

**DOCTORAL (Ph.D.)
DISSERTATION**

Thazin Khaing Moe

Debreceen

2022

**UNIVERSITY OF DEBRECEN
MARTON GEZA DOCTORAL SCHOOL OF LEGAL STUDIES**

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

Candidate:

Thazin Khaing Moe

Supervisor:

Dr. Márton Leo Zaccaria PhD, Senior Lecturer

**Doctoral Program: Changes in State and Law in Central and Eastern Europe
Head of the Doctoral School: Prof. Dr. József Szabadfalvi DSc, Professor of Law**

Manuscript completed on 21st October 2022

Debrecen

2022

Acknowledgement

Since the very beginning of my Ph.D. student life in 2018, several obstacles have been came across from different angles that I never excepted, however I could handle owing to the great support of my supervisor, **Dr. Márton Leó Zaccaria** who is always teaching the ways, leading me to the knowledgeable parts with the suggestions and comments effecting to my level of writing thesis and always stands on me with a huge encouragement of my whole Ph.D. life. This occasion and gratitude pushed me to hard work running with this dissertation. I will always be grateful to my supervisor in my lifetime wherever I will be.

From the first year to the second year, **all the professors**, who gave the lectures in the classes regarding the methodology supportive to our writing dissertation, were teaching how to use the correct methods for our thesis, and whenever I asked the questions what I didn't understand, the effective answers together with a big patience were given to me. Thanks to my supervisor, **Dr. Márton Leó Zaccaria**, and **all the professors**, my dissertation path became smooth and could be finished.

Therefore, I would like to thank to my supervisor and all the professors with my honourable respect.

NYILATKOZAT

Alulírott, **Moe Thazin Khaing**, büntetőjogi felelősségem tudatában kijelentem, hogy a Debreceni Egyetem Marton Géza Állam- és Jogtudományi Doktori Iskolában a doktori fokozat megszerzése céljából benyújtott, **Analysis on the Main Legal Challenges of Labour Migration in the European Union and in the ASEAN** című értekezésem saját önálló munkám, a benne található, másoktól származó gondolatok és adatok eredeti lekövetését a hivatkozásokban (lábjegyzetekben), az irodalomjegyzékben, illetve a felhasznált források között hiánytalanul feltüntettem.

Kijelentem, hogy a benyújtott értekezéssel azonos tartalmú értekezést más egyetemen nem nyújtottam be tudományos fokozat megszerzése céljából.

Tudomásul veszem, hogy amennyiben részben vagy egészben sajátomként mutatom be más szellemi alkotását, vagy az értekezésben hamis, esetleg hamisított adatokat használok, és ezzel a doktori ügyben eljáró testületet vagy személyt megtévesztem vagy tévedésben tartom, a megítélt doktori fokozat visszavonható, a jogerős visszavonó határozatot az egyetem nyilvánosságra hozza.

Debrecen, October 22, 2022 _____



aláírás



PhD supervisor's recommendation

for Thazin Khaing Moe's doctoral (PhD) dissertation entitled

Analysis of the Main Legal Challenges of Labour Migration in the EU and in the ASEAN

I, the undersigned Dr. Márton Leó Zaccaria as Thazin Khaing Moe's PhD supervisor make the following statement regarding the applicant's doctoral thesis submitted for PhD public defence.

Thazin Khaing Moe's dissertation focuses on the migrant workers' legal status, labour market situation, respectively, the social and economic consequences arising from the special characteristic features of this group of persons. The author clearly distinguishes between legal and illegal labour migration, which methodological solution leads to a meaningful study-making base for research results. The dissertation presents the emerging conceptual differences with sufficient thoroughness, supported by scientific literature sources, thus, the further key issues of labour market migration are not overshadowed in the first structural units of the work, which contain conceptual questions, nor in the later parts of the text dealing with regional differences and peculiarities of labour migration.

The author's hypotheses were formulated along the usual elements of the descriptive and legal comparison methodology. The assumptions of the dissertation are primarily based on the possibilities of improving the legal situation of the migrant workers and their opportunities in the labour market, that is, the candidate is conducting an extensive examination in this area. The thesis necessarily has a critical edge, as the dissertation also analyses a number of sources of law, whether national or international, which the author analyses from the point of view of regulatory theory and practice, and she develops her thoughts further emphasising her own position. In any case, the work is permeated by a sense of practicality, even if the author does not carry out a declared and detailed analysis of case law. The processing of the individual case studies, or even the chapter containing the direct comparison, undoubtedly starts from the question of how the individual regulations and typical labour law norm, human rights and labour market practices can be applied effectively to migrant workers. In addition to this approach, the author does not explore the economic, social, human and legal aspects of worker migration in an overly detailed, yet sufficiently in-depth analysis, focusing primarily on the



characteristics that arise in the hypotheses. Such topics typically include examining the potential positive impact of trade unions on the rights of migrant workers or the need to enforce universally recognized international, human rights standards more effectively with regard to legal migration. The dissertation makes a number of statements about the authenticity of the research work, and then precisely carries them through the chapters, thus shaping the scientific results of the dissertation, the verification of the hypotheses and the conclusion of the dissertation.

The dominant organising principle of the dissertation is regionalism, that is, after the general and explanatory-focused introductory sections; the dissertation analyses the characteristics and legal and economic situation of migrant workers in the ASEAN and in the European Union. All these considerations are really emphasised in the last substantive chapter of direct comparison, as the method of comparison of laws also deals with specific legal institutions, legal principles, legal policy directions and perspectives of legal interpretation, which is commendable considering the scope of the processed topic. The author does not necessarily seek to make complete handling on the assigned subject, nor to strictly delimit it, as she deals with migrant workers in general in her work. Nevertheless, legal and illegal labour market migration, as well as the principle of regionalism already mentioned, make the full elaboration logical and transparent, despite the lack of potentially lacking details in some places.

The candidate formulates particularly valuable and thought-provoking suggestions regarding the applicability of collective labour law institutions in the labour market. This part of the labour market regulation is typically in the focus of national legal analyses from a legal conceptual aspect but as the cross-border, international nature of these institutions is indisputable, it is appropriate to include them in the analysis. Moreover, as the candidate considers the trade unions as a particularly useful legal institution, she evaluates them in detail and positively in terms of the legal status of the migrant workers.

It is also important that the PhD candidate worked a lot on her PhD dissertation to improve it in merit after the workplace (preliminary) defence. The author received very useful and well-grounded opinions regarding the possible improvement of her PhD dissertation referring to both



content and the formal requirements. The candidate paid attention to all of these suggestions, ideas and actual proposals and I think her efforts were successful since – with the help of the official reviewers, all professors and other experts who submitted an opinion for the workplace defence – Thazin Khaing Moe could make her PhD dissertation better regarding all important aspects. She has corrected the mistakes in the formal requirements – e.g. footnotes, bibliography and the text itself –, she has made her hypotheses clearer and more scientifically grounded, and she has added some new parts focusing on the relevant legal practice and some relevant laws (e.g. important sources of European Union Law) that were not present in the original version of the dissertation. The candidate has further elaborated her conclusions and research results, while clarifying every uncertain or incomplete part. The sub-conclusions are more relevant and the sources used show a more complete picture now. Overall, the conclusions are more in-depth now; the structure and general research focus of the dissertation (e.g. regarding the comparison including Germany) are clearer and more well-grounded and the dissertation's text itself has become more transparent, correct and focused.

Overall, I believe that Thazin Khaing Moe's doctoral dissertation has developed a unique topic, which is adequately supported by both national and international legal rules and scientific literature. The methodology and approach of the development are novel, and the conclusions drawn from both the national and international legal considerations regarding the legal status of migrant workers are well founded. The dissertation is formally appropriate, logically edited and transparent, and the author's argument and line of thought can be clearly deduced from the work.

In view of the above, as the PhD supervisor of the doctoral candidate, I definitely recommend the work for PhD public defence.

Debrecen, 21 October 2022

Dr. Habil. Márton Leó Zaccaria

Associate Professor of Law, PhD Supervisor

University of Debrecen Faculty of Law

Table of Contents

1. Introduction.....	11
1.1 General Background.....	11
1.2 Research Questions.....	14
1.3 Hypothesis.....	16
1.4 Aims and Objectives	17
1.5 Methodology	19
1.6 Research Structure	20
2. Labour Migration.....	23
2.1 Regular Labour Migration	29
2.2 Fundamental Rights and the Protection of the Family Members of Migrant Workers	39
2.3 The Effectiveness of Regional Integration in the Role of Migration.....	42
2.4 The Vital Role of Trade Union Processes Relating to the Labour Issues	45
2.5 The Relativeness of Trade Unions and Collective Bargaining in the Affairs of Migrant Workers.....	49
2.6 The Importance of the Freedom of Association from the Perspective of the Migrants.....	54
2.7 Summary of General Labour Migration	57
Chapter II.....	62
3. Labour Migration in EU and Germany	62
3.1 European Labour Migration	62
3.2 The Evaluation of Social Security Rights	65
3.3 The Nature of the EU Labour Market and Its Regulation	68
3.4 The Role of Trade Unions Regarding Migrant Workers in EU.....	84

3.5 Summary of European Labour Migration	103
3.6 German Policies on Migration.....	107
3.6.1 How Germany sets their policies differently in their active labour market policies as an EU Member State	112
3.6.2 The Key Role of Hartz Reform with the Convincing on the Effectiveness of Profound Labour Market.....	112
3.6.3 Social Rights in terms of the Laws in Germany.....	117
3.6.4 German Irregular Labour Migration	123
3.6.5 Summary of German Policies on Migration	125
Chapter III	135
4. Analysis on the Policies of ASEAN Labour Migration	135
4.1 Integration on the policies of ASEAN migration	136
4.2 Evaluation on the performances of the labour market policies in ASEAN	141
4.3 Substantial right to free association as part of the trade union proceedings	147
4.4 ASEAN challenges struggling against the irregular workers and their resolution.....	152
4.5 Summary of the Analysis on the Policies of Labour Migration in ASEAN	157
4.6 An approach to Thailand in the case of labour migration.....	159
4.6.1 Role of migrant workers in Thailand's labour market and their social security rights.....	163
4.6.2 The social protection for the migrant workers.....	169
4.6.3 On the importance of the role of trade union in getting the collective bargaining.....	173

4.6.4 Irregular labour migration issue in Thailand.....	176
4.6.5 Summary of the Approach of Thailand Labour Migration.....	180
Chapter IV	189
5. The comparison of the labour migration rules between European Union and ASEAN, and case studies in each region.....	189
5.1 The diversity of the policies of the labour migration between EU and ASEAN	190
5.2 Labour Market Regulations	192
5.3 Trade Union Rights	194
5.4 The Management of Irregular Labour Migration between EU and ASEAN	195
5.5 How to manage and safeguard the migrant workers in the pandemic situation	203
5.6 Summary of the comparison between EU and ASEAN.....	215
6. Conclusion	221
➤ Research results and answers to the research questions.....	233
➤ Bibliography.....	237

1. Introduction

1.1 General Background

Labour Migration gets the greatest role in the age of the globalization 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 that is the highest economic progress in the situation if 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) that 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 have the fundamental rights surely 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 that faces the labour shortage is defined as “Destination Country or Receiving Country”.

Some countries have built the organisations for integrating and cooperating 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 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

¹ International Labour Organization (ILO), <https://www.ilo.org/global/lang--en/index.htm> (10/10/2022)

² Association of Southeast Asian Nations, <https://asean.org/> (10/10/2022)

³ European Union, https://european-union.europa.eu/principles-countries-history/country-profiles_en (10/10/2022)

labour provisions to shelter the migrant workers. The organisations are 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 of 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 unions 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 the human beings and are deserved 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.

1.2. Problem Statement

The term "migration" becomes broader in the global world since the movement is allowed from one country to another country in conformity with the International Covenant on Civil and Political Rights⁴; the people who are confronting the domestic wars, the family situation, likely to settle in another developed country, etc. with different reasons, get increased and they are called "immigrant or migrant". In case of migration process, some people are going to work in the developed countries from their home less developed or developing countries, thus those kinds of people are named "migrant workers". Labour migration process gradually becomes famous around the global world by virtue of which the developed countries need the workers when their national workers are not enough for their productivity and machinery of their economy and the labour shortage has been troubled in case of substituting their citizen workers, especially in the construction,

⁴ International Covenant on the Civil and Political Rights, United Nations, 1967, Article 12, https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf (10/10/2022)

agriculture and manufacturing workplaces. Otherwise, the job opportunities are directing to the foreign workers who are living in the less developed and developing countries. When the demand is compatible to the supply from another state, the labour migration is fulfilled. Overall, it reverses into the normal proceeding in the world.

International Labour Organization (ILO)⁵ has been created by the United Nations with the labour standards not only for all the workers but also for the migrant workers that all countries need to obey and utilize in their national labour laws. As types of migration have been mentioned above, irregular labour migration includes a vital trajectory for the governments that are taking efforts to handle the irregular migrant workers within the country; some countries have accepted the asylum seekers who have absconded from their home country with the political issues or domestic wars but some applying for the refugee's status. In those cases, the migration is reversed into an issue and get complicated in making the provisions. Discrimination affairs have come out and have been practicing among the states. Therefore, every state provides the laws relating to the asylum seeker and refugee and predominantly need to modify their Immigration Act or Laws.

The problem is if the migrant workers have the right to enjoy equal rights as the national workers and if the irregular migrant workers should be given the equal rights or basic rights or is in a slavery situation or not. The regional integration supports the protection of migrants' rights and prevention from the violation of workers' rights. Hence, regional protocols or regulations play a crucial role once the Member States cooperate in the economic and social roles. The regional integration is needed to be evaluated how much strong binding could be made in their regional legislations for all Member States. ILO standards and Human Rights norms are the main roles in the evaluation because those labour standards are essential to all migrant workers in the world.

Some regions have strong binding on their regional regulations while some regions have no binding on their regional legislation. It depends on the Member States' implementation though the regional regulations for the protection of the rights of migrant workers have been promulgated with the agreements of all Member States. Thus there are so many irregular migrant workers arisen out of this modernized world that they cannot be

⁵ International Labour Organization (ILO), <https://www.ilo.org/global/lang--en/index.htm> (10/10/2022)

settled within a given country. Each state has its own different way to solve the irregular labour migration, as mentioned above, like the regularization programme or deportation or bilateral agreements and negotiation between the two respective countries. What are those ways? It can be seen in this dissertation focusing on two regions' (ASEAN and EU) labour regulations and how to handle those issues.

