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“Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region”

Session III – Social policy issues linked with migration

Written contribution

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Topic: Identifying protection gaps with regard to temporary migrant workers

ODIHR’s engagement regarding the question of migrant workers is focused on the assistance to develop efficient and humane migration management policies on the national and regional level¹. Today, I would like to discuss one of the many issues, which require special attention with regard to migration management – that is the protection of temporary migrant workers². Temporary labour migration seems like a rational solution for both migrants and destination states. For migrants, because when they are faced with limited employment opportunities at home, by working abroad they diversify their sources of income and thus their financial risks. It is also seen as rational solution by destination states, which prefer temporary migration labour schemes, being reluctant to open entirely for settlement migration, but at the same time having the need to fill labour market shortages.

¹ The current character of labour migration in the OSCE region and the presence of new, highly intensive migration flows is among others the result of the political and economic transformations of the 1990s and the opening up of Eastern European and CIS countries to globalisation processes.

² Temporary migrant workers can be defined as migrants, who work in the country of destination for a definite period, under a work contract with an individual employer or a service contract with an enterprise. However, temporary migrant workers can have and often do have an irregular legal status, meaning those persons who may not comply with the entry, stay or/ and employment legal rules of the receiving state. Temporary migration often involves circulation - the mobility between countries, including the country of origin and destination (IOM 2008).

Temporary labour migration involves both skilled, semi- and low-skilled migrants. Actually the demand for semi- and low-skilled migrant workers seems to be on a rise and this is due to first of all, population ageing and a shrinking pool of native labour and second of all, the native population being unwilling to engage in a job, which is low paid, unstable and has low social prestige. Thus, temporary migrant workers, for whom this pay relatively to the costs of living in the country of origin is acceptable and who may not be affected by the low status of the work, because their group of reference – family and friends- is primarily in the home country seem to be a perfect solution. They are not competing against, but complementary to the native workforce. Temporary migrant workers are often involved in providing essential social services in destination countries, such as care work. There is a high share of female migrants among this type of migrant workers.

However, unfortunately the picture is not as simple. Temporary migrant workers, apart from those of course who are irregular, although being very much needed in the countries of destination to fill the labour shortages, are also among the least protected groups of migrants. Temporary migrant workers have very limited access to a secure residence status in the country of employment, due to the “rotation” scheme – migrants are required to leave the country of employment after a particular period of time. They are in general legally bound to the same employers, meaning unable to change employers without losing their legal status. The fundamental right to live with one’s family is severely restricted for these migrants. They have few social and employment rights under the national legal systems and the specific international standards concerned with the protection of migrant workers. Now, with the economic crisis, this is even more visible – they are the first to be fired. Their right to social security (unemployment benefits) in several of the destination countries is restricted, although they pay contributions. They do not receive protections of rights arising from past employment. While migrant workers, among them temporary migrants, have an important impact on the development of social policy in destination countries – working in care provision and other social services, they rarely due to their status benefit from the existing social policy. Labour migration has however also an impact on the development of welfare states in their countries of origin, where societies often face a so-called “care drain”. It is exactly that what is supposed to assure their temporariness, which places this group at risk of reducing their protection and access to rights. Neither national nor international laws seem to protect sufficiently this group (Cholewinski 2002).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which entered into force in 2003 was ratified by very few countries. Some more countries have ratified the ILO Conventions³. However, although these conventions adopt a broad definition of migrant worker; they do exclude for example seasonal workers – thus, temporary migrant workers from labour rights. The European Union provides protection only for EU- nationals, however third-country nationals, who constitute the largest migrant group in the EU remain unprotected (unless they are married to an EU national). The EU has now pending a Proposal of the Council Directive on the conditions of entry and residence of third-country nationals for the purpose of employment and self-employment, which would give minimum social protection to temporary migrant workers. However, this

³ The Migration for Employment Convention and the Migrant Workers (Supplementary Provisions) Convention.

proposal is challenged by major receiving states. At the moment, apart from the basic protection of human rights based on general conventions protecting human rights⁴, a protection gap exists regarding temporary migrant workers legal status both at the regional and international level (Cholewinski 2003).

Commitments of the OSCE participating states regarding migrant workers, among others temporary migrant workers, start with the Helsinki Act, according to which States are obliged to aim at ensuring equality of rights between migrant workers and nationals with regard to conditions of employment and work, social security and living conditions. The topic of labour migration has become a pressing issue in 2003 with the Maastricht Decision stating that participating States have to actively combat discrimination among others against migrant workers and that ODIHR ought to reinforce its activities concerning that area.

