

## **Economic and social context of the irregular migration of unskilled labour in Europe: specific features**

### **Introduction**

The following presentation is made up of eleven sections and a conclusion.

Firstly, after a brief review of the figures, we will discuss two concepts used in our study: that of illegality (first section) and that of unskilled labour (second section).

Next, we will look at the rationale currently governing our economies and the relationship this has with the realities of illegal work (third section).

We will then examine the three roles performed by the work (particularly illegal work) done by foreigners in our economic and social system: foreigners do jobs that nationals do not want to (fourth section); foreign workers act as a sort of protective buffer for national workers (fifth section); work by foreigners in irregular situations allows the 'on-site offshoring' mechanism to function (section six). The manufacturing industry is a special case (seventh section).

We then move on to consider various aspects without which our study would not complete: subcontracting (eighth section); the issue of people smugglers (ninth section) and that of the community solidarity which ensures, despite the odds, the survival of undocumented workers (tenth section). The eleventh section deals with outsourcing within the European Union and cross-border recruitment agencies.

Finally, in conclusion, we will emphasise that the issue of the work done by foreigners in an irregular situation is felt in the very heart of our economic and social system. The question asked of us is this: are we willing to accept the long-term presence of a group of workers without rights in our countries?

### ***I Evaluation of the number of illegal immigrants and a discussion of the concept of illegality***

How many foreigners reside illegally in the territory of the European Union? According to the *Atlas des migrants en Europe* (Atlas of Migrants in Europe) (Clochard 2009: 130):

“in 2005, according to the European Commission, there were between 4.5 and 8 million irregular immigrants in the first twenty-five member states of the Union, which is between 0.97 and 1.73% of the population.”

We can see that the figure is far from precise. Furthermore, according to the *Atlas des migrations* (Atlas of Migrations) published by *Le Monde* and *La Vie* (Blandin 2009:122):

“illegal migrants entering Europe [...], according to estimates by the European Union, amount to about 500,000 people each year, including 14% by sea.”

We mention these figures to call to mind the ‘orders of magnitude’: in reality, they must be treated with extreme caution. This is not only because it is always very difficult to measure the phenomena of illegality which, out of necessity, tend to be relatively secretive, and which, by definition, evade enumeration. In George Tapinos’s contribution to *Combating the illegal employment of foreigner workers* (OECD 2000: 19), there is an overview of the various sources and methods used: they are all based on applying a certain extrapolation coefficient to the data, and this coefficient is determined in a manner that is ultimately arbitrary.

Moreover, as Georges Tapinos stated, the very concept of illegality is itself complex. At least three elements may be deemed illegal: entry into the country, residence there and work performed there. However, there is not necessarily any connection between these three elements, and we can even find significant discrepancies between them. For example, legally resident migrants may have an undeclared job, and the reverse is also true, through in this case it would require the use of counterfeit or borrowed documentation. Moreover, many illegal residents entered the country legally, with a tourist visa or an asylum application: the survey conducted in 2008 among regularised undocumented immigrants in Lille (CSP 59.2008: 74) revealed that 68% of respondents came to France *with a valid visa*, with their situation only becoming irregular when it expired. Moreover, 12% of them said they had lost their passports, which in most cases means that they filed political asylum applications. In total, nearly 80% of those reviewed came to France legally: judging by this example, migrants mainly seem to become undocumented once they reach the destination country.

Illegality is ultimately a legal concept, and can be seen as a binary distribution: an individual either *is* or *is not* in a legal situation. But if we take a look at the economic and social context, then it becomes clear that we are dealing not with two clearly defined categories, but rather with an ongoing scale of situations ranging from relatively legally acceptable to less legally acceptable, and correspondingly from less to more precarious. In France, the levels on this scale are as follows:

*Irregular situation:*

- *Undocumented workers performing undeclared work*, paid by cash in hand, without employment contracts or pay slips.
- *Undocumented immigrants performing declared work, using borrowed or counterfeit documentation*: their employment is subject to the standard regulations, but their immigration status leaves them vulnerable, and they often have to work unpaid overtime, work during holidays, and so on.

