • Forced or Compulsory labour: all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her/himself voluntarily (<i>Van der Musselle v. Belgium</i> para. 32). • Human Trafficking: While Article 4 does not explicitly refer to "human trafficking", the Court found in <i>Rantsev v. Cyprus and Russia</i> (para. 282) that trafficking falls within the scope of Article 4, as it is defined by Article 3(a) of the Palermo Protocol and Article 4(a) of the Council of Europe Convention on Action against Trafficking Human Beings ("CoE Anti-Trafficking Convention", which adopts the Palermo Protocol definition) (see <i>Rantsev v. Cyprus and Russia</i> paras. 150, 164): <ul style="list-style-type: none"> - "Trafficking in persons" is: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." <p>Note: the case law does not always clearly delineate what situations are "forced labour" versus "trafficking" or if they generally overlap. The Court recognized that by adopting the definition of trafficking in the Palermo Protocol there is an "intrinsic relationship between forced or compulsory labour and human trafficking" (<i>Chowdury</i> para. 93). In <i>Chowdury</i>, the Court found that the workers on a strawberry farm were subjected to both forced labour and trafficking (para. 101). Additionally, the Court refers to "exploitation" without defining it. This lack of clarity leaves the "minimum threshold of severity under Article 4 uncertain."²⁵</p>	

²⁵ Vladislava Stoyanova, Irregular Migrants and the Prohibition of Slavery, Servitude, Forced Labour & Human Trafficking under Article 4 of the ECHR (Apr. 26, 2017), available [here](#); see also Conny Rijken, When Bad Labour Conditions Become Exploitation: Lessons Learnt from the *Chowdury* Case, in *Towards a Decent Labour Market for Low-Waged Migrant Workers* 189 (Conny Rijken & Tesselje de Lange eds., 2018), available [here](#).

European Convention on Human Rights ("ECHR")	Important rights granted relevant to labour rights
Article 11	<i>"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."</i>
Article 13	<i>"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."</i>
Protocol 12 Article 1 [Check if your country has ratified]	<p>(1) <i>The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</i></p> <p>(2) <i>No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.</i></p>

European Court of Human Rights (ECtHR): Conclusions stemming from case law

Member States must consider how immigration law can address or contribute to human trafficking and exploitation.

- In *Chowdury*, the Court noted that, in addition to requiring States to have satisfactory criminal laws in place, States' "domestic immigration law must respond to concerns regarding the incitement or aiding and abetting of human trafficking or tolerance towards it" (para. 87).
- **Potential Areas for Litigation:** While it is not entirely clear what the Court means, the statement directs Member States to adopt immigration laws that address human trafficking and exploitative labour practices. If interpreted such that Member States must make specific and deliberate references to anti-trafficking in their domestic immigration law, this may result in increased policing and restrictions on migrants. However, it may also be taken to imply the need to reform aspects of immigration law which may inadvertently facilitate or tolerate human trafficking and exploitation, such as increased border surveillance and deportations of exploited workers. Further cases could explore what this additional obligation regarding immigration law might entail.

Member States must effectively prosecute actions in breach of Article 4 (prohibition of slavery and forced labour).

- In *C.N. and V. v. France*, in determining ineffective prosecution, the Court noted that the Principal Public Prosecutor did not appeal the criminal charges of the perpetrators when they were acquitted by the Court of Appeals – the Prosecutor's appeal merely concerned the civil aspects of the case (para. 107). This contributed to the Court's finding that France had not upheld its positive obligations under Article 4 (para. 108).
- In *Siliadin v. France*, the Court considered that the French Criminal Code, as worded referring to labour exploitation and working and living conditions that are "incompatible with human dignity" (Articles 225-13 and 225-14), did not adequately or explicitly deal with the rights under Article 4 (para. 142) and was open to differing interpretations from one court to the next, making prosecution less effective (para. 147). As a result, the applicant, an undocumented child, was left unprotected by the laws (para. 148). The Court found that the State had not met its positive obligations under Article 4 (para. 149).

- In *Zoletic and Others v. Azerbaijan*, the Court clarified that Article 4 taken as a whole, must include into its scope the concept of human trafficking in all its possible forms, despite that only slavery, servitude and forced or compulsory labour are referred to in the first and second paragraph of Article 4 (para. 154).
- The Court emphasises the importance of a harmonious interpretation of the international definition of human trafficking and its constituent elements (action, means, purpose) when applying Article 4 (para. 155).

