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# **The relationship between status and migration transitions**

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Undocumented Worker Transitions

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## **The Undocumented Worker Transitions project**

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The project website is at: [www.undocumentedmigrants.eu](http://www.undocumentedmigrants.eu)

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# 1. Transitions between irregularity and legality

## 1.1. Legal opportunities for the legalisation of undocumented migrants

The three chapters of this report analyse the changes in legal status migrants can experience and the changes in employment-related status that can result from legal changes. In this first chapter we will focus on the changes in legal status that can occur in each country, starting from the transition from irregularity to legality. Initially we will look at the opportunities that undocumented migrants have to become documented. Afterwards, we will devote a chapter to a particular situation that has happened in recent years, that affecting citizens from those countries that joined the European Union in 2004 and 2007. And we will devote another chapter to show the reverse situation, that is, that leading from legality to irregularity. In all the chapters we will review the situation in the countries that have taken part in this study.

In these countries, the opportunities to overcome irregularity are very different. There are countries where the law envisages the possibility of leaving behind irregularity, which implies recognising that such irregularity exists; other countries, however, seem not to recognise the existence of irregularity and offer no chances in this field.

We will see that in Spain and in Italy widespread legalisation processes have taken place and, also, that there are ordinary channels, regulated by law, that can be used to legalise the situation of many undocumented migrants. In Austria, Denmark, Belgium or Bulgaria, in contrast, the law does not offer opportunities to leave irregularity. The situation in the United Kingdom is closer to this second group, although the law only offers limited possibilities, as we will see further on.

Our research has revealed that in the countries where there are no channels to overcome irregularity, marrying a native person of the country where the migrant lives is the most used indirect way. But it has also been proved that governments are making all sorts of efforts in order that marriage is not seen by migrants as a door to legalisation. Laws are currently being changed in

order to make resorting to this opportunity as difficult as possible. That is what we will see in the cases of Austria, the United Kingdom and, particularly, Denmark.

Undocumented migrants are also using other indirect legalisation routes. One that has more frequently appeared in the interviews carried out with migrants in the countries where the research has been conducted is leaving the country and entering it again with some legal permit (generally of a temporary nature, as student, seasonal worker, au pair, etc.). Other opportunities are those related to family regrouping processes.

In short, what we are going to show are very different policies, which reveal that migration rules are scarcely harmonised and, what is still more important, that they also affect migrants' lives quite differently. There are countries where migrants find themselves in an irregular situation during a certain period, but are able to gradually achieve legality and social integration, whilst in other countries many migrants remain indefinitely in an undocumented situation with no possibility of social integration.

In **Austria**, the law does not allow a migrant in an irregular or undocumented situation to apply for his/her legalisation if complying with a number of requirements. Those who are able to evolve from irregularity to legality are those who have resorted to other procedures that are independent of their previous situation as undocumented. Both the experts and the migrants interviewed have described these other procedures that open the door to a number of legal transitions.

The most mentioned and best defined possibility is marriage to an Austrian person. This possibility, however, does not imply that an undocumented person in Austria may have access to legality, as the legal status is achieved through a process that is not related to his/her previous situation as undocumented. What the legal reformation carried out in 2006 intended was precisely to make it clear that marriage is not a legalisation opportunity. According to the present law, the application for the residence of a third-country national who is marrying an Austrian person must be presented in this

third country. The law wanted to make it clear that finding oneself in an irregular situation in Austria does not constitute any advantage for the achievement of legal residence. In addition, the law includes other requirements, such as for instance that the native partner must prove that he/she has a certain level of income.

Despite all this, marriage has certainly been used to achieve a change in legal status. This is clearly shown by the characteristics of the sample of 30 migrants who were interviewed for this research in Austria: 18 of them evolved from being undocumented to having a legal residence, 7 of them having attained this change through marriage.

The other possibilities for making a transition from a situation as undocumented to achieving legal residence are less used. One consists of applying for a humanitarian residence permit provided that certain circumstances are given. But in general this permit is granted only in very specific cases and to lodge a legal appeal is not possible. Another possibility is leaving the host country and coming back to it with a short-term work permit, a student visa or a family regrouping permit. But none of these routes is related to the fact of migrants finding themselves previously in an irregular situation.

As in Austria, in the **United Kingdom** it is very difficult to move from a situation as undocumented to becoming documented. The most frequent situation is the other way round: it is quite common for migrants who were documented to become undocumented. This is the case of rejected asylum-seekers, of students or casual workers who remain in the country after the permit they had has expired, of workers who have lost or abandon a job that was related to their permit, or of those migrants who are affected by legal changes to the migration rules and thus lose their permit. But these transitions from being documented or semi-documented to becoming undocumented will be commented on in section 1.3, given that this section is only dealing with evolving from irregularity to legality.

First of all, it must be pointed out that in the United Kingdom, in contrast to other countries such as Spain and Italy, irregularity from the start (clandestine entries) is not very usual. As we have said, the most common situation is that of undocumented migrants having first been documented or semi-documented.

As we have said, legalisation opportunities are very scarce. As we will see later, in recent years many migrants from countries that have joined the European Union have legalised their situation. But for other migrants, there is only one recognised possibility, the long-residence scheme. To be entitled to it, 14 years of residence in the United Kingdom, 7 for minors, have to be proved. According to the experts interviewed, however, only between 2,000 and 3,000 individuals benefit from this measure every year.

This is the only ongoing opportunity for the legalisation of undocumented migrants, although a regularisation scheme did operate for domestic workers between July 1998 and October 1999, permitting them to regularise their status and therefore change employers, which they had been unable to do before. Other routes used by undocumented migrants in order to gain a residence permit include leaving the country and trying to return with a legal permit, which may be the case for students or those who can apply for a short-term work permit. Marrying a person with British nationality is another possibility, although it has been subjected to restrictions by recent legal changes.

In the United Kingdom there have been campaigns calling for legalisation, for instance the campaign led by “Strangers into Citizens”. But experts do not think it is likely that the government will introduce to a legalisation process any time soon.

In **Bulgaria**, the model of the other European countries has been adopted and migration-related laws are very strict so that they do not provide opportunities for the legalisation of undocumented migrants. This policy is bringing about an increase in the number of undocumented migrants, particularly at the present moment, when there is a need for a foreign labour force. But in addition to

recent undocumented migrants, other migrants in Bulgaria have found themselves in this situation for a long time due to the ineffectiveness of migration and asylum procedures. The law does not offer any possibility for undocumented migrants to apply for legalisation although they may have been in the country for ages. Therefore, those who wish to become documented must resort to indirect ways, among which the most relevant ones are marrying a Bulgarian or family reunification. It is possible to include here successful asylum-seekers and, since January 2007, citizens from other EU countries, as we will comment on further on.

Marriage is extensively used by students, particularly by those from Africa and the Middle East, except Palestinians, who are granted refugee status quite easily. This does not mean, however, that marrying a Bulgarian person makes it easy to legalise one's situation; this is the case only when marriage has taken place where the foreigner was in the country with a tourist visa. The experts interviewed pointed out that marrying a Bulgarian does not always lead to legalisation: there are many migrants indeed who have married a Bulgarian and continue being undocumented.

The second most frequent route to have access to legality is through asylum application. In Bulgaria many people from very different nationalities choose this way, both, according to the experts interviewed, people recently arrived in the country and people who have been in an irregular situation for many years in Bulgaria, since for many of them this is the only practicable route to have access to legality. Some of the undocumented migrants who are arrested by the police make an asylum application at that time; this form of application is also made by migrants, including many Chinese, who had legal status once and lost it because they were not able to renew their permit.

The 30 migrants interviewed reflected this situation: 9 of them are now documented but had previously found themselves as undocumented or semi-documented. Some of them have achieved this change through marriage; others through the achievement of refugee status.



Undocumented migrants who are unable to use one of these ways to legalise their situation can remain in Bulgaria for more than 10 years, or in fact for ever without overcoming irregularity. Most of them live in the country in a relatively normal way, working within the underground economy, but others are confined in internment centres.

Some of these undocumented migrants decide to return to their country to try to make a legal entry into Bulgaria. This is the way that some of them can achieve the transition towards legal residence. Most of them are granted a casual-worker status, but if they remain in Bulgaria after the labour contract is exhausted, they will become again undocumented.

In addition, many undocumented migrants are people “in transit” who intend to reach other countries through Bulgaria, but who stay in the country and work in the underground economy until they are able to reach their final destination. Some of these people are completely undocumented, particularly those from Afghanistan, Iraq, Iran and Turkey, who remain in Bulgaria waiting for an opportunity to go to other countries without making any attempt at legalising their situation there.