*Intermediate situation:*

- *Those holding a temporary residence permit without a work permit:* they are viewed as perfectly legal by the police for a few weeks or so, but they are forced to work illegally.
- *Asylum seekers whose applications are under consideration:* their residency is legal, but they are not allowed to work so their situation is identical to that mentioned above.

None of the groups of migrants mentioned above is able travel outside France.

*Legal migration situation:*

- *Those holding a temporary residence permit with a work permit:* legality is obtained but only for a few months.
- *Those holding a renewable one year temporary residence permit.*  
These people are considered as being in a legal situation. Although the limited duration of their residence permit leads to them living with a certain level of insecurity, this is actually inconsistent with the conditions required for the permit to be issued. One of the conditions required by the authorities for such permits to be issued is an **open-ended** employment contract duly signed by the employer.
- *Those holding a residence card or refugee status:*  
Only the last two groups have real stability and freedom which is comparable to that of nationals.

In short, what is economically and socially significant is not the legal concept of illegality, it is the precariousness it causes; it is clear that the 'scope' of precariousness goes far beyond that of illegality; in other words, legality in no way solves the problem of precariousness. We should keep this in mind when discussing the status and role of foreign workers.

Nowadays in France, the decisive factor expressed through the recent strikes by undocumented workers (2008-2011) is the ability to obtain a work permit through a trade union process and not only through an administrative procedure. Obtaining a work permit is no longer solely dependent on the goodwill of the employer or the government; rather, it is now one of the demands in the struggle for equal treatment of employees, a struggle being fought by trade unions and undocumented workers. And as is always the case in trade union activity, this permit, initially designed as an administrative tool to be used in a migration framework policy, is likely to improve in quality in response to changing relations between the trade unions and the political powers.

## ***II. The concept of unskilled labour***

The concept of unskilled labour also requires close examination. To put it concisely, it is not the workforce that is unskilled, but rather the jobs they are allocated.

All migration sociologists have noticed the same thing: among today's migrants, there are fewer and fewer people who are poor and lacking in qualifications, people who in any case would probably not be able afford to pay the travel costs. There is a growing number of people who have, on the one hand, at least some resources available to pay for their transportation, and on the other hand, are skilled and have a profession, or more generally, to quote Pierre Bourdieu, have social and cultural capital, which makes them hopeful of succeeding in terms of their employability in the country of destination. In other words, migrants are increasingly coming from the middle classes of their countries of origin: they are employed as craftsmen, merchants, technicians, managers, health professionals, and similar.

However, in the country they arrive in, migrants are banned from doing almost all of the jobs corresponding to the level of qualifications they hold, as long as they remain in an irregular situation, and they soon realise that even obtaining a one-year residency permit does not really help their chances. For this reason, migrants in irregular situations generally suffer from severe and widespread professional downgrading: engineers end up working as chefs and technicians as security guards, the doctor take cleaning jobs and teachers become carers, to name but a few examples. We can only reiterate the loss of skills that this downgrading leads to - to the detriment of the country of origin as well as the host country - and the disappointment and bitterness this causes to those who suffer from it must not be underestimated.

To illustrate this point, we will again look at the Lille study (CSP 59, 2008: 98-101). In terms of qualifications, the population studied was categorised as follows:

Without qualifications	35
Vocational training	17
Secondary school	28
Bachelor's degree	11
Master's degree and above	8
No comment	1

Using a scale developed according to the subjective ranking of professions, we obtain a downgrading rate of 54.5%. To focus on just one example, 70% of workers are employed in their home country while only 47% find employment in the host country. With regard to merchants, the respective figures are 1% and 15%.

Moreover, the key issue is the fact that these migrants are **young**. That is to say that an extremely dynamic workforce enters the labour market of the host country with the sole concern of making money, regardless of the working and payment conditions imposed by employers. In any case, their earnings will be far higher than what they would earn from working in their own countries.

