

Doctoral (PhD) Dissertation Abstract

**ANALYSIS OF THE MAIN LEGAL CHALLENGES OF LABOUR
MIGRATION IN THE EUROPEAN UNION AND IN THE ASEAN**

Thazin Khaing Moe

Supervisor: Dr. Habil. Márton Leó Zaccaria PhD, Associate Professor of Law



University of Debrecen

Géza Marton Doctoral School of Legal Studies

Debrecen, 2022

I. General background and scope of the dissertation

Labour Migration has the greatest role in the age of the globalisation technology demanding the foreign workers from the developing countries for the productivities to be quick and fast as confronting the labour shortage in the developed countries which is the highest economic progress in a situation where there are not enough national workers. Those foreign workers are named “migrant workers” in the conformity of the international labour standards such as ILO¹ (International Labour Organization) which has enacted several labour rights for all the migrant workers involving the legal and the illegal. In accordance with the Universal Declaration of Human Rights, everybody has the right to be alive and to get the fundamental rights, thus it becomes essential in the consideration whether the migrant workers also surely have the fundamental rights and get the fair treatment from the employers or not. On the one hand, the country that fills the gaps of the labour shortage is called “Sending Country or the Original Country”, on the other hand, the country which faces the labour shortage is defined as “Destination Country or Receiving Country”.

Some countries have built the organisations for integration and cooperation in the economic, social, educational, etc. area, for instance, Association of Southeast Asian Nation (ASEAN)² and European Union (EU)³, by setting up their own region and their own rules only relating to their Member States. The free movement within the region is being allowed broadly for the regional citizens with the common ID cards or without visa process. Hence, regional integration gets predominant in the event of handling the issues coming out of the regional states. Due to the free movement, the legal provisions are required for the migration affairs without affecting the national citizens but giving the fundamental rights or fair treatment to all the migrants like the nationals. Therefore, the protection of the labour migrants’ rights is not only in the hand of the sending and the receiving country but also depends on the regional organisation’s regulations.

In the implementation of the rights of the migrant workers, International Labour Organization is the prime player regarding the labour standards, which refer to every region to be practiced in the national labour provisions to shelter the migrant workers. The organisations are

¹ International Labour Organization (ILO), <https://www.ilo.org/global/lang--en/index.htm>

² Association of Southeast Asian Nations, <https://asean.org/>

³ European Union, https://european-union.europa.eu/principles--countries--history/country-profiles_en

trying to protect the migrant workers' rights with the collaboration of the Member States, which means that the regulations or regional labour standards are set and drawn under the agreements of the Member States. Therefore, the Member States also have to obey and practice those laws in their national labour laws. Supposing that the national labour laws and regional labour standards are the key factors for all the migrant workers, the decision whether it is correct or not depends on what kind of rights have been promulgated in the national labour laws. The very important rights are the social security rights, trade union rights and collective bargaining rights, which are otherwise called fundamental rights for the migrant workers. This paper will collect those rights in each single chapter and subtitle. Two kinds of migrant workers have split out for decades, as regular migrant workers, and irregular migrant workers. The affair of irregular labour migration also takes serious role; entering through the Border States and changing the status. In consequence, they are also human beings and deserve to be treated fairly and humanely in the destination country; therefore, the policies for the irregular migrants have been mentioned in different ways such as legalization programme or deportation. Regularization system becomes famous around the world that means that the human rights are being appreciated.

II. The importance, aims, and relevance of the research

After World War II, the international migration gets important for all the people who are more interested in migrating for jobs. The rights of the migrant workers get involved in the part of the conflict between the governments of sending and receiving countries based on the fact whether the rights of the migrant workers should be protected together with the national workers of the host country or not. Those kinds of argumentation are being solved by the International Labour Organization (ILO) in the commencement of the ratifications of the member countries and of institution of the rights of the workers around the world. It cooperates with the regional organizations, such as ASEAN, European Union (EU). Some countries give the protection to the migrant workers with the bilateral agreements and multilateral agreements while the regional integration is being implemented. Nowadays the regional organization takes an essential role in the role of social, economic and educational cooperation. The free movement of goods, services and persons is broadly practised in each regional organization, which International Labour Organization tries to reach and get the compromise for the protection of the rights of all workers. The irregular ways are being used through the Border States by entering the neighbouring

countries and some regular workers become invalid once their official resident permit has expired. It is really so disputed and deep to get a solution for all the governments who has to consider for the economic situation and the problematic social condition. Therefore, the importance of the rights of the migrant workers is the principal target of this dissertation examining how the regional protection of ASEAN and EU on all migrant labourers goes well or if it is still in the lack of protection of the fundamental rights of all the migrant workers.

The aim of the dissertation is to articulate how to protect the rights of all migrant workers including the irregular in each region, how to solve the irregular labour migration and to differentiate the regulations between the European Union and the ASEAN. As mentioned in detail in the dissertation, ASEAN still reaches in a poor circumstance the prevention of the infringement of the rights or it is in the process to get the progress for the safeguarding of the regional workers. There are no strong conventions and agreements regarding the rights of migrant workers in the region of ASEAN. To find out the real problem of ASEAN is one of the aims of this dissertation by using the comparison with EU regulations. This phenomenon can be seen systematic and scrutinising in the security of the workers' rights within the region since the various conventions and practices targeting to the labour migration has been provided and it can be said as a united regional cooperation. Thus, this research will go forward in the evaluation of the regional regulations and policies of labour market, trade unions and social security rights concerning the regular and irregular migrant labours and find out the weakness of the ASEAN performance on the labour migration with the case studies.