In **Denmark**, there are no legalisation opportunities, either, for undocumented migrants. Both the experts and the migrants interviewed have agreed on the fact that moving from irregularity to legal residence is nearly impossible in Denmark.

Legalisation opportunities through marriage, a channel that we have seen used in other countries, are much more restricted in Denmark. The national law states that only migrants over 24 years old who are married to a Danish citizen can apply for residency. The interviews with migrants revealed that there are many of migrants who, despite being married to a Danish person, remain undocumented because they are still under that age.

A point to note in the Danish situation is that in addition to migrants not being granted legal residence when they are working in a completely undocumented way, there are also migrants in an irregular situation (that is, not allowed to

stay in the country) but who nevertheless have a tax card and may be working in an enterprise that is paying its taxes.

**Belgium** is another country where the opportunities to move from being undocumented to documented are very scarce. The experts interviewed have pointed out that changes in legal status for those migrants who arrived in the country as undocumented are very infrequent, a view that the migrants interviewed have confirmed.

Some of the migrants who have been able to make the transition from irregularity to legality are those who benefited from the small-scale legalisation processes that have been undertaken in Belgium. The most important group of beneficiaries relate to the legalisation conducted in 2000. Another small group is made up of 60 migrants who in 2004 held a sit-in in a church. In any case, all these regularisations have had much lower numbers than those that occurred in Italy and Spain, as we will see below.

As we will see in section 1.3, the most frequent and easiest legal transition in Belgium is from being documented to becoming undocumented.

In **Spain** there have been strong migration flows in the last decade. The experts interviewed agree that the greatest proportion of migrants involved reached the country irregularly. Many migrants, particularly Latin Americans, enter Spain legally either as tourists or visitors, but become undocumented when they remain in the country beyond the date authorised. Not all the migrants who have arrived in Spain have done so irregularly but it can certainly be stated that many of the non-EU migrants who are currently living in Spain found themselves in an irregular situation at the beginning. Data from the different legalisation processes show, when compared with figures related to legal residents, that most of non-EU migrants have been in this situation.

This fact is reflected in the sample of migrants interviewed in Spain: 16.6% of them were in an irregular situation when the interview was held; 56.6% were documented but had been in an irregular situation at the beginning for a fairly long period; and only 26.6% had migrated legally and had always been

documented. Among the latter, most of the interviewees had reached Spain through family reunification processes.

A number of extraordinary legalisations have occurred in Spain. The two most important ones took place in 2001 and 2005, with the number of migrants legalised in the latter exceeding 500,000. In addition, there is an ordinary legalisation channel that is known as “permit through settlement”. The residence permit can be achieved through so-called “social settlement”, which involves proving that a migrant has been living in Spain for three years and has a job offer. This is an opportunity that it is already being used by all those migrants who were unable to legalise their situation in 2005 and will continue to be used in the future by all migrants who have arrived in the country after that legalisation process. There is also the so-called “labour settlement”, currently less used than the previous one but on the increase. Legal residence can also be attained by co-operating with the Labour Inspectorate.

The situation in **Italy** is similar to that in Spain: most non-EU migrants have started their stay in the country and their labour integration in an irregular way. The restrictive nature of national migration law has led to a massive structural generation of undocumented migrants and of workers within the underground economy. This has been combined with special legalisation procedures, known as *amnesties*, which have been very common in the last 20 years and have favoured a steady increase in the number of legal residents. The sample of the 30 migrants interviewed reflects this policy: half of them were in an irregular situation and only after some years in this position benefited from an amnesty; and only two entered Italy legally with a work permit. The latter reached Italy in 2000, just when the national migration law had made it possible to enter the country legally for looking for a job, an opportunity that disappeared in later legal reformations.

The experts interviewed point out that irregularity is favoured by the combination of increasingly flexible labour laws and increasingly restrictive migration laws. In 2007, one million migrants may have been in an irregular situation, in addition to which most of the non-EU nationals who are currently legal residents were previously in an irregular situation.

There are also many migrants who are semi-documented: those who applied for their legalisation in 2006 and whose applications were accepted but have not been granted a permit yet; Romanians and Bulgarians who are not allowed to work yet; those entering Italy with a tourist visa, particularly from Eastern Europe, and who are working only while their permit lasts (circular migration), etc.

Amnesties have been the most important legalisation tool. During the last one, carried out in 2002, 650,000 migrants achieved legal residence. In addition, there is another mechanism with similar effects to an amnesty: “the decrees on flows” (to grant new working permits). Many migrants have seen such decrees as “mini-amnesties”, as after a period as undocumented, they have applied for a work permit through this procedure.

Other mechanisms through which undocumented migrants can become documented are similar to those existing in other European countries: marrying an Italian person, family reunification processes, leaving Italy when undocumented to come back to the country with some sort of legal permit (for instance as a student) or becoming an EU citizen because of their countries of origin having joined the European Union.

## **1.2. Legalisation of citizens from countries recently joining the EU**

In the above section we have seen that, except in Italy and in Spain, regularisation opportunities for undocumented migrants are very scarce. Nevertheless, in recent years a great number of undocumented migrants have become documented or semi-documented because their respective countries of origin have joined the European Union. This phenomenon has increased the figures of legal residents, but it must be remembered that this is linked to specific circumstances that will not happen again until new countries join the European Union.

The European Union’s enlargement that took place in 2004, where eight Eastern European countries and two Mediterranean ones became new EU countries, was important in relation to what we are discussing here because of

the large number of Polish citizens who have been able to legalise their situation in different countries. The enlargement that occurred in 2007 was even more significant because of the large number of Romanians and Bulgarians legalised, particularly the former, as the number of Romanians in an irregular situation in several EU countries was much higher for any other East European citizens.

In **Austria**, both EU enlargements (2004 and 2007) have had a strong impact on the legalisation of many migrants who were previously undocumented. This is reflected in the sample of migrants interviewed: for 8 out of the 18 migrants who had moved from being undocumented to achieving legal residence, this had been possible because of their countries of origin joining the EU.

In **Spain**, in migration-related matters, the most relevant of the two recent EU enlargement processes was the one that took place in January 2007. Before this date, Romanians were already the second most important foreign population in Spain, only behind Moroccans, while the number of those undocumented was very high (over 75%). After Romania joined the EU, around 400,000 Romanians were legalised in Spain in only one year. This legalisation, however, only affected their residence status, since for most of them there were no changes concerning their labour status due to the moratorium that was applied on the right of free movement of workers.

In the **United Kingdom**, many migrants coming from countries that have recently joined the European Union have also been able to legalise their residence status. A great number of them have been Polish, although Romanians and other nationalities have also registered significant figures. In the United Kingdom also, many of these migrants have found themselves semi-documented at some time or other, as they gained the right to reside but not a work permit. They were offered, however, opportunities for legalisation: workers coming from those countries that joined the EU in 2004, particularly from Poland, were allowed to register under a special programme called the *Worker Registration Scheme*, while those coming from countries that became EU Member States in 2007 (Romanians and Bulgarians) have been able to

apply for a specific card called the *Accession Worker Card*, which once granted allowed employers to apply for a work permit. In addition, all have been able to legalise their labour situation by becoming self-employed.

In **Bulgaria**, since January 2007 a certain number of individuals from European Union Member States or from the other country that joined the EU at the same time (Romania) have legalised their situation. Their number is not as high as in the other countries where this research has been undertaken but given that in Bulgaria there are no channels for the legalisation of undocumented individuals, this has been an important opportunity in 2007 and 2008.

In **Italy**, Romanian migration has had a similar importance to in Spain. In the second half of the 1990s, Italy was the main migration destination for Romanians and became the second country in the world, after Romania, for numbers of Romanian citizens. In Italy the EU enlargement that took place in 2007 was also the most important as far as the number of undocumented migrants who became documented is concerned, as in addition to Romanians, a significant number of Bulgarians lived in this country. But in employment-related matters many of them, however, have remained semi-documented as they have been affected by the moratorium applied to salaried employment.

In **Belgium** and **Denmark** also, migrants who have become EU citizens because of their countries of origin joining the European Union, have moved to another legal status. But in the same way as in the other countries, their right to free movement as salaried employees has been subjected to a moratorium so that in order to work legally many of them have declared themselves self-employed, despite really being salaried workers.

### **1.3. The transition of previously documented migrants to irregularity**

As we have seen, except in Italy and Spain, the legalisation of undocumented migrants has been very modest with the exception of those coming from countries that joined the European Union. We have also seen that legalisation

opportunities are being reduced, as even legalisation through marriage is being subjected to severe restrictions. At the same time, our research has revealed that in many countries the reverse, that is falling into a situation of being undocumented after having been documented, is very common.