## ***II. A reminder of the rationale currently governing our economies, plus an examination of its relationship with the realities of illegal work.***

We will agree to consider that our economies are currently governed by a liberal rationale. It can therefore be stated that the following trends occur within them:

A) A desire for maximum flexibility to enable the most precise adaptation possible to economic fluctuations. This entails the spread of just-in-time management to prevent the sterilisation of capital represented by stocks. It also involves the spread of precariousness: the number of jobs is determined by daily variations in demand.

B) Minimising labour costs: these costs are the decisive strategic issue in competition. The reduction of the workforce is therefore an ongoing objective, which requires working hours to be extended and those who manage to retain their jobs to work harder.

C) The increasing specialisation of companies, which are encouraged to focus on their core business area. This results in the systematic outsourcing of peripheral activities, and the corresponding responsibilities and risks, so the practice of subcontracting is accelerated. As outsourcing effectively consists of recruitment and staff management, it results in the growth of temporary employment agencies.

D) The relationship between employees and employers is gradually becoming more individualised, which leads to the erosion of collective agreements and safeguards. In some respects, we are moving towards the old contractor agreements, which classed both parties involved as separate and equal.

Ultimately, it is clear that European countries are not trying to counter these trends: they simply attempt to limit their most socially corrosive features.

It is clear from this rationale that foreign workers in irregular situations are the ideal employees:

- No limits are imposed on the duration or intensity of the work they can perform;
- They are paid a piece rate, no matter how long they work. This rate is set by mutual consent, without reference to any regulations, and it is clear that the two parties are not on equal footing when they discuss the rate;
- Since these workers have no contracts, they may be dismissed overnight without compensation or notice;
- Undocumented workers do not have access to unemployment benefit or the minimum wage, so they are effectively forced to accept any available jobs;
- The workers' vulnerable immigration status effectively prevents them from disputing their pay and working conditions: the conditions are very much on a 'take it or leave it' basis;

- No tax or social security contributions are paid for their work. They receive no protection and no guarantees against risks (unemployment, accidents, illness, old age).

Overall, workers in irregular situations function entirely outside of the law in force. Flexibility and precariousness are total, and the freedom of the employer is virtually unlimited; the worker is thus enslaved.

Of course, this is an ideal model which could lead to the introduction of deregulation policies, but its widespread application would undoubtedly encounter insurmountable obstacles.

During the post-war boom of the 1930s, national workers were provided with a number of advantages in terms of regulation and protection which constituted what Robert Castel has referred to as the “wage society”.

Even if liberal policy has created several holes in the wage society structure, it is unlikely to ever be able to destroy it: such an undertaking would be met with determined resistance from employees, and would lead to a serious political crisis.

Foreign workers are, of course, not able to use voting rights to fight these practices and are therefore more vulnerable than national workers; however, as long as a preference for national workers does not develop, those migrants who work legally are entitled to equal rights; in legal terms, they are therefore protected in the same way as their national counterparts.

With regard to irregular migrants, however, the application of an ultra-liberal model has only one limitation: when the work involves the implementation of know-how acquired through practice and over time, it is in the employer’s interest to retain experienced workers, particularly if they were trained in-house. This requirement therefore ensures that the worker concerned benefits from some stability, but it is nonetheless a *de facto* sort of stability, which may easily come to an end.

Under these circumstances, the employment of foreigners, and particularly those in irregular situations, performs three functions or responds to three needs in our economic and social system.

Of course, the distinction proposed here is analytical; in reality, roles may overlap, and a single worker or a group of workers may fulfil several of them.

#### ***IV. Foreigners do jobs that nationals do not want to***

Here we encounter the problem of ‘three D’ jobs: *dirty, difficult* and *dangerous*. This sort of work is increasingly carried out by foreigners, and gradually, as their quality deteriorates, they are given to foreigners in increasingly precarious situations, including those in irregular situations.

We are therefore seeing the development of reserved industries, which are becoming enclaves: because of low pay and unpleasant working conditions, the construction, public works, hospitality, cleaning and personal care sectors are increasingly being deserted by national workers.