III. Basic questions and hypothesis

My research questions are the following: (1) "Should the irregular migrant workers get the fundamental labour rights or fundamental human rights in the receiving county?" (2) "Are the regular migrant workers getting the equal rights or facing the discrimination in the two regions of ASEAN and EU?" (3) "Is the ASEAN region, in fact, in a weak situation in the safeguarding of the rights of migrant workers?" (4) "What are the differences of labour regulations between EU and ASEAN?"

The first question is regarding to the irregular migrant workers in pursuance with the modernized problems in the receiving countries. It refers to the irregular migrant workers when it

hears about them that the valid entering and document will be the main factor in assessing whether they should get the human rights or the rights given by the laws of the Destination State. It cannot be denied if the person who enters with validity into a country, he/she should be entitled the protection of the laws, but in case of non-compliance with the formal requirements, nobody should get the law protection. However, Universal Declaration of Human Rights (UDHR) states that everybody has the right to life and security of person⁴, right to feel free from the slavery or servitude condition⁵ and right to get the protection relating to the torture, to cruel, inhumane or degrading treatment⁶. When the consideration of those rights in pursuance to the UDHR and ICPMWTf is performed, not merely the regular migrant workers but also the irregular migrant workers should be together with the human rights frame.

Irregular migrant workers' position is in a real vulnerable circumstance in view of the fact that they are not covered under the law commonly and likely to get the slavery or servitude holding from the employers. The issue is that the exact population of irregular labour migration has no potentiality to be seen in the global data statistics as it is arduous to get the reality and normally the irregular migration comes from the hiding or secret ways. It can be seen that the situation is due to the facile border control mostly, yet some regular migrant workers automatically reverse into the illegal circumstance once their valid document expires after the limited date. Notwithstanding they should have the right to be protected and to change their status under the laws instead of getting the harmful treatment even though they have no enjoyment of equal rights like the national workers. Particularly some Asian countries are removing those illegal workers from the society and treating torture by asking them to work in the dangerous employment in which it is potential to die. Therefore, this research question plays an important role for this dissertation.

The second question relates to the regular migrant workers whether they are entitled to the equal rights as the national workers or not. In accordance with the regional collaboration, the

⁴ Universal Declaration of Human Rights, 1948, December 10, Article 3, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁵ Universal Declaration of Human Rights, 1948, December 10, Article 4, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> and International Convention on the Protection of all Migrant Workers and Their Families 1990, December 18, Article 11(1), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.

⁶ Universal Declaration of Human Rights, 1948, December 10, Article 5, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> and International Convention on the Protection of all Migrant Workers and Their Families 1990, December 18, Article 10, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

equal rights have been given normally with the agreements of all Member States. Nonetheless, the EU national workers acquire the common rights and the common opportunities in any state within the European Union, while the ASEAN national workers are still lack of equal opportunities and rights within the region that can be seen in Chapter II and Chapter III with the discourse.

The third question is relevant to whether ASEAN regulations on migrant labours are in a weak situation or not. I argued that ASEAN regional regulations on migrant workers are poor in the protection of the rights of migrant workers. However, it can be an argumentation with other opponent opinions. Hence, the answer to this question is able to clarify whether my views are going fair or not, which have stated in Chapter III placing the Thailand's labour migration regulations.

The fourth question is the key question of the whole dissertation's aim once the comparison of the two regions has been mentioned by the details of ASEAN and EU labour migration regulations in the respective chapters.

My hypotheses for this dissertation are "If regional regulations are according to the International Labour Standards and fully integrated by all Member States, no migrant worker can confront the infringement of their rights." In addition, "A practical regional cooperation can only lead to safer lives of the vulnerable migrant workers."

Regional regulations and policies are directing to the Member States' collaboration to implement their regional norms, which have been built with the agreements of all Member States. First, the regulations for all labour affairs ought to be fair and just, and advantageous in puzzling out the labour issues within the region. Whether the policies and regulations are efficacious or it is not necessary to be monitored from the perspectives of international labour standards and human rights. If the regulations correspond to the international labour norms, the upcoming process goes to the accomplishment of all Member States. Despite of enacting the regional regulations and ratifying, no effectiveness would be received without the implementation and cooperation in their national labour laws.

ASEAN organisation has no adequate protocols and regulations for all Member States to be obeyed and practiced, particularly even the ASEAN Consensus does not provide the full

fundamental labour rights, and there is no specific convention for puzzling out the matter of the irregular migrant workers, while EU tries to provide several regulations and conventions with regard to all migrant workers. In the event of labour rights, trade union rights and collective bargaining rights, social security rights and basic human rights of UDHR are the foremost favourable and essential rights for the migrant workers.

Furthermore, the labour market regulation requires being flexible in the safeguarding of regular migrant workers' rights together with the combination effort of regional integration. Labour market is the key factor to show the rules or working conditions of the occupation and employment. Principally the region leads to the single market with the effort of its Member States. Therefore, the discourse of labour market in ASEAN and EU has been disserted with some literatures.

For my first hypothesis, the social security rights, trade union rights and collective bargaining rights need to be clarified, and Chapter II and Chapter III will show what kind of social rights the migrant workers have to be entitled and what ASEAN region limits the trade union rights.