1.2 Research Questions

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 regarding the safeguarding of the rights of migrant workers?" (4) "What are the differences in labour regulations between the EU and ASEAN?" The first question concerns 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 person⁶, right to feel free from the slavery or servitude condition⁷ and right to get the protection relating to the torture, to cruel, inhumane or degrading treatment⁸. 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 treated together with the human rights frame.

⁶ Universal Declaration of Human Rights, 1948, December 10, Article 3, [https://www.un.org/en/about-us/universal-declaration-of-human-rights \(10/10/2022\)](https://www.un.org/en/about-us/universal-declaration-of-human-rights (10/10/2022))

⁷ Universal Declaration of Human Rights, 1948, December 10, Article 4, [https://www.un.org/en/about-us/universal-declaration-of-human-rights \(10/10/2022\)](https://www.un.org/en/about-us/universal-declaration-of-human-rights (10/10/2022)) 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 \(10/10/2022\)](https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx (10/10/2022))

⁸ Universal Declaration of Human Rights, 1948, December 10, Article 5, [https://www.un.org/en/about-us/universal-declaration-of-human-rights \(10/10/2022\)](https://www.un.org/en/about-us/universal-declaration-of-human-rights (10/10/2022)) 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 \(10/10/2022\)](https://www.un.org/en/about-us/universal-declaration-of-human-rights (10/10/2022))

Irregular migrant workers' position in a real vulnerable circumstance in view of the fact that they are not covered under the law commonly is hard since it is likely that they get into slavery or servitude held 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. Tracing back the causes of the happening 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 the 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 a key role for the dissertation and then operator will ask you question and will send an ambulance 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 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 workers are in a weak situation or not. I argued that ASEAN regional regulations on migrant workers are poor in regards to the protection of the rights of migrant workers. However, it can be a matter of dispute with other opposing opinions. Hence, the answer to this question can clarify whether my views are fair or not, which have been stated in Chapter III, regarding Thailand's labour migration regulations. The fourth question is the key question for 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.

1.3 Hypothesis

My hypothesis for this dissertation is “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.”⁹ And “A practical regional cooperation can only lead to safer lives of the vulnerable migrant workers.”¹⁰

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 unnecessary 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. 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 the 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

⁹ I state.

¹⁰ Ibid.

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

1.4 Aims and Objectives

My aims and objectives for the dissertation are in the following:

- a. To compare labour regulations between ASEAN and EU.
- b. To point out the weaknesses and strength of labour migration regulation of ASEAN.
- c. To aim the improvement of ASEAN migration policies relating to the irregular labour migration.
- d. To know the EU policies for EU citizen workers and the non-EU citizen workers.

(a) The comparison of labour regulations between EU norms and ASEAN is the first aim of this dissertation in regard to know the differences between these two regions focusing on the migration rules. In addition, EU with 27 Member States¹¹ seems to be under pressure to sustain the development and to move on the high responsibility, thus it is very interesting to focus on how to organise and build up the Union and what kinds of rights have been given to all EU national workers.

(b) The labour standards and norms of ASEAN are prominent in a fragile state with less safeguarding; which is not full protection from the angle of ILO¹² standards and some Member States have not ratified the ILO conventions and

¹¹ European Union, https://european-union.europa.eu/principles-countries-history/country-profiles_en (10/10/2022)

¹² International Labour Organization (ILO), <https://www.ilo.org/global/lang--en/index.htm> (10/10/2022)

the Human Rights conventions. Therefore, finding out the weakness and strength of ASEAN labour migration is an aim.

(c) The migrant workers in ASEAN are tackling the feeble security in the occupation of the destination states that has not legislated the sufficient rules and regulations. Especially the irregular labour migration takes in the scattered circumstances, with the reason that ASEAN governments respect the sovereignty of the Member States without interfering in each other's issues, merely leading to the bilateral agreements between the sending and the receiving countries. The exact provision in the national policies should be acted, notwithstanding the Member States target the policies by changing on and on; which is no specific promulgation like EU Member States in line with the EU labour laws. Thus, to get supportive ASEAN labour migration regulations is one of the objectives in this thesis.

(d) Surely EU labour laws have already served both EU citizen workers and non-EU citizen workers, except the job opportunities within EU, working conditions and social security rights, trade union rights and collective bargaining rights can be enjoyed like by the EU citizen workers. In the event of irregular labour migration, the legalisation programme has been implemented systematically and properly for all the migrant workers with no bias. Although those regulations of EU do not reach the perfect level, it is better than ASEAN protection and recognition of the rights of migrant workers.

Overall, the real intention goes to clarify the ASEAN labour policies' weaknesses and what kind of rules need to be promulgated to prevent the infringements of ASEAN migrant workers' rights. Mostly the employers are favouring to gain the cheap labours that do not require to be respected, and then paying the lower wages than the workers have to be entitled and asking them to work in a chaos or dangerous conditions. The Human Rights and ILO labour standards do not seem to be taken into consideration. EU is famous for the great dignity in giving the job opportunities and privileges, the equal rights in conformity with the labour standards, and in respecting the human rights. A single way to point out the

weaknesses of ASEAN labour rights is to contrast with the human dignity region. Accordingly, the comparison part is the main segment of this dissertation.

Germany has been chosen from EU members to discourse how to manage the labour migration with which regulations, the reason why German regulation on labour standards has been great throughout history and still is today, its regulations are still strong among EU members. From the side of ASEAN, Thailand has been selected because it accepts so many migrant workers from the neighbouring countries, especially, the irregular labour migration issue is the most influential problem in Thailand, the reason why Thai management with the regulations for migrant workers is in the objectionable situation and the migrant workers are still facing the discrimination.

1.5 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 and, why EU policies on migration is stronger than ASEAN. The nature of comparative method is to analyse the histories, the cases, the statistics, etc.¹³ 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 unions

¹³ David Collier, The Comparative Method, January 1992, [https://www.researchgate.net/publication/234113288_The_Comparative_Method_\(10/10/2022\)](https://www.researchgate.net/publication/234113288_The_Comparative_Method_(10/10/2022))

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 main 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.¹⁴ 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 the issues causing to 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 that has already been established but not innovate a theory, and from which step the hypothesis comes out, since the sense of deductive method relies on the rules and facts.¹⁵ 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 present only with fewer mentions, 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.

¹⁴ Phillip John Relacion, Qualitative Research Methods DEFINITION OF QUALITATIVE RESEARCH. [https://www.academia.edu/37017373/Qualitative_Research_Methods_DEFINITION_OF_QUALITATIVE_RESEARCH_\(10/10/2022\)](https://www.academia.edu/37017373/Qualitative_Research_Methods_DEFINITION_OF_QUALITATIVE_RESEARCH_(10/10/2022))

¹⁵ Dr. Shalini, Inductive and Deductive Reasoning. [https://magadhuniversity.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._\(10/10/2022\)](https://magadhuniversity.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._(10/10/2022))

Some cases of some countries in EU and in ASEAN are discussed, especially the judgements of the cases of the host courts. This method will help in the evaluation of the practical issues in each region, such as how to find solutions to deal with the irregular workers in the legal courts, and the clarification of the role of the Courts in the case of migrant workers. Especially, it is more interested in learning the importance of the claims of the clients (migrant workers) through the judgements of the national courts.

1.6 Research Structure

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 kind 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 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 to compare the differences between ASEAN labour policies and EU labour policies by presenting the differences of the labour market regulations, trade unions rights and the management of irregular migration between these regions.

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

Chapter I

2. Labour Migration

Primarily it is necessary to express what migration and labour migration are. Migration is defined as the movement of a person or people from one country, locality, place of residence, etc. to settle in another country as defined by the Oxford Dictionary.¹⁶ The UN Migration Agency (IOM) defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.¹⁷ The Oxford dictionary defines migration as the movement of people to a new area or country in order to find work or better living conditions.¹⁸ Another dictionary also defines it as a movement to another place, often of a large group of people or animals.¹⁹ Finally, migration can be defined as those people who are moving to a new country from their home country by virtue of working or living there.

The IOM defines labour migration as movement of persons from one State to another, or within their own country of residence, for the purpose of employment.²⁰ Labour migration refers to migration for the main purpose of employment.²¹ Labour migration is a kind of migrating to another country for work. It is a clear definition.

In accordance with the definitions of migration, it is a kind of movement of the people from one country to another country. The people get interested in migrating to another country for some reason: education, business, working, etc. Jorgen Carling argues that "Labour moves from areas where capital is scarce and labour is abundant to areas where capital is plentiful and labour is scarce."²² After World War II, free movement became popular and interesting for regional economic growth. With the development of

¹⁶ Definition of Migration, Oxford Dictionary, <https://www.ourmigrationstory.org.uk/about/what-is-migration.html> (10/10/2022)

¹⁷ Definition of Migration, Unites Nations, <https://www.un.org/en/sections/issues-depth/migration/index.html>.(10/10/2022)

¹⁸ Definition of Migration, LUXICO Dictionary powered by Oxford, <https://www.lexico.com/definition/migration>. (10/10/2022)

¹⁹ Definition of Migration, Your Dictionary, <https://www.yourdictionary.com/migration>. (10/10/2022)

²⁰ IOM UN Migration, Key Migration terms, <https://www.iom.int/key-migration-terms>. (10/10/2022)

²¹ USLEGAL, <https://definitions.uslegal.com/labor-migration/>.(10/10/2022)

²² Jørgen Carling, International labour migration: Consequences for countries of origin, Occasional Paper #21, Human Geography,1996.

freedom of movement around the world, the free movement of workers became wide and broad for governments. The World Bank reported that 10 percentage of the world's population migrated between 1850 and 1914. Finally, labour migration plays an important part in balancing and controlling irregular migration.²³ Before the 1960s, the intention of migration was to live permanently in the receiving countries. But most of the migrants are shifting just for temporary migration, but they are not enthusiastic with the permanent shift.²⁴ Therefore, labour migration is a kind of migration with a reason of working in another country. Immigration creates the economy to be increased in filling the labour shortages with kinds of skills.²⁵ The people from the less developed states especially migrate to the developed states for earning a higher salary that is a better chance that they cannot get in their state of origin. On the other hand, the developed states are facing the problem of a shortage of labour as the labourers from their country are not enough for their employment needs, or the employers need cheaper workers. Labour migration stems from this root caused by supporting and demanding the workers in employment.

There are four main causes that make the people migrate to work:

Economic Crisis: The global financial and economic crisis has had severe consequences for the world of work, the global economy slowed down, contraction was announced in a number of national economies, and unemployment is on the rise.²⁶ According to the International Labour Organization's (ILO) 2009 Global Employment Trends report (GET) there could be a dramatic increase in the number of people joining the ranks of the unemployed, working poor and those in vulnerable employment.²⁷ This increases the number of migrant workers compared to the past. Especially people from less developed countries are migrating to developed countries to work. Economic performance and labour market situations are the major determinants of the impact of the global crisis on

²³ Mariana Bălan, Migration and Globalization: Challenges and Perspectives, 2017, page 25. [https://www.globalization101.org/uploads/File/Migration/migration.pdfAsia-EU \(10/10/2022\)](https://www.globalization101.org/uploads/File/Migration/migration.pdfAsia-EU (10/10/2022))

²⁴ Jørgen Carling, Ibid.

²⁵ Victor Rodriguez Michaca, Elsa Maile Gutierrez Landa, José Manuel Préstamo Lépez and José Luis García Rodríguez, *Labor, Migration and International Political Economy*, May 5, 2016.

²⁶ The Global Economic Crisis and Migrant Workers: Impact and Response, International Migration Program, 2009

²⁷ The Global Economic Crisis and Migrant Workers: Impact and Response, International Migration Program, 2009.

migrant workers. However, other subsidiary factors affect the overall impact. The most important is the situation in sectors that predominantly employ migrant workers.

Domestic Wars: Domestic war is one of the causes, which creates migrant workers because some countries are facing domestic wars within their country. Therefore, the people who live in the states of domestic wars are seeking a place to stay in their neighbouring countries and migrating to work there. Some migrant workers are coming from the states facing domestic wars.

Family Situation: Some people become migrant workers because of family situations. Sometimes family conditions force them to work in another country. In less developed countries, many people are annoyed due to their jobs inability to earn much money for their family, e.g. a family is full of debt to pay another person, but they cannot get much money within a short time in their country that is less developed. Therefore, one of the members of the family decides to work by migrating to another country. There are many reasons in some families to migrate to work in a developed country.

Border State: It is a little strange to hear it as a cause of labour migration. But it is one of the types of labour migration. Many people living in a border state often migrate to work in their neighbouring countries. It is easy for them to enter and work in the neighbouring country. Among them, some are legal/regular migrant workers, but others are illegal/irregular migrant workers.

In the age of globalization, every country accepts migration widely. The incentives of unilateral labour migration from Country A to Country B, bilateral labour migration and unilateral labour migration from Country B to Country will exist in the case of restricted or unrestricted labour migration globally.²⁸ Betts in 2010 mentioned three broad levels of the global governance for migration, which are formal multilateralism, international rules, norms and principles, and informal networks like the Global Forum on Migration and Development.²⁹ Normally, the poor country sends the workers to the rich country. Moreover, every border state makes it easier for people to migrate easily to a neighbouring country. It happens every day and increases every year. The business people can get cheap

²⁸ ODED GALOR, Time Preference and International Labor Migration, *JOURNAL OF ECONOMIC THEORY* 38, 1-20 (1986), Received July 30, 1984; revised May 18, 1985.

²⁹ Sonja Nita, Antoine Pécoud, Philippe De Lombaerde, Kate Neyts and Joshua Gartland UNESCO, *Migration, Free Movement and Regional Integration*, UNESCO – UNU-CRIS Institute on Comparative Regional Integration Studies, 2017.

workers easily through the border states. Among them, most of the workers are working as illegal workers. Virtually, global migration gets stratified and segmented based on skill and legality, length of stay (temporary or permanent).³⁰ Some other factors also create migration: domestic war, poverty, lack of job and changing the place of residence. Under World Migration Report 2020, 3.5 percent of global population (272 million) is the total number of migrant people in 2019.³¹ This does not include irregular migration in that population. About migrant workers (labour migration), the report mentioned the following:

Between 2013 and 2017, high-income countries experienced a slight drop in migrant workers (from 112.3 million to 111.2 million). Upper middle-income countries observed the biggest increase (from 17.5 million to 30.5 million).³²

In fact, expert predictions about migrants in the past were just 2.6 percent or 230 million by 2050, however, the population of migrants in 2019 is more than the predictions due to be difficult to predict for the future.³³ Although the number of migrant workers is getting bigger and bigger, irregular migration cannot be completely prevented. When we talk about the population of migrant workers, we can get the exact number of regular workers but illegal or irregular migrant workers cannot be counted at all. Should we address how to migrate for those working illegally? It is also hard to predict them because even the legal or regular labour migration cannot be predicted exactly for the future. Is it good that the global migrant population gets enhanced? Alternatively, what are the advantages or disadvantages of labour migration globally? These questions will be assessed in Chapter IV with a theoretical approach.