Our research has shown that the loss of legal status is due to three main reasons. The first relates to people remaining in a country after their permit has expired: they may be students, casual workers, etc. The second reason relates to asylum seekers who remain in the country after having had their application rejected: they were in a legal situation while their application was being considered, but this becomes no longer the case. And the third derives from a number of legal reforms that affect people with residence permits, such as the changes some countries have made in the area of family reunification or regarding the renewal of permits.

In **Austria**, ending up in irregularity is pretty common and is in fact affecting many migrants who had entered the country legally. This is the case, for instance, of women married to Austrians who have been affected by a legal reform establishing that they should have made the application in their countries of origin. There are also partners who had gained a residence permit through family reunification, but when they tried to renew it, they lost it because of another reform that had raised the earnings threshold allowing migrants to bring their families to the host country. These reforms were introduced by the migration law adopted in January 2006.

Both the experts and the migrants interviewed have pointed out that the transition from legality to irregularity, mostly suffered by regrouped wives, generates many problems, traumas and depression, forcing those who were working to enter the underground economy.

In Austria, severe restrictions regarding the approval of asylum applications is another reason explaining the increase in the number of individuals who fall into irregularity. These individuals also find it very hard to regain a legal status.

In the **United Kingdom**, the majority of migrants who are currently undocumented were not in this situation from their arrival in the country, but originally had legal status. The largest group are asylum seekers whose claims have been rejected, and another are students who have remained in the country beyond their permitted period. A third group is that of casual workers who remain in the country after their permit has expired, often because this is the only way to get out of the debt they incurred when migrating. A TUC study on Ukrainian seasonal workers revealed that migrating to the United Kingdom involved debts of nearly 1,500 pounds sterling, which they were unable to pay back if they worked for only six months.

Many of those individuals who remained in the United Kingdom longer than authorised did not initially have this intention, but ended up doing so because of the need to increase their earnings before returning to their countries of origin, thus becoming undocumented. This has shown by both the experts and the migrants interviewed.

There are also many transitions from legality to what can be considered as falling into semi-documented situations. In these cases, there is much mobility between legality and irregularity. Many migrants enter the country with a tourist visa and are in a legal situation while it lasts, they start working and when the visa expires they return to their countries of origin and re-enter the United Kingdom with a student visa. According to the experts interviewed, many semi-documented situations are to be found: students working without the appropriate permit, individuals legally entering the country as au-pairs who then work in other sectors, people allowed to work as self-employed who are in reality salaried workers, etc.

Both the interviews with experts and migrants revealed that for carers (who look after people in care homes, predominantly women) the new point-based system, which favours skilled workers, is preventing them from renewing their permits. After having had permits for four years, they were denied the chance to renew them, which would have allowed them to gain entitlement to the rights acquired after five years of living in the country. This was despite the



fact that a number of employer organisations were finding a shortage in the number of care workers. Following strong opposition to these changes, some concessions were made which allowed some long-term Filipino workers to renew their permits, but these changes certainly resulted in many workers suddenly becoming undocumented.

For migrants, becoming undocumented has other effects in addition to encountering difficulties in finding work and having to do so within the underground economy: they also lose the health rights they were previously entitled to. Some of the migrants interviewed stressed the seriousness of the situations that may arise as a result. Another effect is losing the right to travel, which may lead to problems in family relations.

In **Spain**, the same ways of losing legal status that we have seen in the aforementioned countries also occur, particularly regarding migrants who stay in the country beyond the permitted deadline: students, seasonal workers, etc. Nevertheless, the quota system adopted for seasonal jobs (particularly in the agricultural sector) affects many foreign workers who in the majority of cases comply with returning to their countries of origin once the work permit has expired. This seems due to the fact that Spanish rules give them preference for the following season provided that they comply with this requirement. As a result, not many migrants who come to Spain to cover seasonal jobs become undocumented afterwards.

But there are also cases of workers who have arrived in Spain through the quota system and that once in the country find that the company that had made the job offer no longer wants to employ them. Thus they become undocumented migrants.

Nevertheless, the most common route for generating undocumented workers stems from the difficulties in renewing permits. The law states that in order to renew the initial permit, a migrant must have a job and have contributed to the Social Security for at least six months during the previous period. In addition to this requirement, there are problems related to red tape, such as those from delays in official answers. Three months after the application for a permit

renewal, the administration may not have given any response to the application; in this case, the administrative silence is considered positive; nevertheless, the worker may not be registered at the Social Security, which can lead him/her to being unprotected in case of unemployment and to being unable to proceed to a further renewal.

Despite the varied interpretations that each provincial governmental office makes of the Spanish migration law, the general trend is, according to the experts interviewed, of implementing it in the most restrictive way, particularly with the current economic crisis. This is leading to a large increase in the number of individuals who were previously documented falling into irregularity.

In **Bulgaria**, the transition from being documented to undocumented occurs for similar reasons to the other countries and affects asylum seekers who have seen their application rejected but remain in the country; and migrants with a short-term work permit or a student permit who remain in the country once their permit or visa is exhausted. This is reflected in the sample of 30 migrants interviewed: six of them were undocumented migrants who had previously been documented or semi-documented but stayed in Bulgaria after the end of their permit.

In Bulgaria there are many migrants who have been experiencing different situations, as in previous years asylum and migration procedures were very faulty. Many of the migrants currently undocumented had previously been semi-documented while waiting for their applications to be resolved, and worked for many years in the underground economy until finally becoming undocumented. Some migrants have seen their legal status changed several times.

Even people who have gained a residence permit can become undocumented: they are obliged to renew it on an annual basis until they have had legal residence for five years, which is when they are granted the permanent permit; but in some cases renewal is not granted and they lose their legal status.

In **Italy**, the risk of losing legal status is also very high. First, as in other countries, there is the possibility that individuals with short-term permits stay in the country beyond the deadline, which is often the case with seasonal workers. But there are also many migrants who had a stable permit and have lost it due to the difficulties of renewing it.

The experts interviewed highlighted that the hardening of the requirements for the renewal of permits, introduced by the Bossi-Fini Law (2002), has increased the possibility of ending up as an undocumented migrant after having previously been documented. This is happening to migrants who lose their jobs, and to others who, despite being documented, were working in the underground economy because their employers did not want to sign a labour contract. This is also happening to individuals who had gained their residence permit through family reunification and afterwards were not able to renew it.

The large number of migrants who have been in documented and undocumented positions several times proves that in Italy it is quite easy to pass from one status to another. Some of them have taken advantage of a number of legalisations (amnesties) to recover regularity.

The interviews carried out underlined that half the workers that were regularised in 2002 were women employed as home carers and that a good deal of them fell into irregularity again due to the difficulties in renewing their permits.

In **Belgium**, there are many cases of changes in legal status that concern moving from legality to irregularity, the most frequent being those affecting migrants whose permits have expired and are not renewed. In some cases this occurs without them even losing the job they had, which they continue working in within the underground economy. Gaining legalisation later is very difficult because, as has already been said, legalisation opportunities are very scarce in Belgium. Therefore, for many of them moving from legality to irregularity becomes irreversible.

In **Denmark** many migrants lose their regular situation also because they stay in the country for longer than authorised. These cases are due to the fact that

the foreign labour force needed by the Danish economy exceeds the provisions made by national migration law. The strong restrictions on migration in Denmark do not match the need for a labour force that the country has had during periods of economic development, which has favoured the emergence of pools of undocumented migrants who have worked in an irregular situation.

Students are one of the groups that most frequently find themselves in such a situation. Many of them work during the time that their visa allows them to remain in Denmark and continue doing so after their visas have expired. Those working as au pairs and staying longer than permitted and asylum seekers who have had their applications rejected are in the same situation.

Another group of individuals who lose legal status are those who had acquired it through marriage and have later divorced. The Danish law is very restrictive and gives migrant partners a temporary residence permit only for seven years, so that during this time the residence permit is linked to the continuation of the marriage.

## 2. Working conditions in irregular situations

### 2.1. Undocumented migrants find jobs in different sectors

Policies against irregular migration are focused on aspects such as border controls, the arrest, internment and expulsion of undocumented migrants and the hunt for criminal networks involved in human trafficking. These policies, however, have not prevented the entry of a foreign labour force through irregular routes when European economies have been in need of it. The experts interviewed in all the countries in this study have agreed on the fact that undocumented workers find work in those sectors demanding a labour force.

The countries that have had the greatest economic growth in recent decades and those where the underground economy is significant are those that have received the largest flows of irregular migration. Irregular migration is framed by a triangle whose vertices are: restrictive migration policies that make it difficult for people to enter legally; a rate of economic development that calls for a migrant labour force; and a rate of underground economic activity that can easily accommodate this labour force. The following review of the lessons drawn from the countries where this study was carried out will confirm that the stocks and flows of undocumented migrants depend basically on these elements.