Chapter II, III and IV will testify my second hypothesis. Chapter II states the regulations of the Labour Migration of the EU, which has the discourse or the broad statements dealing with the EU's all regulations showing the respect to all the workers in EU and which is visible to the rule of law on the EU Member States. Chapter III describes the regulations of labour migration of ASEAN, which are able to see the weak rule of law in ASEAN Member States as they are just concentrating on their particular internal issues by relying on the bilateral agreements of the sending and the receiving states.

IV. Methodology

The following methods have been used in this dissertation;

1. Comparative Method
2. Qualitative Method
3. Deductive Method
4. Case study Method

The impetus of carrying out this thesis is to distinguish between ASEAN and EU migration policies and to seek the evidence of why ASEAN regional policies on migration are

fragile and weak, furthermore, why EU policies on migration is stronger than ASEAN. The nature of comparative method is to analyse the histories, the cases, the statistics, etc.⁷ However, comparative method has been used to analyse the rules and regulations, the histories of each region, the issues of the irregular migration, and the implementation of the Member States of each region. The compared organisations are ASEAN and EU, which have been discoursed in a different chapter such as Chapter II describing the labour migration in EU and Germany. The prime action of comparative method is in Chapter IV that has sought the differences between the ASEAN regulations and EU regulations. The intention of utilising the method targets to seek the causes of weaknesses of ASEAN labour migration, principally the fundamental rights relating to social security rights, trade union rights and collective bargaining, and to compare the regulations of labour markets in those regions. Therefore, comparative method is the main key in my dissertation.

The analysis of the collected data and the focus on the literature review play the crucial role in this research. Phenomenological method, case study method and historical method have been used, which are parts of types of qualitative method, with which ways of description of the process and situations, interpretation, and evaluation.⁸ When the literature reviews are used, books, ILO information documents, scientific journal articles and online journal publications have been used. In every single chapter, the evaluation of those collected data and some theories of the authors have been carried out. Statistics and tables regarding to the migrant populations yearly were not needed to be applied owing to the reason that the focus leads to the evaluation of the regulations and policies and to the issues causing the irregular migrant workers. Accordingly the qualitative method is needed by using the literature reviews based on the ground theory.

Some authors' theories are based on and summarized the general assumption with some theoretical evaluations to pull out the hypothesis. Deductive reasoning method is grounded on the theory, which has already been established but not innovative, a theory, from which step the

⁷ David Collier, The Comparative Method, January 1992, https://www.researchgate.net/publication/234113288_The_Comparative_Method

⁸ Phillip John Relacion, Qualitative Research Methods DEFINITION OF QUALITATIVE RESEARCH. https://www.academia.edu/37017373/Qualitative_Research_Methods_DEFINITION_OF_QUALITATIVE_RESEARCH

hypothesis comes out, since the sense of deductive method relies on the rules and facts.⁹ From Chapter I to Chapter IV, deductive reasoning method is entailed describing the literature reviews, the theories of some authors and the facts of the collected data. Hence, my hypothesis has been drawn through the evaluation of the existed theories and assumptions.

Qualitative method and deductive reasoning connect each other in reviewing this dissertation. Comparative method is the main activity of supporting the aims and objectives. Case study method is only applied in fewer cases, but it contributes the explanation of the irregular labour migration in Thailand.

Case study method has been used in the last Chapter or Chapter IV, which is the comparison of the regional regulations between the European Union and the ASEAN. Some cases of some countries in EU and in ASEAN are referred to, especially the judgements of the cases of the host courts. This method will virtually help in the evaluation of the practical issues in each region, such as how to find a solution dealing with the irregular workers in the legal courts, and the clarification of the role of the Courts in the case of migrant labours. Especially, it is more interested in learning the importance of the claims of the clients (migrant workers) through the judgements of the national courts.

V. Structure of the Research

Primarily the general labour migration including labour market, trade unions, collective bargaining, and freedom of association, social security rights and the fundamental rights of the families of the migrants has been initiated; what kinds of rules are used to place in the labour migration from the perspectives of the international labour standards and norms. It has been placed and stated in Chapter I, with the name “Labour Migration” involving the subtitles of regular and irregular labour migration, fundamental rights and protection of the family members of migrant workers, the effectiveness of regional integration in the role of migration, the vital role of trade union processes relating to the labour issues, the relativeness of trade unions and

⁹ Dr. Shalini, Inductive and Deductive Reasoning, <https://magadhuuniversity.ac.in/download/econtent/pdf/%27Inductive%20and%20deductive%20reasoning%27%20pdf.pdf#:~:text=Deductive%20Reasoning%20means%20a%20form%20of%20logic%20in,applied%20and%20the%20result%20obtained%20is%20inevitably%20true.>

collective bargaining in the affairs of migrant workers and the importance of the freedom of association from the perspective of the migrant.

Then European labour migration together with the explanation of German policies has separately been written in Chapter II, which entails the subtitles of European labour migration, the evaluation of social security rights, the nature of EU labour market and its regulation, active labour market policies, the role of trade unions regarding migrant workers within EU, and labour migration in Germany involving the detailed description of the labour rights.

Chapter III connects to the analysis on the policies of ASEAN labour migration comprising of the integration on the policies of ASEAN migration, the evaluation on the performances of the labour market policies in ASEAN, the substantial right to free association as part of trade union proceedings, ASEAN challenges struggling against the irregular workers and its resolution, and an approach to Thai policies.