This is giving rise to segmentation of the labour market, which is being divided into multiple independent markets and separated by increasingly impenetrable partitions. Hence, there can simultaneously be a long-term shortage of labour in one sector and unemployment in another, without an equilibrium being established (with such an equilibrium requiring communication between the two sectors). Consequently, in France, employers the catering and construction sectors repeatedly complain about the persistent existence of unfilled job vacancies, even though there are three million unemployed people registered in the country.

This demonstrates how misleading the polemical cliché of foreigners ‘taking jobs’ from nationals is. Whether expressed in a straightforward (“an immigrant is just one more unemployed person”) or a more watered-down manner (“in times of high unemployment, we cannot accept new immigrants”), the error being made is the same: far from taking work from nationals, foreigners are actually taking the jobs that nationals do not want to do.

#### ***V. In times of crisis, foreign workers act as a sort of protective buffer for national workers***

This phenomenon has notably been highlighted by Claude-Valentin Marie, specifically in an article published in April 1996 by the magazine *Plein Droit* (*Plein Droit*, No. 31, p.14 to 21) eloquently entitled: *En première ligne dans l'élasticité de l'emploi* (The frontline in employment elasticity).

Claude-Valentin Marie established that between 1975 and 1990, there was a massive reduction in the number of foreigners working in industry. This reduction is analysed sector by sector, and the table below, based on the Table I from the article, presents the results:

#### Proportion of foreigners among total number of employees in the sector:

Industrial sector:	October 1973	December 1991
Nonferrous minerals and metals	16.5	8.2
Ferrous minerals and metals	13.3	8.9
Construction materials	15.6	10.5
Metalworking	15.4	9.9
Automobile construction	24.8	11.4
Rubber	16.3	8.8
Construction, civil engineering	31.1	21.1
Clothing textiles	9.6	7.8
Overall:	11.9	7.7

Commenting on the pace of evolution over time, Claude-Valentin Marie wrote:

“the reductions in the proportion of foreigners in the workforce first (1982-85) occurred in the large establishments (over 500 employees) primarily affected by restructuring, and spared, for a time, the construction, printing, publishing and clothing textile industries. Over the next three years (1985-88), lay-offs spread to all secondary industries. At this time, medium-sized establishments were also affected, since the orders made by service outsourcers to subcontractors were reduced or stopped altogether.

In total, over fifteen years (1973-1988), industrial enterprises have reduced the proportion of jobs held by foreigners by about 40%, representing (at the lowest cost) the dismissal of more than half a million employees. *Foreigners have undoubtedly suffered more than nationals as a result of the crisis and the restructuring of the industrial sector.*” (own emphasis).

What happened to the qualified foreign workers? A small number of them, who were (rightly) sceptical about the chances of a turnaround in the trend, applied for assistance to return to their countries of origin. But above all, we are seeing a massive shift towards the tertiary sector. This shift is linked to the increasingly popular trend of outsourcing work which was formerly performed internally in the large industrial facilities. Finally, we have also noticed a significant expansion in foreign production.

It is important to examine the social and political reasons behind these developments:

Claude-Valentin Marie wrote that “across the board, the dismissal rate of foreigners was (in relative terms) two times higher than the dismissal rate of nationals, with the most significant number recorded in the sectors which had in the past hired the largest number of foreign workers (mining, steel industry, automobiles) and which, during the crisis, have made foreign workers suffer the consequences of the collapse of their business. [...] (foreigner works) have contributed as much to offsetting the social consequences of the crisis for nationals (massive lay-offs in the industry) as they have to facilitating the restructuring of the production system (large-scale migration to the tertiary sector).”

Claude-Valentin Marie, said in passing that “reducing by half the number of foreign employees in the intermediate goods and capital goods industries [...] *has been of no benefit to nationals*, contrary to the predictions made” (own emphasis). This also confirms what was said above about the lack of communication between the foreign and national segments of the labour market.

