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Social and Human Rights Standards for Undocumented Migrant Workers in Europe

Normative Framework and Implementation (*work in progress*)

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International Law Framework

- 1. ICERD: International Convention on the Elimination of All Forms of Racial Discrimination.
- 2. ICCPR: International Covenant on Civil and Political Rights.
- 3. ICESCR: International Covenant on Economic, Social and Cultural Rights.
- 4. CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women.
- 5. CAT: Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- 6. CRC: Convention on the Rights of the Child.
- 7. ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (not yet signed by any EU country, not yet binding).

Conventions of the International Labour Organisation (ILO)

- 8. Resolution Concerning a Fair Deal for Migrant Workers in a Global Economy.
- 9. ILO Convention No.97 Concerning Migration for Employment.
- 10. ILO Convention No.143 Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

European Conventions European Conventions

- 11. CHART: Charter of Fundamental Rights of the European Union (European Charter of Fundamental Rights) (European Union, not binding).
- 12. ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe).
- 13. ESC: European Social Charter.

Instruments

- 1. UN Special Rapporteur on the Human Rights of Migrants.
- 2. UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health.

Scope (some examples)

- 1. ICERD clarifies that it covers 'undocumented non-citizens' (General Recommendations 30), 'Human rights are, in principle, to be enjoyed by all persons' (paragraph 3), 'States parties are under an obligation to guarantee equality between citizens and non-citizens' and to 'ensure that legislative guarantees against racial discrimination *apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens*' (Paragraph 7).