The International Labour Organization is the main organization that enacted or promulgated the regulations with many conventions for countries across the globe. And their regulations are famous for monitoring the rights of workers in every country because the workers' rights need to be protected. There are nine core conventions derived from the

³⁰ Jorgen Carling, Ibid.

³¹ The World Migration Report 2020, IOM UN Migration, [www.iom.int/wmr\(10/10/2022\)](http://www.iom.int/wmr(10/10/2022))

³² The World Migration Report 2020, Ibid.

³³ The World Migration Report 2020, Ibid.

Universal Declaration of Human Rights (UDHR)³⁴: among them, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)³⁵ is the specific convention for the migrant workers and their families that give the right to liberty and security.³⁶ Every state is trying to protect the rights of the workers by cooperating and establishing the organizations that set their own or specific rules, regulations and policies (for example: ASEAN, the European Union, etc.). It is a kind of regional integration for labour migration. Regional integration takes the essential role in controlling the irregular workers and in collaborating their economic system with their members. Each region is facing the issues of irregular labour migration today. How to solve the problems of irregular labour migration in ASEAN and the EU will be mentioned in Chapter II and III. Each region has its own rules and regulations for its labour migration. The nature of the regional organization is to allow the member citizens to migrate freely under the agreements of the members, to protect them equally within the region and to give equal rights of employment as the same for the national workers. But the migrant workers from third countries (not the member countries) shall not be protected and favoured like the member citizens. No one can argue about this exception, as it cannot be said as a kind of discrimination.

Free movement of goods, services, people, workers, etc., is allowed widely in each region with their control and policies within Member States. Due to the free movement given by the organizations, the free movement of workers is also an integral part to take into consideration in setting the regulations in every region, for the member citizens and for non-member citizens owing to the global free movement of workers. In this case, there are two sides, which are the sending or origin country and the receiving country, to take into account the laws. However, the laws of the receiving country effect on the workers' rights directly. If the laws cannot save the lives of the workers in the receiving countries, the sending country can do nothing except for consultation between the two governments.

The labour market plays a special role in the free movement of workers, to categorize different kinds of jobs and to balance the support and the demand of workers. The nature of

³⁴ United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (10/10/2022)

³⁵ United Nations Human Rights Office of the High Commission, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> (10/10/2022)

³⁶ Alan Desmond, Shining new light on the UN MIGRANT WORKERS CONVENTION, 2017.

the labour market is to be flexible in the supply and demand of the workforce in a specific region. It is important and essential to both the employers and employees. Without its regulations, there would be a chaotic situation in case the employers do not have any mutual or multi-lateral agreements to find the workers. The labour market can arrange the workforce in the suitable places and balance the demand and supply for employment.

Regional integrity virtually supports the international labour migration in sharing the opportunities of jobs, symmetrically balance the labour demand and labour supply between the Member States and preventing the human rights violations of workers. The incorporation of international migration between two states, three assumptions is normally obeyed; the real consumption-wage differentials, long time process of migration and the labour supply with the workers' decisions for migration.³⁷

As soon as the regulations of labour migration are talked about, the national legislation of the receiving country shall be taken and reviewed, how they protect, to what extent of the human rights of the workers are protected, etc. Especially, although the migrant workers cannot get the full rights of nationals in the national labour laws, fundamental rights should be got surely. The ILO has promulgated the fundamental rights of the workers globally and the regional organizations are trying to balance the ILO's standards and their regional cultures or traditions. The European Union is also justifying their regional regulations in accordance with international labour standards for labour migration within the region, and on the other hand, it has to follow all the cultural, economic, traditional, political and educational affairs. The solutions and protections regarding irregular labour migration are different in different organizations. The most effective way to reduce the violations of the fundamental rights and the number of irregular migrant workers should be found out more than whether rules and regulations are bad or good.

Two kinds of labour migration have been divided mainly in this paper: regular labour migration and irregular labour migration. The most common current issue globally is how to reduce the number of irregular migrant workers. These two topics will be mentioned in the next subtitles.

³⁷ George Myron Agiomirgianakis, International Macroeconomic Interdependence and International Migration of Labor, Article in International Journal of Finance & Economics, 4/1996.

2.1 Regular Labour Migration

Firstly, the European Convention on the Legal Status of Migrant Workers provides the definition of migrant workers. According to this, the term ‘migrant worker’ means a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment.³⁸ Migrant workers are defined as people who work in a region or country different from their usual place of residence.³⁹ Another definition states that ‘migrant workers’ is used in a narrower sense to refer to those who migrate from their country of birth to other places for employment.⁴⁰ According to the definitions expressed above, migrant workers are people who are working in a country different from their own country. Their intention is to get more money than in their original country.

Among 272 million migrants, two-thirds of the population is regular migrant workers under the ILO Report 2020.⁴¹ Most of the ILO’s labour standards are regulated for global migrant workers regularly or legally, some for irregular migrant workers because they are also humans and should not be abused and exploited. Therefore, every worker who migrates legally to the receiving country shall be entitled to all worker rights in accordance with international labour standards.

How can we know whether they are regular migrant workers or not? It is clear that if the workers enter another country through a border state or any other way and work in any employment in compliance with the laws of that country, they are legal or regular workers. Regular migrant workers may work at both legal and illegal workplaces in their free time because they have more chances than irregular migrants do.⁴² Moreover, the regular workers’ status changes into irregular when their valid documents (visa or work permit, etc.) expire and are not extended. All legal workers will get protection under the international labour standards and national legislation of the receiving country. The extent of their rights depends on the national and regional labour laws. Nowadays there are

³⁸ Chapter I, Article- 1, Definition, European Convention on the Legal Status of Migrant Workers, ETS93–Legal Status of Migrant Workers, 24.XI.1977.

³⁹ Nurulsyahirah Taha, How portable is social security for migrant workers? A review of the literature, Definition Concept, 2015.

⁴⁰ Pong-Sul Ahn, Migrant Workers and Human Rights, Out-Migration from South Asia, 2004.

⁴¹ World Economic Forum, 2020, <https://www.weforum.org/agenda/2020/01/iom-global-migration-report-international-migrants-2020/> (10/10/2022)

⁴² Epstein, Gil S., *Labor Market Interactions Between Legal and Illegal Immigrants*, IZA Discussion paper series, 2003, No. 204.

different kinds of institutional organizations for regional integration in economic, political, social, educational, and cultural affairs. Those regional organizations protect labour rights themselves with their own conventions, protocols, agreements (bilateral or multilateral) and cooperation. However, their protections are regulated in accordance with the international labour organization's standards. ILO⁴³ standards are binding globally as it sets all the protocols and conventions in conformity with each description of worker (for example, child labour, women labour, disability, etc.). They can fully exercise their rights under international treaties: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR)⁴⁴, the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁴⁵, the Convention concerning the Status of Refugees⁴⁶ and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁴⁷

Emigration has negative and positive effects for the two sides. The economy of the host country can be promoted in the areas of productivity, filling labour shortages and getting revenue. The emigrants send the remittances to their family that can reduce the poverty levels.⁴⁸ Therefore, if their status is documented or legal status, they are entitled to get full security under the national laws in the host state. If they are undocumented or illegal workers, it is sure that they do not have the right to get safeguards under the host country's laws, in spite of coming and working outside the relevant laws.

Global integration prefers regular workers to replace the lack of labour for their productivity to irregulars. Nevertheless, some employers want cheap workforce for their employment and it makes their business circle fast and effective. In case of cheap labour, we can argue that most cheap labour are not only irregular employees, but also low skilled. Although the low skilled ones are documented workers, the opportunities for high salary

⁴³ International Labour organization, <https://www.ilo.org/global/lang--en/index.htm> (10/10/2022)

⁴⁴ United Nations Human Rights Office of High Commission, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁴⁵ United Nations Human Rights Office of High Commission, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁴⁶ United Nations Human Rights Office of High Commission, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

⁴⁷ United Nations Human Rights Office of High Commission, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

⁴⁸ Justus Mugambi Gitari, The Effects of Labour Migration on the Country of Immigration, the Country of migration, and the World as a Whole, 1/2014.

jobs cannot be possessed for the reason that they cannot afford to work in high skilled parts. If the high skilled workers are undocumented, they cannot work in high skilled sectors and get high salary in regard of their illegal status. All migrant workers have their basic human rights. The International Human Rights Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, International Labour Standard Conventions and Instruments for the Migrant Workers has stated all the fundamental and basic principles of migrant workers. All the members of these conventions have to provide the rights of the migrants in their national labour laws in accordance with these conventions and instruments. The main fundamental and basic rights for migrant workers are:

1. Prohibition of discrimination
2. Social Security
3. Medical Health Care
4. Education
5. Trade Unions

Discrimination: Not only legal/regular migrant workers but also illegal/irregular migrant workers face discrimination in their employment, if it is reviewed. It is a big infringement for the migrant workers. Migrant workers have the right to enjoy treatment no less favourable than nationals of the receiving countries in respect of remuneration,⁴⁹ other work conditions (for example: overtime, work hours, weekly rest, holidays with pay, safety, health, termination of the employment relationship, etc.).⁵⁰

Moreover, the migrant workers have to get fair conditions in other terms of employment (e.g. minimum age of employment, restriction on domestic work, etc.).⁵¹ They shall enjoy equality of treatment with nationals in respect to guarantees of security of employment, the provision of alternative employment, relief work and retraining.⁵² The national policy designed to promote and to guarantee, by methods appropriate to national

⁴⁹ General Assembly resolution 45/158 , International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990, Article 25. <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cmw.pdf> (10/10/2022)

⁵⁰ General Assembly resolution 45/158 , Ibid.

⁵¹ General Assembly resolution 45/158, Article 25 (1) (b). https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf (10/10/2022)

⁵² Labour Standards of International Labour Organization , C143- Migrant Workers (Supplementary Provisions) Convention 1975 (No.143), Part II Migration in Abusive Convention, Article-8(2), 09 December 1978, <https://www.ilo.org/dyn/normlex/en> (10/10/2022)

conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms, are declared and pursued.⁵³ For migrant workers treatment in respect of remuneration, membership of trade union, accommodation, social security, employment taxes and legal proceedings without discrimination in regards to nationality, sex, religion and race will have to be applied.⁵⁴

Social Security: All migrant workers should have the right to social security, as one of the most important rights. Social security is legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, etc., with respect to social security, migrant workers and members of their families shall enjoy in the receiving countries the same treatment granted to nationals.⁵⁵ The competent authorities of the sending country and receiving country can establish the necessary arrangements to determine the modalities of application of this norm.⁵⁶ Where the applicable legislation does not allow migrant workers and members of their families a benefit, the states concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit because of the treatment of nationals who are in similar circumstances.⁵⁷ National laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits that are payable wholly out of public funds, and concerning allowances paid to

⁵³ International Labour Organization, Part II Equality of Opportunity and Treatment, C143 Migrant Worker (Supplementary Provision) Convention 1975, Geneva, 09 December 1978, Article 10, [https://www.ilo.org/dyn/normlex/en \(09/12/1978\)](https://www.ilo.org/dyn/normlex/en (09/12/1978))

⁵⁴ International Labour Organization, Co97 Migration for Employment Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article 6 (1), [https://www.ilo.org/dyn/normlex/en \(10/10/2022\)](https://www.ilo.org/dyn/normlex/en (10/10/2022))

⁵⁵ International Labour Organization, Co97 Migration for Employment Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article 6 (1), [https://www.ilo.org/dyn/normlex/en \(10/10/2022\)](https://www.ilo.org/dyn/normlex/en (10/10/2022))

⁵⁵ General Assembly resolution 45/158, International Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article 6 (1), [https://www.ilo.org/dyn/normlex/en \(12/09/2004\)](https://www.ilo.org/dyn/normlex/en (12/09/2004))

⁵⁶ International Labour Organization, Co97 Migration for Employment Convention (Revised), Ibid. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31224_2 \(10/10/2022\)](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31224_2 (10/10/2022))

⁵⁷ General Assembly resolution 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990, Article 27 (1), [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf \(10/10/2022\)](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf (10/10/2022))

persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.⁵⁸

Medical Health Care: Migrant workers and members of their families will have the right to receive any medical care urgently required for the preservation of their life or the avoidance of irreparable harm to their health based on equality of treatment with nationals of the receiving country.⁵⁹ If migrants for employment and the members of their families who are authorized to accompany or join them are in reasonable health, the receiving country has responsibility to undertake to maintain their medical health.⁶⁰ Moreover, if migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination, the state of employment has the responsibility to undertake this obligation.⁶¹

Education: This right is essential to the members of the families of the migrant workers. Some family members of migrants accompany them in the state of employment. Therefore, their children should get the right to education in the receiving country. Article 30 of ICPRMW states that each child of a migrant worker will have the basic right of access to education because of equality of treatment with nationals of the state concerned.⁶² Besides, the receiving country will enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy and take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and

⁵⁸General Assembly resolution 45/158, Article 27 (2).
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf (10/10/2022)

⁵⁹ International Labour Organization, Co97 Migration for Employment Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article6(1)(b)(ii), <https://www.ilo.org/dyn/normlex/en> (10/10/2022)

⁶⁰ General Assembly resolution 45/158, Article28.
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf (10/10/2022)

⁶¹ International Labour Organization, Co97 Migration for Employment Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article5, <https://www.ilo.org/dyn/normlex/en> (10/10/2022)

⁶² General Assembly resolution 45/158, Article 30.
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf (10/10/2022)

obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection.⁶³

Trade Union: When migrant workers face the infringement of their rights in the receiving country, they should have the right to participate in a trade union. Therefore, some conventions give the rights regarding trade unions to migrant workers. Article 26 of ICPRMW provides that migrant workers and their family members have the right to take part in meetings and activities of trade unions and of any other associations established in accordance with law, to protect their economic, social, culture and other interests, subject only to the rules of the organization concerned.⁶⁴ In addition, they have the right to join freely any trade union and any other association as previously mentioned and to seek the aid and assistance of trade unions.⁶⁵

2.2. Irregular labour migration

Irregular migrant workers are foreign nationals working in the shadow economy, including those with a regular residence status who work without registration to avoid due taxes and regulations.⁶⁶ The migration data portal states the definition of irregular migrant worker as irregular workers who are non-citizens employed in regular jobs without authorization to work, such as foreigners who cross borders without detection and go to work without work authorization or with false documents.⁶⁷ Irregular migrants can be defined as those who enter or remain in a country without the states' proper authorization and otherwise considered undocumented, over stayers and or infringing upon the terms outlined in one's visa.⁶⁸ Therefore, if irregular migrant is defined, it is a person who is working in a foreign country without authorization or in an illegal situation.