Chapter IV leads the comparing the differences between ASEAN labour policies and EU labour policies by consisting of the differences of the labour market regulations, trade union rights and the management of irregular migration between these regions. The case studies part has been placed in the chapter.

Each of the chapters has the summary of the descriptions that have done. The answers to my research questions and the reviews or the evaluations of the overall migration processes have been shown in the conclusion, and the whole dissertation has been driven with the connection of different chapters.

VI. Research results

My hypothesis and answers to the research questions are required to describe a bit detail for the research results. The first hypothesis “If regional regulations are according to the International Labour Standards and fully integrated by all Member States, no migrant worker can confront the infringement of their rights”, which has been mentioned as my hypothesis under the reviews of ASEAN and EU collaborations. Primarily EU cooperation on migration gets stronger and stronger with 27 Member States, although EU never invades the national legislation of the Member States. The cause of being united among the Member States is that EU’s harmonisation

of labour laws and regulations gradually get efficacious in the implementation of integration within the European region. Every EU citizen has the common ID card that is recognized in the free movement of persons around Europe, and thus gains the same rights in any Member State such as social security rights relating to working. EU social security coordination regulated the basic social rights for all EU workers of the intra-migration.

In the event of undocumented migrant workers, non-protection and the protection with the consequences among three approaches are being practiced, and furthermore the regularisation programme is widely created; Member States are obeying and practising. EU social security coordination regulated the basic social rights for all EU workers of the intra-migration. For assessing whether EU cooperation goes steadily or heavily, it depends on to what extent the regional regulations are efficient and powerful, which means that EU policies and regulations are literally binding on the Member States' legislation and practice. Here is the case that European agreements and protocols lead to the binding regulations with the support of the harmonisation of labour laws.

From the outset of the Maastricht Treaty, the European Union started to permit all European citizens to work in the region by carrying out the social policies for all the workers, which will affect the working conditions in the labour market. In view of European labour market policy, the labour taxation, unemployment benefits, active labour market policies, job protection, wage setting, working time and immigration mobility have been entitled; all Member States are implementing and practicing them in their national labour laws. Although migrant workers from outside the EU cannot get the social rights like the nationals, it is clear with the references mentioned in this dissertation that EU fully protect the same rights to all regional citizen workers.

In the event of the trade union rights in EU, national trade union federations of the members are connected to the cooperation in the ETUC (European Trade Union Confederation) which is serving the proceedings of trade union rights for EU workers and supports the European Commission in making legislation concerning the labour regulations. Regarding the migrant workers from the third countries, EU has the consideration issues based on three dilemmas referred to above, which means that not only EU citizens but also non-EU citizens might be protected and given to the same rights like the nationals. Nevertheless, from my point of view,

the regional integration exists for the prevention and safeguard of the regional people and thus they should get more opportunities and privileges, and rights than non-regional citizens should. In line with the international labour rights and human rights, the non-European workers should be entitled to those rights provided except the special rights such as the free movement with the same ID card or active labour market policies for the youths.

In ASEAN, there is ASEAN Consensus on the Protection of the Rights of Migrant Workers and their Families which is the principal protocol intending to protect the ASEAN citizen workers, unfortunately the consensus cannot make the members to be binding. ASEAN has split up two groups that are sending countries (Myanmar, Laos, Cambodia, Philippines, Vietnam, Brunei, and Indonesia) and receiving countries (Singapore, Thailand and Malaysia). ASEAN also has the free movement without visa within the region but no common ID card. Despite that the free movement for working has been allowed, the protection sector of migrant workers is weak. One thing is that ASEAN members have no limitation in giving the enjoyment of the workers' rights between regional workers and non-regional workers; which means that every worker is the same. Most of the labour supply is from the regional countries and the irregular migration problem is being faced through the Border States in Thailand and Malaysia. Hence, we can conclude that the weak cooperation is going ahead in ASEAN because the ASEAN citizen workers despite of being regular workers cannot enjoy the social rights, trade union rights and collective bargaining fully. The lack of strong and supportive legislations in the region causes the regional workers to be illegal status. While the discrimination is barely seen in EU, ASEAN Member States are practicing discrimination even against the regional migrant workers.

The second hypothesis "A practical regional cooperation can only lead to safer lives of the vulnerable migrant workers" can particularly be viewed in Chapter III (Analysis on the Policies of ASEAN Labour Migration) as the poor cooperation of the ASEAN region is found, which mentions that ASEAN is trying to harmonise the national policies of the Member States but not implementation yet because of the non-interference of the sovereignties. However, the labour migration is permitted with the free movement within the region, what is not the same in EU where the workers need the work permit to work according to the study of the national policies of the receiving countries of ASEAN and the regulation for the irregular labour

migration hasn't been found as the prevention and the control. In the affairs of labour market policies in ASEAN, not enough provisions are provided for all the Member States within the region, but concentration on the bilateral agreements or the mutual agreements is being relied on, which means that the Member States are not depending on the regional regulations of the organisation.

Overall, my hypotheses come out in line with the deductive reasoning by balancing on the ASEAN and EU comparison, once ASEAN legislations is not fully provided under the international labour standards and the members cannot integrate properly and fully the provisions of the region, thus the infringement of the rights of migrant workers have to be confronted. Otherwise, EU's legislations are stronger than ASEAN and Member States are also integrating exactly and properly; which results EU migrant workers with less infringement of their workers' rights.

