OSCE

Office for Democratic Institutions and Human Rights

**Regularization of migrants in an irregular situation in the OSCE region
Recent developments, points for discussion and recommendations**
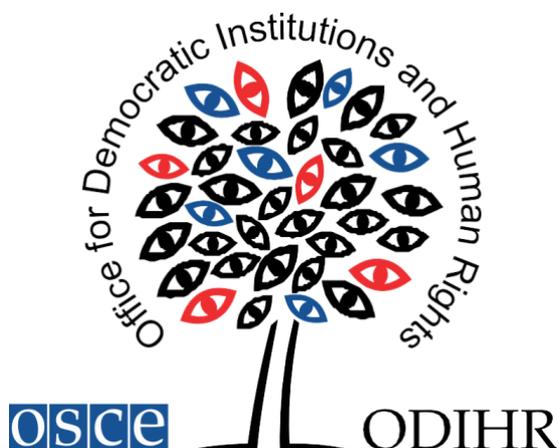
MEETING REPORT

Online meeting co-organized by

**OSCE ODIHR
&
PICUM: Platform for International Cooperation on Undocumented Migrants**

8 November 2021, 14:00 – 18:00 CET

**Warsaw
January 2022**

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BACKGROUND TO THE MEETING

The majority of OSCE governments have carried out regularization programs and/or established on-going regularization mechanisms at least once in the past twenty years, and many several times. However, there has been no comprehensive comparative study of regularization programs and mechanisms in the OSCE region since the "Regularizations in Europe (REGINE)"[1] study in 2009. Therefore, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) commissioned an expert study in 2020 to raise awareness of existing international standards and commitments related to regularization as well as to identify regularization measures, key trends and noteworthy practices, including recent practices in the context of the COVID-19 pandemic. The scope of the research presented in the study has covered measures to regularize status and to prevent irregularity identified across the OSCE region since 2006. These measures cover all grounds that are not regulated and required by the transposition of international conventions, such as refugee status. The study presents recommendations and points for further discussion among relevant stakeholders, particularly those who are responsible for designing and implementing regularization measures.

Following the study's publication in August 2021, ODIHR and PICUM (the Platform for International Cooperation on Undocumented Migrants) jointly organized a webinar in November 2021 to present the study's findings and to discuss the good practices and lessons learnt. Given the scarcity of systemized information, and recent changes and developments, including a variety of measures in response to the COVID-19 pandemic, the event targeted, among others, stakeholders involved in this work at the national level, including practitioners and policymakers working on detailed responses and solutions in the area of regularization.

Based on relevant OSCE commitments (see Annex 2), ODIHR assists participating States to facilitate integration and protection of the rights of migrant workers to the benefit of both receiving societies and the migrants themselves. This assistance includes awareness raising, capacity building of key national stakeholders, the promotion and exchange of good practices, and policy research and advice. This webinar built on several past and ongoing ODIHR initiatives in training assistance for national authorities and research to inform policy development on migration across the OSCE region.[2] The meeting was co-organized with PICUM in recognition of PICUM's long-standing work and expertise on regularization as well as the contributions of experts in PICUM's network to the data collection for the ODIHR expert study.

AIMS OF THE MEETING

The meeting was organized to fulfil several objectives:

- raise awareness about the significance of regularization of migrants in irregular situations and existing international standards and commitments related to regularization;
- provide an opportunity to discuss key trends and noteworthy practices, including recent developments in the context of the COVID-19 pandemic;
- promote exchange of experiences and review of good practices (in line with OSCE commitments and international legal standards) among responsible officials and experts from across the OSCE region, particularly those who are responsible for designing and implementing regularization mechanisms;
- present recommendations and points for further action.

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[1] Martin Baldwin-Edwards and Albert Kraler, *REGINE Regularisations in Europe. Study on Practices in the Area of Regularisation of Illegally Staying Third Country Nationals in the Member States of the European Union* (Vienna: International Centre for Migration Policy Development, 2009).

[2] These include previous ODIHR events such as "Migrants in an Irregular Situation whose Return or Removal has been Postponed in Line with OSCE Commitments, International Legal Standards and Good Practices" in March 2017 and "Migrant Children's Rights in Regional Processes: What Next After the Chisinau Agreement?" in December 2020.

MEETING SUMMARY

The meeting opened with keynote speeches followed by three panel sessions, including presentations from experts from participating States, non-governmental organizations (NGOs) and international organizations exchanging lessons learned from recent practice, sharing updates on national developments and proposing recommendations for future reforms. Eighty (80) participants joined the online meeting.