⁶³ International Labour Organization, Part II Equality of Opportunity and Treatment, C143 Migrant Worker (Supplementary Provision) Convention 1975, Geneva, 09 December 1978, Article 12(a), [https://www.ilo.org/dyn/normlex/en \(10/10/2022\)](https://www.ilo.org/dyn/normlex/en (10/10/2022))

⁶⁴ General Assembly resolution 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990, Article 26. [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf \(10/10/2022\)](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_45_158.pdf (10/10/2022))

⁶⁵ General Assembly resolution 45/158, Ibid.

⁶⁶ Data Base on Irregular Migration, CLANDESTINO, [http://irregular-migration.net/index.php?id=186\(10/10/2022\)](http://irregular-migration.net/index.php?id=186(10/10/2022))

⁶⁷ Irregular migrant workers in the EU and US, Migration Data Portal, [https://migrationdataportal.org/blog/irregular-migrant-workers-eu-and-us \(06/19/2019\)](https://migrationdataportal.org/blog/irregular-migrant-workers-eu-and-us (06/19/2019))

⁶⁸ Canadian Association for Refugee and Forced Migration Studies (CARFMS), CARFM ORTT, [http://rfmsot.apps01.yorku.ca/glossary-of-terms/irregular-migrant/ \(10/10/2022\)](http://rfmsot.apps01.yorku.ca/glossary-of-terms/irregular-migrant/ (10/10/2022))

Migrants without an authorization for entry and/or employment are at the margins of protection by safety and health, minimum wage and other standards as they are most often employed in sectors where those standards are either not applicable or not respected or enforced. It is, therefore, imperative that countries ensure some minimum standards of protection, including basic human rights, for all migrant workers, whatever their status is. ICRMW and ILO Convention No. 143 contains provisions intended to ensure that all migrant workers enjoy a basic level of protection even when they have immigrated or are employed illegally and their situation cannot be regularized.⁶⁹ Article 25 of ICRMW states that there is no interpretation of the regularization of the status of irregular or undocumented migrant workers for getting the protection of the fundamental rights.⁷⁰ Migrant workers in an irregular situation are not allowed by many countries because it is complicated for the governments to solve those problems. In the conventions relating to migrant workers, some articles protect the irregular migrant workers but there are not many articles for the protection of irregular migrants. By reviewing that, no government has any desire to accept the irregular situation for migration. Therefore, the countries that are facing migrant workers in an irregular situation, are trying to solve that situation by sending back them to their country of origin.

In addition to measures to protect the rights of migrant workers, both the most recent ILO instruments on migrant workers and the UN Convention (Part VI) place great emphasis on efforts to curb irregular migration and illegal employment and the need to formulate appropriate migration policies to that effect; the imposition of sanctions to give effect to regulations in this area; the exchange of information; providing information to migrant workers; and facilitating the provision of consular services.⁷¹

A migrant in an irregular situation may fall within one or more of the following circumstances:

1. He or she may *enter* the country irregularly, for instance, with false documents or without crossing at an official border crossing point;

⁶⁹Protection of the rights of irregular migrants, International Legal Framework for the protection of Migrant Workers, page29 <https://www.osce.org/secretariat> (10/10/2022)

⁷⁰International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, Article35.

⁷¹ Protection of the rights of irregular migrants, International Legal Framework for the protection of Migrant Workers, page29 <https://www.osce.org/secretariat> (10/10/2022)

2. He or she may reside in the country irregularly, for instance, in violation of the terms of an entry visa/residence permit; or

3. He or she may be employed in the country irregularly, for instance, he or she may have the right to reside but not to take up paid employment in the country.⁷²

The facts mentioned above are the commencement of being irregular migrant workers because of facing those situations. Some migrant workers face irregular situations in the receiving states.

The push and pull forces at work (including the need for migrants to find work in order to support their families and the promise of a better life abroad) appear to ensure that migrants continue to find ways to enter (often through irregular channels).⁷³ In other words, the tightening geographical borders by many governments, rather than deterring people from moving across countries and regions, have made it difficult for people to move across borders legally and have been a contributing cause of irregular migration. There have also been other adverse consequences of this approach.⁷⁴

From a human rights perspective, states must respect, protect, promote and fulfil the human rights of non-citizens (including those in an irregular situation) and governments, which exercise their ability to defend the sovereignty of their state, are required to do so in full respect of their human rights obligations to migrants.⁷⁵ To protect all the migrant workers, including legal and illegal, the two states, which are the sending and receiving countries, have the liability to safeguard and solve their problems, with their national labour laws and policies or by cooperating in international organizations. The country of origin should undertake activities to discourage irregular labour migration movement. The potential irregular migrants should be taken action in the origin countries. These activities may include public information and/or education campaigns on the risks of irregular migration, particularly on the dangers of falling into the hands of traffickers, smugglers or

⁷² Irregular Migration, Migration Data Portal, [https://migrationdataportal.org/themes/irregular-migration\(10/10/2022\)](https://migrationdataportal.org/themes/irregular-migration(10/10/2022))

⁷³ Marius Olivier* and Avinash Govindjee, LABOUR RIGHTS AND SOCIAL PROTECTION OF MIGRANT WORKERS: IN SEARCH OF A CO-ORDINATED LEGAL RESPONSE, Paper presented at the Inaugural conference of the Labour Law Research Network (LLRN), Barcelona, Spain, 13-15 June 2013.

⁷⁴ Marius Olivier* and Avinash Govindjee, Ibid.

⁷⁵ Marius Olivier* and Avinash Govindjee, page10.

unscrupulous labour migration intermediaries or agents, and knowledge of laws and practices in destination countries.⁷⁶

Although the receiving countries do not want to receive the irregular migrant workers in their country under their laws and regulations, and they are facing the situation, which changes from regular into irregular and workers enter their country illegally or irregularly. The receiving countries have a duty to safeguard and solve those issues by negotiating between the two governments. It is an effective way to reduce the irregular migrant workers. Moreover, they should manage their border states in accordance with the laws. Not all the international labour laws and conventions give absolute protection to them. Therefore, this issue depends on the governments.

Regional integration is also essential to solve the migrant worker's problems. For example, ASEAN and EU organizations have the protocol for protecting the rights of migrant workers. There is an ASEAN Census on the Protection of The Rights of Migrant Workers in ASIA. In Europe, there is the European Convention on the Legal Status of Migrant Workers. With the Census and Convention, the state parties have to adhere to the terms and conditions of those in enacting their national labour laws. Thus, the national labour law is a part of the protection that is very important to them. National labour laws of the receiving countries need to include effective protection by virtue of preventing the infringement of the rights of migrant workers.

More systematic and comprehensive migration policies are needed to prevent or stem irregular migration movements, recognizing the interplay between the movement of people and other policy spheres. One of the greatest challenges for governments is to establish transparency and credibility in their ability to manage irregular flows of migrants, by providing authorized channels of entry and stay, as well as clear information about these channels, while at the same time employing measures to deter irregular movement.⁷⁷

After migrating to a developed state to work, migrants will get a lot of skill and experience, higher salary than in their native state, and especially, they can send money to their family for the temporary reduction of family poverty. On the one hand, the host

⁷⁶ Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, VIII. Measure to Prevent or Reduce Irregular Labour Migration, 2015.

⁷⁷ International Agenda for Migration Management, © 2005 International Organization for Migration (IOM) and the Federal Office for Migration (FOM), Switzerland, Chapter III.

country, can hire cheap workers for their business without any big investment, enhance their economic growth, improve industrial production, and adversely there will be a competition for jobs between natives and migrant workers, on the other hand, for the home country, it is clear that they can lose their skilled manpower but the massive unemployment can be reduced and they can get the benefit from the remittances for the country's economy.⁷⁸ Normally, the workers from the developing countries are migrating to the developed countries with the reason of getting a higher salary than in their home country. In this part three sub-parts follow to point out the good and bad effects, for the workers, for the home country and for the host country. Each has its own positive and negative factors.

The Asia – EU Dialogue on Labour Migration⁷⁹ seeks to develop and enhance inter- and intra-regional exchange of ideas and strategies on facilitating managed and legal migration between Asia and the European Union (EU).⁸⁰ It brings together representatives from the different governmental entities involved in the labour migration process, such as ministries of labour, employment, immigration, expatriate welfare, specialized agencies, embassies etc., as well as experts from outside the governmental sphere.⁸¹ The Asia – EU Dialogue on Labour Migration aims to improve understand the key trends and issues, support the identification of common policy concerns, and promote actions that will facilitate safe and legal labour migration between the two regions and its impact on development. It seeks to achieve these objectives by ensuring that the different regional and national perspectives and policies are given due consideration, thus allowing for origin countries to better understand the challenges faced by destination countries and vice versa. Examples of the best practices/lessons learned from on-going research, projects and programmes are analysed, along with recent legislative and policy developments.⁸² Article 3 of Migrant Workers Convention 1975 tries to suppress the clandestine movements of migrant workers and illegal migrant workers and the organizers of illicit or clandestine

⁷⁸ Justus Mugambi Gitari, *The Effects of Labour Migration on the Country of Immigration, the Country of migration, and the World as a Whole*, January, 2014.

⁷⁹ International Organisation of Migration, <https://www.iom.int/asia-eu-dialogue-labor-migration>

⁸⁰ Asia-EU Dialogue on Labour Migration, IOM UN Migration, established 2008, <https://www.iom.int/asia-eu-dialogue-labour-migration> (10/10/2022)

⁸¹ Asia-EU Dialogue on Labour Migration, Ibid.

⁸² Asia-EU Dialogue on Labour Migration, IOM UN Migration, established 2008, <https://www.iom.int/asia-eu-dialogue-labour-migration> (10/10/2022)

movements of migrants.⁸³ It is the right fact because every country should prevent the increase of illegal migrants by legal means. If so, the population of illegal migrants becomes less. Article 25(3)⁸⁴ of ICPRMW states that migrant workers shall not be deprived of any rights derived from this principle because of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner due to such irregularity.⁸⁵ Article 9 says that law shall protect the right to life of migrant workers and their families.⁸⁶ It includes both regular and irregular migrant workers. All irregular migrants have the right to life. However, they are irregular migrants. Article 68 states that the state parties shall take measures to impose effective sanctions on persons, groups or entities, which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.⁸⁷

Assisting non-citizens who, because of their vulnerability, find themselves in the position that they require emergency assistance or care, irrespective of other considerations, clearly correlates with the notion of human dignity and, generally, with a human rights friendly approach.⁸⁸ By reviewing the protection of international conventions, the irregular migrant workers cannot get their full rights because they are working irregularly.

2.2 Fundamental Rights and the Protection of the Family Members of Migrant Workers

The term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable

⁸³ C143- Migrant Workers (Supplementary Provisions) Convention 1975 (No.143), Labour Standards of International Labour Organization, Article3, <https://www.ilo.org>.

⁸⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 of 18 December 1990, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> (10/10/2022)

⁸⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article25(3). <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁸⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 9. <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁸⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 68. <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁸⁸ Marius Olivier* and Avinash Govindjee, page 11.

bilateral or multilateral agreements between the States concerned.⁸⁹ Migrant workers have the right to reunify with their families under International Labour Laws. Irregular migrant workers cannot get that chance and rights because they are illegal and not in conformity with the laws. Nevertheless, even though ICRMW has stated all the rights of all migrant workers, irrespective of their status, in general, it can be seen that many receiving states do not allow them to have their legal rights. Therefore, every state has the responsibility to protect the family members of migrant workers, like the rights of migrants. Each state has to enact the rights of the family members of migrant workers in their national labour laws because Article 9 of ICRMC states that the right to life of migrant workers and their families shall be protected by law.⁹⁰ Human Rights conventions have promulgated the rights for the family members. The rights of family members of all migrant workers are provided in the convention of ICRMW, International Covenant on Civil and Political Rights, International Covenant of Economic, Social and Cultural Rights, the Conventions of International Labour Organization, etc. The family members have almost the same rights as the migrants themselves.

Migrant workers and their families shall be free to leave and enter any state, including their state of origin.⁹¹ A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorized to accompany or join him/her shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his/her occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the given Member State belongs to provide such.⁹² Under International Convention on the Protection of the Rights of All Migrant Workers and Their Families, the family members have the right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment and not kept in slavery or servitude, and

⁸⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 4. <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁹⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 9. <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁹¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 8. <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁹² International Labour Organization, Co97 Migration for Employment Convention (Revised), 1949 (No – 97), 22nd Jan 1952, Article 5, <https://www.ilo.org/dyn/normlex/en> (10/10/2022)

forced or compulsory labour.⁹³ The intersection between family life and immigration law is a complicated one, as a fair balance must be struck between states' desire to control immigration and their international obligations to respect and support family life.⁹⁴ Somehow the family members of the migrant workers also have human rights in the destination country according to the ILO standards. They do not have to face inhuman behaviour and slavery and have the right to get respect for their substantial rights.

Social security of family members: It is important that the family members of all migrant workers get social security in the receiving country. About the social security, Article 27 of the Convention stipulates that, with respect to social security, migrant workers and members of their families shall enjoy the same treatment granted to nationals as far as they fulfil the requirements provided for by the applicable legislation of that state and the applicable bilateral and multilateral treaties.⁹⁵ Article 28 grants migrant workers and members of their families the right to receive any medical care that is urgently required for the preservation of their life or avoidance of irreparable harm to their health based on equality of treatment with nationals of the state concerned. It is important to stress that such emergency medical care shall not be refused due to any irregularity with regard to their stay or employment.⁹⁶ Each Member State of ILO undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.⁹⁷ In summary, the family members are entitled to the same

⁹³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 10 and 11. <https://www.unhcr.org/496323780.pdf> (10/10/2022)

⁹⁴ Delphine Nakache (University of Ottawa), Migrant Workers and the Right to Family Accompaniment: A Case for Family Rights in International Law and in Canada, Article in International Migration · March 2018, IOM, Published by John Wiley & Sons Ltd.