Member States must take a specific set of measures ("operational measures") to protect potential victims if the authorities are aware of circumstances where an individual is at risk of being trafficked or exploited, including undocumented migrants.

- These operational measures must be taken in certain circumstances: "the authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the [CoE] Anti-Trafficking Convention" (*Chowdury* para. 88).
- These operational measures include: removing the individual from the situation or risk, facilitating the identification of victims by qualified persons, and assisting victims in their physical, psychological, and social recovery (from the [Council of Europe Convention on Action against Trafficking Human Beings](#) ("CoE Anti-Trafficking Convention")) (*Chowdury* paras. 88, 110).
- A State whose authorities fail to do so will be in violation of Article 4, so long as taking the measures are within the scope of its powers and do not impose a disproportionate burden on authorities (*Chowdury* para. 88; *Rantsev* para. 287). Measures from the CoE Trafficking Convention fall within the scope of Article 4 (*Chowdury* para. 67, *Rantsev* para. 282).
- **Of Note:** In *Chowdury* the Court implies that State authorities, once aware of potential trafficking, should take measures specified by the CoE Anti-Trafficking Convention (para. 110). This implies that those operational measures mandated by the CoE Anti-Trafficking Convention do not impose a disproportionate burden.²⁶

²⁶ Vladislava Stoyanova, *Chowdury and Others v. Greece: Further Integration of the Positive Obligations under Article 4 of the ECHR and the CoE Convention on Action against Human Trafficking* (Apr. 28, 2017), available [here](#).

Member States must investigate situations of potential exploitation when that matter comes to the authorities' attention.

- This obligation to investigate need not depend on a formal complaint by the victim or the victim's close relative (*Chowdury* para. 89; *Zioletic* paras. 156 and 169).
- The obligation to investigate is triggered by a circumstance giving rise to a "credible suspicion" that the victim had been trafficked, held in domestic servitude, or likewise (*C.N. v. the United Kingdom* para. 71).
- Member States are obligated to investigate effectively, meaning the investigation is actually capable of leading to the identification and punishment of individuals responsible (*C.N. v. the United Kingdom* para. 69; *Zioletic* paras. 132-133).

Undocumented status is considered a major factor in determining coercion and potential forced labour.

- In *Van der Musselle v. Belgium*, the Court defined "forced or compulsory labour" under Article 4 as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (para. 32). "Penalty" need not go as far as physical violence – it can take on subtler forms of a psychological nature, such as threatening to report the victims to the immigration authorities when their employment status is irregular (*C.N. and V. v. France* para. 77).
- In *Chowdury*, the Court emphasized the fact that the workers were undocumented in finding both forced labour and trafficking, noting that they "were aware that their irregular situation put them at risk of being arrested and detained with a view to their removal from Greece. An attempt to leave their work would no doubt have made this more likely and would have meant the loss of any hope of receiving the wages due to them, even in part" (paras. 95, 101). Similar reasoning and considerations were included in the later judgement on the *Zoletic* case, where the Court considered that threats of possible arrests of the applicants by the local police because of their irregular stay was among the indicators of possible physical and mental coercion and work extracted under the menace of penalty. Being irregular migrants without resources (due to non-payment and wage deductions) was another factor of potential vulnerability (para 166).
- In contrast to *Chowdury*, a subsequent case, *Tibet Mentés and others v. Turkey*, found that the workers (who were not undocumented) were not subject to any "menace of penalty:" the mere possibility that they could be dismissed did not amount to coercion (para. 68). The Court found no violation of Article 4 (*Tibet Mentés* paras. 68–69).

Forced labour and human trafficking can be found even when the victim can move freely.

- In *Chowdury*, the Court rejected Greece's argument that the situation did not constitute forced labour or human trafficking because the workers could move freely, leave, go shopping, and seek other work (paras. 73, 123).
- **Potential Areas for Litigation:** The *Chowdury* case is different from most prior cases regarding violations of Article 4, which involved "children forced to work for relatives and people tricked into working in situations of prostitution."²⁷ Though the victims in *Chowdury* had more mobility and agency than victims in other ECtHR cases (see e.g. *C.N. and V. v. France*) the Court emphasized that their irregular status made it effectively impossible for them to leave and stop working due to the risk of being detained or deported (paras. 95–97). However, notwithstanding the victims' vulnerability, the Court did not find "servitude" because the workers were seasonal and therefore knew that their substandard working conditions would not be "permanent and that the situation [was] unlikely to change" (para. 99; see also *C.N. and V. v. France* para. 91). *Chowdury* demonstrates that Article 4 violations could be found in a wider array of exploitative situations pertaining to undocumented workers.