Mr. Konstantine Vardzelashvili, Acting Head of Democratization Department, ODIHR, opened the meeting and welcomed the participants. He thanked PICUM for the excellent cooperation on the desk study and on the preparation of the meeting. He highlighted that ODIHR recognizes that status resolution is the most pressing priority for undocumented people, who currently have few options for regularization. In the past twenty years, the majority of OSCE participating States have tried to address this situation by carrying out various regularization programs and by establishing on-going regularization mechanisms in law as well as measures to uphold human rights of undocumented migrants. It has been shown again and again that regularization helps improve migrants' working and living conditions and contributes to fulfilling human rights, social and public health objectives. It also contributes to increasing tax and social security revenues for state budgets, and helps States gain better information about migrant populations which can contribute to more evidence-based policy making. Mr. Vardzelashvili noted that ODIHR commissioned an expert study to help raise awareness of existing practice, international standards and commitments related to regularization. The impressive line-up of expert speakers at the webinar would present the most up-to-date information about recent developments and lessons learned. He expressed hope that the discussion would generate useful points for further reflection among relevant stakeholders, in addition to the recommendations from the ODIHR expert study, and be instrumental to those who are considering or are responsible for designing and implementing regularization measures.

Ms. Michele LeVoy, Director, PICUM, also welcomed the participants to the meeting and thanked ODIHR for the good collaboration. Her opening remarks stressed that undocumented people are part of our communities and are the backbone of many sectors of our societies, such as agriculture, construction and domestic care. She explained how regularization is a life-changing event for many reasons including that the individual concerned can finally be able to work officially and have greater access to medical help when needed. Once regularized, people can stand up for themselves and others, in case someone tries to abuse or exploit them, without fear it will lead to detention and deportation. Once regularized, the constant stress of living and growing up undocumented ends and people are able to plan their lives and build their future. Regularization also benefits our societies and governments by strengthening trust in state authorities among migrant communities, strengthens social and economic equality within society, empowers migrants and their families, and reduces their vulnerability to exploitation and abuse. She underlined that many countries in the OSCE region, including all European Union (EU) Member States, have regularized undocumented people, either through permanent regularization mechanisms or temporary regularization programs. A recent study by the European Migration Network counted 60 'national protection statuses' in 24 EU Member States, many of which would be considered regularization mechanisms. For temporary regularization programs and structural mechanisms to work effectively, quickly, humanely and be fair, they must have the below **seven characteristics, which embody good practice:**

1) Undocumented people themselves should be able to apply, and the permit itself should not depend on others, like a spouse, parent, or employer. This reduces dependency on employers and limits risks of exploitative or violent relationships.

2) Decisions should be based on clear, objective criteria. Reasons for refusal should be documented and argued. Wholly discretionary procedures create confusion, may give false hope, or deter people who have grounds for regularization from applying. For example, having lived in the country for several years – regardless of status – should be sufficient grounds for regularization. When deciding the number

of years required, a shorter time should be considered for children and those who have grown up in the country. The criteria should also be realistic and feasible to prove.

3) The regularization procedure needs to be accessible in practice. That means not bureaucratic, burdensome, or expensive. It should be feasible and reasonable for undocumented people to produce the proof that the government requires, and any fees should be minimal and affordable for someone with income below the minimum wage.

4) People should have access to free legal aid, sufficient information on the criteria and process, be heard (including children) and have the possibility to appeal.

5) The resulting residence permit should be secure and long-term. It should give full access to the labor market and social rights.

6) A temporary residence permit should be given **during the procedure** itself to prevent and alleviate suffering, redress exclusion, and promote inclusion.

7) Civil society, including migrant-led organizations, should be involved from the design to the implementation and evaluation of the scheme. This will help make sure the scheme is effective, feasible and adapted to the local context.

Finally, Ms. LeVoy emphasized that regularization **programs should be flanked by permanent mechanisms** and accompanied by measures to support the applicants and address the causes for irregular stay and work. In closing, she said that the organizers are glad to have so many speakers from so many different countries who have understood that regularizing undocumented people makes good social, political and economic sense.

Ms. Jyothi Kanics, ODIHR expert, presented the ODIHR study on *Regularization of migrants in an irregular situation: recent developments and trends across the OSCE region*. She explained the purpose, scope and methodology of the study and drew attention to the relevant international standards and commitments in this field. Ms. Kanics summarized the key observations and points for discussion from the study and explained the shift in many countries from employing time-bound temporary programs to enshrining permanent mechanisms in the legislation. She also highlighted the adoption of more child-specific and child-rights-based mechanisms as well as new pathways for integration for former unaccompanied children and regularization through education and vocational training opportunities. She finished her intervention by presenting the overarching recommendations from the study.

***Session I was chaired by **Ms. Alice Szczepanikova, ODIHR Migration Adviser**, and focused on strengthening and clarifying the legal and regulatory framework.