Claude-Valentin Marie is even more explicit in his conclusion:

“In the contemporary period, and despite the waning influence of unions, it has never been completely possible to underestimate the resistance provided by employees faced with corporate liquidations, the questioning of social rights or redeployment and downgrading. The presence of foreigners was - at least



initially - very useful in this context, *perfectly playing its role as a shock absorber against the contradictions of the system*. Bearing the brunt of the most negative consequences of the developments described, on the frontline, *they have actually reduced social tensions within the world of work, and prevented the impact from being too immediate and too severe for civil society as a whole*. This socio-political dimension of their contribution to the ‘modernisation’ of our society has been, and we cannot emphasise this enough, just as important as their economic role.”

To this critical analysis, we would like to add two comments. Firstly, it is mainly because they do not have the right to vote that foreign workers were forced to play this buffer role: it is politically easier to get rid of them because nationals are always able to retaliate through elections. Here again, we can clearly see the benefits to be derived from equality of rights.

Moreover, Claude-Valentin Marie’s study dates to 1996, but it is clear that it remains valid today. In particular, it explains why the unemployment rate in France for employees from countries outside the European Union is double (20%) that of nationals and EU citizens (10%). The buffer effect obviously still exists today.

## ***VI. Work by foreigners in irregular situations allows the ‘on-site offshoring’ mechanism to function***

This third role is the prerogative of foreign workers in irregular situations.

The sectors where we find the vast majority of these workers are essentially the same in all countries of the European Union: construction and public works, hospitality, manufacturing, cleaning, security, personal care and agriculture. We will focus on and explore the case of manufacturing. All other sectors share a common characteristic: because of their ‘physical’ nature or the equipment used, they cannot be relocated. A construction site must be situated on the premises where the completed building will be located. Catering, cleaning, security and personal care are performed where those using the services are located and cannot be relocated.

So the presence of foreign workers in irregular situations enables these industries to find a workforce, on their doorstep, which can be exploited under labour conditions approximating those in the third world and can be recruited by businesses wishing to ‘outsource’ their jobs: there is the same flexibility, precariousness, lack of rights, responsibilities and protection and the same kind of obedience, and so on.

As mentioned elsewhere (Terray 1999), ‘on-site offshoring’ is based on two factors; to be more precise, two conditions must be met simultaneously for it to be possible. The first is the ‘administrative vulnerability’ of foreigners without residence permits. This vulnerability is effectively created by the legislation governing the entry and residency of foreigners in the national territory and the punishment of offenders. These laws vary slightly from country to country, but the outcome is the same: the foreigners in irregular situations are likely to be

continuously monitored, then arrested and placed in a detention centre and eventually deported. In general, the procedure is subject to some judicial review, but this is most often just a formality and provides the immigrant caught up in the system with very few real opportunities. In legal terms, a foreigner without a residence permit is therefore deprived of any protection and all effective rights. He is effectively delivered bound hand and foot to the authorities, which may decide overnight that he should be deported. His administrative situation is therefore extremely fragile, and this is what continually exposes the immigrant to the possibility of being blackmailed by informers among which his employer, his landlord or anyone else with whom he may have a dispute.

It is precisely here that the second condition comes into play. If the legislation against illegal residence was strictly and fully implemented, if all the necessary means were allocated to ensuring its implementation, and if those in charge of it were not constrained by any political or humanitarian scruples, there would be only a very small number of foreigners without residence permits in France, and consequently 'on-site offshoring' would not be possible. In reality, the law is applied in a selective and graduated way; foreigners without residence permits are undoubtedly in a vulnerable situation which makes them an easy target for exploitation, but allowing their continued presence in sufficient numbers in this country - regardless of the individual turn-over -, is what is providing employers engaged in 'on-site offshoring' with the staff they need. The two components are highly complementary: without repressive legislation, there would be no administrative vulnerability enabling exploitation, but without the flexible application of that legislation, there would be no workers at all to be exploited.

Consequently, the application of the law is what must be examined. With regard to employers, the conclusion is clear: although the law punishes them with very severe penalties in theory, a whole series of different processes effectively allow 'illegal' employers to escape this punishment. Firstly, finding proof of the laws being broken is generally falls to the authorities and mechanisms like cascade subcontracting, which we will return to later, are often employed to hinder the completion of their investigations. Moreover, the policy implemented by criminal prosecutors does not focus on employers as a target.