Forced labour and human trafficking can be found even when the victim initially consents to the employment arrangement.

- The Court in *Chowdury* noted that when "an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour" (para. 96).
- The undocumented status, and therefore vulnerability of the workers, was a significant consideration in determining that the circumstances still amounted to forced labour, notwithstanding the workers' prior consent (*Chowdury* para. 96, *Zoletic* paras 166-167).

²⁷ European Court of Human Rights Rules in Favor of Bangladeshi Migrant Workers in Greek Abuse, Open Society Foundations (Mar. 30, 2017), available [here](#).

International Legal Framework Relevant to Undocumented Migrant Workers' Rights

UN Human Rights Treaties

This section lists the UN treaties most relevant for the rights of migrant workers, including when they are living and/or working irregularly.

The UN's core human rights instruments are made up of the Universal Declaration on Human Rights (UDHR) and nine human rights conventions that give legal form to the rights stated in the UDHR. International Convention on the Elimination of All Forms of Racial Discrimination ([ICERD](#)), International Covenant on Civil and Political Rights ([ICCPR](#)), International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)), Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT](#)), Convention on the Rights of the Child ([CRC](#)), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ([ICMW](#)), International Convention for the Protection of All Persons from Enforced Disappearance ([CPED](#)), Convention on the Rights of Persons with Disabilities ([CRPD](#)).

Note that the UN 'Migrant Workers Convention' largely consolidates rights for migrant workers which come from other human rights conventions. Thus, the fact that a particular state has not signed or ratified the convention is not in itself an argument that the state is not bound by human rights obligations towards migrant workers, where the state is bound by other UN core human rights conventions.²⁸

In terms of policy, the UN [Global Compact for Safe, Orderly and Regular Migration](#) is relevant as the first, inter-governmentally negotiated agreement, prepared under the auspices of the United Nations, to cover all dimensions of international migration. It seeks to ensure the 'safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times.'

²⁸ Elspeth Guild, Stefanie Grant and Kees Groenendijk (editors), *Human Rights of Migrants in the 21st Century*, Routledge, 2018.

UN human rights conventions	Important rights granted relevant to labour rights
ICERD	<p>Article 5:</p> <p><i>“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:</i></p> <p>(e) <i>Economic, social and cultural rights, in particular:</i></p> <p>(i) <i>The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;</i></p> <p>(ii) <i>The right to form and join trade unions;</i></p>
ICCPR	<p>Article 8: The prohibition of slavery, servitude and forced or compulsory labour.</p> <p>Article 22: The right to freedom of association and to form and join trade unions</p> <p>Article 26: All persons are equal before the law and entitled without any discrimination to the equal protection of the law.</p>
ICESCR	<p>Article 6: The right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.</p> <p>Article 7: The right to just and favourable conditions of work which ensure, in particular:</p> <p>(a) Remuneration which provides all workers, as a minimum, with (i) fair wages and equal pay for work of equal value and (ii) a decent living for themselves and their families;</p> <p>(b) Safe and healthy working conditions;</p> <p>(c) Equal opportunity for everyone to be promoted;</p> <p>(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.</p> <p>Article 8: The right to form and join trade unions.</p> <p>Article 9: The right to social security, including social insurance.</p>

UN human rights conventions	Important rights granted relevant to labour rights
CEDAW	<p>Article 11:</p> <p>1. <i>“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment... in particular:</i></p> <p>(a) <i>The right to work as an inalienable right of all human beings;</i></p> <p>(b) <i>The right to the same employment opportunities...;</i></p> <p>(c) <i>The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;</i></p> <p>(d) <i>The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;</i></p> <p>(e) <i>The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;</i></p> <p>(f) <i>The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.</i></p> <p>2. <i>In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:</i></p> <p>(a) <i>To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;</i></p> <p>(b) <i>To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;</i></p> <p>(c) <i>To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;</i></p> <p>(d) <i>To provide special protection to women during pregnancy in types of work proved to be harmful to them.</i></p>

A note on non-discrimination and undocumented workers

The UN human rights treaties generally apply to everyone regardless of their citizenship, migration or residence status. The framing of human rights at the UN level is based on the idea that human rights are there to ensure that each individual can lead a life of dignity. Equality and non-discrimination are legal means through which to ensure dignity to all persons.