Mr. Neil Bruton, Campaign Development Worker, **Migrant Rights Centre Ireland** (MRCI) introduced their campaigning work with Justice for the Undocumented and focused on the Irish government's forthcoming scheme to regularize undocumented migrants. Justice for the Undocumented has been campaigning for 11 years, during which many brave undocumented people stepped forward to advocate for change. This led to increased awareness and a strong network of allies. In 2018, the Irish government carried out a regularization program referred to as the Student Scheme. MRCI and Justice for Undocumented intensified their advocacy pre-election 2020 and were able to secure support from key political allies including a specific commitment to the program by the government. In April 2021 the Irish government proposed a draft scheme, the final terms of which are subject to a consultation process with civil society. The Minister's initial proposals envisage that eligible people would have a period of 4 years residence in the State without an immigration permission, or 3 years in the case of those with children; be granted an immigration permission that allows for unrestricted access to the labor market; and have years of residence with that permission reckonable for the purposes of pursuing citizenship by way of naturalization. The scheme will operate under the Minister for Justice on an

administrative basis and will be time limited. It is anticipated it will be open for approximately six months for applications. During the consultation period, MRCI raised key points with the government, pushing for the scheme to be broad and inclusive (inclusion of those with pending applications and deportation orders as well as inclusion of dependents, spouses, and de facto partners) and calling for a reduction of the residence requirement as well as a simplified residence requirement - including all residence whether regular or irregular – as is common in residence criteria in regularization measures across the region. Additionally, MRCI advocated for low fees; assurance of safety in applying and a non-punitive approach by employers; and a flexible approach to documentation. MRCI stresses that there is no downside to including as many undocumented people as possible in this scheme as there is cross party support for the regularization, as well as from across business, trade unions and civil society, and no one should be left behind, including those who have lived a long time in Ireland but have had some period of regular residence. The recent Irish government update confirmed that the new scheme will open by the end of 2021 and that successful applicants will receive immigration permission, unrestricted access to the labor market and can begin the path to citizenship.

The next speaker was **Ms. Juliana Macedo do Nascimento, Senior Advocacy Manager, United We Dream,** who presented the 'DACA' program in the United States, and shared her personal experience as a 'DACA' recipient. She first traced the historical developments starting with the Dream Act that was introduced in Congress in 2001 but did not pass. It was reintroduced for the third time in 2010 and passed in the Senate, but not in the House. Eventually, activists turned to President Obama and pushed for executive action to offer some form of protection from deportation and access to the labor market. On June 15, 2012, the secretary of Homeland Security announced the policy of Deferred Action for Childhood Arrivals (DACA) under which certain people who came to the United States as children and meet several guidelines may request consideration of deferred action (a use of prosecutorial discretion to defer removal action against an individual) for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action does not fully regularize a person's residence status by providing a residence permission and thus does not create a pathway to citizenship. In 2017, then-Attorney General Jeff Sessions declared DACA illegal and unconstitutional, but the Supreme Court ruled in favor of Dreamers in June 2020. However, this and subsequent legal challenges have meant that the United States Citizenship and Immigration Services is now only processing renewals and not considering new applications. In addition, children who come of age now would not meet the criteria set earlier (which mentions specific dates). On the one hand, DACA has been a major victory, allowing many to stay and to work in the USA, but it is temporary, does not provide a path to citizenship and is now considered outdated. It has also been vulnerable to judicial challenges. According to Ms. Macedo do Nascimento, the only real solution will be a legislative solution that creates a pathway to citizenship.

The final speaker on the first panel was **Mr. Sérgio Ferreira, Spokesperson, L'Association de Soutien aux Travailleurs Immigrés (ASTI),** who presented the mechanism for regularizing school-going children and their parents in Luxembourg and other recent developments. He explained that Luxembourg has a high percentage of non-citizen residents. A regularization mechanism for school-going children and their families has existed in Luxembourg since 2015. Children who have completed at least 4 years of school, have sufficient resources, and submit the application before the age of 21 are eligible for regularization. Parents can be regularized when they can support themselves and when they exercise parental authority of a school-going child who has been in school for at least 4 years. The criteria also require that their presence should not constitute a danger to public order or safety and health; they should show a genuine desire to integrate; and they have not evaded a deportation order. No statistics are publicly available, so it is not known how many applications there have been, how many decisions and how many people regularized as a result, or how the exclusion criteria are being applied. From ASTI's work, they see that some families fulfilled all the conditions, but apparently because they had not responded to a return order at some point (even though they did not "evade"), their application was denied. Another regularization measure has recently been introduced in Luxembourg which considers humanitarian, medical or personal grounds, but the criteria are unclear. In summer 2020, ASTI and the platform for migrant organizations made new proposals to the immigration minister to improve the situation of undocumented persons: a proposal for a time-bound regularization for workers and for people who cannot work or be returned; and proposals for immigration law reform to

create a residence permit for jobseekers and to introduce a permanent regularization mechanism in the law for workers and for those who are non-removable. As these proposals have not gone forward, ASTI will be launching a new campaign to push for changes in 2022, where it will be important to mobilize evidence to counter myths and prejudice and to change the public narrative.