- 2. ICCPR insists that 'each State Party to the present Covenant undertakes to respect and to ensure to *all individuals within its territory ...the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status* (article 2.1).
- 6. CRC equally clarifies that 'everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (preamble, paragraph 3).
- 8. ILO, emphasises, 'it is important to ensure that human rights of irregular labour migrants are protected' (article 28).
- 11. CHART explains that all listed rights, except citizen rights, are the rights of 'everybody', hence in principle also of undocumented migrants.

• cont.

Cont.

Details (examples)

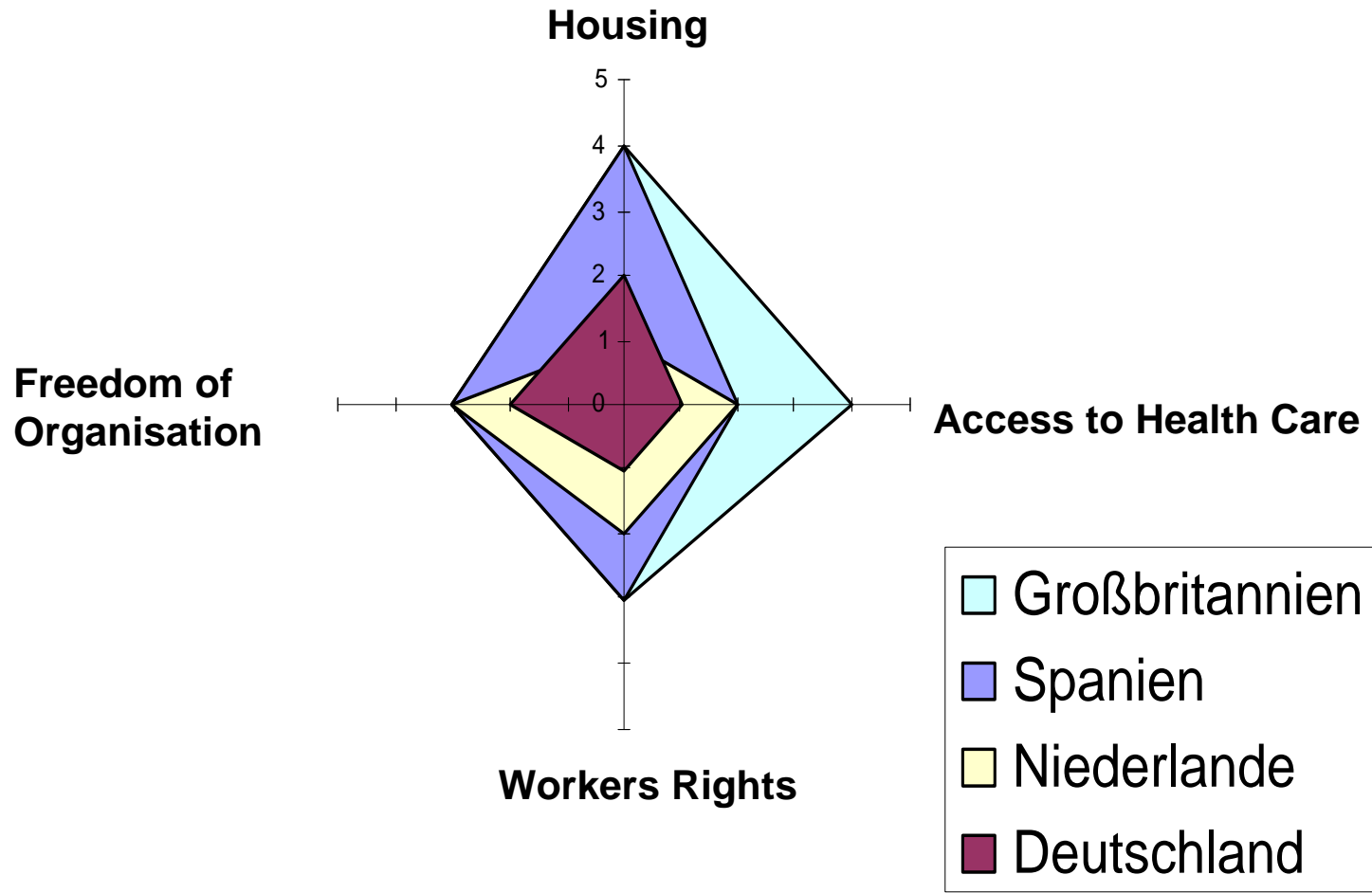
- 3. ICESCR,
- ‘*all* have a right to adequate housing’,
- ‘the right of *everyone* to just and favourable conditions of work, fair wages and equal remuneration for work of equal value without distinction of any kind , safe and healthy working conditions, ...rest and holiday’ (article 7),
- ‘the right of *everyone* to form trade unions and join the trade union’,
- ‘all individuals are entitled to enjoy labour and employment rights, including right to assembly and organise, once they are in employment’ (General Recommendation 30, paragraph 35).
- The right to education is an obligation and is ,independent from legal status‘ (General Comment No. 13, paragraph 34), states shall ,ensure that public education institutions are open to non-citizens and to children of undocumented migrants who are living on the territory of the state‘ (General Recommendation 30).

