

Illegal Domestic Work: Advocating Reforms to European Union Policy

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Key Message

This policy brief advocates for the reform and creation of European Union policy towards allowing the legal entry of domestic workers and the regularization of illegal domestic workers already present in the European Union.

Introduction

Domestic work world-wide is a huge industry, employing somewhere around 400 million people worldwide (Mather, 2015). In the European Union (EU) alone, it is estimated that there are 26 million domestic workers (Mather, 2015). This large and important field of employment has very little official recognition as actual work and is only seen as something that “women do” (Mather, 2015, p. 3). However, most significantly, a large proportion of this domestic work is carried out by illegal migrant workers. From background research, it was found that societies in Europe create a huge demand for such work but provide no legal channel for these migrants to enter and work in the European Union. The illegal status of domestic work migrants already in the EU has also not been addressed by EU policy makers. This brief therefore argues that policy should be implemented to easily facilitate the entry of non-EU domestic workers to meet demand. In doing so, policy should be implemented both impartially, benevolently and with flexibility to ensure that individuals are not faced with exploitation and human trafficking. The case of Italian amnesties towards illegal domestic workers will be examined to further this argument.

Domestic Work in The European Union: Background

A domestic worker can be defined as “any person engaged in domestic work within an employment relationship, whether for one or more households, and regardless of their immigration status” (Mather, 2015, p. 2). Domestic workers carry out any number of jobs including cooking, cleaning, gardening, childcare, and washing. A plethora of different authors note that the demand for domestic work and the influx of domestic workers has been and still is increasing dramatically within countries in the European Union (Mather, 2015; Schwenken, 2007; Cyrus, 2016). This would not be considered an issue if it were not for many of these domestic labourers working illegally in their respective EU countries (Cyrus, 2016). A large proportion of these immigrant’s hail from non-EU countries. Cyrus (2016) notes that illegal domestic worker immigration has also increased, although data on how

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many individuals work is difficult to obtain considering that the work is carried out without government surveillance. It is important to note that there is a strong demand for domestic workers in private households which “creates an important niche for informal work that is only partially filled by the resident workforce” (Cyrus, 2016, p. 180).

Much of domestic work in EU countries carries little prestige, is poorly paid, has a negative stigma attached to it, and is often very demanding hence why much demand is created for migrant workers to fill these positions (Mather, 2015). Skilled non-EU migrant workers, such as nurses, are able to legally migrate to many EU countries as they are seen as beneficial by the state (Anderson, 2007). Therefore, their ability to migrate and work legally is far more obtainable. However, those who are seen as “unskilled” domestic workers face tougher immigration regulations and are at best only offered temporary work permits (Anderson, 2007). When demand can no longer be met because of these more stringent requirements, working illegally becomes more prominent. Cyrus (2016) notes that many non-EU domestic workers enter the EU through legal channels, but simply overstay their visas. Working illegally in domestic work consequently comes with a number of issues for both the migrants and the state.

There are a number of reasons why there is such a demand for domestic work in Europe. Most significantly, as Anderson (2007) notes, is the societal shift away from using unpaid family labour to take care of the elderly to using paid services. In Northern Europe this is particularly the case as there has been a move towards using welfare and private services to take care of the elderly. Triandafyllidou (2016) highlights that this along with an ageing European population with a longer life expectancy has created a boom for domestic work. Not only that, but with the greater liberation of traditional gender roles, women are no longer assumed to be the ones to fulfil domestic work. Therefore, it creates the demand for someone else to fulfil the task once occupied by European women. In Southern Europe, traditional gender roles still play an important role in who does the household work as it is still seen as woman’s work. The use of domestic workers for this “gendered work” therefore allows for “women in these societies to work outside the home” freeing them from traditional responsibility (Anderson, 2007, p. 247). Triandafyllidou (2016) and Mather (2015) do argue that the work in all cases is still gendered as it is mostly immigrant women from Asia and Africa who take up the European women’s domestic work. Considering these factors, the use of domestic immigrants is clearly vital in modern European society.

However, there is little recognition from EU member states of the benefits these migrants have in liberating gender roles, meeting care services and household demands. As

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Cyrus (2016) notes “EU policy has focused only on prevention of illegal migration. The legal exclusion of unauthorised immigrants is justified with the argument that their undeclared work has only detrimental economic effects [through lack of taxation]” (p. 177). Under the European Council Directive 2002/90/EC all unauthorised immigration and employment is considered illegal, and through the Council Directive 2008/115/EC outlines that these illegal “third-country” nationals should be returned to their respective country (European Parliament, 2019). Mather (2015) highlights that the irregularity of their status is down to discriminatory work permit systems in EU countries favouring more highly skilled migrants. This, as previously discussed, creates a market for illegal domestic work because there are still strong pull factors emanating from EU countries (Triandafyllidou, 2016). The main issue therefore is that these migrants find themselves having to work under an illegal status as there is no legal channel for them to become recognised labourers due to the unskilled nature of their work. Under the current system in many EU countries, they are treated just like any other illegal immigrant to the EU and therefore face deportation if they are caught (Askola, 2010). Paradoxically, this is regardless of the fact that their work is in strong demand and has had beneficial effects to European societies. Triandafyllidou (2016) goes as far as saying that they are an indispensable part of society.