During the **Q&A session** following the panel, **Mr. Neil Bruton** confirmed that the new scheme in Ireland would grant a status with unrestricted access to the labor market and a pathway to citizenship. He also explained how the MRCI campaign had secured broad support for the upcoming regularization scheme, for example, by meeting with every political party (in this regard, he noted that they do not have any far-right parties), well in advance of the elections and focusing on regularization as the top priority for the program for government (rather than asking for several things). They showed the rationale – e.g., that there is no evidence of regularization motivating more irregular migration to a country.

Ms. Juliana Macedo do Nascimento was asked to share some lessons learnt from the U.S. experience of youth-led campaigning. She responded: 1) that the idea of "comprehensive immigration reform" that comes alongside a focus on enforcement, security and border measures has not worked and has not succeeded in bringing the necessary reforms over the past 35 years. The idea that a youth can receive a Green Card while the parents are deported is not a way forward; 2) that it can be strategic to pass pathways for certain groups (e.g. young people, agricultural workers) but success is only possible through campaigning in a coalition including, for example, unions, communities, and groups that focus on border communities.

In response to a question regarding how they handle difficult narratives, **Mr. Sérgio Ferreira** explained that they seek to tackle such myths with evidence and that raising awareness is the first step. They need to find more allies among the public and political parties. They will try to step up their campaign before the upcoming national election in 2023, also learning from the Irish experience.

***Session II was chaired by **Ms. Carolina Lasen Diaz from the Office of the Council of Europe's Secretary General's Special Representative on Migration and Refugees** and explored creating an enabling environment and promoting good practices for undocumented migrants to regularize their situation.

Ms. Paola Botta, Associate Expert, Migration and Human Rights, [United Nations Office of the High Commissioner for Human Rights (UN OHCHR)](#) spoke about the legal framework and how we can build upon international human rights law to strengthen pathways. Her recommendations were informed by two documents published by the UN Network on Migration, specifically, the *[Guidance Note: Regular Pathways for Admission and Stay for Migration in Situations of Vulnerability](#)* (2021) and the global mapping on *[Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice](#)* (2018). Ms. Botta stated that:

1) Strengthening national frameworks for regularization should fully reflect **international human rights law principles and obligations** that may be grounds for regularization (e.g., non-refoulement, right to private life, best interests of the child, right to health, right to rehabilitation for victims of torture, etc.).

2) Regularization needs to be **accessible for migrants in vulnerable situations**. The criteria should be rights-based, clear and realistic, able to respond to the people's real needs and situations. Measures to ensure access include fee waivers, flexible documentation requirements and ensuring that people will not be penalized or targeted for immigration enforcement in cases when the application is denied.

3) Establish **rights-based regularization procedures**. Procedural safeguards should include an individual assessment, with reasoned decisions provided in writing and the possibility for appeal. Procedures also need to be child rights based, gender sensitive, and trauma informed.

4) Civil society participation in design, implementation and monitoring is crucial. **Monitoring** will help to better understand who is being left behind by the existing schemes and what barriers exist. OHCHR will soon publish a specific chapter on monitoring pathways of admission and stay including regularization mechanisms and programs.

5) Regularization should provide **access to services and a pathway to long-term status**. States should ensure that regularization leads to access to rights and services, which currently may vary depending on the type and length of permit. There should be avenues to extend and renew if only temporary status is granted as well as a pathway to a more secure status based on considerations such as integration or employment. However, criteria that are difficult for people in situations of vulnerability to meet should be waived.

Ms. Marianne Halle, Communication and external relations, [Centre de Contact Suisses-Immigrés (CCSI)](#), shared her experience regarding [Operation Papyrus](#), which was a temporary regularization scheme in the city-canton of Geneva that ran from February 2017 to December 2018, during which more than 99% of applications filed by support organizations and trade unions on behalf of undocumented people were accepted. It has been estimated that the settled undocumented population in Geneva is several thousands and that 75% are women working in the domestic sector.[3] Under the existing regularization mechanism, humanitarian permits were granted in very limited numbers, on a case-by-case basis, in what was often a long and arbitrary process. Operation Papyrus aimed to make the criteria clearer and less restrictive and to make the procedure more adapted to the realities of applicants. The authorities required five criteria to be met by applicants: 5 years of residence for families with children, or 10 years for others; employment; financial independence; level of language as an indicator of integration (A2 oral French) and no criminal record. Operation Papyrus was not open to former asylum seekers. Accompanying measures included French classes, labor market controls after workers had been issued permits and help for those who lost employment in the process. The main achievement of Operation Papyrus was a more standardized procedure with transparent criteria that led to predictable outcomes with a high success rate as applicants knew exactly which criteria had to be met and which documents had to be submitted.