Implementation in European Comparison

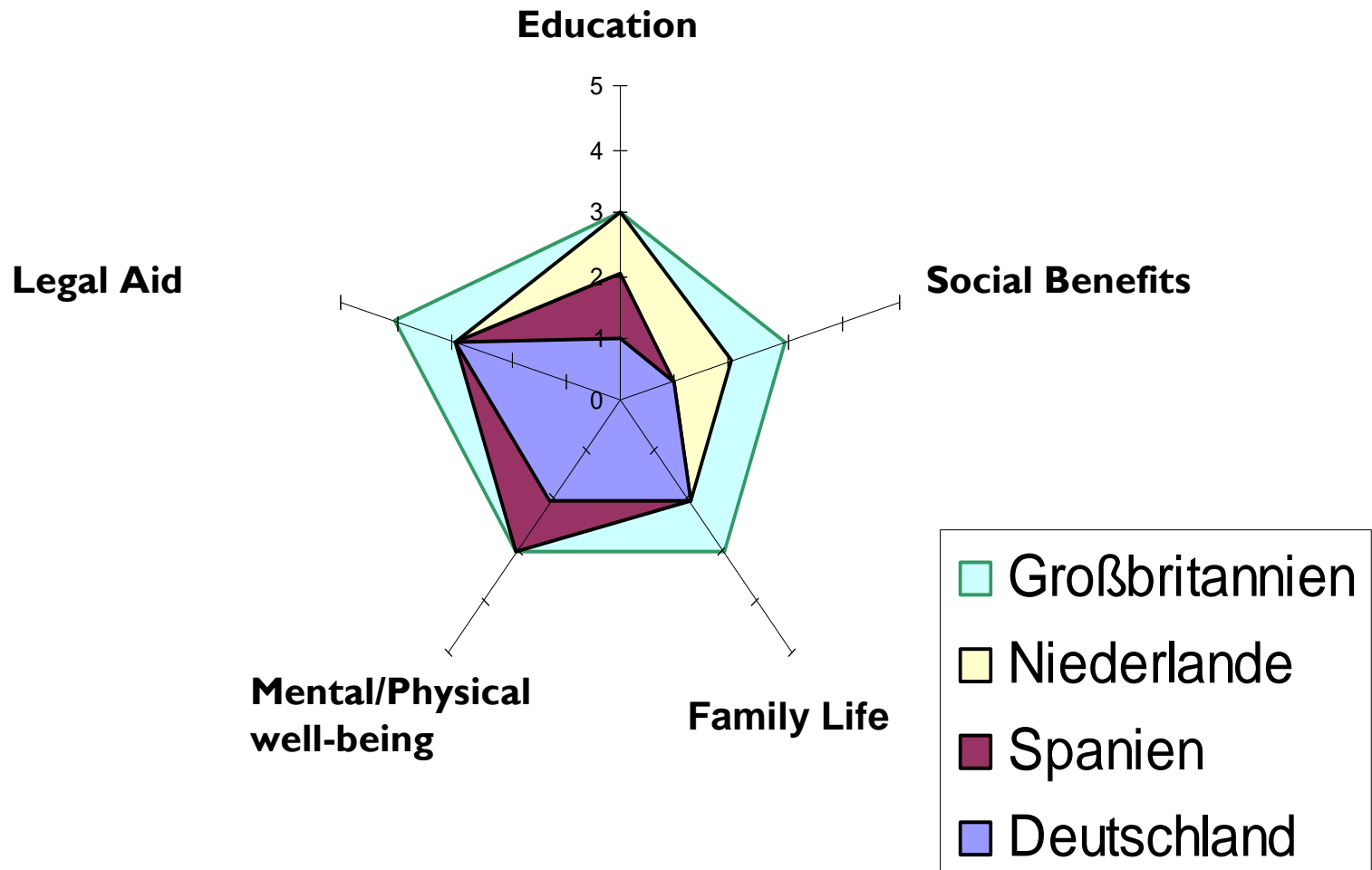
Country Right /opportunity	Housing	Access to health care	Fair Working conditions	Right to Organize	Education	Minimum benefits	Family Life	Legal Aid
Austria	X	X	-	X	L	X	L	X
Belgium	-	U	U	L	U/L	X/L	U	L
Denmark	-	X	-	-	X	X	-	-
France	U	U/L	L	U	L	L	U	L
Germany	X	X/L	U	-	X	X/L	L	X
Italy	X	L	-	U	L	-	-	X
Netherlands	X	X/L	-	-	U/L	X/L	L	U
Spain	L	U/L	L	X	U/L	-	-	L
Sweden	X	X	-	-	X	X	-	-
Switzerland	-	L	U	U	L	L	-	-
UK	U/L	U	L	L	L	L	U	U
USA	L	L	U	U	L	L	-	-

- X Red: No Rights/Opportunities; L Yellow: Limited; U/Green: Unlimited (Subject to chances)

Comparison I



Comparison II



Some Given Reasons for Exclusion

Immigration Policy

- To deter documented migrants (and rejected asylum seekers) from overstaying
- To deter undocumented migrants from entry
- To complicate undocumented immigrants' stay
- To encourage return, including putting additional pressure on potential clients for 'assisted voluntary return' programmes.

Social and Labour Market Policy

- To protect social services from additional claimants
- To prevent congestion and overcrowding
- To protect legitimate populations/workers from further (and unfair) competition over resources

Reasons for Inclusion

- For professional ethics
- For ethical and humanitarian reasons
- To oblige international obligations
- To prevent 'inhuman consequences'
- To prevent negative consequences for those who can not be held responsible (e.g. children)
- Because they are members/pay tax and insurance contributions
- To prevent emergence of new underclass
- To prevent spreading of infectious diseases/health threats to the public

Conclusion

- In normative terms undocumented migrants have social and human rights.
- Despite the fact that all studied countries are liberal democracies characterised by rule of law,
and despite the fact that all countries are signatories to the listed international conventions
recognition and implementation of human and social rights standards for undocumented migrants diverges significantly.
- No country can claim not to discriminate undocumented migrants, whilst some countries even discriminate documented migrants.
- By and large, Sweden, Austria and Germany could be considered 'worst cases' whilst US and UK could be considered 'best cases' with all the other countries falling somewhere in-between.
- The fact that there is a comprehensive normative framework, and that there are professional ethics which both call for granting social and human rights to undocumented migrant workers and their families should serve as encouragement to according lobbying.