Forwarding to the research questions and answers:

- (1) "Should the irregular migrant workers get the fundamental labour rights or fundamental human rights in the receiving country?", under the factors given in this dissertation, in my opinion, the answer is that the irregular migrant workers should get the fundamental labour rights and human rights in the receiving country.
- (2) "Are the regular migrant workers getting the equal rights or facing the discrimination in the two regions of ASEAN and EU?" The regular migrant workers in EU are getting the equal rights like the nationals but those in ASEAN with much discrimination till today.
- (3) "Is the ASEAN region, in fact, in a weak situation in the safeguarding of the rights of migrant workers?" In the comparison of EU labour migration and ASEAN labour migration, no denial factor is that ASEAN is in fact in a weak situation in the safeguarding of the rights of the migrant workers.
- (4) "What are the differences of labour regulations between EU and ASEAN?" Three basic approaches are necessary to be pointed out: labour market regulation and social security rights, trade unions rights and how to solve the irregular migrant workers.
 1. While EU creates the job opportunities for the young people who will have finished their degrees and for the unemployed people who have no job currently,

and has the strict rules for the irregular migrant workers, ASEAN labour markets accept not only the regular but also the irregular migrant workers.

2. While EU carries out the exact legislations for the trade unions' rights provided as the regional integration, ASEAN is in lack of explicit regional provisions or regional conventions for the integration of the protection of the trade union rights.
3. While EU has the regularisation system for the irregular migrant workers within EU, ASEAN has no regularisation system for those.

Conclusions

In the analysis on the legal policies of labour migration of the European Union and the ASEAN, the key approach gives the guidance to the weaker integration of the organisation (ASEAN) from the stronger integration of the organisation, showing the differences of the migration rules and policies, applying to the case studies, pointing out two approached countries to be analysed, and reviewing the rights provided by each region from the angle of the International Labour Standards.

Labour migration is divided into two types, regular labour migration of which representatives enter with the valid process and documents to work in the formal employment and irregular labour migration of which representatives go to the destination country without the valid documents or work in the informal employment, or the legal migrant workers' status becomes changeable because their resident permit expires. The reason of splitting into two categories migrant workers is that many countries are accepting the irregular migrant workers besides the regular ones though they have no any persuasion for entering legally. In case of their rights' protection, the fundamental rights under the International Labour Standards are non-discrimination or fair treatment, social security right, trade union right and collective bargaining right that all migrant workers must get. Some countries provide those fundamental rights except trade union right and collective bargaining right to all migrant workers, regardless of their status, while some countries have no recognition on the irregular migrant workers, which can be seen in some ASEAN countries. Therefore, the global government leaders often hold conferences and discuss whether the irregular migrants should be protected or not, otherwise finding the solution to the issue.

European labour market should be a bit flexible to refrain the arising of the irregular migrant workers. In case of the trade union movement of EU, ETUC performances are relied on within the region, which includes national trade union federations and European trade union federation. ETUC is also involved in making the labour legislation together with the European Commission. Regarding the migrant workers' right to trade union in EU, three dilemmas are being taken into consideration, which is already mentioned above in Chapter II. For the first dilemma, trade union should not participate in the recruitment of the foreign workers not to lose their rights in the employment. For the second dilemma, members of trade unions should be accepted as representatives of other migrant workers in trade unions, not as members. For the third dilemma, the migrant workers should get the right to participate in the trade unions, get the common interest in conformity with their skills, and not get the same rights like the nationals out of the employment.

In terms of Social Security Rights, the current social security regulations are Regulation No.883/2004, Regulation No.987/2009, and European Convention of the Social Security (ECSR), European Social Charter and Community Charter of the Fundamental Social Rights of the Workers. The obligations for the rights of equal treatment without any discrimination shall be carried out by the Member States in the provision of their national legislations. It is compulsory for all the Member States of EU to treat equally all the nationals together with their national people. For the third country nationals, Regulation 1213/2010 gives the social security rights for all the migrant workers from the third countries by extending Regulation No.883/2004 and Regulation No-987/2009. Regulation 1231/2010 relates to the third nationals who are already legally staying in one of the European Member States but not for the third nationals who are trying to enter, to stay or to reside in EU. Besides, Article 13 of the Regulation 1231/2010 expresses that the legal third country nationals shall not effect on the rights of invalidity benefits and old age or survivor's pension benefits from the Regulation 883/2004, and in case of unemployment benefits, the third nationals should be the one who has applied for job seeker status and still available in the employed benefits for at least four weeks mentioned in Art.14. As the third country nationals are not the nationals from the member countries of the European Union, they have no right to get some special rights or some social security rights such as the invalidity benefits or old age pension benefits. The social security rights have also been given in the European Social Charter except the rights of survivors' benefits, death grants, family benefits

and unemployment benefits. In my views of the social rights of EU, a perfect regulations for all the European citizens are being given an effort depending on the various kinds of situation, such as the replacement of the new regulations in places of old ones, in lieu of the International Labour Organization standards and Human Rights standards. Any lack of rights of social security cannot be found by concluding all the Regulations and Rules for all the European citizen workers. Although there is no provisions referred to the third country national workers in those Regulations for the social security rights, a specific reference and provision has been announced with the Regulation No.1231/2010 that gives the social rights except invalidity benefits and old age pension benefits. Among those substantial rights, EU's provision to the unemployment benefits for the third national workers needs to be praised as it can be said "the special rights" and even the member citizen workers of ASEAN have no right for the unemployed benefits.