The [Secretary of State for Integration and Migration of Portugal](#), **Ms. Cláudia Pereira** shared Portuguese experiences with the mechanism to regularize workers as well as measures adopted in the context of COVID-19. Portugal has an existing mechanism in law to regularize undocumented workers with an offer of employment who entered regularly. Last year it extended access to workers who entered irregularly but who have been working for 12 months and are registered with social security. Portugal also took steps to create an enabling environment for regularization procedures, temporarily regularizing those with pending applications in the context of COVID-19. The State Secretary explained the two main strategies to achieve the government's vision to include migrants in all measures from housing, employment to education and health: ensuring that information reaches migrants and that obstacles to access services are removed. The authorities have taken a whole-of-government approach, so it was relatively easy to respond quickly when the COVID-19 pandemic hit. A decree was adopted very soon after the pandemic started, so that people with pending applications were temporarily considered regularized and were granted full access to social benefits. Further decrees have been issued to extend this measure until the end of 2021. There are also simplified procedures to apply for and to renew residence permits, with automatic renewal in some cases. The government set up an on-line platform for vaccination with information translated into more than 25 languages; 86% of the population is now vaccinated including undocumented migrants. Another issue the authorities sought to address is to remove obstacles to getting a social security number for migrant workers, including when

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[3] Gender-differentiated impacts of irregular migration status and regularization programs were not specifically addressed during this event. However, both OSCE and PICUM have carried out work on gender-sensitive migration policies in the past. For more information, see PICUM's [website dedicated to women](#) and OSCE's [Guide on Gender-Sensitive Labour Migration Policies](#) and [Gender and Labour Migration Trainer's Manual.](#)

undocumented. If someone has a promise of a labor contract, they can now directly register with social security. Ms. Pereira underlined the significant contribution of 884 million Euros made by migrants to the social security system in 2019, and the fact that migrants ensured the provision of essential services during the period of confinement caused by the pandemic.

During the Q&A session, **Paola Botta** was asked whether there is a specific recommendation published around an assurance that people will not face deportation if their application for regularization is rejected. She confirmed that in the UN Migration Network's recent guidance note, para 33 dealing with procedural safeguards states that: "Applicants should be assured that their data will not be used for immigration enforcement purposes should their application not be successful." She explained that the UN Migration Network is tasked to support States in implementing the Global Compact for Safe, Orderly and Regular Migration (including objective 5 and 7). Another approach, the so-called "Munich model", was also mentioned by one of the participants in the meeting chat. Munich set up a mechanism for anonymous immigration case reviews, where irregular migrants, through the mediation of an NGO, can anonymously request an opinion on their chances of regularization from immigration authorities. This approach was recognized as a good practice by Guidance for Municipalities on Migrants with Irregular Status in Europe published by the Centre on Migration, Policy and Society (COMPAS). In addition, the Council of Europe's ECRI recommendation could also be referred to in advocacy efforts to promote firewalls to safeguard against deportation. Firewalls are mentioned in objective 15 (b) of the Global Compact, even if in an implicit way.

When asked what has happened since Operation Papyrus ended, **Marianne Halle** explained that Geneva has managed to maintain most of the criteria; those who meet the five criteria have a very good chance of regularization under the ongoing regularization mechanism. What is more challenging is whether and how this approach could be extended beyond Geneva and codified in regulations on the Federal level. She noted that the conservative cantons do not want to clarify the criteria. Therefore, more advocacy efforts are needed across the country.

Ms. Pereira was asked whether the Portuguese government is considering extending some of the temporary measures into 2022 as the COVID-19 pandemic persists, and more generally. She explained that under the current measure people are temporarily regularized until they receive a final response, and there is no time limit per se. The government has issued three regularization decrees and the measure keeps being renewed as necessary.

In response to a question regarding a proof of employment, **Marianne Halle** explained that there was a specific form that undocumented workers could use to "self-declare" their previous employment, listing the name of their employer and salary, etc., so that support from the employer was not required to apply. Once the person obtained a residence permit, the labor control office sent a letter to the current employer "inviting" them to declare themselves to the authorities and ensure respect of labor standards. Most employers did reach conformity within a few months, but it was key to have a common understanding with the authorities around the end goal being more important than having everything in order when claims were lodged.[4]

***Session III** was chaired by **Ms. Shannon Pfohman from Caritas Europa** and examined monitoring, innovating and responding to particular situations.