Finally, only a small amount of financial and human resources are allocated to monitoring and punishing infringements, meaning that the cracks are too wide and most of the predators get away. Only a few scapegoats – usually foreigners themselves – are ever punished by the law.

As regards to the workers themselves, tens of thousands of them are deported each year - more than 700,000 between 2005 and 2007 (Clochard 2009: 93) - and each of these deportations is a tragedy in itself. Nevertheless, statistically, this figure represents a relatively small share of the foreigners without residence permits living in Europe, especially as the departures are probably at least offset by the number of arrivals; indeed, the figure is both high enough to ensure that foreign workers without residence permits feel insecure and fearful, and low enough that a significant number of them are still available to illegal employers. Once again, if the law was properly implemented, foreign workers without residence permits would be entirely eliminated, but if it was not implemented at

all, blackmailing by informers would become ineffective, the workers would not feel threatened, and they would be safe from administrative vulnerability and would therefore become a source of indefinitely exploitable labour. The solution currently in use is a sort of middle ground: anyone who has had contact with undocumented immigrants is aware that they all live in constant fear of arrest and deportation, and behave accordingly. But most of them manage to survive, often for many years, and during this time work for the benefit of illegal employers.

Two concluding remarks: firstly, such a system can only function with the support of the government: it is the government that determines the laws in force (with the approval of parliament), organises their implementation, and exacerbates or reduces repression. In other words, whatever the official line may be, 'on-site offshoring' requires the complicity or complacency of the authorities.

Secondly, 'on-site offshoring' is the weapon used to introduce radical discrimination into the workplace: because of their illegal immigration status, undocumented workers are deprived of almost all rights they should be entitled to as workers, i.e. the rights to which their national counterparts are entitled. In other words, the struggle for their legalisation is in reality a struggle against discrimination and for equal rights.

## ***VI. A special case: manufacturing***

The case of manufacturing is unique, because it is a highly mobile industry: in fact, many companies in the textile and clothing sector have been relocated in recent decades. In these circumstances, one wonders how and why factories manufacturing clothing have managed to remain in various cities in Europe.

International competition primarily forces employers to minimise their labour costs in order to remain competitive: in Europe, this is only possible through the extensive use of illegal labour. When this first condition is met, factories located in Europe have two advantages over their rivals in Africa and Asia: they are saving on transportation costs which offshore production requires; moreover, they are able to respond much more rapidly to demand fluctuations. Of course, this ability to adapt quickly requires a highly flexible workforce, which is, again, only found among undocumented workers. It is actually the extreme version of the just-in-time production system used which requires the involvement of the undocumented workers. But here too, the conditions are the same; endless working days, dreadful working conditions, random and uncertain and extremely low pay. Furthermore, the workers in the factories had to borrow money to be able to afford to emigrate and so arrived in Europe heavily indebted: until they have repaid their debts, they remain highly dependent on their employer, which means that they are in a condition similar to slavery.

## ***VI. Subcontracting***

As Claude-Valentin Marie has shown, the crisis and the restructuring which took place in the 1980s have resulted in two closely related consequences: the

massive growth of outsourcing and subcontracting, and an equally massive decline in foreign employees in businesses created in this context. The production line is then broken down into separate segments and each segment is assigned to an individual specialised business: as we know, the division of labour increases productivity. But the completion of the activity requires a manager capable of harmonising everyone's contributions: This role is understandably performed by the general contractor who has obtained the contract and distributes the work involved among subcontractors.

The problem is that the game is not played out equally, because on the one side we have a monopoly and on the other competition. The general contractor is able to manipulate the subcontractors so that they are in a situation where they are in competition with one another and to select the bid it deems to be the most advantageous. Thus each subcontractor is forced, if he wants to win the contract, to reduce costs, margins and deadlines as much as possible; reduced salaries, more intense work, objectives which are impossible to achieve without a workforce willing to accept these sort of conditions. Foreign workers, especially those in irregular situations, are the perfect recruits.