The sectors where migrants find jobs are the least regulated ones and those with the highest rate of underground economic activity and whose growth is based on an extensive use of labour. We will see that the seven countries of this research have much in common in terms of the sectors where undocumented migrants work.

In **Austria**, migrants in an irregular situation have more difficulty in gaining access to the underground economy than in the Southern European countries, although there are sectors where such access is fairly common. The experts interviewed have pointed out that the economic sectors with a

significant presence of irregular migrants are the building industry, the cleaning sector, personal care, home help and hotels and restaurants. The migrants interviewed have confirmed that the building industry, personal care/home help and hotels and restaurants are the main sectors where irregular jobs are to be found.

There are other specific labour niches within underground economy where the presence of undocumented migrants is notorious; in Eastern Austria, for instance, many Hungarian migrants in an irregular situation had been working in previous years. Agriculture has (legally) recruited many Polish workers for seasonal work, who then have fallen into irregularity and stayed within underground economy.

Women in an irregular situation are mostly employed in home care and personal care roles. Others work in the sex industry. For all, however, moving to another job is very difficult unless there is a change in their legal status. Given the enormous difficulties that migrants encounter in Austria in gaining legality, many of these women will remain in these jobs practically for ever.

The experts interviewed stressed that the underground economy, or the non-formal sector, has grown in Austria with the increase in labour flexibility and precariousness, this being the reason for the preservation of employment niches for undocumented migrants.

Both the experts and the undocumented migrants interviewed stated that jobs within the underground economy are found through social networks and a number of intermediaries.

In **Spain**, there are sectors with high rates of underground economic activity, which are precisely those that have experienced the highest growth in the last decade of strong economic development. The most important sector is the building industry, together with hotels and restaurants, agriculture, home help and personal care. These sectors that combine economic development and high levels of underground activity have received the greatest flows of irregular migration into Spain since the middle of the 1990s.

Both the experts and the migrants interviewed highlighted the sectors above as those with the highest presence of undocumented migrants, and stated that having migrated in an irregular way has not certainly been a major hindrance to finding a job in Spain in the last decade. After the legalisation process conducted in 2005 and the warnings issued by the government that it would take further measures to combat underground work, it became more difficult for migrants in an irregular situation to find a job. But in general, the aforementioned sectors continue to have significant levels of underground work.

During the first few months of an irregular migratory process, migrants find work that is sporadic and usually very precarious. Those interviewed stated that these jobs are always found through social networks, while the experts agreed that social organisations supporting migrants contribute to the role of the social network by helping undocumented migrants.

Particularly in the building industry, migrants usually find jobs in outsourced enterprises, which is a very common feature also in hotels and restaurants.

Among undocumented migrants in Spain it is quite usual also to work in enterprises owned by other migrants, particularly with compatriots. This is the case for Chinese employees working in restaurants or in the textile sector for Chinese employers, but also for many Latin Americans who work for Latin American entrepreneurs in the building industry, particularly in minor works and façade and housing repairs. A number of Moroccans and Pakistanis also find themselves in this situation.

In the **United Kingdom**, a number of sectors also recruit undocumented migrants. The experts interviewed state that undocumented migrants can be found in all sectors, but particularly in hotels and restaurants, the building industry and agriculture.

Home care and personal care is a sector that includes a great number of undocumented workers in the United Kingdom. Recent legal changes have further reinforced this situation as, according to some interviewees, many of the employees in this sector who were documented are becoming

undocumented. The new points-based immigration system, favouring skilled workers, is leading to some care workers not having their work permits renewed, and thus leading many to end up in undocumented work.

In the United Kingdom, another feature is the importance of ethnic enclaves as areas of work, both for documented and undocumented migrants. Many work for employers of the same ethnic or national origin in areas or enterprises with a strong ethnic concentration.

A number of victims of human trafficking, finally, are subjected to forced labour. According to the experts interviewed, many of these individuals are employed in the same sectors in which migrants in an irregular situation work.

In **Bulgaria**, some of the experts interviewed pointed out that undocumented migrants can encounter difficulties in finding a job because employers prefer to recruit workers legally. But they also reported that there are sectors with significant rates of underground economic activity: building, trade, tourism, agriculture etc., where undocumented migrants are commonly found.

Some studies have revealed that in Bulgaria the percentage of workers with no employment contract may be up to 25% or even 30% in the building industry. Working with no contract is usual in many sectors, both for Bulgarians and migrants. The building industry is one sector where migrants in an irregular situation are well accepted, because they are paid lower wages, but it is not the only one.

In **Italy**, the size of the underground economy allows undocumented migrants to find jobs easily enough in a number of sectors. Generally speaking, in places where there are undocumented migrants there are also native workers subjected to the conditions of the underground economy, a feature that was confirmed by the migrants interviewed. Therefore, it can be said that irregular migration is only one of the structural pillars of underground economy.

Migrants in an irregular situation are employed in the same sectors as other migrants: the building industry, agriculture, hotels and restaurants, home care, small manufacturing companies (textile, metal, furniture...). As in Spain, in



Italy the sector of employment in which migrants work is highly dependant on gender, for example, many undocumented migrant women work in home and personal care.

In **Belgium**, undocumented migrants work above all in the building industry, in caring work, in trade (grocer's shops, baker's shops...), in ethnic businesses, and also in agriculture.

The building sector employs a high number of undocumented workers in addition to Belgian workers and documented migrants. There have been a number of measures to prevent and control irregular work in this sector, which have not succeeded, and employers have sought to avoid this by resorting to undocumented migrants as a cheap labour force. Undocumented migrants have a higher presence in some niches within the sector, such as internal repairs and renovation, but they are also present in demolition and other work.

Migrant women in an irregular situation are mostly found in the home care sector and caring roles.

In agriculture, and particularly in fruit harvesting (strawberries, apples, etc.), it is quite usual to employ undocumented migrants to supplement the regular labour force. They are usually casual jobs, which sometimes only last for a few days, in which workers are picked up in specific places and taken out to the fields. In these jobs documented migrants (many of whom have a short-term work permit) usually work alongside undocumented ones.

## **2.2. The links between undocumented status and working conditions**

The interviews conducted showed that undocumented migrants have, generally speaking, poorer working conditions than natives and documented workers. This is not always the case (we will examine in the next section situations where documented and undocumented workers share similar conditions) but is, however, a general pattern.

The abuses and irregularities suffered by undocumented workers are fairly similar in all the countries and sectors. We have gathered information

particularly from sectors such as home care, the building industry, and hotels and restaurants, that, as we have seen in the previous section, recruit undocumented workers in all the countries of our research.

In **Austria**, there is a clear correlation between irregularity and working conditions. The migrants interviewed shared the view that they have had to accept extensive violations of labour standards and of legal conditions in order to survive.

According to the migrants interviewed, the particular difficulties faced by undocumented workers relate to wages, working times, weekly rest breaks, sexual harassment and problems of being paid on time.

The experts interviewed pointed out that for workers in an irregular situation working within the underground economy, labour conditions are worse than for others. They referred to situations where it has been proved that for undocumented workers wages are 20% lower than for other workers. The experts also stressed that undocumented workers have no social protection.

For migrant women in Austria the most common sector for irregular work is home and personal care. Many migrant women who work in this sector are expected to be available for the whole day and are generally undocumented. In this case, there is a clear link between the legal status and working conditions, since very few documented migrant women accept such conditions. The migrant women interviewed pointed out that in addition to having to be available all day, wages are low. They also stated that those working in private homes have no rights at all. Many feel badly treated, regardless of the families for which they work being middle- or high-class.

In Austria another important sector for irregular work by undocumented migrants (in this case, men) is the building industry, where a correlation between legal status and working conditions can also be observed: the migrants interviewed stated that wages are lower for the undocumented. One said that “All the Austrians earn 10 €/hour at least, whilst undocumented workers earn 6 or 7 €/hour”. They also believed that many employers are interested in giving jobs to undocumented migrants because of the

advantages they derive in terms of paying lower wages and avoiding taxes and social insurance.

Hotels and restaurants are another important sector where undocumented migrants are employed and where they also earn lower wages than native workers. The migrants interviewed stressed that undocumented workers earn less money than native workers and documented migrants, in addition to their working days being longer and less flexible.

One of the features of irregularity that most affects undocumented migrants in this sector in Austria is not being able to enjoy a weekly rest break.

Interviewees stated that they only have one day off per week, that they have no rights and that there are situations where employers even try not to comply with wage agreements.

In **Spain**, both the migrants and the experts interviewed pointed out that for undocumented workers working conditions are poorer than for other workers. The migrants interviewed also stressed that working conditions are particularly hard at the beginning and only improve slightly with the passage of time, although people may continue to be undocumented. Newcomers, even when they are supported by a social network, suffer the worst working conditions.