Ms. Ainara Dorremochea Fernández, Assistant Director General of Legal Regime, **Ministry of Inclusion, Social Security and Migrations of Spain**, explained the Spanish 'arraigo' regularization system and provided updates on recent reforms targeting unaccompanied children. The Spanish 'arraigo' system was first introduced two decades ago and enables the regularization of persons who have developed roots either through employment, social integration, or family ties. This system was highlighted as good practice in the ODIHR study. During the COVID-19 pandemic, policies had to be

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[4] Further details on documents accepted as proof of residence in Operation Papyrus are also available here.

adapted to the new situation. At least 13% of those employed in essential sectors are migrants. One of the measures taken to respond to the pandemic was an administrative measure to extend permits for 6 months, so people with permits did not lose their status. There was also more flexibility with the application of criteria and consideration for renewal of permits as well as for family reunification requests where, for example, the income requirement was reduced. She also presented several measures taken to address the situation of unaccompanied children and young people. The first measure was taken 2 weeks before the lockdown when it was made easier for unaccompanied children (aged 16 to 18) to obtain a work authorization, as a result of which 473 youth are now working. Measures were also passed to provide renewable 2-year residence and work permits to 18- to 21-year-olds who were former unaccompanied children residing irregularly but without access to the labor market. Most recently, a decree was adopted to facilitate access to residence and work permits for unaccompanied children as they turn 18 and transition into adulthood. As many unaccompanied youths have fallen into irregularity in recent years, the authorities wanted to improve their situation by reducing vulnerability and establishing a pathway for their inclusion. It is important to create a specific regime with rules for unaccompanied children who are ageing out and to provide a residence authorization of at least 2 years to give them stability and support.[5]

The following speaker was **Ms. Ludovica Banfi, Project Manager, Social Research Research and Data Unit, EU Fundamental Rights Agency (FRA)**, who explained how the provision and design of permits can contribute to preventing and addressing labor exploitation of undocumented workers. She drew attention to the findings of the FRA's research addressing labor exploitation, which examines measures that can be put in place to identify and to assist exploited migrant workers to access justice and compensation, including permits. First, she stressed that policies that tie a migrant to a specific employer should be avoided as this can lead to exploitation. She added that dependency on the employer for the renewal of a residence permit is also a risk factor. Even regularization schemes that require employment can place migrants at risk. Some promising practices have been identified including the Irish Reactivation Employment Permit Scheme. The Canadian policy that allows an open work permit for vulnerable workers is also a noteworthy practice in this regard. Safeguards to protect workers from exploitation also encompass the duty to provide information. For example, the EU Directive on transparent and predictable working conditions provides for measures that could protect workers. Ms. Banfi highlighted that seasonal workers are at increased risk of exploitation due to their short length of stay and dependency on their employer. Therefore, there is a need to increase inspections and to monitor their situation including accommodation provided on site. In general, strong equal treatment provisions and efficient complaints mechanisms are important, including the possibility for a third party to complain on behalf of workers. In June 2021, the FRA published a new study entitled *Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive*. This study aimed to examine the implementation of the protective elements for undocumented workers in the directive[6] and inform the European Commission Communication on the directive of 29 September 2021. The FRA study identified promising practices when permits are granted without requiring participation in criminal proceedings, and are extended to enable workers to receive due wages. She noted that the recent EC communication clarified that residence permits under the directive should not require cooperation in criminal proceedings. Ms. Banfi closed by recommending system strengthening through labor inspections, firewalls, and other measures, which can enable (undocumented) migrant workers to report workplace violations to competent authorities and access remedies safely, without risk of immigration enforcement.

Finally, **Ms. Joanna Fomina, Assistant Professor, Institute of Philosophy and Sociology, Polish Academy of Sciences**, presented the 2012 regularization program of long-term irregular residents in Poland, which was open to all persons who were residing without a regular residence status, who had lived in Poland for at least 4 years and who could provide identification. People obtained a residence

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[5] Further details on the new reform are presented in a recent PICUM blog post.

[6] The Directive obliges EU Member States to criminalize certain forms of employment, for example, when employers subject workers to particularly exploitative working conditions, and envisages the possibility of granting such victims temporary residence permits.

permit for two years and were allowed to work under an employment contract. On paper, this was a very inclusive program, but in practice there were barriers. At the time, Poland was both a country of transit and immigration and the legal framework did not reflect this reality. From 70,000 to 500,000 undocumented people – mainly Ukrainian and Vietnamese – were estimated to reside in the country at the time. There was wide political consensus for 'abolition' as regularization was called at the time. The previous regularization program in 2003 and in 2007 had very strict criteria so it was decided that the new program should be as liberal and as inclusive as possible. The program itself had two criteria: 1) irregular stay at start of the program (1 Jan 2012) and 2) defined period of uninterrupted stay. The burden of proof was on the authorities, so they often had to accept the length of stay based on the individual's testimony. The number of applications was rather low, around 10,000, with approximately 4,000 positive decisions, due to problems with both criteria. For example, seasonal workers were not able to apply because an uninterrupted stay was required. Children born after 2007 were also excluded. Additionally, some people were not able to apply because they did not meet the requirement of irregular stay as they were viewed as legally residing, for example, those in detention centers. An important lesson learned was that civil society should be involved in the design of the regularization mechanism, as NGOs foresaw the problems, but there was a rush to adopt the law, and, therefore, there had not been enough consultation to anticipate these gaps.