The list of prohibited grounds for discrimination includes 'national origin', which has not been interpreted as the same as 'nationality'. However, the list also includes 'other status' (e.g. Art. 2 ICCPR and ICESCR) and this is widely understood²⁹ to include migration or residence status, when discrimination results in the denial of equality in respect for human rights. Therefore, differential treatment between citizens and non-citizens, including when irregularly residing, is discrimination unless sufficiently justified and proportionate to achieve a legitimate aim.

Discrimination on grounds of national origin and migration or residence status is also closely linked to racial discrimination. In addition to the strong provisions on non-discrimination in CERD (see above), CERD General Recommendation 30 (2004) makes a series of recommendations on how states should comply with their responsibilities, among others, in relation to social, economic and cultural rights.

These include:

- Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects;
- Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault;
- Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.

²⁹ Numerous UN bodies have made this clear in their guidance on interpretation and implementation of the conventions (e.g. Resolutions, General Comments, General Recommendations) and regular monitoring of state parties (e.g. Concluding Observations). The ICESCR General Comment 20 on 'Non-discrimination in Economic, Social and Cultural Rights' adopted in 2009 also defines the notion of 'national origin' used in the ICESCR as referring to a 'persons' state, nation or place of origin'. See also e.g. Guild, Grant & Groenendijk, Introduction, in Elspeth Guild, Stefanie Grant and Kees Groenendijk (editors), 2018, Human Rights of Migrants in the 21st Century, Routledge.

A 2019 ruling of the **Employment Tribunal in Paris** ([Conseil de Prud'Hommes de Paris](#)) of 17 December 2019 (n° RG F 17/10051) is a particularly interesting legal development regarding how anti-discrimination law can be used to assert the rights of undocumented workers.

In September 2016, twenty-five undocumented men of Malian nationality were working on a demolition site when one of the workers fell from an unsecured scaffolding. When the employer refused to call the emergency services, and dismissed the workers from the site when they did, the workers decided to start a strike and occupy the site. The labour inspection documented numerous violations of labour standards and working conditions contrary to human dignity. With the support of the local trade unions, in particular CGT, the workers took their case to the labour tribunal (Conseil de Prud'hommes), seeking regularisation of their administrative situation and payment of unpaid wages.

CGT collaborated in the case with a specialised sociologist, and described how workers were, based on their origin and irregular status, assigned more difficult and dangerous tasks. The *Défenseur des droits* (the French Ombudsperson) also prepared a report on the case, including evidence of this systematic discrimination in the organisation of the work. The case led to recognition by the employment tribunal that the employer was guilty of "systemic discrimination" against the workers, and ordered to pay compensation and damages to the workers.

International labour standards relevant to migrant workers

While the above summary of UN human rights treaties demonstrates clearly that labour rights are human rights, the international labour standards developed by the International Labour Organisation (ILO) further develop guidance in this domain.³⁰ As a general rule, international labour standards apply to all workers, unless otherwise stated.

All EU member states have ratified the eight fundamental ILO Conventions³¹ and the Labour Inspection Convention (1947, No. 81) as well as a number of other relevant ILO Conventions.³² All EU member states except Romania have ratified the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).³³

For the others, it is important to first verify whether your government has ratified the relevant ILO Convention before building your case on it, though some limited reference may still be useful, as they remain global standards on decent work even when not directly applicable in the national context.

Below are two tables:³⁴

- ILO Conventions and Recommendations directly or indirectly relevant to migrant workers in irregular situations.
- A summary of key rights and issues addressed, together with the ILO instruments which contain relevant provisions and have been the basis for guidance from the corresponding ILO supervisory body.

³⁰ A useful resource is the NORMALEX Information System on International Labour Standards available here: <https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12000:0::NO::>

³¹ [Forced Labour Convention, 1930 \(No. 29\)](#); [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#); [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#); [Equal Remuneration Convention, 1951 \(No. 100\)](#); [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#); [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#); [Minimum Age Convention, 1973 \(No. 138\)](#); [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#).