The division is clear from the outset: the general contractor keeps most of the profits from the contract; the subcontractor takes on the risks associated with its implementation, as well as the responsibilities and risks associated with managing the workforce. In the construction industry in France we know of an extremely powerful and prosperous company, which only hires nationals or legal immigrants, yet still derives enormous profits from the work of undocumented workers employed by its subcontractors.

It is true that, in turn, the subcontractors outsource the recruitment and management of their workers to a second set of subcontractors: temporary employment agencies. As indicated by Nicolas Jounin (N. Jounin, in A. Morice and S. Potot 2010: 76), the temporary product is a "specific form of bribery, which uses the daily threat of dismissal", in other words, it also guarantees limitless flexibility and precariousness.

In the same article, Nicolas Jounin indicates, however, that faced with an increasing crackdown on illegal immigration, some construction companies began "to substitute their undocumented employees with posted workers through the transnational provision of services, where development is permitted by the liberalisation of services on a European and international level" (*ibid.* p.70). What is the advantage of this substitution? "The use of posting can bring the work back into the realm of legality with regard to the employment of undocumented foreigner workers" (*ibid.* p.87). Of course, this advantage is theoretically offset by the fact that the state is entitled to impose the application of the French minimum wage and statutory working hours legislation (*ibid.* p.83), but the monitoring of this is so sporadic that the risk of punishment is virtually nonexistent.

As noted by Nicolas Jounin, "the term 'onsite offshoring' may even apply more accurately to posting than to the employment of undocumented migrants. The idea is one of a transfer carried out and controlled by the company: in the absence of a transfer of activity [...] there is a transfer of labour. The undocumented immigrants

crossed the border just as posted employees do; but the mobility of the latter group is directly controlled by their employers.” (*ibid.* p.70) (see eleventh section).

A mention should be given to ‘cascade outsourcing’, which was briefly mentioned above. This is a procedure which is designed to ensure the impunity of contractors who have used illegal workers. The process consists of inserting five or six shadow companies between the contractor and the production site, which often consist of nothing more than a manager with a telephone, at most. The contractor is supposed to ensure that the subcontractors it uses do not employ undocumented workers; it therefore does this with the first company in the series which provides the required proof: and this is of course real, since it does not employ anyone! The next company does not concern the contractor. As for the police, they have entered factories and sometimes manage to make it up one or two rungs of the ladder, but they are never able to reach the contractor. In an industry like manufacturing, the established companies are never investigated: only very small intermediary companies have been arrested and prosecuted.

### ***IX. People smugglers in the villain’s role.***

In official rhetoric, illegal migrants are often referred to as the innocent victims of unscrupulous, predatory smugglers, whose ‘chains’ are condemned as cynically exploiting the misery of immigrants. These idealised images are far from reality.

On the one hand, it is these illegal immigrants, regarded as victims, who are hunted down by border guards or pursued by the speedboats of the Frontex agency. Regarding smugglers, Alain Morice and Swanie Potot find that “the number of infringements recorded and punishments which occur is paltry” (A. Morice et S. Potot 2010, p. 19). In addition, those smugglers arrested generally operate independently and on a small-scale, bribing drivers or fishermen as required: clearly they have nothing in common with the networks using modern equipment that we have enthusiastically been told about.

On the other hand, the tightening of border controls, the implementation of increasingly sophisticated monitoring and detection techniques and the construction of increasingly insurmountable walls make the smuggling networks clearly necessary. How could migrants, isolated in a foreign land, succeed in overcoming the obstacles facing them without the help of ‘professionals’? We can impose any sort of moral judgments we want on this situation. The fact remains that their ‘work’ generally lives up to the expectations of migrants, since most of them eventually arrive safely. A reminder of a figure cited above: 500,000 illegal immigrants per year manage to enter the territory of the European Union; this figure demonstrates both the effectiveness of the smugglers and the ineffectiveness of the measures used against them. However, we shouldn’t be ambiguous about their role: it is not the smugglers that create illegal immigration; is the closure of borders that forces people to illegally try their luck by using the services of a smuggler.