During the Q&A session, **Ms. Ainara Dorremochea Fernandez** underlined again the importance of migrants in society, explaining that immigration is necessary because there are specific sectors where migrants are providing essential services. States need to have migration policies to create pathways for migrant workers and should plan to ensure the necessary workforce. The economy is not back to a normal situation so some specific measures are still needed; for example, renewal of permits and inclusion of migrants in social supports for those temporarily unemployed (e.g., in the tourism sector).

Ms. Shannon Pfohman from Caritas Europa pointed out that these issues could also be relevant to consider in advocacy targeting the development of the European Care Strategy in the near future.

Ms. Carolina Lasen Diaz also provided an update that the Council of Europe is preparing a new Recommendation on human trafficking for the purpose of labor exploitation. The work started in October 2021 and should be completed by the end of June 2022.[7]

MEETING CONCLUSIONS AND RECOMMENDATIONS

During the closing session, **Ms. Jyothi Kanics**, the ODIHR expert, briefly presented the recommendations from the ODIHR study:

1. **Strengthen and clarify the legal and regulatory framework**
    ⇒ *States should establish rights-based regularization mechanisms in law*
    ⇒ *States should adopt robust child rights-based regularization mechanisms*
    ⇒ *States should enact laws and policies that provide for solutions, which foster stability, respect family unity and promote integration*
2. **Create an enabling environment and promote good practices**
    ⇒ *States should ensure engagement of all relevant actors and co-operation with civil society*
    ⇒ *All stakeholders should prevent discrimination against undocumented migrants and ensure access to services, protection and justice*
    ⇒ *All stakeholders should improve regularization mechanisms in policy and practice while ensuring access to justice*
    ⇒ *All stakeholders should learn from the good practices of cities and regions*
    ⇒ *States should enhance options for human rights compliant return*

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[7] For more information and updates see the Council of Europe web site.

3. Monitor, innovate and respond to particular situations
⇒ *States should continue to use ad-hoc programs to proactively address exceptional situations and legacy issues following policy changes*
⇒ *States should collect data, monitor, and evaluate the effectiveness of regularization practices to inform future reforms*

Michele LeVoy, Director, PICUM concluded the meeting with her reflections on the progress over the past years. She highlighted that the webinar speakers and participants had discussed not only why regularization is necessary, but also exploring how it can be done better. She noted real progress and momentum in addressing gaps in national systems, and important lessons shared during the meeting from civil society, governments, and international organizations. Challenges remain, such as: How to overcome the myth that regularization is a pull factor? How to make sure that no one is left behind? How to make sure that there are clear criteria and standardized procedures? How to build meaningful pathways to citizenship? How to withstand judicial challenges and political pressure? How to duplicate successful practices in different regions? How to make sure that civil society are part of the discussion? How to include the undocumented migrants themselves? How to transform our energy into something concrete that can be used by governments and other actors? She noted that in May 2022, the International Migration Review Forum will take place in New York, where States that adopted the Global Compact will discuss what they have done. Additionally, the UN Migration Network will hold stakeholder reviews and meetings where progress will be assessed.

Ms. Alice Szczepanikova, ODIHR Migration Adviser, closed the meeting by thanking the speakers and participants for their contributions.

ANNEX 1: AGENDA

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**REGULARIZATION OF MIGRANTS
IN AN IRREGULAR SITUATION IN THE OSCE REGION
RECENT DEVELOPMENTS, POINTS FOR DISCUSSION AND RECOMMENDATIONS**

**OSCE ODIHR and
the Platform for International Cooperation on Undocumented Migrants, PICUM**

8 November 2021, 14:00 – 18:00 CET
English – Spanish
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<td>14:00 – 14:30</td>
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Introductory session

Mr. Konstantine Vardzelashvili, Acting Head of Democratization, ODIHR, Welcome and introductions

Ms. Michele LeVoy, Director, PICUM, Good practice elements that are important for effective regularization mechanisms and programs

Ms. Jyothi Kanics, ODIHR expert, Regularization of migrants in an irregular situation: recent developments and trends across the OSCE region
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<td>14:30 – 15:15</td>
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Session I: Strengthening and clarifying the legal and regulatory framework