The labour market policies of EU are the labour taxation, unemployment benefits, other benefits related benefits, active labour market policies, job protection, wage settings, working time and immigration mobility. Single labour market is targeted by the EU instead of common labour market as the preference of the same rules and regulations within the region, and the more equitable and a uniform platform for all the EU citizens. EU has split into two parts that are through the statutory minimum wage that 21 Member States are applying and through the collective bargaining that 6 Member States are doing. Prominently EU considers even for all the potential workers such as the final year students and unemployed people. That factor is clear that EU's desire to be free of poverty in all Member States is moving forward. Yet the minimum wage system through the collective bargaining focuses on the workers' skill level and the current conditions while the system through the statutory minimum wage is going to the constant wage level. Both systems look good but the collective bargaining way may have some issues or strikes in case the workers get some bad effects with not-enough salary.

German Policies on Migration: Employment law of Germany provides several types of employment contract, which are permanent and fixed, remedies of employees, working time and equal opportunities. The policies of Germany on migrant labours are that the Green Card was released for the recruitment of IT specialists between 2000 and 2004 and EU Blue Card for non-immigrants in 2012, which is for two or four years but after three years the labourer will get the permanent settlement. Yet there was the Recruitment Ban that blocked the guest workers who are not the members of EEC and which preferred the permanent workers. In view of the Skilled

Immigration Act, it stipulates that the skilled workers mean with two years training at least and they can apply for the work visa and get after four weeks of applying. The duration of work visa is four years or depends on the employment contract, and then the skilled workers can apply for the permanent resident permit after four years of residency but with the proof that they can earn 3685 Euro per month if they are over 45 years old. In accordance with the factors mentioned above, the skilled Immigration Act provides the chance of the permanent residence to the migrant workers if they get the work visa for four years at least. It is a kind of lust for all the migrants to Germany. However, it does not mean that the law is flexible but it measures the level of the skills of the workers and not all skilled professionals need to show their certificates but five years experiences. Entering into Germany with labour migration is not flexible and not rigid. Germany implemented the active labour market policies with Hartz Reforms, which was created by the commission for Modern Labour Services. Four performances of Hartz Reforms (Hartz I, Hartz II, Hartz III and Hartz IV) have been divided and implemented with three aims mentioned in Chapter II. Hartz I leads to new personnel service agency, the support of the vocational trainings and deregulation of temporary work sector, Hartz II for the commencement of mini-job and midi-jobs which has no social insurance, Hartz III for the restructuring of federal labour office and in the changing of unemployment assistance and social assistance, and Hartz IV for a kind of reduction of the benefits depending on the wage and the income of the other family members. Hartz I, II and III have their own successes for the reduction of the unemployment but Hartz IV in a state of trouble that cannot go up like the first three Hartz. Hartz I could reduce the unemployment by the support of the vocational trainings and by deregulating of temporary work sector. Hartz II innovates the jobs opportunities of mini-jobs and midi-jobs for most of the women like the housewife but midi-job has no social insurance and mini-job with a slight insurance when it gets a set wage. That opportunity keeps all the weak women to be stable and confident with their own job, yet every worker is entitled to get the essential social security such as the benefits for the occupational disease. Hartz III made the conditions for the unemployment insurance benefits stricter. Hartz IV tried to reduce the unemployment population by forcing the workers to work in any job like the low paid jobs or any physical job that they would not like to do. Each of Hartz reforms has its different changes and regulations, and can be seen that all the reforms were extraordinary compared to other European countries. Under the statement expressed above, Hartz I, II and III were effective and supportive in the reduction of the

unemployment population, which was the highest range than that of other Member States. Moreover, many positive reviews and comments have been got for those reforms I, II and III. Particularly the German employment systems could be improved and successfully processed. However, Hartz IV was notorious in the implementation of the unemployed reduction because it made the status of the skilled workers lowered by forcing them to work in any level of job that may be inconsistent to their qualifications and by paying the less unemployment benefits. Those Hartz reforms are only relevant to the national workers in Germany but not for foreign workers or non-EU citizen workers. The labour market regulations for the third country national workers can be viewed as the restricted regulations since 1990s, though, they get more chances currently if they have the high skilled level recognised by the Skilled Immigration Act in the contrast of the past and the present, as they had to work in the dangerous workplace without any option in the past, and they can get their professional jobs corresponding to their qualified level of education which the German law can accept.

The social rights for the migrant workers in Germany are the sickness benefits, maternity benefits, and death grants, accidents at work and occupational disease, pensions, unemployment benefits. They are also taken into consideration under the two kinds of social systems, which are through the contributions and through the tax. Their labour market status and job type is very important to get the social rights, which means that they have to work in the formal sector and should hold the valid work visa. The satisfactory solution is the pension allowance for the migrant workers that they are allowed to pay the contributions for five years at least. Moreover, the unemployment benefits are also covered for the migrant workers by the contributions of 165€ from their remuneration. For the family benefits, it depends on their resident permit. In view of the social rights for migrant workers in Germany, the fair system can be found as the fundamental social rights have been given with their regulations. In comparing the EU nationals and non-EU nationals, it cannot be assumed that non-EU national workers struggle with the discriminations in the social systems in lieu of the fair system, they have options to choose to be valid of getting the social insurance once they are holding the valid resident permit and can work in the harmony of the labour policies of Germany.