Among the aspects highlighted by the migrants interviewed it is worth mentioning low wages, having to do the hardest jobs and not enjoying either holidays or the weekly rest break established in each sector. In general terms, they refer to abuses of all sorts.

The interviews with migrants also underlined the psychological dimension of irregular work. Those who are undocumented suffer from stress caused by the fear of being discovered and expelled and having to work in a semi-hidden way, which means they have to accept the worst and least paid jobs.

The great majority of women in an irregular situation start their working lives in Spain in home or personal care. This is their door to the labour market, a sector where they find work fairly quickly and easily when they have no permit of any sort. Undocumented migrant women may have wages equal to or less

than those earned by documented workers. Whilst the latter are usually paid around 10€/hour, the former rarely reach 8€/hour.

Home care is a transitional job. After some time, many migrant women move to hotels and restaurants or to the retail sector. Although some migrant women make this transition while still undocumented, this step is easier once legalisation is achieved. Working as a home carer may assist the legalisation process because it represents the offer of employment necessary for access to a first residence permit, provided that the family for which the migrant is working agrees on making such offer.

In Spain the building industry is the main sector where undocumented migrants are employed with labour conditions that are markedly different from those of other workers. Among the irregularities they face is the non-payment of overtime and of agreed bonuses, as well as others related to wages. Another much mentioned irregularity occurs when workers are dismissed after a job is finished: they are frequently not paid for the last month worked, nor the dismissal indemnity. According to the interviewees, this practice marks a clear line between documented and undocumented migrants, as it almost never occurs with the former group, while it is very common with the latter.

Hotels and restaurants is another important sector for undocumented migrant workers in Spain, and one where they may suffer employment-related abuses similar to those in the building industry. It is also very common for them to work in hidden areas such as the restaurant kitchens, where they do not have direct contact with customers.

In the **United Kingdom**, the interviews with migrants revealed that a great deal of undocumented workers suffer from bullying and harassment by employers and in some cases also by other workers.

Among the employment-related abuses migrants are subjected to, interviewees stressed long working days, wages below those earned by other workers and having to carry out the hardest work or in the poorest conditions.

Some of the experts interviewed pointed out that undocumented workers are seriously exploited in a number of enterprises. Such firms may be in agriculture, hotels and restaurants, the food industry, cleaning, home care, etc. It could be argued that undocumented migrants are colluding in this exploitation, but the truth is that it occurs in situations where they do not have any other option, sometimes because employers are holding their passports, in other cases because the undocumented migrant knows no one else in the UK than his or her employer.

Police action against irregular migrants may reinforce fear and subjugation among undocumented migrants. In this regard, the experts interviewed stressed that black migrants do not have the same status as white migrants (particularly East Europeans). They felt that the latter are treated more favourably by the police, meaning that they are in a better position to oppose the strongest abuses.

The measures launched by the UK government in March 2007 ('Enforcing the rules') encouraged employers to report undocumented migrants, but they did not make any reference to abusive employers. These new measures worsened the situation of undocumented workers because their position in relation to employers became weaker still, resulting in them being subjected to even poorer working conditions. Further measures introduced in February 2008, which increased the sanctions against employers recruiting undocumented migrants, have led to many workers being dismissed or encountering further difficulties in finding work. Interviews with migrants have clearly shown that employers have become stricter in asking migrants for their papers. This is occurring particularly in Chinese restaurants, in hotels and restaurants in general, and in the building industry. Many hotels and restaurants, including Chinese ones, are asking workers for their papers and dismissing them if they are in an irregular situation. Many workers have found themselves trapped: they can neither go back to their countries of origin due to the debts they have incurred, nor gain more or less stable work.

Nevertheless, hotels and restaurants continue to be one of the sectors in the underground economy, perhaps the main one, where undocumented workers

are employed in the UK. Some of the experts interviewed identified hotels, catering, take-away restaurants, etc, as workplaces where it is common to find undocumented workers, who have the hardest and worst-paid jobs and are expected not to make trouble.

In **Bulgaria**, undocumented or semi-documented migrants are in a very vulnerable position: they have no possibility of gaining an employment contract, they have no health care and are outside of any social protection mechanism. In addition, it is very difficult for them to rent a dwelling and they live in a parallel and unsafe world. This means they have to accept any job they are offered, even if working conditions are very poor. Moreover, this situation can last for a very long time, since those who entered the country irregularly and are working in the underground economy have no opportunity of gaining legal status and therefore have access to the regulated economy (except those few who acquire refugee status).

The experts interviewed agreed that undocumented migrants working within the underground economy have lower wages than other workers.

The migrants interviewed felt they were in the lowest segment of the labour market. There are undocumented migrants working (obviously without a contract) in enterprises where there are also Roma individuals who are in a similar situation. The interviewees felt they were in a similar position to the Roma, although the Roma may have greater security and stability.

Access to underground work may be in the economic sectors mentioned in the previous section, with jobs being found through other migrants who are already in the labour market. Another possibility may be work in small businesses owned by other migrants, often relatives. For undocumented migrants employed by family members or others from their country, working conditions are no better than for those working for Bulgarian employers; they often work only in exchange for accommodation or food or for a small cash wage agreed with the relative.

In **Italy**, undocumented migrants are generally exploited in employment and even when they move from one job to another, poor working conditions

persist. The migrants interviewed explained that when faced with demands from undocumented migrants, employers generally threaten them with denunciation to the police.

The interviews revealed that for an undocumented migrant a usual working day is 12 hours in tomato harvesting and also in many restaurant kitchens, and 13 hours for waiters. For those employed in personal care the working day never ends. The experts interviewed also said they knew of undocumented migrants being forced to work 15 or 16 hours a day.

Wages are also lower than in the regulated economy for undocumented migrants, who can earn between 5€ and 7€ per hour working in hotels and restaurants, or between 8€ and 12€ an hour in the building industry, whereas those in cleaning earn only 5€ to 6€ an hour. Migrant women employed in personal care generally earn between 400€ and 600€ a month in exchange for never-ending working days, as they are expected to be available all the time.

In **Belgium**, undocumented migrants usually earn below the legal minimum. But some of the experts interviewed pointed out that in most cases the working conditions of irregular migrants are not very different from those of migrants employed legally. The main difference relates to working hours, which are worse for the undocumented.

Undocumented migrants working in fruit harvesting are picked up in specific places and taken to the fields. Often they do not even know how much they are going to be paid: some interviewees mentioned earning 6€ an hour, while others stressed that during the strawberry harvest they worked 12 hours a day.

A large number of undocumented women in Belgium begin working as home carers, where working conditions are poor and have worsened due to increasing competition in recent years. This is shown by what migrants earn: a woman interviewee pointed out that she had asked to be paid 8€ an hour, but that she knew of many migrant women, particularly Polish women, who were working for 5€ and hour.

The increasing competition in this sector is partly due to the decision of the Belgian government to subsidise the home care sector. Families employing a home carer are given a voucher, provided that the recruitment is legal. The introduction of this system means that employing undocumented migrants is less advantageous, which has resulted in increased competition between them.

Nevertheless, the recruitment of undocumented women continues to be widespread in this sector. Live-in domestic workers have the worst working conditions: often they are expected to do all the housework in addition to looking after children or adult dependants and to be available all day long. They have one day off a week, which is sometimes reduced to half a day. The interviewees also reported that they are not always paid in the end. One described her first job as a live-in domestic worker in a rural area where she worked from 6.00 am to 12.00 am, had no weekly rest day and was not allowed to leave the house; she also pointed out that her case was not extraordinary.

In Belgium, the building industry is one of the sectors employing large numbers of undocumented workers, as we stated in the previous section. Their working conditions are very varied, according to the accounts of the migrants interviewed: working days may range from 10 to 16 hours, while wages can range from 6€ to 8€ an hour.

Among the problems reported by migrants, not being paid wages or receiving wages below what had been previously agreed seemed a fairly common phenomenon. Another recurrent problem in the building sector is working without appropriate safety measures. Interviewees stressed that migrants do not ask for the implementation of such measures because they are used to managing without when employers do not provide them.

In **Denmark** there are migrants in an irregular situation who have, as has been seen, a tax card and may be working in enterprises that pay taxes. These workers have better working conditions than those in a completely irregular situation, as they at least have an employment contract. Those who



have been undocumented from when they entered the country can neither find work nor benefit from any legal regulation.

The working conditions of undocumented migrants are closely linked to the clandestine nature of their status. In Denmark, those without a legal status are subjected to extensive police persecution and constantly exposed to the risk of being deported. For this reason they can be seen as individuals deprived of all rights.