Mr. Neil Bruton, Migrant Rights Centre Ireland (MRCI), on the new scheme to regularize undocumented migrants

Ms. Juliana Macedo do Nascimento, United We Dream, on the 'DACA' program in the United States of America

Mr. Sérgio Ferreira, L'Association de Soutien aux Travailleurs Immigrés (ASTI), on the mechanism regularizing school-going children and their parents and recent developments in regularization in the Grand Duchy of Luxembourg

Q&A Session with participants

Chair: **Ms. Alice Szczepanikova**, **ODIHR Migration Adviser**

The first session will shine a spotlight on the importance of strengthening the legal and policy framework, to include clear and transparent criteria, regardless of whether a mechanism is based on humanitarian or other grounds such as integration or employment. It will also be an opportunity to review recent legislative and policy reform efforts that have established or clarified regularization measures including those with a specific focus on children and youth.
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<td>15:15 – 15:30</td>
<td>Coffee break</td>
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15:30 – 16:15	**Session II: Creating an enabling environment and promoting good practices**
	Ms. Paola Botta, UN OHCHR, on the legal framework and how can we build upon international human rights law to strengthen pathways
	Ms. Marianne Halle, Centre de Contact Suisses-Immigrés, on Operation Papyrus of the Canton of Geneva in Switzerland
	Ms. Cláudia Pereira, Secretary of State for Integration and Migration of Portugal, on the mechanism to regularize workers, and temporary regularization of all people pending application in the context of COVID-19
	Q&A session with participants
	Chair: Ms. Carolina Lasen Diaz, Office of the Council of Europe's Secretary General's Special Representative on Migration and Refugees
	This session will showcase good practices, which create an enabling environment for undocumented migrants to regularize their situation. These include the various measures introduced in response to the COVID-19 pandemic.
16:15 – 16:30	Coffee break
16:30 – 17:15	**Session III: Monitoring, innovating and responding to particular situations**
	Ms. Ainara Dorremochea Fernández, Assistant Director General of Legal Regime, Ministry of Inclusion, Social Security and Migrations of Spain, on the Spanish 'arraigo'-system and the recent reform targeting (former) unaccompanied children
	Ms. Ludovica Banfi, EU Fundametal Rights Agency, on how the provision and design of permits can contribute to preventing and addressing labor exploitation of undocumented workers
	Ms. Joanna Fomina, Institute of Philosophy and Sociology, Polish Academy of Sciences, on the 2012 regularization program of long-term irregular residents
	Q&A session with participants
	Chair: **Ms. Shannon Pfohman**, **Caritas Europa**
	This session will focus on the flexible and innovative approaches to regularization and ways of monitoring the results of the measures. In addition, we will explore special permits for victims of crime such as labor exploitation.
17:15 – 18:00	**Closing session**
	Ms. Jyothi Kanics, ODIHR expert, Summary of key recommendations Open discussion with participants **Moderator: Ms. Alice Szczepanikova, ODIHR**
	Final remarks **Ms. Alice Szczepanikova, ODIHR** and **Ms. Michele LeVoy, PICUM**

ANNEX 2: SELECTED OSCE COMMITMENTS

OSCE commitments related to migration, migration management and the protection of the human rights of migrant workers include those made in the following documents:

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990.

Decision No. 2/05 on Migration of the 13th OSCE Ministerial Council, Ljubljana, 5-6 December 2005.

Decision No. 5/09 on Migration Management of the 17th OSCE Ministerial Council, Athens, 1-2 December 2009.

Decision No.3/16, OSCE's Role in the Governance of Large Movements of Migrants and Refugees of the 23rd OSCE Ministerial Council, Hamburg, 8-9 December 2016.

OSCE commitments to actively promote children's rights and interests such as those made in the *Istanbul Summit Declaration (1999)* are also relevant for migrant children.

ABOUT THE OSCE ODIHR AND PICUM

The **OSCE Office for Democratic Institutions and Human Rights (ODIHR)** provides assistance to OSCE participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. Among other areas of work, ODIHR provides expertise, delivers technical assistance and develops policies and good practices on the protection and promotion of the human rights of migrants and on the integration of migrants across the OSCE region. ODIHR commissioned this report as part of these activities on migration and in view of addressing the human rights situation of irregular migrants through further examination of the topic of regularization mechanisms and programs.

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of organisations that seeks to advance social justice and human rights for undocumented migrants. Grounded in principles of social justice, anti-racism and equality, PICUM brings together the experiences and expertise of its members. Founded in 2001 as an initiative of frontline organisations to mobilise support for undocumented migrants, today PICUM leads a network of over 160 civil society organisations in more than 30 countries.