## ***X. Community solidarity***

Our study would be incomplete if we did not discuss the solidarity that enables undocumented workers to overcome the trials they go through. We have seen that undocumented workers find themselves in a hostile environment; they are often severely exploited and are constantly under threat of being denounced or arrested. In overcoming these obstacles, undocumented workers are fortunately not alone: they may make use of various solidarity networks, some based on links with family and friends, others on a common origin and others still on shared religious beliefs. Through these networks, they are able to find physical and financial assistance, advice and information which are useful in navigating their new lives. New relationships are forged, often marked by paternalism or cronyism, from which workers will eventually find it quite difficult to free themselves and which will probably make their integration into the host society more difficult. But here again, it is repression that these workers suffer cause them to be rejected and imprisoned within their communities.

## ***XI. Subcontracting practices within the European Union and cross-border recruitment agencies.***

a) The practice of subcontracting among firms belonging to different countries of the European Union has occurred for many years; subcontractors were permitted to work within the national territory of the commissioning company, with their employees being regarded as posted workers.

The decision of the Court of Justice of European Communities of 27 March 1990 (Bouygues Rush-Portuguesa Case) set certain terms regarding this practice:

- foreign employees must return home upon completion of their work and will not have access to the labour market of the host country.
- the subcontractor must be registered in their country of origin.

Under these two conditions, posted workers do not need a work permit; their contract of employment with the company and the subcontracting contract it must sign are sufficient.

b) With regard to the status of posted workers, they are subject to the social legislation of the host country in a number of areas which are: individual and collective freedoms; discrimination and equality between men and women; maternity protection and parental leave; the right to strike; working hours, holidays; weather conditions; minimum wage; overtime; health insurance; illegal labour.

In the mind of the legislature, this is to prevent any form of social dumping.

There are, however, two key areas in which the employee remains subject to the laws of his country of origin:

- Terms of breach of the employment contract and the right of termination,
- Membership of a social security system (if the period of the contract is under 24 months).

However, there are two loopholes through which social dumping can take place: more flexible termination law leads to a more precarious situation for the employee, and a less favourable protection system would make the work cheaper.

c) The requirement that the subcontractor must be registered in their country of origin aims to exclude companies whose sole business is the provision of manpower.

However, the criteria to claim this 'registration' are very vague: is the presence of some administrative staff sufficient to signify that the company is established? Also we have seen examples of subcontractors who supplied workers without any equipment. Considering the facts, it closely resembles the provision of labour.

Moreover, it is now permitted for a foreign temporary employment agency to give its employees contracts in another EU country. All that is required is that it registers its employees with the authorities and presents a financial guarantee equal to that of the domestic firms. It can even assign tasks to employees from countries outside the EU: if these workers are normally employed by the company, work permits are not required for them.

Temporary employees enjoy the same status as the other posted workers: as is the case with the national representative, they may be dismissed overnight by the user company.

In the case of conflict, a court - in France, the Industrial Tribunal - decides the outcome. It is doubtful whether temporary foreign workers, acting on their own initiative, without a sound grasp of the language of the host country, would lodge a complaint in court.

Protection rules are therefore strict in theory. But the application of the laws remains very arbitrary.

### ***Conclusion***

From the study above, we can draw at least one conclusion: in our economic and social system, foreign labour, especially the work of foreigners in irregular situations, does not constitute an epiphenomenon or a peripheral or marginal reality which would be resolved by simple administrative and policing measures alone. Quite the contrary: this phenomenon goes to the very heart of our system, within which it performs structural functions.

This means that we will not be able to reach a resolution without directly confronting those who defend the established order. But the question we are faced with is less economic and social than political, and it could be summed up as

follows: are we willing to accept the long-term presence of a group of workers without rights in our countries? Workers who are ripe for overexploitation, and even slavery?

If we accept this situation, it is obvious that it would act like a cancer and would produce metastases. It would cause a downward trend in remuneration for everyone; it would function as a battering ram to erode our achievements and our rights. In fighting for the legalisation of undocumented workers and for equal rights, we are defending everyone.

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