Migrant women, both documented and undocumented, also work as home carers and au pairs. In both cases, working conditions are worse than in other sectors. Moreover, there is an initial stage when legally they can only work for the family that has recruited them, which involves a high degree of dependence and offers them very limited bargaining power.

### **2.3. Working conditions are not always poorer for undocumented migrants**

In the previous section we saw that undocumented migrants generally have worse working conditions than other workers, but also noted that this is not always the case. There are many situations in which semi-documented or fully documented migrants have working conditions that are very similar to those typically experienced by undocumented workers.

When we talk of semi-documented migrants we are referring to the significant proportion of migrants, in all EU countries, with a residence permit but without a work permit. Many, however, are working, so we consider them to be semi-documented. As with undocumented migrants, they are working in the underground economy so have neither an employment contract nor social insurance.

Among semi-documented workers there are two main groups: asylum-seekers who have been admitted and are therefore allowed to stay in the country while their case is decided, but not permitted to work, although there are differences between EU countries regarding this issue; and dependant partners, usually women, who are not allowed to work for a certain time either, a period which also varies between EU countries.

Semi-documented migrants work on an irregular basis in the underground economy and their working conditions are similar to those of undocumented migrants. There are, in addition, fully documented workers who experience similar working conditions. Therefore, there are a number of situations in which undocumented, semi-documented and documented migrants find themselves at the bottom as far as working conditions are concerned.

But the reverse situation is also to be found, that is, undocumented workers with ordinary working conditions, similar to those of the documented. There are enterprises recruiting undocumented workers only because they are unable to find other workers or because they cannot document them, but are not taking advantage of their irregular status to subject them to poor working conditions.

The interviews conducted in the seven countries involved in this research revealed that this similarity of working conditions between undocumented and semi-documented workers, on the one hand, and documented migrants, on the other, can be found both when the conditions are poor and with more standard conditions. In the former case, documented or semi-documented migrants are treated the same as the undocumented; and in the latter, the reverse situation occurs.

In **Austria**, asylum seekers are in a legal situation, but have no access to the labour market, so when they work, they do so irregularly. Those interviewed were in a situation similar to that of undocumented migrants: they state that their short-term and precarious position, together with the lack of a work permit, exposes them to exploitation, particularly in rural areas. In these areas there are many enterprises employing them as an irregular, cheap and flexible labour force. Some interviewees reported cases of individuals being paid 2€ an hour for carrying firewood and of others earning 5€ an hour in the building industry.

A significant number of semi-documented individuals are women who have legal residence but no work permit, who have entered the country through family reunification rules. Their working conditions can be very similar to those

of undocumented women. The interviews conducted with this population did not observe that semi-documented women were in a better position than undocumented women.

In addition, the experts interviewed pointed out that there is an important section of the Austrian underground economy whose working conditions are similar to those of regulated economy. This means that there are undocumented workers with similar employment conditions to other workers, which was confirmed by some of the migrants interviewed. Nevertheless, even in these cases some differences can be noted: some interviewees stated that despite wages and working days being the same, undocumented migrants have to carry out the dirtiest or the most difficult or dangerous tasks.

In **Spain**, many women holding a residence permit also find themselves in a situation of irregularity, as they work without a work permit. This is generally the case of those who have achieved a residence permit by means of family reunification. They also work within the underground economy, often starting as domestic workers. Both the experts and the migrants interviewed remarked that semi-documented and undocumented women share identical working conditions.

But the interviews also showed that there are cases of documented and undocumented migrants having the same working conditions. In this regard, it has been shown that within underground economy there are two different situations: employers who take advantage of undocumented migrants to exploit them, but also employers who recruit irregular migrants because they cannot find other workers (Spaniards or legal migrants) for a number of jobs. In this case, these workers are not treated very differently from other workers.

The recent economic crisis has brought about an increase in the number of employers who take advantage of migrants' difficulties to impose tougher working conditions on them, without making any distinction between those in an irregular situation and those with a legal status.

In the **United Kingdom**, the interviews with migrants found that a large number of undocumented workers earn less than the National Minimum

Wage, although this situation is also suffered by a number of documented migrants. This is, then, an example of exploitation of documented migrants, where their working conditions are the same that those usually found by the undocumented.

In **Belgium**, it has been observed also that in many cases working conditions for irregular migrants do not differ very much from those of migrants in a legal situation with an employment contract, although the former may earn lower wages.

As has been mentioned before, in fruit harvesting documented migrants with short-term work permits can be found alongside undocumented migrants. Both groups have similar working conditions, due to the fact that even documented workers have to accept often poor working conditions. Belgian farmers usually employ groups of workers recruited by another company in their countries of origin (Poland is the main country where this occurs) who are treated according to the standard working conditions in the countries they come from. They are documented workers who are being exploited in a similar way to undocumented ones.

In **Denmark**, there are also documented foreign workers facing working conditions similar to those usually experienced by the undocumented. The interviews with migrants found women who migrated legally with a three-year visa to work as au pairs, who were abused and exploited by their employers: long working days, practically no spare time, etc. In these cases, no differences can be found between their situation and that of undocumented women.

### **3. Changes in working conditions after gaining legal resident status**

#### **3.1. Gaining legal status usually leads to a medium-term improvement in working conditions**

In the first chapter we saw that opportunities to legalise residence status of undocumented migrants were scarce in most of the seven countries of this research. Despite this general characteristic, in all countries there are indirect routes by which a number of individuals achieve legality, such as marriage, family reunification, leaving the host country and re-entering with some sort of residence permit, etc. This chapter examines whether this change in legal status leads to an improvement in labour status, that is, of working conditions; and if so, whether this improvement is immediate or not.

It is more difficult to observe changes in labour status derived from the change in legal status in countries where neither direct regularisation routes nor extraordinary regularisation processes exist. We saw how in Austria, Denmark and Bulgaria making the transition from an irregular or undocumented situation to legality is extremely difficult, which means that finding examples of changes in labour conditions after gaining legal status is far from easy. Moreover, in these countries there have been no extraordinary legalisation processes. In the United Kingdom and Belgium, the situation is very similar although in the latter legalisation processes are not unheard of. In spite of this, given that in recent years many countries have joined the European Union through two enlargement processes, a significant number of migrants have been able to modify their legal status.

But it is in Spain and Italy where many more migrants have moved from irregularity to legality, because in both countries there have been widespread legalisations processes and in Spain there have been opportunities for ordinary legalisation.

In Spain legalisation processes were undertaken in 1986, 1991, 1996, 2001 and 2005, in addition to a number of ordinary ways through which many

undocumented migrants have gained legal status. Between 1993 and 2002, the so-called quota system was used, which allowed a certain number of undocumented migrants to legalise their situation, even though they could be obliged to go back to their countries of origin to get a visa. Legalisation through settlement is another way, which was further clarified through a legal reform introduced in 2004: undocumented migrants who are able to prove that they have been in Spain for three years and that they have an offer of employment may apply for a residence permit.

In Italy a number of legalisation processes have also been introduced, with the 2002 being the most important at the European level in terms of the number of migrants legalised (650,000). In addition, as has been mentioned, a mechanism with similar effects to *amnesties* has been in place: the decrees on flows which grant new work permits, used by many migrants as a way to legalise their situation. Both in Italy and Spain, the great majority of the third-country nationals who are now in a legal situation had previously been undocumented.

The interviews with migrants in all seven countries have illustrated a variety of situations regarding the employment-related effects of gaining legal status. As we will show, gaining legal status usually leads to an improvement in labour status, but this is a gradual process that takes time, that is to say, improvements in labour conditions are more likely as more time is spent in the regulated labour market.

In the **United Kingdom**, the interviews with migrants found two distinct labour market situations once legal status had been attained. The first case is that of undocumented migrants working for an enterprise or employer that did not belong to an ethnic enclave, while the second situation is that of migrants working within their own ethnic enclave. In the first case, migrants' legalisation can lead to a fairly quick improvement in their labour situation, whilst in the second situation this is seldom the case. Undocumented migrants working within ethnic enclaves tend not to find their working conditions improve after gaining legal residence. An improvement depends more on the length of time

they have been working or on the agreements they reach with their employers (of the same ethnic origin) than on changes in their legal status.

In contrast, changes in the labour situation are observed when migrants work outside of ethnic enclaves. Among the migrants interviewed there were asylum seekers and students, who once they gained a work permit, moved from precarious and unskilled jobs to jobs matching their skills. In spite of this, most of these individuals did not experience an immediate and substantive improvement in working conditions after a change in legal status, again with length of time worked being relevant.

In addition to time, other factors in the UK have been shown to have an influence on improvements in labour conditions. A number of migrants interviewed did not make a clear link between legal status transition and a change in labour position, but pointed out that a greater command of the English language certainly leads to an improvement in working conditions.