⁹⁵ The International Convention on Migrant Workers and its Committee (Fact Sheet No. 24 (Rev.1), UNITED NATIONS, New York and Geneva, 2005. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet24rev.1en.pdf> (10/10/2022)

⁹⁶ The International Convention on Migrant Workers and its Committee (Fact Sheet No. 24 (Rev.1), UNITED NATIONS, New York and Geneva, 2005. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet24rev.1en.pdf> (10/10/2022)

⁹⁷ Part II Equality of Opportunity and Treatment, C143. Migrant Workers (Supplementary Provisions) Convention, 1975 (No 143), Article 10. <https://www.ilo.org/dyn/normlex/en> (10/10/2022)

rights as the migrant workers, medical care on an emergency case and the rights to social security.

Education for family members: Some migrant workers have children in the family. The children should have the right to education as their human rights. They have the right to education in the state concerned. Even though they are the children of irregular migrant workers, they have the basic right of access to education. Therefore, Article 30 establishes that each child of a migrant worker shall have the basic right of access to education because of equality of treatment with nationals of the state concerned. Furthermore, access to public precatonal institutions or schools shall not be refused or limited because of the irregular situation with respect to stay or employment of either parent or due to the irregularity of the child's stay in the state of employment.⁹⁸ Educational rights for family members are very prominent and valuable as even the members of the illegal workers have the right to get an education in the concerned states.

2.3 The Effectiveness of Regional Integration in the Role of Migration

The protection of the rights of migrant workers is being performed at the national level, regional level and global level. Among those levels, the regional level is an effective way to cooperate between Member States. Each region tries to protect and manage their place in conformity with their agreements, protocols and conventions. Depending on their strong prevention and protection, we can monitor to what extent the migrant workers can get protection. Some regions are weak in serving and managing this issue, but some are quite strong and favourable in the community of workers. Some migrant workers are entering border places as irregular migrant workers. In the case of irregular migrants from border-states, origin country and receiving country virtually make the consultation and cooperation to get a better solution or solve it under their regional consensus. If the consultation becomes stronger and stronger, the regional integration is very essential to the two countries if they are in the same region.

⁹⁸ The International Convention on Migrant Workers and its Committee (Fact Sheet No. 24 (Rev.1)), UNITED NATIONS, New York and Geneva, 2005. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet24rev.1en.pdf> (10/10/2022)

Cooperation in the field of migration can take various forms, ranging from dialogue and sharing information, experience and practices to cooperation in policy development and operational implementation. Cooperation on the international level will contribute to more effective national policy development, avoiding overlap and duplication and facilitating a more effective use of resources at national, regional and international levels.⁹⁹ Because of the growing labour migration flow, the labour laws have to be provided in accordance with international standards. To be in conformity with the ILO and human rights standards, firstly, the origin states and the destination states need to be members of ILO and Human Rights Conventions (such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family). Secondly, international consultation and cooperation are very essential to protect all the migrant workers. Thirdly, implementation of regional consensus shall be made under their regional agreements. These three facts are very concerned with regional integration.

Regional organizations can facilitate such agreements by providing necessary infrastructure and by pooling limited human and financial resources. Regional arrangements might also have certain advantages vis-à-vis bilateral agreements.¹⁰⁰ More importantly, bilateral agreements usually do not envisage free movement but rather aim at managing certain migration flows.¹⁰¹ Most of the states and people blame the destination states when the migrant workers face the infringement of their rights. In fact, a receiving country alone cannot protect the migrant workers at all. Therefore, regional integration is very important to implement in the protection of all the migrants.

In ASEAN, there is ASEAN Consensus on the Protection of All the Rights of Migrant Workers. The Member States have to implement the covenants and Articles under ASEAN Consensus between all the Member States in ASEAN. Rather than the ASEAN Consensus, bilateral or multilateral agreements are often served occasionally. In Europe, it is clear that the Member States allow all the workers from another Member State to work in each state under their European Convention on the Protection of All Migrant Workers. The

⁹⁹ International Agenda for Migration Management, © 2005 International Organization for Migration (IOM) and the Federal Office for Migration (FOM), Switzerland, Chapter III. <https://publications.iom.int/system/files/pdf/iamm.pdf> (10/10/2022)

¹⁰⁰ Sonja Nita, Antoine Pécoud, Philippe De Lombaerde, Paul de Guchteneire, Kate Neyts and Joshua Gartland, Migration, Free Movement and Regional Integration, UNESCO.

¹⁰¹ Sonja Nita, *Ibid.*

Council of Europe's instruments in the field of labour migration cover general human rights as well as more specific agreements relating to migrants and migrant workers. The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)¹⁰² (Council of Europe, 1950) has the broadest application, it applies to all persons within the jurisdiction of the states' parties (Art. 1), including migrant workers regardless of their legal status. While there are no specific provisions on migrant workers in the ECHR, migrants have obtained remedies from the European Court of Human Rights under its case law in protection of their right to respect for family life and the non-discrimination principle (Arts. 8 and 14 respectively) (see Textbox VII.5).¹⁰³ Moreover, the European Social Charter (1961) and its Additional Protocol (1988), as well as the Revised European Social Charter (Council of Europe, 1996) are also concerned with migrant workers. Therefore, Europe can protect the workers within Member States as a kind of regional integration. In America, the Organization of American States (OAS), which adopted the 1948 American Declaration on the Rights and Duties of Man (OAS, 1948) and the 1969 American Convention on Human Rights (Pact of San José) (OAS, 1969) give the protection for the human rights of migrant workers. Certain principles applicable to migrants and their families have also been developed based on the case law of the Inter American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights.¹⁰⁴ The North American Free Trade Agreement (NAFTA) deals only marginally with migration issues through the North American Agreement on Labour Cooperation (NAALC).¹⁰⁵ Countries of the same region may share common interests concerning specific migration challenges and cooperation may be easier due to existing personal links and mutual trust.¹⁰⁶ With respect to the movement of people, two different types of governmental cooperation have developed at the regional level, regional arrangement and Regional Consultative Processes.¹⁰⁷ First of governmental cooperation is regional

¹⁰² Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, 1950, <https://www.unhcr.org/4d93501a9.pdf> (10/10/2022)

¹⁰³ International Legal Framework for the Protection of Migrant Workers, <https://www.osce.org/secretariat> (10/10/2022)

¹⁰⁴ International Legal Framework for the Protection of Migrant Workers, [Ibid.](#)

¹⁰⁵ International Legal Framework for the Protection of Migrant Workers, [Ibid.](#)

¹⁰⁶ Sonja Nita, Antoine Pécoud, Philippe De Lombaerde, Paul de Guchteneire, Kate Neyts and Joshua Gartland „A case for regional migration governance?, Migration, Free Movement and Regional Integration, UNESCO.

¹⁰⁷ Sonja Nita, [Ibid.](#)

integration frameworks such as the Association of Southeast Asian Nation (ASEAN), ECOWAS, the Southern Common Market (MERCOSUR), the North American Free Trade Agreement (NAFTA), have addressed the liberalization of the internal mobility flows as part of their broader market-building effort. RCP focuses on the security aspects linked to migration and in particular the control of unwanted migration flows, especially from outside the region.¹⁰⁸ Therefore, each government has the responsibility to protect their national workers and migrant workers from foreign countries, irrespective of their status.

National migration policy is also important for each country in managing the labour migration processes. National migration policy includes: (1) managing the entry, transit, departure and return of foreigners into and out of national territory; (2) determining who is allowed to remain on the territory, and for what time period, for what purposes, and with what rights and responsibilities; (3) facilitating the integration of those authorized to remain to become functional members of society, ensuring that temporary migrants respect the laws and norms of the society and that their rights are respected; (4) ensuring access to opportunities and fair treatment for nationals abroad, while maintaining links with these nationals to enhance the prospects of return of remittances, skills and investment; and (5) respect for refugee protection principles.¹⁰⁹ Therefore, the foreign workers have the responsibility to obey the national migration policy and these five policies are the substantial migration policy in the receiving countries.

2.4 The Vital Role of Trade Union Processes Relating to the Labour Issues

The Cambridge dictionary says a trade union is an organization that represents the people who work in a particular industry, protects their rights, and discusses their pay and working conditions with employers.¹¹⁰ Labour unions or trade unions are organizations formed by workers from related fields that work for the common interest of its members.

¹⁰⁸ The Oxford Handbook of Comparative Regionalism, Edited by TANJA A. BORZEL and THOMAS RISSE, Oxford University Press, 2016, page457. https://books.google.hu/books?id=frhICwAAQBAJ&pg=PA457&ots=YY6H_a7u8P&dq=migrant%20workers%20and%20regional%20integration&lr&pg=PA457#v=onepage&q=migrant%20workers%20and%20regional%20integration&f=true (10/10/2022)

¹⁰⁹ International Agenda for Migration Management, © 2005 International Organization for Migration (IOM) and the Federal Office for Migration (FOM), Switzerland, Chapter III. <https://publications.iom.int/system/files/pdf/iamm.pdf> (10/10/2022)

¹¹⁰ Definition of Trade Union, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/trade-union> (10/10/2022)

They help workers in issues like fairness of pay, good working environments, hours of work and benefits. They represent a cluster of workers and provide a link between the management and workers.¹¹¹ The Collins English Dictionary expresses about trade union that it is an organization that has been formed by workers in order to represent their rights and interests to their employers, for example, in order to improve working conditions or wages.¹¹² Moreover, it is an organization, usually in a particular trade or profession that represents workers, especially in meetings with employers.¹¹³ One more definition states that they are associations of workers and are formed with the intention of protecting the workers against exploitation by the employers and to improve the workers' working conditions.¹¹⁴ By looking at the definitions mentioned above, it is clear that trade unions are organizations to protect and represent the workers against losing their rights at their workplace.

Trade unions can play a main role in improving health and safety, addressing grievances, and improving workers' well-being. Unions may represent their members at their immediate workplace or in industry-wide negotiations. National trade unions represent the interests of a wide range of workers, from labourers and cleaners to teachers and lawyers. International trade union federations bring together common concerns of trade unions at a global level, representing workers at the ILO and promoting labour rights in countries where unions are banned or restricted.¹¹⁵ Trade union rights are a dimension of many significant rights, the most essential ones in the context of the advancement of trade union rights are the freedom of expression, the freedom of assembly, the freedom of association, the right to form trade unions and the right to collective bargaining. It would not be useful to discuss all rights incorporated by trade unions, e.g. the right to work, as this

¹¹¹ Definition of Trade Union, The Economic Times, Glossary, Economic. [https://economictimes.indiatimes.com/definition/Trade-Union \(10/10/2022\)](https://economictimes.indiatimes.com/definition/Trade-Union (10/10/2022))

¹¹² Definition of Trade Union, Collins English Dictionary, [https://www.collinsdictionary.com/dictionary/english/trade-union \(10/10/2022\)](https://www.collinsdictionary.com/dictionary/english/trade-union (10/10/2022))

¹¹³ Definition of Trade Union, Longman Dictionary of Contemporary English, [https://www.ldoceonline.com/dictionary/trade-union \(10/10/2022\)](https://www.ldoceonline.com/dictionary/trade-union (10/10/2022))

¹¹⁴ Smriti Chand, Trade Union: Its meaning and definition, <http://www.yourarticlelibrary.com/trade-unions/trade-union-its-meaning-and-definition-trade-union/26118>

¹¹⁵ Institute for Human Rights and Business, Migrant Workers and Trade Unions, 21 February 2019, [https://www.ihrb.org/focus-areas/migrant-workers/briefing-migrant-workers-and-trade-unions \(10/10/2022\)](https://www.ihrb.org/focus-areas/migrant-workers/briefing-migrant-workers-and-trade-unions (10/10/2022))

right is not considered a threat to governments.¹¹⁶ Trade union rights are significant in the implementation of the rights of workers. The International Trade Union Federations performs the main role of trade unions globally with many Members States.

The importance of an approach that addresses issues of work and migration, focuses on prevention and protection and emphasizes multi-stakeholder collaboration was recognized by the international community through the adoption of the ILO 2014 Protocol to the Forced Labour Convention, 1930, which encourage states to include employers' organizations and trade unions in the development and implementation of policies, to protect migrant workers from abusive recruitment practices.¹¹⁷ The Protocol also makes specific note of the importance of promoting freedom of association and collective bargaining and explicitly links migration to work and the vulnerability to forced labour.¹¹⁸ One of the most effective ways of preventing the exploitation of migrant workers is guaranteeing the right to join trade unions in the destination countries. In industries with strong trade union representation, there is evidence of lower levels of exploitation, child labour, trafficking and forced labour.¹¹⁹ When some rights of migrant workers are infringed in the destination country, they have chances to get remedies for their infringement through trade unions that are made in accordance with the national labour laws. Trade unions are trying to solve the problems of migrant workers concerned with the disputes from workplaces or with fundamental rights or human rights. Under the facts stipulated above, the importance of preventing the violations of the rights of the migrant workers is to join trade unions. Every worker has trade union rights under International Labour Organization Protocols and its recommendations.

As a membership-based organization, trade unions are mandated to represent their members, protect their rights and interests, and provide services from the field of education to social security based on the power of the collective and solidarity, whose sphere of engagement ranges from the workplace to the industry and to the society, which is the

¹¹⁶ Trade Unions in ASEAN: Their Status and Role in the Application of CSR Practices with the Example of Cambodia, Joana Cassinerio, Journal of Human Rights and Peace Studies journal homepage: <https://www.tci-thaijo.org/index.php/HRPS/index>.

¹¹⁷ [Eliza Marks and Anna Olsen](#), The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion, Thomsan Reuter Foundation News, 2016, [http://news.trust.org/item/20160115141746-mr2gt/\(10/10/2022\)](http://news.trust.org/item/20160115141746-mr2gt/(10/10/2022))

¹¹⁸ [Eliza Marks and Anna Olsen](#), Ibid.