³² See e.g. International Labour Organisation, [The ILO and the EU, partners for decent work and social justice: Impact of ten years of cooperation](#), ILO Office, November 2012.

³³ For more from the ILO on social protection, see ILO, [Intervention Model: For extending social protection to migrant workers in an irregular situation](#), December 2021. The briefing sets out to what extent undocumented migrants have rights to social protection under the international human rights framework, in particular in terms of rights arising out of past employment, compensation and benefits in the case of occupational injury, and the right to health. It underlines the importance of extending social protection to migrant workers in an irregular situation, through various policy options, including regularisation, the unilateral extension of basic social protection to migrants in an irregular situation, the conclusion and enforcement of bilateral/multilateral social security agreements or the inclusion of social security provisions in BLAs, and additional complementary measures. See also: ILO, [Extending Social Protection to Migrant Workers, Refugees, and their Families: Guide for Policymakers and Practitioners](#), 2021.

³⁴ The tables included are from ILO, [Protecting the rights of migrant workers in irregular situations and preventing irregular labour migration: A compendium](#), 2021.

ILO Conventions and Recommendations directly or indirectly relevant to migrant workers in irregular situations

Specific topical category	Convention or Recommendation, Protocol or Declaration
Migrant workers	<ul style="list-style-type: none"> • Migration for Employment Convention (Revised), 1949 (No. 97) • Migration for Employment Recommendation (Revised), 1949 (No. 86) • Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) • Migrant Workers Recommendation, 1975 (No. 151)
Instruments with specific provisions on migrant workers	<ul style="list-style-type: none"> • Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) • Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) • Social Protection Floors Recommendation, 2012 (No. 202) • Private Employment Agencies Convention 1997, (No. 181) • Private Employment Agencies Recommendation 1997, (No. 188) • Domestic Workers Convention, 2011 (No. 189) • Domestic Workers Recommendation 2011, (No. 201) • Violence and Harassment Convention 2019, (No. 190) • Violence and Harassment Recommendation (No. 206), 2019 • Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) • Decent Work and Employment for Peace and Resilience Recommendation, 2017 (No. 205)
Fundamental principles and rights at work	<ul style="list-style-type: none"> • Forced Labour Convention, 1930 (No. 29) • Protocol of 2014 to the Forced Labour Convention, 1930 • Abolition of Forced Labour Convention, 1957 (No. 105) • Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) • Right to Organise and Collective Bargaining Convention, 1949 (No. 98) • Minimum Age Convention, 1973 (No. 138) • Worst Forms of Child Labour Convention, 1999 (No. 182) • Discrimination (Employment and Occupation) Convention, 1958 (No. 111) • Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) • <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow up, 1998</i>
Governance instruments	<ul style="list-style-type: none"> • Labour Inspection Convention, 1947 (No. 81) • Labour Inspection (Agriculture) Convention, 1969 (No. 129) • Employment Policy Convention, 1964 (No. 122) • Employment Policy (Supplementary Provisions) Recommendation, 1984 (No.169) • Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Critical issue	Protection and rights	ILO standard
Work injury and access to health care	<ul style="list-style-type: none"> Equality of treatment, without any conditions of residence, between nationals and foreign workers and their families of any ratifying member State, with regard to compensation in cases of work injury Equality of treatment between non-nationals and nationals as regards employment injury benefits Regardless of status, when leaving the country of employment, entitlement to employment injury benefits due All in need should have access to essential health care. Social security extension strategies should ensure support for disadvantaged groups and people with special needs Extending social protection for migrant workers in informal economy 	<p>C19/C121</p> <p>R151</p> <p>R202</p> <p>R204</p>
Occupational safety and health	<ul style="list-style-type: none"> Right of all workers to a safe and healthy work environment Every domestic worker has the right to a safe and healthy working environment Take all appropriate measures to prevent any special health risks to which migrant workers may be exposed 	<p>C155</p> <p>C189</p> <p>R151</p>
Fair Recruitment	<ul style="list-style-type: none"> Protection of migrant domestic workers against fraudulent and abusive recruitment practices by private employment agencies (PEAs) Protection of migrant workers against fraudulent and abusive practices by PEAs – no recruitment fees and related costs directly or indirectly charged to the worker Fees charged by PEAs shall not be deducted from remuneration of domestic workers 	<p>C189</p> <p>C181</p> <p>C189</p>
Labour inspection	<ul style="list-style-type: none"> Primary duties of labour inspections are to enforce provisions on conditions of work and protection of workers (firewall between labour inspection and immigration enforcement) 	C81/C129