**Austria** is one of the countries where, as we have already seen, undocumented migrants encounter more difficulties in legalising their situation and therefore one of the countries where there are fewer examples of changes in labour status associated with changes in legal status. In spite of this, the interviews with migrants pointed to examples where gaining legal residency brought about improved working conditions. One example is of women who, when in an irregular or semi-documented situation, were in badly paid personal care jobs and were expected to be available the whole day. After getting a work permit these women were able to move to other economic sectors, some of them moving into the public sector care work, with better paid regular jobs and reasonable working hours.

In **Bulgaria**, the migrants interviewed who moved from being undocumented to documented stated that this transition meant important changes in working conditions. All reported that such legal transition enabled them to get an employment contract and a wage increase. Although documented migrants frequently have lower wages than native workers, we will see later that they are better paid than undocumented migrants.

In **Belgium** there was a legalisation process in 2000, but according to some experts interviewed no research has been conducted on how the change in the legal status affected labour conditions. It is not even known whether they found regular jobs. This was a legalisation process that was not linked to the labour market, as employers did not play any role (in contrast to the last Spanish legalisation process, in which migrants could only gain legal status if employers made an offer of employment). There was, however, some monitoring of the 60 migrants who legalised their situation in 2004 after occupying a church, and 56 are known to have found a regular job.

One of the interviewees, however, a representative of a social organisation, had some knowledge of the subsequent careers of migrants legalised in 2000, and stated that legalisation does not always lead to an improvement in the labour situation. After that legalisation process there were many migrants who did not see any change in their labour position, particularly those working in home help or personal care. Many female migrants who were working within the underground economy when they were in an irregular situation did not leave this sector despite gaining legalisation. There were also migrants for whom finding a job was even more difficult than before.

In **Spain**, both migrants and experts interviewed stated that for previously undocumented migrants gaining a residence permit was a major victory. They considered this achievement as the most important point in their evolution. The experts stated that this change has two dimensions: a material one, related to an improvement in working conditions, and a psychological one, in which migrants feel freer, less pursued and in a better situation. As we will see further on, whilst material conditions do not always improve automatically, the psychological change is indeed immediate.

When migrants gain legal status they can have an employment contract and be registered for Social Security. This is a very important change when compared with their previous situation as undocumented individuals, a change which is not always immediate but is certain to happen on a medium-term basis, although migrants have sometimes to move to another employer to see it happen.



For the majority of employees, working conditions in Spain depend on collective agreements, meaning that migrants gaining an employment contract also have access to regulated working conditions, provided that enterprises do not engage in fraudulent practices with them. The migrants interviewed stated that their working conditions gradually improved after legalisation. In their opinion, the main improvements relate to wages, working hours and the ability to take holidays and weekly rest breaks.

In **Italy**, migrants gaining residence and work permits frequently do not find any changes in their labour status, as we will see in the next section. Many employers treat newly documented migrants exactly as they did when they were undocumented. Nevertheless, on a medium-term basis significant changes in working conditions occur.

Labour insecurity may continue for a time after a worker has moved from irregularity to regularity. Newly documented migrants may have an employment contract, but in many cases these are precarious contracts: apprenticeship contracts, seasonal contracts, with temp recruitment agencies, etc. For many migrants, overcoming precariousness is only possible by moving to another sector, where they may find stable jobs. Examples can be found of moving from agriculture to hotels and restaurants, from home care to hotels and restaurants and to other branches within the service sector, etc.

Moving between sectors may occur in both directions. In the legalisation process of 2002, for instance, many women who at the time were working in other sectors than domestic work moved into it because it was easier to gain legalisation as domestic workers than in other jobs. In addition, many of them made this step only after agreeing with their employers that they would pay employers' social security contributions. Subsequently, however, some of these women were recruited to other sectors, leaving domestic work.

Generally speaking, the migrants interviewed in Italy agreed that gaining a residence permit is a fundamental step towards stable jobs and regular working conditions, although this is not an immediate change, but a medium-term one.

### **3.2. Working conditions do not immediately improve after a change in legal status**

As we have seen above, even though the gaining of legal status leads to an improvement in labour conditions, in many cases this does not occur in the short-term. In this section we will examine this matter more closely.

In **Italy**, after a migrant has achieved residence and work permits through, for instance, a legalisation process it is very common that his/her labour status does not change. This is due to the enormous weight of the informal economy. The experts interviewed highlighted that despite being in a legal situation, migrants may continue working with no contract and under the same working conditions as before, and this was further confirmed by migrants themselves. Several of those interviewed who had legalised their residence status had indeed remained within the underground economy for some time.

Often the lack of change in working conditions, despite migrants having gained a legal status, is imposed by employers. Legalised migrants may be threatened with being replaced by other migrants who are irregular if they do not agree to continue working under the same conditions as before.

When migrants gain a work permit they can move from working informally to working under an employment contract. This is a tangible change in their situation, but it is often the only one, as working conditions do not vary. Moreover, as it has been said before, the initial employment contracts are usually very precarious.

Changes in working conditions perceived by individuals who move from being undocumented to semi-documented are still less appreciable. Romanians and Bulgarians who become legal residents after having been in an irregular situation, but who have no work permit, have often not seen any improvement in working conditions. For example, Romanian women in an irregular situation who were working as domestic workers became legal residents after their country joined the European Union, but their working conditions have hardly changed.

Many migrants in a legal situation are working without an employment contract in the underground economy. In Southern Italy, they amount to more than 60% of all legal migrants. In this case being documented does not seem to have affected their working conditions.

In **Spain**, the experts interviewed had already drawn our attention to the fact that changes in labour position might not be very significant in the immediate months after undocumented migrants had become legal residents. Their working conditions while in an irregular situation often remained the same for a period of time. This is particularly the case when migrants continue working at the same workplace as when they were undocumented, and even more so when their legalisation has required their employers to take steps on their behalf, for instance to provide them with a mandatory offer of employment.

The migrants interviewed stated that this continuation of previous working conditions after regularisation may extend even to when migrants have acquired a legal employment contract. Workers may have agreed with their employers that their working conditions remain the same for a certain period.

In all these cases, the improvement of working conditions usually occurs when migrants move to another job. Having become documented, when they join a new company their employment contracts comply with the conditions established in labour law.

A common change relates to moving from hotels and restaurants to the building industry. In the former sector, wages are lower and working days longer. During the years of strong growth of the building sector, many migrants took the opportunity of having gained legalisation to leave the sector where they had been working (usually hotels and restaurants) and to move to the building industry with a legal employment contract. It was then that their working conditions improved. The crisis this sector has been suffering since mid 2007 has practically ended this route.

For women who were domestic workers while they were in an irregular situation, they often remain employed in this sector, with hardly any change in working conditions. What they may find is, however, a change in their labour

conditions when not living-in (that is, when they live in the employers' home, often looking after dependant individuals, usually with very long working days) and they move to work without accommodation. But major improvements in working conditions often only occur when they move to another sector.

Asylum seekers find themselves in a similar situation in Spain, as although they are not in an irregular situation they are not allowed to work during the first six months of their stay. After this period they may gain a work permit and can have access to their first legal job. Those interviewed pointed out that the working conditions in their first jobs are usually not very good, but that they tend to improve with subsequent changes of employment.

The experts interviewed highlighted that any improvement in working conditions requires not only that migrants make a transition to legal status, but also the implementation of anti-discrimination measures. They suggested that the introduction of anti-discriminatory clauses both in labour law and collective agreements is needed. They also pointed out that access to training is one of the most important ways of achieving an improvement in working conditions.

In **Austria**, the data collected also confirms that an improvement in working conditions does not immediately follow changes in legal status. For instance, women who entered the country through family reunification lack a work permit for a period, so that their status changes when they get a work permit. Many started working (irregularly) before having a permit, which may allow them to improve their employment situation, although this may depend on them moving to another workplace. Those who remain in the domestic care sector will hardly benefit from any improvement in working conditions, so it is necessary to move to other work in hospitals, hotels, restaurants etc. to experience any improvement.

In cases where employers have facilitated the legalisation of undocumented migrants, workers usually remain working under the same conditions as before. The interviews with migrants provided examples of women who gained their legalisation through fictitious marriages, arranged with the co-operation of the employers for whom they were working informally. In such

cases, women continue working for the same employers until they are able to repay the debts they have incurred in the process of legalisation and do not benefit from any improvement in working conditions.

The interviews also showed that in the building industry some workers who have become documented have not seen their working conditions improved while they were employed in short-term jobs. In this sector it is also very common that when employers have helped their workers make the transition to legal status by applying for their work permit, migrants usually have to accept that their labour rights continue to be violated.

In addition, even three years after legalisation, many migrants have neither been able to leave precarious jobs nor to improve their working conditions. What this proves is that the improvement of working conditions depends on many other factors than merely achieving legal status.