The dire importance of this situation is stressed by the fact that the irregular status of many domestic workers makes them vulnerable to different kinds of abuse. Not only are they faced with deportation if caught working, their unregulated status exposes them to other issues such as earning poverty level wages. They also have no access to basic rights that other legal workers have in EU countries such as regulated hours of work, sick leave, and holidays (Mather, 2015). As Mather (2015) notes, the undeclared status of these domestic workers “leaves them highly vulnerable to exploitation and even slavery by private householders and unscrupulous labour agencies” (p. 3). The fact that many of these illegal domestic workers are women puts them at risk of sexual exploitation too (Schwenken, 2007). Arguably, these illegal migrants could better their situation by organizing themselves into a union or by protesting their status. However, as Mather (2015) stresses this would not be possible because of fears of deportation, imprisonment, and losing their already unstable jobs.

Therefore, in sum there is a clear need for domestic workers in the EU as they carry out vital work which the native population is generally unwilling to fulfil. Not only that, the liberation of women from traditional roles, especially those women who live in Southern Europe has created an ever-greater need for such work. The main issue arises concerning the nature of this work as many low skilled non-EU workers are employed informally and

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therefore often illegally (Schwenken, 2007). This illegality puts these individuals in a vulnerable position of being threatened with deportation as they are impartially classified as illegal aliens. Their status leads them to living in poor working conditions, vulnerable to exploitation, and no legal rights. This is also because the EU does not grant an official status to migrant domestic workers as their labour is not considered “real” work (European Parliament, 2016). It therefore begs the question of what can be done to transform much of this vital work carried out by illegal immigrants. The clear toleration of exploitation by countries in the EU should be reflected on and solutions must be found. It is therefore of utmost importance that the EU along with other sovereign governments of member states should forge new policy to recognise the worth of domestic workers and normalize the status of those illegally residing in the EU.

Policy Options

A Question of Impartiality

Under the current EU regulations, all working illegal immigrants are treated the same under European law (European Parliament, 2019). As discussed, if these domestic workers are found to be working illegally, they too would be deported under these laws. This is because this law is applied impartially. For Rothstein and Teorell (2008), this would constitute quality of governance because the way in which authority is exercised is carried out impartially. Rothstein and Teorell (2008) note that “government and officials should not take into consideration anything about the citizen or case that is not beforehand stipulated in the law” and that laws have to treat people alike (p. 170). In this case, the European Council Directive 2002/90/EC and 2008/115/EC are impartial applications of the law because it is applied to all illegal immigrants therefore constituting good governance under their criteria. Not only that but there is procedural impartiality as these two directives outline a set of regulations for the proper conduct that countries should follow when member states are faced with illegal immigrants (Rothstein and Teorell, 2008).

It is important to note that this policy brief does not argue that the impartial European Union laws towards illegal immigration are poorly founded. As Triandafyllidou (2016) noted, it is the discriminatory system of obtaining work visas for the European Union that causes these domestic workers to migrate and work the way they do. They are subsequently classified “illegal” under the impartial EU law. As has been previously discussed, this system undervalues the labour of non-EU “unskilled” domestic workers and prioritises those with qualifications such as nursing. Impartiality, according to the criteria of Rothstein and Teorell

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(2008) is therefore not applicable in this instance. Cyrus (2016) in reference to illegal immigration makes a distinction between restrictive tools and reductive instruments in combatting illegal immigration. This author notes that EU policy focuses solely on the restrictive side which implies strong border protection and law enforcement to try and stop “unwanted” individuals from crossing the border and staying. Cyrus (2016) notes that there should be more “reductive instruments” in place “directed at reducing illegal immigration through facilitation of legal immigration opportunities at the outset or regularization with hindsight” (p. 185).

