



Fourth Study Commission
Public and Social Law

Meeting in Madrid, 23 - 27 September 2001

MIGRANT WORKERS (IN COMPLIANCE OR NOT) AND THEIR SOCIAL STATUS

General Report

The general report was prepared by the president of the 4th study commission in order to compile the answers to the questionnaire of the different national associations of judges. The subject was chosen at the conference in Recife in September 2000. In the preliminary remarks of the questionnaire it was defined that the report is solely focused on social and labour law excluding aspects of civil, administrative and criminal law. In spite of the fact that the deadline to submit the report was the 30th of June all reports arriving before the 20th of August have been considered. 16 reports arrived until this date: Austria, Belgium, Canada, Cyprus, Croatia, Finland, Ireland, Israel, Italy, Japan, Luxembourg, Macedonia, Moldavia, Slovenia, Switzerland and Taiwan submitted responses to the questionnaire. The reports of Australia, Brazil, Greece, Spain and the United States arrived too late.

I. Does your social legislation create distinctions between migrant workers that are in compliance, non-compliance, clandestine? Indicate your understanding of each category

In several countries there is no distinction between the three categories. Other countries have three different categories which are:

- workers in compliance who have permits to work and for residence
- non complying workers who could comply by getting a working permit and/or a residence permit
- clandestine workers who cannot get a working permit and/or a residence permit.

Some countries have favourable conditions for refugees and stateless workers like Austria, Belgium, Canada, Germany, Greece, Moldavia, Slovenia, Switzerland. Some countries like Austria, Belgium and Finland even assure a protection for candidates applying for refugee status. In Israel employees from Palestine are in a special category because they return to their homes every day.

II. How is your social system dealing with problems arising from each category? Please explain briefly the applicable rules (e.g. in matters of health, incapacity insurance, pension benefits).

1. In general migrant workers who have their permits have the same rights in the field of social and labour law like citizens.
2. In several countries non complying or clandestine workers have no social rights.
3. Everywhere they are given medical assistance in cases of emergency.
4. In some other countries labour and social law is applied in the same way also for non complying workers. In some countries the employer has to give accommodation to the migrant workers.

III. Are complying migrant workers directly eligible, after a period of time to the same rights as nationals?

In general workers who have the permits have the same rights like citizens. For example in Germany, Argentina, Austria, Belgium, Canada, Italy, Spain, Finland, Greece, Slovenia and Tunisia. Sometimes there are certain time conditions required to have the possibility to assert these rights. For example in

Cyprus migrant workers need ten years of residence to be eligible for works council. In Australia you need to be a permanent resident. In Austria they can vote for works council but they are not eligible.

IV. Can non-complying or clandestine migrant workers legalize their status? How?

1. Some countries don't have special regulations for this case.
2. In other countries it is not possible. For example Israel and Japan.
3. In some other countries it is possible, if you can get a work permit. For example in Austria, in Moldavia and Slovenia.
4. In some other countries it is possible, but there are certain restrictions, for instance time limits. This is the case for example in Belgium, Brazil, Greece, Luxembourg, Italy etc. In other countries it is only possible for humanitarian reasons. For example Canada, Finland, Ireland.

V. Do the family, the children, benefit from a special status? Describe.

In most countries the rights of the family depend on the rights of the worker. In Israel since the 1st of February exists a national health-service, which is also admissible for children of clandestine or irregular workers. These children can also go to school.

Conclusions

A migrant worker who has obtained a work permit and a residency permit has the same rights as a citizen. Some countries differ regarding members of the family of the worker.

The manner in which countries deal with clandestine and irregular workers and their families differ greatly from country to country. The differences arise on the different political approach of the countries.

Nevertheless in practice in general the fundamental human rights enumerated in the U.N Human Rights Convention are granted by the countries, for instance in respect of education and urgent medical treatment.

Proposed topic for the next meeting:

"Working conditions for children."

Special proposition:

The 4th study commission proposes to confer the title of Honorary President of the 4th study commission to the former president Mamadou Mansour SY .