In the **United Kingdom**, as in other countries, many workers who have legalised their situation remain in the same jobs as when they were undocumented or semi-documented, particularly where these jobs are in ethnic enclaves. For migrants working within their ethnic communities, working conditions do not change according to the legal status. Family relations and other links within the ethnic enclave are more decisive in determining working conditions.

The migrants interviews also revealed that outside of ethnic enclaves it is fairly common for migrants who have legalised their status to continue working, for some time, under the same working conditions as before, for example in the case of domestic workers they are often in a similar situation to those who are still within the informal or semi-formal economy, which particularly affects women.

### **3.3 Working conditions differ between migrants with legal residence and native workers**

Granting of legal status lead to improvements in labour conditions, although, as we have seen, this is not an immediate effect. But what is the limit of this improvement? Do documented migrants have the same working conditions as

native workers? In this section we will see that this depends very much on the degree of regulation of industrial relations in each country.

Generally speaking, most of documented migrants never acquire the same working conditions as native workers. But the main problem faced by documented migrants is that even being in a legal situation they are often not able to get access to the professions in which they are skilled. Difficulties regarding the recognition of qualifications and work experience acquired in the countries of origin are a major barrier to equality between documented migrants and natives.

In **Austria**, when documented migrants have an employment contract then their working conditions are broadly similar to those of native workers, as in general terms having access to legal residence and to regular jobs means that working conditions comply with the law. Taking into account that Austrian labour law is relatively progressive, regular jobs cannot make substantive differences between migrant and native workers.

Nevertheless, both the experts and the migrants interviewed stressed that despite migrants having regulated working conditions, they are over-represented in the most precarious and short-term jobs. In addition, even migrants in a legal situation often have worse working conditions than natives in a number of ways. For instance, they frequently have problems in earning their salary entitlement as they may have been recruited to work on a part-time basis but work full-time and get paid as if they were working part-time. Their situation in the labour market is more insecure.

In Austria difficulties regarding the recognition of foreign qualifications are the reason why many migrants or refugees in a legal situation have to accept unskilled jobs despite having high levels of education (doctors working as health workers, etc.). The interviews found that recognition of nursing qualifications had allowed a number of women to gain access to skilled jobs in the public sector, although while their qualifications were not recognised, they carried out less skilled jobs, often in the field of personal care.

In **Spain**, it has been observed that the improvement in working conditions which results from the legalisation of undocumented migrants, or some time after, does not mean that the average working conditions of documented migrants are exactly the same as for natives. The experts interviewed noted that for documented migrants wages are generally lower, the jobs they do are harder and labour instability is greater.

In this regard, there are a number of different situations. In many enterprises, migrants have very poor working conditions, which are the same regardless of whether they are in an irregular situation or have a work permit. This has been discussed in another section of this report: migrants who when documented continue working in very similar working conditions as before. Another case concerns enterprises where documented migrants enjoy working conditions established by collective agreements: then, there is no apparent discrimination, although the interviews showed that migrants may be carrying out more skilled jobs than those stated in the contract, but being paid as if they were doing the less skilled tasks detailed in their contract, and may also encounter more difficulties in terms of career development. This fact, in addition to them undertaking the hardest jobs, means that their working conditions are worse than for native workers.

The recognition of foreign workers' qualifications is, also in Spain, another major difficulty for them in improving their labour status. This recognition may take up to two years and until this point migrants are forced to take jobs below their qualifications. Thus having transferred from being undocumented to documented does not prove enough for them to be able to carry out the jobs they are qualified for; they will need a second legal transition, the recognition of their qualifications, which, as already said, may take years.

In **Italy**, similar situations as those described in Spain are to be found. But in addition, applications by migrants for the recognition of the qualifications and work experience acquired in their countries of origin are systematically rejected. A very common situation is for migrant workers to be working in jobs below their qualifications, as well as carrying out tasks beyond those specified in the employment contract. Moreover, the scarce opportunities for the

recognition of skills and qualifications make it very difficult for migrants to be able to move to higher positions within enterprises.

In **Bulgaria**, documented migrants are not usually able to move from their low position in the labour market. The interviews revealed their concern about carrying out less skilled jobs than they could be doing according to their professional knowledge. In Bulgaria, the recognition of skills and qualifications acquired in migrants' countries of origin encounters the same difficulties as in other countries. This situation frequently leads them to becoming depressed because they feel very pessimistic about their expectations of being able to compete with Bulgarian professionals or specialists on equal terms. This is the reason behind the decision of many migrant professionals to start their own businesses as a way to improve their economic status given the difficulties encountered in improving their labour market position.

### **3.4 Changes in working conditions due to other changes in legal status**

Other kinds of transitions in legal status that may have an influence on working conditions include an extension or improvement to the work permit, for example, where it is renewed and migrants acquire a longer permit or a permanent one (a long-term permit, to use the EU term).

We will see that the acquisition of a second, or renewed, residence permit may result in an improvement in labour conditions, but this does not happen in all countries, and the passage of time may be more important: with time migrants gain a deeper knowledge of the labour market and of native languages, with these aspects, rather than changes in residence permit, accounting for an improvement in labour conditions. Furthermore, this improvement is often due to self-employment or to the creation of a migrant-owned business. In some countries, this is the option chosen by many migrants.

In **Spain**, before having access to a permanent permit, migrants are granted a two-year one, with a permanent one being granted after five years of legal stay. When migrants gain the second residence permit (the first lasting for



only one year) they can also start the procedure for family reunification. Although a number of months (sometimes even a year) will elapse before this procedure is concluded, family reunification means a significant change of status in their social situation.

In the employment field, the acquisition of the second permit is usually the moment when opportunities arise for migrants to gain better jobs. Workers have greater ability to choose, as they are now allowed to work in all economic sectors and may change their job. As has been stated before, it is generally when migrants move to other jobs that they achieve better working conditions, at least in the opinion of the experts interviewed. However, it was observed from the interviews with migrants that the gradual improvement in working conditions depends rather on the passage of time: the longer migrants have been in Spain, the greater their knowledge of the labour and social environment, and their capacity to negotiate and labour opportunities increase.

Vocational training is another channel for the improvement in work status, but migrants have few training opportunities. Their participation depends on a number of factors, such as their own attitude towards training in general, which they sometimes do not consider to be very relevant. The characteristics of the training schemes on offer, which may not suit migrants' needs and requirements in terms of contents, place, duration, etc., are another factor to consider. Migrants who undertake training have generally been in the Spanish labour market for more than three years, that is, those with a two-year renewed permit.

In Spain, self-employment is an opportunity many migrants take advantage of in order to improve their standard of living. They set up their own companies in sectors such as the building industry, cleaning, transport and other services etc. The experts interviewed stressed that self-employment is supported by the existence of a strong social network. For migrants with a good pool of contacts it is easier to find the economic support that they need to start their own business.

But often self-employment does not bring an improvement in status. Migrants become what it is known as 'autonomous salaried workers', that is, self-employed individuals who work regularly for an employer. Trade unions call them 'false self-employed workers'. Many Romanians find themselves in this situation in Spain because, although legalised as residents on 1 January 2007, they cannot have an employment contract due to the moratorium applied on working. Many registered as self-employed in order to legalise their labour situation, and the number of self-employed Romanians rose from around 5,000 to about 45,000 in just one year.

In **Bulgaria**, migrants gain full access to the labour market on equal terms as native workers by acquiring a permanent permit after five years of legal residence. Those interviewed regarded this achievement as very significant in terms of improving their labour status.

Self-employment is also a route that many skilled and qualified migrants take in Bulgaria in order to overcome the difficulties they encounter in pursuing their professions as salaried workers. The creation of their own businesses is considered by many migrants as the best way they can improve their economic status.

In **Austria**, access to a permanent residence permit does not seem to result in an improvement in migrants' working conditions. The migrants interviewed stated that the improvement of working conditions in Austria is instead a consequence of other factors, such as learning the native language, the recognition of qualifications or moving to another job.

In the four countries mentioned, as in **Italy**, the **United Kingdom** and **Denmark** (in fact, in all the EU countries), self-employment has been a route to labour legalisation for migrants coming from the countries that have recently joined the EU and who are affected by the restriction to the right of free movement of workers. Given that this moratorium only affects directly employed workers, many migrants have legalised their employment situation by registering as self-employed workers. This is an obvious improvement in their labour position, derived from becoming legal residents, but many of

these migrants would certainly not have chosen self-employment if they had been able to legalise their situation as salaried workers. Therefore, citizens from the countries that have recently joined the EU are a group affected by specific circumstances, but this does not diminish the importance of self-employment as a way for many migrants across Europe to improve their economic status.