Trade unions rights for migrant workers in Germany seem fragile although the German Constitution doesn't prevent the rights of trade union rights for migrant workers or guarantees the rights of trade unions for all the workers in Germany in case of monitoring the facts which I

found. The biggest trade union organization DGB accepts the migrant workers' representatives for joining their union not to lose their social rights and fundamental rights in the workplace.

Normally Germany confronts the irregular labour migration through the Border States of the EU, but previously they could stay unlimited in Germany. Nevertheless, the non-EU citizens need the resident permit. The agenda for the irregular labour migration implements the European Directives: the first draft to detain the irregular migrants up to 18 months and the second draft to sanction the employers who accept the irregular migrant labours. Germany fosters the fundamental human rights for all the irregular migrant workers and performed the regularization system up to 10% of the irregular population within EU region. Under my evaluation, the German appreciates and considers the fundamental human rights for all the irregular migrant workers and has not neglected those with the reason that they are not legal. It is a real satisfactory factor from the humanitarian angle while the stricter rules for the labour migration are being promulgated.

In case of labour migration, ASEAN labour migration was started with the establishment of ASEAN Economic Community (AEC) that intends to create the free flow of goods, services, investment and capital and to establish a single market and productive base. The member countries are cooperating in accordance with the ASEAN Forum on Migrant Labour (AFML), which is a platform to negotiate between the workers, the employers, and the governments. ASEAN Summit is also the policy-making body that calls the meeting twice annually and already finished the 38th of ASEAN Summit. Under the findings of the literature learning, ASEAN is trying to harmonise the national policies of the Member States but not implementation yet because of the non-interference of the sovereignties. Although the labour migration is permitted with the free movement within the region, what is not the same with European Union where the workers need the work permit to work according to the study of the national policies of the receiving countries of ASEAN. The regulation for the irregular labour migration has not been found as the prevention and the control.

The labour market policies in ASEAN are not many provisions for all Member States but just a few provisions and performances. Normally going forward to the mutual agreement or bilateral agreement between the Member States for the recruitment systems gets the key movement within the region because there are no much influenced legislations and

agreements. There is ASEAN Mutual Agreement Recognition (MRAs) which has three characteristics of low skilled workers as the international labour migration, the government-to-government agreements and the private recruitment agencies' companies, which were in force in 2015, in seven sectors that are the medical doctors, dentists, nurses, architects, engineers, accountants, surveyors and tourism professionals. It shows that the bilateral agreements between the Member States are more favourable than the regional agreements. ASEAN Forum on Migrant Labour (AFML) implements three themes dealing with the exploitation, discrimination and violence, the carrying out the labour migration governance and the combat the trafficking in person. No restrictions for the irregular migrant workers have been found in the ASEAN labour market policies. Moreover, the Member States' labour market policies (Especially the main receiving states) are found the fragile regulations except the Singapore. Therefore, ASEAN labour market policies provisions are still required to prevent some potential issues, and thus the Member States' legislations in the labour market are weak. Mutual agreements target the acceptance of each other's workers but do not focus on the better legislation for the protection of the regional migrant workers.

In monitoring the ASEAN trade union rights mentioned in Chapter III, we can say that ASEAN is endeavouring to the trade union rights for the migrant workers with the Council, the project and some social dialogue or workshops. One thing is explicit that ASEAN is not carrying out the trade unions rights with the regulations and exact legislations with the exception of ASEAN Consensus that provides the right to organise for the migrant workers. ASEAN is in lack of explicit regional provisions or regional conventions for the integration of the protection of the trade union rights.

The regulations for the irregular migrant workers in ASEAN have not been stated specifically. In addition, ASEAN Consensus does not act the prevention the irregular migrant workers and the protection of the fundamental rights of the irregular migrant workers. ASEAN mainly faced the obstacles that so many irregular migrant workers have been accepted in the receiving countries. The Member States are trying to get a resolution with the bilateral agreement such as deporting the workers, and a feeble regularisation system is being performed. As ASEAN has no particular provisions for the irregular migrant workers, the harmonisation of the

national policies cannot be carried out and the Member States have to rely on the mutual agreements.

Not enough provisions and regulations within the region are found dealing with the migrant workers. ASEAN is going ahead in the organisational project, workshop, or program to implement the protection of the rights of the migrant workers. Only one Consensus and ASEAN Charter are not adequate for the cooperation or coordination of the free movement of labours. Although the regional conventions and provisions are soft laws, the minimum policies and regulations are supposed to be provided in the region. Thus, the Member States are required to rely on the bilateral agreement with another Member State. Currently ASEAN key issue is relating to the irregular labour migration within the region and cannot control it with the legislations because the bilateral or mutual agreements between the governments cannot solve the problems in case of legal violations of the receiving states. In order to harmonise the national labour laws stronger cooperation of the organisation is needed.