Critical issue	Protection and rights	ILO standard
Access to justice	<ul style="list-style-type: none"> Present the case to competent body and equality of treatment regarding legal assistance. Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally. Effective and accessible complaint mechanisms. All victims of forced or compulsory labour, irrespective of their presence or residence status in the national territory, should have access to appropriate and effective remedies, such as compensation The lawful exercise of rights enjoyed as resident cannot be a reason for non-renewal of residence permit or for expulsion, and not inhibited by the threat of such measures. 	<p>C143/R151</p> <p>C189</p> <p>C29/R203</p> <p>R151</p>
Protection in case of expulsion	<ul style="list-style-type: none"> Waiver of costs of expulsion – right to appeal (that should stay execution of expulsion order); legal assistance 	C143/R151
Irregularity and loss of employment	<ul style="list-style-type: none"> Loss of employment should not lead to automatic loss of residence, with equal treatment with regard to alternative employment, relief and re-training; appeal against termination Allowed sufficient time to find alternative employment or await final decision, in case of appeal against termination of employment Refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto 	C143/R151
<p>Source: ILO, <i>Protecting the rights of migrant workers in irregular situations and preventing irregular labour migration: A compendium, 2021</i></p>		

A note on firewalls, effective complaints mechanisms and safe reporting³⁵

The **ILO Labour Inspection Convention (C81)** stipulates in Article 3 that the functions of the system of labour inspection shall be to:

- secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
- supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

In addition, although there may be exceptions according to national laws and regulations, labour inspectors ‘shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions’ (Article 15).

The ILO Committee of Experts on the Application of Conventions and Recommendations has underlined that giving labour inspectors duties to enforce immigration law interferes with their primary duties to secure the enforcement of legal provisions relating to conditions of work and the protection of workers, and undermines their relationship with workers.³⁶

³⁵ Largely reproduced and updated from PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020.

³⁶ Article 3 [Labour Inspection Convention, 1947 \(No. 81\)](#). See also Article 15. See for example: ILO Committee of Experts, [Report on the Application of International Labour Standards \(Conventions and Recommendations\): General Report and observations concerning particular countries](#), February 2017; ILO, Promoting Fair Migration. General survey concerning the migrant workers instruments, [Report of the Committee of Experts on the Application of Conventions and Recommendations \(CEACR\), Report III \(Part 1B\) ILC 105th session](#), 2016; ILO, [General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture. ILC 106th Session, 2017. Report III \(Part 1B\); Resolution concerning fair and effective labour migration governance – ILC 2017](#); International Labour Conference 2017 – report [Addressing governance challenges in a changing labour migration landscape](#), April 2017; International Labour Organisation non-binding [General principles and operational guidelines for fair recruitment](#), 2016; International Labour Office – Labour Inspection, [General Survey 2006](#).

Several other international and regional bodies, guidelines and studies are increasingly recognising this issue and recommending necessary safeguards are put in place.³⁷ For example, the 2021 [Political Declaration](#) on the Implementation of the United Nations [Global Plan of Action to Combat Trafficking in Persons](#), adopted by the UN General Assembly on 22 and 23 November, includes the need ‘to establish firewalls between immigration checks and labour inspections, and/or to ensure that labour inspections are conducted in such a way that does not put potential victims of trafficking in fear of immigration authorities or offences.’ (para 28).

As highlighted above, the right to available, accessible and effective complaints mechanisms and safe reporting for undocumented workers, is also increasingly being recognised as an EU policy priority for implementation of the EU “Employers’ Sanctions Directive” EU “Victims’ Directive”, “Anti-Trafficking Directive”, and EU employment regulations.³⁸

³⁷ A separation between labour authorities and immigration enforcement has also been strongly recommended by several UN, ILO, OSCE and Council of Europe bodies including, inter alia, the UNGA, [Global Compact for Safe, Orderly and Regular Migration](#), 73/195, 2020; UN Special Rapporteur on Migrants, in his [report](#) for a 2035 agenda among others); CEDAW [General recommendation](#) No. 26 on women migrant workers, 5 December 2008, .

+Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings at the OSCE, [An Agenda for Prevention: Trafficking for Labour Exploitation](#), 2011, p.12; [ECRI General Policy Recommendation 16](#); as well as at EU level by the EC Communication on the application of Directive 2009/52/EC ([COM \(2021\) 592 final, 29 September 2021](#)); the European Parliament [resolution](#) of 14 January 2014 on effective labour inspection as a strategy to improve working conditions in Europe (2013/2112(INI)); See also the EU Fundamental Rights Agency (FRA), [Protecting migrants in an irregular situation from labour exploitation: Role of the Employers’ Sanctions Directive](#), 2021; FRA, [Apprehension of migrants in an irregular situation – fundamental rights](#), 2014. The work of the Group of Experts on Action against Trafficking in Human Beings in monitoring the Council of Europe Convention on Action against Trafficking in Human Beings is also extremely relevant, for example, their 3rd monitoring round focused on access to remedies, including for undocumented workers. See also GRETA, [Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation](#), 2020.

³⁸ Note an effective complaints mechanism also required for regular seasonal workers by Article 25 of the [Seasonal Workers Directive](#) (2014/36/EU).

Concluding remarks

Undocumented workers have a range of individual rights- as people, as workers, and when victims of crime - stemming from different legal frameworks at different levels.

Based on the above analysis, these should include at a minimum:

- equal treatment regarding pay (at least applicable minimum wages);
- healthy and safe working conditions, including regarding limitations on working time and the right to daily and weekly rest periods;
- transparent and predictable working conditions;
- paid holiday leave and parental leave;
- protection from unfair dismissal;
- effective and accessible complaints mechanisms and legal procedures;
- payment of due wages and salaries, including limited coverage by state guarantee mechanisms in cases of employer insolvency;
- payment of compensation and disability benefits in case of labour accidents;
- non-discrimination in opportunities and conditions at work, at least on grounds of gender, racial or national origin, sexual orientation, religion or belief, age, or disability.
- specific protections and limitations on work for children;
- specific protections, services and compensation when victims of violence; criminal labour exploitation, forced labour and trafficking in human beings; or other crimes.

These legal frameworks also impose numerous obligations on governments, employers and general and intermediate contractors, and mechanisms for liability and accountability.

There remain enormous challenges in holding employers and businesses accountable for violations of undocumented workers' rights, which remain systemic part of the business model of many sectors.

In many EU member states civil courts and labour tribunals only check identity and not work permits, and in practice do not report undocumented workers for immigration enforcement purposes if the irregular status of the worker is known.³⁹ But, there remain very significant barriers for undocumented workers to take complaints, participate in proceedings and actually receive due wages and compensation through the courts.

³⁹ For examples, see PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020; Migrant Justice Institute, [Migrant Workers' Access to Justice for Wage Theft: A global study of promising initiatives](#), 2021.

In addition to the difficulties faced by any worker to assert their rights through formal complaints mechanisms, crucial issues for migrant workers include the burden of proof and difficulties to prove an undeclared employment relationship and the level of rights violations, as well as the lack of safeguards to ensure that the exercise of labour rights will not lead to loss of residence status, immigration enforcement and other forms of retaliation and negative repercussions. This is particularly problematic when interacting with labour inspectorates; it removes for migrant workers a key mechanism to prove employment relationships for civil claims, and access to labour inspectorates' non-judicial complaints mechanisms.

The international and EU legal frameworks provide some potential solutions to this issue, and it is increasingly being recognised as an issue in policy guidance and debates, but examples of necessary safeguards in practice remain limited and further safeguards are needed.⁴⁰

Notwithstanding, this guide seeks to raise awareness among all stakeholders of the applicable legal frameworks protecting undocumented workers' rights. We hope this knowledge may serve to support worker organising, negotiations, and advocacy for reform of laws and procedures. And not least, individual and strategic litigation through formal complaints mechanisms – including employment tribunals and civil courts - when it is safe and in the interests of the individual workers concerned.

⁴⁰ For examples, see PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020; Migrant Justice Institute, [Migrant Workers' Access to Justice for Wage Theft: A global study of promising initiatives](#), 2021.

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