¹¹⁹ [Eliza Marks and Anna Olsen](#), Ibid.

voice of the working people and a facilitator of integration.¹²⁰ While the labour movement has a tradition of international solidarity, established workforces have often displayed hostilities towards the inflow of new workers, and a surplus of workers on which employers can draw tends to have a depressing effect on wages.¹²¹ Furthermore, an untapped pool of non-unionized workers weakens the bargaining position of organized labour that is why it is often assumed that an inflow of migrant labour inevitably strengthens the position of employer's vis-à-vis organized labour.¹²² While trade unions may sometimes oppose the inflow of foreign labour, after they have entered the country, it is essential to organize them, which is not only for ideological reasons (workers' solidarity) but also self-interest as unionized migrants are less likely to undercut established terms and conditions of employment.¹²³ In the broad framework of labour relations, it is the counterpart of the employers and the state. It is an institution of collective bargaining and a partner in the various themes and processes of social dialogue.¹²⁴ The role of trade unions in labour migration takes part of the vital role for the protection of migrant workers. If there are not unionized migrant workers, collective bargaining cannot be entitled and the infringement of their rights will happen continuously.

Organizing and recruitment of migrant workers into trade union structures is the cornerstone of the BWI strategy¹²⁵. Ensuring decent terms and conditions of employment is the main goal of the union. Union membership (or at least networking/contact in case membership is not allowed) also facilitates the provision of services like legal support, language facilitation, and contract negotiations.¹²⁶ Trade unions face several dilemmas in

¹²⁰ The Role of the Trade Union Movement in Migration and Development: A Contribution from the Building and Wood Workers International (BWI), International Dialogue on Migration (IDM) Intersessional Workshop on "Making Global Labour Mobility a Catalyst for Development", Geneva, Switzerland.

¹²¹ Torben Krings, Unorganizable? Migrant Workers and Trade Unions Membership, 2014, See discussions, stats, and author profiles for this publication at: [https://www.researchgate.net/publication/280490650\(10/10/2022\)](https://www.researchgate.net/publication/280490650(10/10/2022))

¹²² Torben Krings, Ibid.

¹²³ Torben Krings, Ibid.

¹²⁴ The Role of the Trade Union Movement in Migration and Development: A Contribution from the Building and Wood Workers International (BWI), Geneva, Switzerland.

¹²⁵ BWI Strategy Plan, [https://odoo.bwint.org/web/content/cms.media/832/datas/EN_strategicplan_final.pdf#:~:text=BWI%20Strategic%20Plan%20is%20both%20a%20summary%20of,movement%20in%20building-construction%2C%20building%20materials%2C%20and%20timber-based%20industries,\(10/10/2022\)](https://odoo.bwint.org/web/content/cms.media/832/datas/EN_strategicplan_final.pdf#:~:text=BWI%20Strategic%20Plan%20is%20both%20a%20summary%20of,movement%20in%20building-construction%2C%20building%20materials%2C%20and%20timber-based%20industries,(10/10/2022))

¹²⁶ The Role of the Trade Union Movement in Migration and Development: A Contribution from the Building and Wood Workers International (BWI), International Dialogue on Migration (IDM) Intersessional Workshop on "Making Global Labour Mobility a Catalyst for Development", Geneva, Switzerland.

their approach towards labour migrants, on a national as well as transnational basis.¹²⁷ While the literature on union response to migrants and transnational union activity has developed separately, the dilemmas rest on common grounds. Specifically, they include the two faces of trade unions, being sword of justice and stake: social justice concerns towards free movement and decent working condition; democracy and membership principles; and the embeddedness of unions' methodologies and strategies on nationally based activities.¹²⁸ Globalization of the trade union movement has already taken place through the World Federation of Trade Unions (WFTU) and the International Trade Union Confederation (ITUC), both of whom partner with industries based Global Trade Union Federations (GUF) to operate on an international and regional level.¹²⁹ Hence, membership of trade unions for migrant workers encounters various dilemmas including social justice at the national and international level.

Although, it can be said that the right of a migrant to join a trade union poses an obligation on unions towards those potential members, there are still significant points of concern.¹³⁰ Firstly, it can be claimed that in comparison to labour rights, fundamental human rights are individualistic and do not capture the idea of the collectivism within union activity. Secondly, human rights are mainly aimed at imposing obligations on the state and less on private actors, including unions. Thirdly, an interrelated consideration, even though human rights have been adopted in international forums, their application is more on the local than global scale, dependent on a nation-state, and generally performed within its geographical boundaries.¹³¹ The three significant points that are fundamental human rights, less on private sector and interrelated consideration still exist in spite of migrant workers' joining the trade unions.

2.5 The Relativeness of Trade Unions and Collective Bargaining in the Affairs of Migrant Workers

The Cambridge dictionary defines collective bargaining as the system in which employees communicate as a group with their employers to try to agree on matters such as

¹²⁷ Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, *Global Justice and International Labour Rights*, Edited by Cambridge University Press, 2011.

¹²⁸ Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, *Ibid.*

¹²⁹ Jakob Mathiassen, 'Why the labour movement must become as global as globalisation?', published in Danish on the 1. May 2019.

¹³⁰ Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, *Ibid.*

¹³¹ Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, *Ibid.*

pay and working conditions.¹³² Industrial disputes between the employee and employer can also be settled by discussion and negotiation between these two parties in order to arrive at a decision.¹³³ The Merriam-Webster dictionary defines collective bargaining as a negotiation between an employer and a labour union usually about wages, hours and working conditions.¹³⁴ The ILO¹³⁵ defines it as all negotiations that take place between an employer, a group of employers or one or more employers and one or more workers' organization for determining working conditions and terms of employment, regulating relations between employers and workers, and regulating relations between employers or their organizations and workers' organizations.¹³⁶ It is a prominent point of this definition as expressed above that collective bargaining is a negotiation between employers' organization and workers' organizations based on their rights and their disputes arisen through their employment.

Collective bargaining is a kind of voluntary negotiation between the representatives of the employers and the representatives of the workers in good faith. Through trade unions, this process has to be started for the interests of the workers and the duty of the employers. Especially, the issues of wages, working conditions, employment policies and productivity settlement are solved through negotiations. There are four objectives that are: to settle conflicts, to protect the interests of the workers, to get a common consensus through the negotiation and to avoid third party intervention.¹³⁷ There are generally five steps of collective bargaining: prepare, discuss, propose, bargain and settlement.¹³⁸ In the prepare step, each party has to choose the representatives on their behalf to negotiate and create a negotiation team, the second step that both parties have to create the basic rules in

¹³² Definition of Collective Bargaining, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/collective-bargaining>

¹³³ Vaibhav V, Collective Bargaining: Definition Types, Features and Importance, Definition of Collective Bargaining, <http://www.economicdiscussion.net/collective-bargaining/collective-bargaining-definition-types-features-and-importance/31375> (10/10/2022)

¹³⁴ Definition of collective bargaining, Merriam-Webster, since 1828, <https://www.merriam-webster.com/dictionary/collective%20bargaining>

¹³⁵ International Labour Organization (ILO), <https://www.ilo.org/global/lang--en/index.htm> (10/10/2022)

¹³⁶ International Labour Organization, Part I Scope and Definitions, Article 2, C154- Collective Bargaining Convention, 1981 (No.154) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299\(10/10/2022\)](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299(10/10/2022))

¹³⁷ Harsh Sood, *Introduction to the Collective Bargaining*, https://www.academia.edu/29441597/Introduction_to_Collective_Bargaining (10/10/2022)

¹³⁸ JOMARI H. MARITORIA, *Collective Bargaining*, https://www.academia.edu/40922184/Collective_bargaining (10/10/2022)

the negotiation team to obey for both parties, the third step (propose) that each party will stipulate an initiating opening statement that includes their conflicts relating to their working condition or wages, etc., the fourth step (bargain) that the negotiation will be started by taking a long time to get a common consensus under the agreements of the parties and the last step (settlement), the common consensus will be implemented by virtue of resolving the conflicts arisen from the employment.¹³⁹ These steps are those in which the collective bargaining has to be performed. When the bargaining processes are divided, four kinds of processes can be seen: distributive bargaining, integrative bargaining, attitudinal restructuring bargaining and intra-organizational bargaining.¹⁴⁰ The distributive bargaining negotiates about the economic issues (wages, salaries and bonus), the integrative bargaining focusing on a cooperation to get a better situation from the bad because both parties can gain and no one can lose as a somewhat cooperative bargaining, the attitudinal restructuring bargaining perform the shaping and reshaping the attitudes of both parties that lead to good faith and the intra-organizational bargaining negotiating to resolve the conflicts between the workers and the employers relating to the employment.¹⁴¹ If there is no good faith in the negotiation between the workers and the employers, their performance for getting the common consensus can be broken easily and the public authorities must ensure that both parties bargain in good faith and strive to get an agreement, Jean-Michel Servais asserted.¹⁴² Bargaining processes are normally served with these five processes, but more processes should be extended, for example: the negotiation concerned with the working conditions of the employment, which is crucial to the working standards of all workers. In this paragraph, the objectives, the steps and the processes of collective bargaining have been mentioned in general.

When the representatives of the workers are chosen, transparency among workers is very essential. The important thing is that the representatives of the workers should be the ones who are chosen by the workers because Adele and Areola argue that the industrial conflicts between the unions and workers could be resolved with the workers’

¹³⁹JOMARI H. MARITORIA, *Ibid.*

¹⁴⁰ Jean-Michel Servais, *International Labor Law*, fourth Edition, 106, 2014.

¹⁴¹ Jean-Michel Servais, *International Labor Law*, fourth Edition, 106, 2014

¹⁴² Jean-Michel Servais, *Ibid.*

representative in the collective bargaining.¹⁴³ Moreover, fair and legal processes in the bargaining process are also important. Gomes-Mejia mentions the fair and legal process that makes the collective bargaining successful.¹⁴⁴ To settle the target problems between the parties, they need to keep in touch with each other by making them motivated and voluntary negotiated. Syrian de Silva also asserts: “In a collective bargaining certain essential conditions need to be satisfied such as the existence of the freedom of association and labour law system.”¹⁴⁵ The ILO’s supervisory bodies argued that all the legislation and procedures must respect the freedom and autonomy of both parties to make the bargaining negotiations easy.¹⁴⁶ Hence, the true representative for the workers, the fair legal process and keeping in touch often are very necessary for the collective bargaining negotiation to settle the conflicts or issues. However, if the legislations restrict the autonomy of the parties, the bargaining system will be delayed and cannot keep on conciliating.

It is a kind of bilateral agreement and the state exists as a conciliator in case of some controversial issues while making negotiations.¹⁴⁷ The state has to enact the effective law including the flexible collective bargaining and trade unions. Most of the states recognize collective bargaining as a basic principle in their laws, though their legislation may be different in their approaches.¹⁴⁸ Normally, trade unions can perform the mediation for the cases arisen out of the employment. However Syrian De Silva argues: “The existence of the freedom of association does not necessarily mean that there would automatically be recognition of unions for bargaining purposes.”¹⁴⁹ Especially in systems where there is a multiplicity of trade unions, there should be some pre-determined objective criteria operative within the industrial relations system to decide when and how a union should be recognised for collective bargaining purposes.”¹⁵⁰ In fact, the trade unions cannot guarantee to get collective bargaining between them even though the national laws and regulations

¹⁴³ Sunday Samson Babalola and Ajibola Ishola, PERCEPTION OF COLLECTIVE BARGAINING AND SATISFACTION WITH COLLECTIVE BARGAINING ON EMPLOYEES’ JOB PERFORMANCE, Corporate Ownership & Control / Volume 14, Issue 2, Winter 2017, 297.

¹⁴⁴ Sunday Samson Babalola and Ajibola Ishola, Ibid.

¹⁴⁵ Sriyan de Silva, COLLECTIVE BARGAINING NEGOTIATIONS, 1996.

¹⁴⁶ GIUSEPPE CARABETTA, INTERNATIONAL LABOUR LAW STANDARDS CONCERNING COLLECTIVE BARGAINING IN PUBLIC ESSENTIAL SERVICES, 2014.

¹⁴⁷ Sriyan de Silva, Ibid.

¹⁴⁸ Jean-Michel Servais, Ibid.

¹⁴⁹ Sriyan De Silva, Ibid.

¹⁵⁰ Sriyan De Silva, Ibid.

recognize the bargaining system and the freedom of association is very necessary for all the workers because they can bargain collectively with bilateral agreement or any other agreement.

In a bilateral level, the result of collective bargaining is not legal, however, it has effect on the interest of the workers. In a tripartite level, the public authorities are needed for review, advice and assistance of employers' and workers' organizations in some matters like the preparation of laws and regulations, the establishment of national bodies and the implementation of plans of economic and social development.¹⁵¹ Moreover, possessing the true negotiation is the very vital factor and then any interference should not be allowed. Therefore, the public authorities need to avoid interfering in the bargaining.¹⁵² To do the best negotiation for the conflicts, good ways have to be used correctly without any mistakes, whether it is bilateral or multilateral or tripartite level. Conciliation or mediation by the public authorities sometimes may interfere in the negotiation between the workers and the employers. In case of mediation of the public authorities they should serve and target to get the best solution with good faith without any favour.

Therefore, the collective bargaining is essential to all the workers to protect their rights and to resolve the problems arisen from the employment. The representatives are very crucial in the negotiation on behalf of the workers and need to be chosen only by the workers but not by the union made by the employers. Good faith is favoured between both parties, if not; the bargaining process will be broken. Normally trade unions and collective bargaining are connected to each other; otherwise, neither of the trade unions can guarantee to bargain freely. The fundamental factor of all the bargaining process is to get the right to freedom of association. If the freedom of association cannot be easily gotten, parties will be far from the bargaining processes. If they get the freedom of association freely under ILO conventions or protocols, the rights of the workers can be protected easily and requested through any negotiation. The factors mentioned above are concerned with all the workers, including migrant workers. Migrant workers also need to have the right to be members of the worker organizations if they are working legally. Though they do not have the full

¹⁵¹ Jean-Michel Servais, Ibid.

¹⁵² GIUSEPPE CARABETTA, Ibid.

rights of national workers, they should have the right to demand their fundamental rights in employment at a minimum.

