

Abstract

The UN Migrant Workers Convention (CMW) that provides for fundamental human rights for migrant workers and members of their families has been adopted in 1990. Until today, none of the EU Member States has signed or ratified it. The EU Member States argue that there is no need for them to accede to the CMW, as, inter alia, the rights contained in it are already secured by other international human rights instruments and in the EU legal instruments. Additionally to the claim of the CMW redundancy for the current EU legal framework, the Member States have several times repeated the fear that the ratification of the CMW could give irregular migrants more rights and increase irregular migration to the EU.

Inspired by these two in fact contradictory arguments, this research aims to explore the scope of irregular migrants related human rights protection under international and European law and verify the basis of the EU Member states claims by comparing the scope of rights of irregular migrant workers in the EU with the standards embedded in the CMW. The main research questions posed are *What human rights are the irregular migrants entitled to in the EU, based on international and European legal instruments? Is the CMW indeed redundant and unnecessary in the legislative framework of the European Union or is it rather complementary with regard to the international and European law? And does it give any additional rights to irregular migrants?*

In the centre of the research there is the CMW containing the set of human rights standards for irregular migrants. The CMW provides a guarantee of equal treatment of migrant workers and host country citizens (in certain cases) and prohibits any discrimination. For the first time it provides a definition of migrant workers, seasonal workers, cross-border workers and their family members. In relation to irregular migrants, it secures basic human rights as well as certain social rights.

The research is clustered in six Chapters. The first Chapter provides for introduction to international migration, mainly from the international legal perspective and it gives a broader understanding of the precarious situation of irregular migrants. It focuses detail

the terminology used today in the academic sphere as well as in this research, it specifies the hypothesis, research questions, methodology, sources used and literature revision.

The second Chapter focuses on the CMW, the context and background of its emergence including the motivation leading to the drafting process and on its content. It then analyses the EU position towards the CMW and the main arguments of the EU Member States explaining their restrained attitude to it. The EU MSs contestments of the CMW are rather vague and not legally precise in nature. The author concludes how little legally profound are the MS arguments and that their main motivation might most probably be of political nature.

It is then framed in the wider context of international human rights law (Chapter 3) focusing on fundamental human rights instruments and its monitoring bodies providing for general and specific protection of migrants' rights. The Chapter shows that most of the basic international human rights instruments extend to "all human beings" regardless their status, so irregular migrants are covered by them. The author looks in to the ECtHR case law with regards to protection of migrants rights and concludes for wide possibilities of the Court while applying protection *par ricochet*. Thus rights covered by the ICCPR and ICESCR as well as ECHR do apply also to migrants in irregular situation. The EU Member states have all signed and ratified these instruments and the reservations and declarations they use do not exclude irregular migrants from its scope.

The Chapter 4 is systematically analysing the EU Migration law. It looks at the EU migration law emergence and the current primary and secondary sources of EU law in the field as well as at the soft law instruments. It analyses in detail the EU Charter on Fundamental rights and specific Directives that relate to irregular migration. One of the conclusions of this Chapter is a missing legal basis in the Treaties for the irregular migrants human rights. In the end of the Chapter, the author considers the possibilities for irregular migrants to regularize in EU law as a way of gaining access to human rights. The author finds out that although there are possibilities in EU secondary legislation to allow for regularisations, EU MS are not always using those channels and their reality is rather different from country to country. EU Migration policy is in the same time

following a trend of securitization and criminalization of migration, it focuses more on external border control than on the human rights dimension of the issue.

The crucial part of the research is contained in its Chapter 5 that compares the provisions that the CMW grants to migrants in irregular situation with the current international and European legal framework in the EU. Some articles have been given more attention as for their importance or complicated nature – especially in the cases of the social rights, where the obligation of a state to act is much wider than in the other cases. Most of the fundamental human rights are already entailed in EU legislation in most cases owing to international human rights law applicable in EU Member States. Even where the CMW is substantively similar to other instruments, some of the rights set out in Part III are likely to be of particular value to migrants and their family members, simply because they may be in a weaker social or legal position. The author however identifies several rights that are not covered in the EU nor under European neither international law. These are in detailed described and together with the other rights clustered in the correlation table in Annex I., that gives a useful quick overview of the comparative analysis.