In 2005 the OSCE Human Dimension Seminar gave the participating States the chance to exchange and share opinions on the issues of migration and integration. The conclusions of the seminar were that no OSCE participating State can claim definite success in the area of migration and that they have to aim at their migration policies to be both *humane*, meaning that the rights of migrants are effectively protected and *pragmatic* in that the receiving countries accept labour migration on the basis of their shortages in their labour market. Again, regarding the protection of migrants rights the participants of the seminar underlined that both temporary and permanent migrants should be included into the integration programs, aiming at preventing marginalization and exclusion. The participants also emphasized the specific experiences of female migrant workers, who are at risk of exploitation in the labour market both as migrants and as women.

Taking into account that social cohesion is a key element of a democratic society, ODIHR welcomes activities aiming at cohesion, based on a fair participation of all individuals, including temporary migrants. Thus, ODIHR encourages OSCE participating States to take into consideration the following concerns in relation to temporary migrant workers:

Inter-state cooperation in:

- developing a legal framework for dealing with temporary migrant workers, especially in the case of countries, which are new receiving countries;
- implementation of already existing bilateral labour agreements, to promote legal channels for migrant workers;
- promote bilateral social security and social insurance mechanisms, which can provide effective means of protecting workers, especially in regard to medical coverage;
- giving priority for further temporary employment of workers who have already worked under temporary migration scheme contracts and have returned to their country of origin at the end of the contract;

⁴ The European Convention on Human Rights in Europe, the Council's of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Universal Declaration of Human Rights.

- exchanging information and the creation of a compatible data- base on migration flows of temporary migrant workers;
- supporting voluntary return and professional reintegration, taking into account such measures as the recognition of qualifications and transferability of pension rights;
- facilitating the sending of remittances for migrant workers, as a means to improve the conditions in the country of origin, thus creating job opportunities and preventing labour migration out of economic necessity;
- involving social partners and non-governmental organisations in the formation of migration policies;
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Destination states to:

- acknowledge social policy as an important instrument of inclusion and protection of temporary migrant workers rights;
- facilitate access to legal employment through temporary migrant work schemes, a less time consuming and complex procedure of receiving a work permit and making legal employment worth it for both the employer and the migrant worker;
- ensure equality of rights between migrant and national workers with regard to conditions of employment and work and to social security and to ensure that migrants have satisfactory living conditions;
- to avoid deskilling of migrants, instead using their skills for the benefit of the receiving country;
- to facilitate family reunification.

States of migrants' origin in:

- providing access to information about conditions of stay and employment abroad;
- regulating recruitment abroad, which will involve gender-equality in access to employment and gender-responsive training;
- enabling investment of remittances, with a focus on women migrants and developing re-integration programmes.

References:

Cholewinski, Ryszard (2002) Legal status of Migrants Admitted for Employment. A comparative study of law and practice in selected European States, Strasbourg: Council of Europe, Doc. MG-ST, 4 December 2002

IOM (2008) World Migration: Managing Labour Mobility in an Emerging Global Economy

Excerpts from the OSCE participating States commitments in relation to temporary labour migrants:

- **Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1975 “Economic and social aspects of migrant labour”**
 - to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions;
 - to endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment;
 - to regard with favour the provision of vocational training to migrant workers and, as far as possible, free instruction in the language of the host country, in the framework of their employment;
 - to confirm the right of migrant workers to receive, as far as possible, regular information in their own language, covering both their country of origin and the host country; to ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography;

- **OSCE Ministerial Council in Maastricht, December 2003 Decision No. 4/03, Tolerance and Non-discrimination (MC.DEC/4/03)**

The Ministerial Council,

(...)

11. Undertakes to combat discrimination against migrant workers. Further undertakes to facilitate the integration of migrant workers into the societies in which they are legally residing. Calls on the ODIHR to reinforce its activities in this respect;

- **OSCE Ministerial Council in Sofia, December 2004 Decision No. 12/04, Tolerance and Non-discrimination (MC.DEC/12/04 of 7 December 2004)**

Annex to Decision No. 12/04, Permanent Council Decision No. 621, Tolerance and the Fight Against Racism, Xenophobia and Discrimination (PC.DEC/621 of 29 July 2004)

(...)

The participating States commit to:

- Take steps, in conformity with their domestic law and international obligations, against discrimination, intolerance and xenophobia against migrants and migrant workers;
- Consider undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers to society.