2.6 The Importance of the Freedom of Association from the Perspective of the Migrants

The Cambridge dictionary defines freedom of association as the right of a person to join other people, for example, as in a union, to defend their rights.¹⁵³ The International Labour Organization states the freedom of association as a free and open society that the workers and the employers form and join the organizations for themselves.¹⁵⁴ Freedom of Association is a kind of right to organize not only for the workers but also for the employers. The right to organize has been given by the Universal Declaration of Human Rights (UDR)¹⁵⁵ and other ILO conventions. There are two main conventions for freedom of association: No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948¹⁵⁶ and No. 98, Right to Organise and Collective Bargaining Convention, 1949¹⁵⁷. Under these conventions and UDHR, all workers and employers have the freedom of association.

Under Article 3 of No. 87 of Freedom of Association and Protection of the Right to Organise Convention, 1948, all the workers have the right to draw up their constitutions and rules of their organization.¹⁵⁸ Their established organization can join and affiliate with any federation, confederation and any international organization of workers and employers according to Article 5 of No 87/1948 Convention.¹⁵⁹ Their organizations can get the right to collective bargaining, the right to consult with the government and the right to

¹⁵³ Definition of freedom of association, Cambridge Dictionary, [https://dictionary.cambridge.org/us/dictionary/english/freedom-of-association\(10/10/2022\)](https://dictionary.cambridge.org/us/dictionary/english/freedom-of-association(10/10/2022))

¹⁵⁴ International Labour Organization, [https://www.ilo.org/global/topics/freedom-of-association-and-the-right-to-collective-bargaining/lang--en/index.htm\(10/10/2022\)](https://www.ilo.org/global/topics/freedom-of-association-and-the-right-to-collective-bargaining/lang--en/index.htm(10/10/2022))

¹⁵⁵ United Nations, Universal Declaration of Human Rights (UDHR), [https://www.un.org/en/about-us/universal-declaration-of-human-rights\(10/10/2022\)](https://www.un.org/en/about-us/universal-declaration-of-human-rights(10/10/2022))

¹⁵⁶ International labour Organization, Freedom of Association and Protection of the Right to Organise Convention, 1948, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312232

¹⁵⁷ International labour Organization, No. 98, Right to Organise and Collective Bargaining Convention, 1949, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

¹⁵⁸ International Labour Organization, C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 3. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312232

¹⁵⁹ International Labour Organization, Ibid, Article 5.

representation at the international or regional conference. After the organization has been established, the workers and employers should have the right to perform freely based on their benefits, such as the constitution and electing the representation for them.

In accordance with Article 1 of No. 98, Right to Organise and Collective Bargaining Convention, 1949, the workers are entitled to the right to get adequate protection against anti-union discrimination in their employment.¹⁶⁰ The employers or the employers' organizations cannot dominate the workers' organizations by virtue of Article 2 of 1949 Convention¹⁶¹. National laws are also vital for the protection of the rights of freedom of association. Therefore, Article 3 and 4¹⁶² also mention that the appropriate machinery for the right to organize needs to be provided in the national laws. This convention gives some fundamental rights for the freedom of association only. Particularly, these two conventions do not have the full basic rights concerning the right to organize for all workers.

In conformity with the international labour standards on freedom of association, the governments cannot interfere in the rights of workers and employers that are basic union activities.¹⁶³ International labour standards mean that the governments need to apply and obey those standards in their national labour laws, to respect those rights that ILO has promulgated and to protect the workers' rights, although ILO Conventions are not legally binding.

Trade unions and freedom of association are very essential to be taken into account during collective bargaining. Therefore, firstly, the workers should have a worker organization and choose a representative for them. Secondly, they have to try to participate as the members of trade unions in the receiving countries. Whenever they face issues arisen from their employment, they should get remedy or the complaint through their

¹⁶⁰ International labour Organization, No. 98, Right to Organise and Collective Bargaining Convention, 1949, Article 1, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

¹⁶¹ International labour Organization, No. 98, Right to Organise and Collective Bargaining Convention, 1949, Article 2, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

¹⁶² International labour Organization, No. 98, Right to Organise and Collective Bargaining Convention, 1949, Article 3 and 4, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

¹⁶³ Kolawole Temitope Emmanuel, Freedom of Association: State Practices and The Impact of International Conventions, [\(10/10/2022\)](#)

organization, trade unions and collective bargaining processes. Likewise, the migrant workers also should have the right protection through the bargaining with their migrant workers' organization in each receiving country. The host countries' national labour laws need to protect the migrants' fundamental rights while the full rights of the nationals cannot be given to them. In the European Union, the Member States have to respect all the national workers and state the equal rights in their legislations. Even non-EU national workers get nearly all the labour rights except the job opportunities in most of the EU Member States.

Migrant workers should also have the right to join a trade union and their representatives act in consultation of their affairs or issues through collective bargaining. International Labour Organization also promulgated some conventions for the migrant workers that relate to the trade unions' rights and right to organize. Article 6(1) (a) (ii) of Migration for Employment Convention, 1939 (No. 66) expresses that the migrant workers have the right to be a member of a trade union.¹⁶⁴ It is because being a member of a trade union can resolve their problems relating to their employment. In accordance with Article 6(1) (a) (ii) of the Migration for Employment Convention (Revised), 1949 (No. 97), the migrants are entitled to the rights of membership of trade unions and enjoyment of the benefits of collective bargaining.¹⁶⁵ Moreover, Article 2 of the Migrant Workers Recommendation, 1975 (No. 151) states that they should enjoy the equal opportunities and treatment like the nationals of the Member State in case of being a member of a trade union and in any form of co-operative.¹⁶⁶ Article 26 of International Convention of the Protection of the Rights of Migrant Workers and their Families gives the migrants the right to join a trade union and of any association established with the laws.¹⁶⁷ Hence, the migrant workers should have the right to be members of workers' organization and get the collective bargaining process for their conflicts or issues like the national workers.

¹⁶⁴ International Labor Organization, Migration for Employment Convention, 1939 (No.66), https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:4462450111318::NO::P12100_SHOW_TEXT:Y:

¹⁶⁵ International Labor Organization, Migration for Employment Convention (Revised) 1949 (No.97), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31224_2

¹⁶⁶ International Labor Organization, Migrant Workers Recommendation, 1975 (No. 151), Article 2 (g) and (h), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31248_9

¹⁶⁷ International Convention on the Protection of the Rights of All Migrant Workers and Their Families, Adopted by General Assembly Resolution 45/158, 1990. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> (10/10/2022)

All the International Conventions and ILO standards are not legally binding to all the national laws of the associated countries, however, these standards are essential to the protection of all the workers by providing the right to organize or freedom of association in the national laws of the concerned countries. Only national laws can prevent the violation of the human rights of the workers. To develop the national laws for the right to organize, regional integration and cooperation play an important role to influence the Member States with the regional protocols or agreements. Therefore, freedom of association, collective bargaining and trade union rights are connected to each other in order to fulfil the whole process of negotiations for the workers' problems.

Depending on the regions, parts or organizations, the Member States implement some rights in their national laws with the regional agreements or multi-lateral agreements. The workers' fundamental rights cannot be the same based on the regions. Among the regional integration, the European Union is the most organized and cooperative region with the equal regulations in the Member States. The Member States of the European Union can perform and implement better systems and policies in their national legislation. We can say that the European Union standards for labour migration are better than ASEAN policies if we compare them. Therefore, I will use the comparative methods by comparing ASEAN and EU in Chapter II, Chapter III and Chapter IV. In using this comparative method, the International Labour Standards and Human Rights laws will be referred to and this Chapter, I have been mentioned with the International Labour Laws and Human Rights Laws or reviewing the regional legislation for labour migration from the perspective of international standards.

2.7 Summary of General Labour Migration

The definitions of this thesis can be seen in Chapter I. This Chapter shows the labour migration, regular labour migration, irregular migrant workers, and the fundamental rights of the family members of the migrant workers, regional integration, collective bargaining and freedom of association according to the international labour laws. Labour migration is warmly welcomed globally as it is a kind of factor that can develop the economy between the two countries or among the regions. In labour migration, there are two main types of migration, legal and illegal or regular and irregular migrant workers. Typically, no argumentation will happen if the regular migrant

workers are entitled to the rights like nationals in the concerned countries under the national labour laws: not only the fundamental rights but also all the rights that belong to the native (national) workers since they entered the receiving country legally or with the permission of the two states. People migrate to work owing to four causes: economic crisis, domestic war, family situation and border state. The migrants are working in the foreign countries for one of these reasons, however, vitally they want a huge remuneration in comparison with their remuneration in the native state. Notwithstanding, any migrant worker should get full rights like the national workers without any discrimination.

Irregular migrant workers who enter the host country illegally, enter legally but reside without valid documents or enter and reside legally but work illegally, are deported by the host state and do not get the labour rights under the national laws. However, they should get the fundamental human rights provided by the national legislation based on the international labour standards. Not all the international labour laws and conventions give the absolute protection for them. Therefore, this issue depends on the governments. The receiving countries have a duty to safeguard and solve those issues by negotiating between the two governments. It is an effective way to reduce the number of irregular migrant workers.

Somehow the family members of the migrant workers also have human rights in the destination country according to the ILO standards. They do not have to face inhuman behaviour and slavery and have the right to get the respect of their substantial rights. The family members are also entitled to the rights of education and medical care in an emergency case and the same rights to social security as the migrant workers.

Most of the states and people blame the destination states when the migrant workers face the infringement of their rights. In fact, a receiving country cannot alone protect the migrant workers at all. Thus, regional integration is very important to implement in protecting all the migrants. Each region (ASEAN or EU, etc.) has its own protocols and agreements on labour migration within its region to cooperate. Each government has the responsibility to protect its national workers and migrant workers from foreign countries, irrespective of their status. The foreign workers are also responsible to obey the national migration policy and these five policies are the substantial migration policy in the receiving countries. In accordance with the ILO and human rights standards, firstly, the origin states

and the destination states need to be members of ILO and Human Rights Conventions (such as International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family). Secondly, international consultation and cooperation are very essential to protect all the migrant workers. Thirdly, implementation of regional consensus shall be made under their regional agreements. These three facts are closely related to regional integration.

Trade unions can play a vital role in improving health and safety, addressing grievances, and improving workers' well-being. Trade unions rights are significant in the implementation of workers' rights. International Trade Union Federations performs the main role of trade unions globally with many member countries. The possibility of preventing the violations of the rights of the migrant workers is to join trade unions. Every worker has their trade union rights under International Labour Organization Protocols and its recommendations. The three significant points that are fundamental human rights, less on private sector and interrelated consideration still exist in spite of joining trade unions of migrant workers. If there are not unionized migrant workers, the collective bargaining cannot be entitled and the infringement of their rights will happen continuously. Through trade unions, this process has to be started for the interests of the workers and as the duty of the employers. Especially the issues of wages, working conditions, employment policies and productivity settlement are solved through negotiations. Bargaining processes are normally served with these five processes, but more processes should be extended, for example the negotiation concerning the working conditions of the employment, which is crucial to all working standards of all workers. In this paragraph, the objectives, the steps and the processes of collective bargaining have been mentioned in general. Conciliation or mediation of the public authorities sometimes may interfere in the negotiation between the workers and the employers. In case of mediation of the public authorities, they should serve and target to get the best solution with good faith without any favour.

Freedom of Association is a kind of right to organize not only for the workers but also for the employers. On freedom of association, the following regulations are important: No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948 and No. 98, Right to Organise and Collective Bargaining Convention, 1949. All workers and employers have the freedom of association. The migrant workers should have the right

to be members of workers' organization and get the collective bargaining process for their conflicts or issues like the national workers.

Conclusion for Chapter I

Primarily, labour migration is a major issue even in the global economy; the real support of productivity from the viewpoint of the receiving countries, and the slight interest through the reimbursement on the side of the sending countries. Two parts have mainly been split into regular/legal and irregular/illegal migrant workers in this chapter. Hence, the importance of the rights of the regular condition and irregular condition become the key point from the standpoint of International Labour Standards, but we never consider whether those rights are fair or not. If the law cannot save the lives of migrant workers in the host countries, their countries of origin can do nothing except engage in consultation between the two governments. In this case, the national labour laws are significant in the shape of the prevention of the infringement of the migrants' rights. The fair remedy and treatment are crucial to be enacted in the national labour laws for the migrant workers entering the host country legally. Moreover, the fundamental remedies should also be provided in the case of irregular migrant workers, as some business people want only cheap workers without caring for the rights of workers. International labour standards are not legally binding, though, those are what the countries accepting migrant workers should have the responsibility to be ratified and be a member of ILO (International Labour Organization).

Relating to trade unions, collective bargaining and freedom of association, all workers are entitled to the rights of freedom of association and being a member of a trade union in every country. However, every migrant worker cannot be guaranteed their labour rights in accordance with international labour rights, in every host country, for example, Thailand, Malaysia, etc. To enter a trade union and get the right to collective bargaining, the primary step starts with the freedom of association. Without the freedom of association, no migrant workers can begin to be members of trade union. We can notice whether a host state discriminates against migrant workers by reviewing the trade union regulations regarding their weaknesses and strengths. As mentioned above, the five steps which are: prepare, discuss, propose, bargain and settlement, are the normal way of the collective bargaining process for the issues of all workers. If the bargaining is goes without any steps, it will be chaos, which leads to ineffective negotiations and the workers also cannot get the

desired remedy. Hence these five steps are compulsory for the way of bargaining. There are five processes; distributive bargaining, integrative bargaining, attitudinal bargaining, restructuring bargaining and intra-organizational bargaining, nevertheless, more processes should be extended, for example: the negotiation concerned with the working conditions of employment, which is crucial to the working standards of all workers

Chapter II

3. Labour Migration in EU and Germany

The Protection of the rights of the migrant workers becomes essential and more vital in the European region. The main affairs implemented and performed by the regional integration are always focused on due to their great importance. Protecting of the migrants' rights is also included in those affairs, as labour migration gets famous and controversial around the world. We can only control and find the solution to the migrant issues with the legislation. Nevertheless, we cannot find the perfect legislation and policies to handle the migration issues. In comparison regional solution and policies, better rules and regulations can only be found because there is no perfect legislation and the governments can hardly figure it out based on the potential effects that may affect their economy. The crucial part of the presentation is how to set the better laws and regulations not for interpreting their economy, but for national workers' opportunities and for improving the social cooperation among the Member States when it is viewed from the perspective of regional integration. European Union's migration policies are the ones of the better rules in the protection and the prevention of the rights of the migrant workers' rights under the International Labour Standards and in accordance with Human Rights Laws.