A policy suggestion stemming from the arguments of Cyrus would therefore be to treat both the visa applications of skilled and non-skilled workers equally and create legal channels where low skilled domestic workers can apply for work and residency permits. By doing this it would also recognise domestic work as “real” work. Further to this policy on treating the different skill levels impartially, visa requirements could be made more flexible and relaxed depending on which area society is in most need of labour. In this case, where there is a clear demand for domestic workers in the EU to work in care and private households, visa requirements could be relaxed allowing for more domestic workers to enter legally. Changing the requirements for each different non-EU migrant would not breach the principle of impartiality. This is because Rothstein and Teorell (2008) do point out that “impartiality can encompass different policies and does not necessarily rule out support for specific groups or interests” (p. 170). This is as long as the law does not discriminate against certain individuals within the groups such as ethnicity or gender. In summary, illegal domestic workers should not have to be classified as illegal in the first place. Policy should be implemented that is impartial towards which non-EU migrants are permitted into the EU, basing it on demands of society.

Going Further Than Impartiality: Italy as an Example

Whilst Suzuki and Demircioglu’s (2019) paper questions whether the impartial application of policy benefits or disadvantages different layers of society differently concerning citizens, their ideas can be applied to this case too to create more policy options to tackle the issue. Suzuki and Demircioglu (2019) outline that impartiality in today’s society is not enough as there should be more “dynamic and diverse values” beyond impartiality (p. 6). These include values such as equity, procedural justice, benevolence, and flexibility. These values contradict with the principle of impartiality as they suggest special treatment of certain groups that are potentially more disadvantaged than others. As Triandafyllidou (2016) argues,

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domestic workers already hold one of the lowest economic positions in society especially because their work provides no upward mobility, is low paid, and has tough working conditions. This low status is further exacerbated by the illegality of many of these individuals. The ideas of benevolence and flexibility in policy and law towards helping disadvantaged groups can be examined through the case of illegal domestic workers in Italy.

Italy is a particularly interesting example of how illegal immigration can be tolerated to a low level and how such migrants can become effectively assimilated into society (Hooren, 2010). Italy takes a more reductive approach as they recognise that the root causes of illegal immigration come from “market mechanisms and social agency which counteract migration control” (Cyrus, 2016, p. 185). Hoorn (2010) highlights that the majority of domestic workers in Italy who had been surveyed entered and worked illegally until their status had been regularised. Ambrosini (2011) further notes that Italy has a strong demand for such work because it supports social services “that still hinge on the family and unpaid female labour” (p. 35). The Italian government recognised this demand by families for domestic workers and therefore permits amnesties (Ambrosini, 2011). In 2009, families were able to regularise their illegal household workers, which saw 300,000 approved applications (Ambrosini, 2011, p. 36). The government also recognised that these migrants, through working in close quarters with Italian families also had a high level of integration into society, such as learning the language. Ambrosini (2011) notes that even under far-right coalition governments, an exception was made for domestic workers. The example of Italy therefore shows a strong level of flexibility and benevolence in policy making. Being flexible therefore helps the very lowest in society by allowing them to obtain a certain level of rights and satisfies the rest of society who rely on domestic workers to uphold their social services. Under the standard procedure of EU law, these migrants would be classified as “illegal” and would have no other options other than being removed. Policy should therefore be made so that domestic migrants, especially when integrated into society, do not have to be removed. The system should instead normalize the status of the domestic workers who are already present in EU countries.

Recommendations for the European Union

From this research, there are some clear recommendations for the EU. This policy brief does not advocate the legalization of all illegal immigrants, but in terms of domestic labour, it is clear that reforms are needed. This is because of the high demand for such labour, which creates pull factors bringing in illegal migrants because legal channels for non-EU

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immigration are simply not viable. Interestingly, regularizing the status of illegal domestic workers has already been discussed by the European Parliament in plenary sessions, however little progress has been made since (European Parliament, 2016). The EU should not necessarily reform its impartial policy on what constitutes an illegal immigrant and what processes should be carried out to remove them, but instead reform the system by which domestic workers can enter and live in the EU.

The Italian example of flexibility and benevolence can certainly be emulated by other member states in the EU, however further improvements can certainly be made. In Italy, families are the actors who regularize illegal immigrants, however this option should be open for the migrants themselves too. This is because the family can still refuse to normalize their status, therefore keeping the domestic workers open to exploitation because of no legal rights. If this policy is implemented it also needs to be made sure that the process of legalizing is as simple as possible, making sure that there is no Administrative burden on the side of the immigrant worker. Therefore, for new domestic workers entering the EU, there needs to be pathways for them to easily do so legally. Not only that, but for the illegal domestic workers already in the EU, Italian style amnesties need to be supported to make sure all domestic workers are registered. By registering these migrants and giving their line of work status as “real work,” they are guaranteed more legal rights (Mather, 2015). Further to this, by guaranteeing legal rights, they are less at risk of exploitation such as human trafficking, overwork, and below poverty level wages.

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