Thai labour migration has been analysed since it is one of the main receiving countries and mostly confronting the irregular migrant workers issue. Social rights, labour market regulations, trade union rights and irregular labour migration in Thailand are divided. Thailand is also accepting so many migrant workers from the region mostly and from out of the region. ASEAN migrant workers rely on Thai labour market, but especially from the neighbouring countries, Myanmar, Cambodia and Laos. In the assessment of Thai labour market, it opens for the regular and for the irregular migrant workers. Therefore, two sectors can be differentiated into formal sector and informal sector. The recruitment agencies are making the labour market active to supply the labour demands. The migrant workers with the primary education level are placed in the fishing factory, manufacturing, the industry, and they are domestic workers. The high skilled workers or professional workers are called normally from Japan, China, Philippines, US and UK while the low skilled workers are called from Myanmar, Cambodia, Laos, and Vietnam and undocumented migrant workers have to work in the 3D jobs. In looking back the social rights for the migrant workers, the regular migrant workers get the coverage of the social rights such as injury benefit, sickness benefit, maternity benefits, invalidity benefits, death benefits, child benefits, old-age and unemployment benefits. Under Thai laws, the irregular migrant workers are also entitled to some social security rights such as the disability benefit,

death benefit or old age benefits under Social Security Scheme and Migrant Health Protection Scheme. In addition, the children of regular or irregular migrant workers get the right to education, health care and child protection services. Those are evaluated in accordance with the laws provided in Thailand but the practical undertakings seem weak. If the labour market accepts the irregular migrant workers, the responsibility for them should be active and available, for instance, giving the fundamental rights at least. Moreover, even if the government strictly barred the irregular ways, the fundamental labour rights and basic human rights have to be felt according to the International Labour Standards and Human Rights laws. What trade union rights are prominent is that the migrant labours have no right to organise and join the trade unions, as there is no provision for the rights of trade unions for migrant workers. The government relies on the MOU system with the sending countries but Myanmar and Laos have not made the agreements with Thailand yet. In practise, the migrant workers are allowed to join the trade unions but they do not have the right to organise. Hence, we can monitor that the trade union rights are not fulfilled even as the fundamental level. In case of irregular migrant workers, the population of irregular labour migration can be seen larger than the regular migrant workers. In tracking back the reasons of causing the irregular ways, the non-restriction of the Border States the complicated processes of doing the regular steps, the employers' favourable demand of the cheap labours and not the handling of the rule of law for this case. The government implies the regularisation for the workers has been undertaken for three times. Another way to solve the issue is to repatriate the limited workers to their home countries. It is good to see the regularisation way for the irregular migrant workers but not as a system. The effort of the government to control the irregular labour migration is not found at all but it seems that the solution is made only under the situation. Example of Singapore is good to utilise that the Singaporean government controls it with the law by taking action the employers who accept the irregular migrant workers. Thailand's situation is also corresponding to the Singaporean example, as the employers in Thailand are demanding the cheap labour for the lower usage of their expense to the workers. Every year Thailand is facing the problem of a surge of the illegal migrant workers that is a kind of big stress. Moreover, the processes of going to the regular way should be managed into the non-complicated proceedings and made them clear to be obeyed.



Nyilvántartási szám: DEENK/462/2022.PL
Tárgy: PhD Publikációs Lista

Jelölt: Moe Thazin Khaing
Doktori Iskola: Marton Géza Állam- és Jogtudományi Doktori Iskola
MTMT azonosító: 10066434

A PhD értekezés alapjául szolgáló közlemények

Folyóiratcikkek, tanulmányok (4)

1. **Moe, T. K.:** Labour migration in Germany.
Lex et Scientia. 29 (1), 50-65, 2022. ISSN: 1583-039X.
MTA Állam- és Jogtudományi Bizottság: A
2. **Moe, T. K.:** Nature of the EU Labour Market and Its Regulations.
Pro futuro. 10 (4), 89-104, 2021. ISSN: 2063-1987.
DOI: <http://dx.doi.org/10.26521/profuturo/2020/4/9467>
MTA Állam- és Jogtudományi Bizottság: A

4. **Moe, T. K.:** Migrant Workers in Myanmar.
Public Goods & Governance. 3 (2), 32-37, 2018. EISSN: 2498-6453.
DOI: <http://dx.doi.org/10.21868/PGnG.2018.2.5>
MTA Állam- és Jogtudományi Bizottság: D

Konferenciaközlemények (2)

5. **Moe, T. K.:** Rights of Migrant Workers Under International Labor Laws.
In: Tavaszi Szél = Spring Wind 2019. Szerk.: Bihari Erika, Molnár Dániel, Szikszai-Németh
Ketrin, Doktoranduszok Országos Szövetsége, Budapest, 388-394, 2020. ISBN:
9786155586606





**DEBRECENI
EGYETEM**

**DEBRECENI EGYETEM
EGYETEMI ÉS NEMZETI KÖNYVTÁR**

H-4002 Debrecen, Egyetem tér 1, Pf.: 400
Tel.: 52/410-443, e-mail: publikaciok@lib.unideb.hu

6. **Moe, T. K.:** Rights of Internal Migrant Workers in Myanmar.

In: Doktoranduszok fóruma : Miskolc, 2018. november 22. : Állam- és Jogtudományi Kar
szekciókiadványa /szerk. Szabó Miklós, Miskolci Egyetem, Miskolc, 162-166, 2019. ISBN:
9789633581919

MTA Állam- és Jogtudományi Bizottsága irányelvei szerint:

„A” kategóriás folyóiratban megjelent publikációk: 3, melyek közül az értekezés
alapjául szolgál: 3

„D” kategóriás folyóiratban megjelent publikációk: 1, melyek közül az értekezés
alapjául szolgál: 1

A DEENK a Jelölt által az iDEa Tudóstérbe feltöltött adatok bibliográfiai és tudományometriai
ellenőrzését a tudományos adatbázisok és a Journal Citation Reports Impact Factor lista alapján
elvégezte.

Debrecen, 2022.11.02.