This chapter will refer to the labour migration system of EU, how to puzzle out the issues arisen from the migration, types of trade union rights and labour market system, and approach on the German labour migration policies compared to some other EU countries.

3.1 European Labour Migration

European Union is one of the strongest unions in the world, the second largest currency trade, and the largest international trading bloc with their Member States by supporting and guaranteeing their nationals mutually through the Treaty of Rome (EEC).¹⁶⁸ In the history of the migration of EU, free movement of workers was given as the first glance of implementation of the Treaty of Rome after the Second World War, by stating in the European Coal and Steel Community¹⁶⁹ in 1951 and the European Economic

¹⁶⁸ European Council of European Union, [https://www.consilium.europa.eu/en/maastricht-treaty/\(10/10/2022\)](https://www.consilium.europa.eu/en/maastricht-treaty/(10/10/2022))

¹⁶⁹ Britannica, [https://www.britannica.com/topic/European-Coal-and-Steel-Community_\(10/10/2022\)](https://www.britannica.com/topic/European-Coal-and-Steel-Community_(10/10/2022))

Community (EEC)¹⁷⁰ in 1957, moreover, in Article 39 of the Treaty establishing the European Union that entails the abolition of any discrimination of nationality¹⁷¹. In previous years, only the migrant workers could have the free movement in their destination, not including the family members. In conformity with the Single European Act 1986¹⁷² free movement of goods, services, persons, and capital has been allowed freely; and in 1992 all the nationals from Member States of EU are started to be granted and also get the right of free movement by virtue of the Maastricht Treaty (Treaty of European Union) that was signed by the EU Member States on 7th February 1992.¹⁷³ Moreover, another agreement that permits the free movement within the Member States is Schengen Agreement signed in 1985, which gives authorization to the Member States' nationals to enter other member areas with the uniform passport and visa after the abolishment of internal border controls.¹⁷⁴ It can be said that the European free movement began to be implemented with the Treaty of Rome and goes forward to the target of the big integration stronger. The most pleasant factor is that EU nationals have the right to go and return freely with the same cards. Labour migration of EU was introduced with the free movement and gets alive in the enlargement of EU due to support for their productivity and promotion the job opportunities.

The primary days of the treaty of Amsterdam, a proposal to make an inclusion of the migration of third country nationals, seemed hard to decide to accept the residence and work permission to them among the Member States, which did not agree on the conditions of the admission of labour migration of the third nationals approached by the EU. Depending on the slight general consensus within the Member States the European Commission provided the Green Paper in 2004, an immigration policy, and made a public hearing to justify whether the EU governments grant or not.¹⁷⁵ After the challenged process

¹⁷⁰ European Parliament, <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome> (10/10/2022)

¹⁷¹ Treaty Establishing European Union, Document 12002E039, http://data.europa.eu/eli/treaty/tec_2002/art_39/oj (10/10/2022)

¹⁷² Single European Act, 11th December, 1986, <http://www.europarl.europa.eu/about-parliament/files/in-the-past/ep-and-treaties/single-european-act/en-resolution-on-the-single-european-act-19861211.pdf> (10/10/2022)

¹⁷³ Saara Koikkalainen, *Borderless Europe: Seven Decades of Free Movement*, 3rd June, 2021, <https://www.migrationpolicy.org/article/borderless-europe-free-movement> and Maastricht Treaty, 7th February, 1992, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT>

¹⁷⁴ Schengen Agreement, <https://www.schengenvisainfo.com/schengen-agreement/> (10/10/2022)

¹⁷⁵ Sergio Carrera and Marco Formisano, *An EU Approach to Labor Migration: What is the Added Value and the Way ahead?*, CEPS Working Document, No-232, 2005.

was successful, the re-launching on the European Labour migration policy could be implemented.¹⁷⁶ Virtually the policy makers might be confused in making those migration policies depending on the complexity of whether the political ways or socio-economic ways should be referred to, as the Member States have their own cultures, tradition, religion, and social background. In fact, the EU tries to harmonize the national labour migration policies and build the greatest foundation policies. Bertrand Russell and Alex affirmed to favour the national policies from the perspective of the social background, however, does not support the adaptation of the progression area due to the changeable condition into the poverty.¹⁷⁷ Establishing cooperation with many countries is difficult and to set up the most suitable rules in the condition that each country's culture and social background can be diverse, and on the other hand, the flexibility amongst the Member States needs to be respected and realized. Therefore, harmonization of socio-economic rules of different members might be the excellent solution for the European Union.

From 2004, European Member States (UK, Ireland and Sweden) started trying to open their labour market for the foreign workers, who are employed in their countries to fulfil the labour demand and to promote their productivity and manufacturing.¹⁷⁸ EU tried to go to the global approach for bringing the more coherent ways by virtue of the issues of illegal immigration, the oversee development, the management of skilled workers and taking action against the trafficking.¹⁷⁹ Illegal migrant workers from third-countries are bound by the Directive 2008/115/EC on common standards and procedures in Member States for returning illegal third-country nationals and the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegal third-country nationals. The preservation of labour markets and internal market of EU, human rights, labour migration protection, and youth protection are a kind of reflection arisen from the new inter-institutional relations and organizations, which causes the poverty decreased and the national protection of migrant labour increased, in the form of packages of socio-economic rights that are either harmonized with national legislation or harmonized to EU

¹⁷⁶ Sergio Carrera and Marco Formisano, *Ibid.*

¹⁷⁷ Roxana Proca, *The Europeanization of intra-EU labour migration policy (2011-2014) - the poverty variable*, 2014.

¹⁷⁸ Martin Kahanec and Klaus F. Zimmermann, *Migration in an Enlarged EU: a challenging solution?*, *European Economy Paper* 363, 2009.

¹⁷⁹ Hugo Brady, *EU Migration Policy: An A-Z*, 2008.

legislation.¹⁸⁰ Before the formation of the European Union different Member States have different norms, legislation, and policies of the labour migration but the Europeanization or harmonization of those policies for intending the intra-EU migration of labour was performed with the ambition of prevention and preparedness of reducing the poverty level within the intra-EU. Though countries' migration systems might be the same consequences of the effects of the performance of their systems surely were non-identical, therefore, EU's same regulation and policies make them all to get the very same benefits that mean that all the member countries feel the bad and the good arisen from the integrated implementation without any diversity.

3.2 The Evaluation of Social Security Rights

Migrant workers or the workers of some other countries are usually guaranteed with the social security rights provided in their national laws. EU Member States are alive with their different cultures and legislations, though, the European Union created the common rules and regulations for all the members' discretion and consideration in the condition of accepting the workers from another member country that gets EU to be flexible and promoted their socio-economic affairs. European Union coordination on the social security does not disturb or replace national legislation, but the substantial rights have to be protected in accordance with the responsibilities of the Member States. EU gives the insurance for all workers of intra-migration in the social security rights regulated not to lose their basic rights by the EU social security coordination. The minimum is that workers can feel safe and work confidently within their regional integration.

Tracing back the European Social Security Coordination to Regulation 3 and 4 were provided in 1958, which were replaced by Regulation 1408/71 in 1971 and 574/72 in 1972, and then replaced by Regulation (EC) No.883/2004 (of the European Parliament and of the Council of 29 April 2004 on the Coordination of Social Security System) and Regulation 987/2009. Those regulations laid down the social security rights of EU citizen workers and EEA states. Furthermore, third country national workers residing and working in an EU member state have been included from 2010 by Regulation 1232/2010. Therefore, the current coordination rules are Regulation 883/2004 and its implementing Regulation

¹⁸⁰ Roxana Proca, The Europeanization of intra-EU labour migration policy (2011-2014) - the poverty variable, 2014.

987/2009.¹⁸¹ The common rules for EU-27+ Iceland, Liechtenstein+ Switzerland are regulated and those countries have the freedom to choose who are to be insured under those rules.¹⁸² Moreover, EU stipulates with European Convention on Social Security 1972¹⁸³ by aiming the facilitating their social progress and multilateral co-ordination of social security legislation. According to Article (2) of the Convention, the social security rights are:

1. Sickness and maternity benefits
2. Invalidity benefits
3. Old age benefits
4. Survivors' benefits
5. Benefits in respect of occupational injuries and diseases
6. Death grants
7. Unemployment benefits and
8. Family benefits.¹⁸⁴

The Immigration and Social Security Coordination Act includes free movement into UK, but as the UK left the EU the reciprocal free movement system also finished on 31st of December in 2020.¹⁸⁵ European workers had so many job opportunities in the UK, which accepted a big population of labour migration when it was a member of European Union. We can assure that at that time, the UK was the most hospitable for all the workers within EU and they got the labour rights like the nationals, but after leaving EU their rights become less under the UK legislation.

The European Union (EU) has the most comprehensive (and complex) system of exportable social benefits within itself. The EU allows exportability of all cash benefits in Member States, including pensions, survivors' benefits, death allowances, and benefits for accidents and occupational diseases.¹⁸⁶ Pursuant to Article (12)(4)(a) of the European

¹⁸¹ European Council (Council of European Union), <https://www.consilium.europa.eu/en/policies/rules-social-security-systems/> (10/10/2022)

¹⁸² European Commission, <https://ec.europa.eu/social/main.jsp?catId=849&langId=en> (10/10/2022)

¹⁸³ European Convention on Social Security, European Treaty Series No.72, Paris, 14.XII.1972. <http://www.worldlii.org/int/other/COETS/1972/7.html> (10/10/2022)

¹⁸⁴ European Convention on Social Security, 1972, Art 2.

¹⁸⁵ Updated Impact Assessment For EU-social Security Coordination, 2021, <https://www.gov.uk/government/publications/immigration-bill-2020-overarching-documents/updated-impact-assessment-for-eu-social-security-co-ordination-february-2021-accessible-version> (10/10/2022)

¹⁸⁶ , Nurulsyahirah Taha, Mahmood Messkouh and Karin Astrid Siegmann.

Social Charter¹⁸⁷, migrant workers and their families are entitled, just like all workers on the territory of a contracting party, to social security. In particular, the states have the obligation to take steps by bilateral and multilateral agreements or by other means to ensure equal treatment with their own nationals as the nationals of other Member States in respect of social security rights. ECSR has also recognized the extension of the application of the right to social security to self-employed workers.¹⁸⁸ Furthermore, the ECSR has established that the right to equal treatment poses an obligation on states to remove all discriminatory provisions from their domestic laws on social security, in order to guarantee the effective exercise of the right to social security to foreigners who come from other Member States. The European Court of Human Rights¹⁸⁹ has stated that the right to benefits, which is a pecuniary right, is linked to the right to property under Article (1) Protocol No.1 European Convention on Human Rights¹⁹⁰. Protection is applied when a person residing in the country has paid contributions to the pension scheme.¹⁹¹ In addition, the ECTHR decided that maternity benefits and child benefits derived also from Article (8) of European Convention on Human Rights and the right to respect for private and family life. It held that limiting the grant of child benefits to non-nationals possessing a permit while refusing it to other foreigner amounted to arbitrary discrimination and violated Article (8) in conjunction with Article (14) of European Convention on Human Rights.¹⁹² Article (18) of European Conventions on Legal status of Migrant Workers¹⁹³ states that each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families, equality of treatment with its own nationals, in the matter of social security, subject to conditions required by national legislation and by bilateral or multilateral agreements already concluded or to be concluded between the Contracting Parties concerned and shall moreover endeavour to secure to migrant workers and members of their families the conservation of rights in course of acquisition and acquired rights, as well as provision of

¹⁸⁷ European Social Charter, 1996, <https://rm.coe.int/168007cf93> (10/10/2022)

¹⁸⁸ Yannis Ktistakis, Ibid.

¹⁸⁹ Council of Europe, <https://www.coe.int/en/web/moscow/european-court>

¹⁹⁰ European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf (10/10/2022)

¹⁹¹ Yannis Ktistakis, Ibid.

¹⁹² Yannis Ktistakis, Ibid.

¹⁹³ European Conventions on Legal status of Migrant Workers (No 093), https://www.coe.int/t/dg3/migration/archives/documentation/legal_texts/093_Convention_Legal_Status_Migrant_Workers_explanatory_report_en.pdf (10/10/2022)

benefits abroad.¹⁹⁴ In accordance with the facts mentioned above, EU has the broad protection of social security for the migrant workers within EU Member States.

4.2.1 Monitoring on the social security rights of the Conventions adopted by the European Unions and the European Commission

5. Primarily the European Social Charter (ESC) needs to be designed with the steps of the historical process of the revitalisation before 1996 due to the complex human rights instrument. It was started in 1961 to express the European understanding of social rights and to help the foundations for a comprehensive harmonisation of social protection in Europe. European Social Charter was provided and amended in 1980s, in 1988, in 1990, in 1991, in 1995 and lastly in 1996. In case of social security rights for migrant workers in the EU, the European Social Charter provides the right to safe and healthy working conditions in Article 3, maternity rights in Article 8, the right to protection of health in Article 11, the right to social security in Article 12, the right to social and medical assistance in Article 13, the right to benefit from social welfare services in Article 14 and the right of elderly persons to social protection. Nevertheless, the right to survivors' benefits, death grants, family benefits and unemployment benefits although the right to the protection of the termination of employment has been provided, are not seen in the Charter. In fact, those rights are also included in the fundamental social rights that should be surely designed.
6. The Community Charter of the Fundamental Social Rights of Workers, which was adopted in 1989, is also one of the fundamental social rights agreed by the European member states, which provides that every European worker shall enjoy adequate social protection (Art-12), every worker must have the enjoyment of workplace safety and health (Art-19), and every worker of the European Community, whether they have retired or not, must be entitled to resources and social and medical assistance (Art.24 and 25). Those enactments are under the agreement of all member states except the United Kingdom (UK

¹⁹⁴ European Convention on the Legal Status of Migrant Workers, European Treaty Series - No. 93, Article (18), 24 November 1977. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680077323> (10/10/2022)

left EU in 2020). This Charter does not include full fundamental social security rights for workers, and it is only for the European workers. By reviewing this Charter, every member state must follow the instructions of this charter without any delay and absence. The European Pillar of Social Rights also provides social rights for all the workings including the social security rights in Chapter III which involve childcare and support for children, social protection, unemployment benefits, minimum income, old age income and pensions, healthcare, inclusion of people with disabilities, long term care, housing and assistant for homeless and access to essential services. The Treaty of the Functioning of the European Union has some rules for migrant workers that are Art-151, to provide the proper social protection with the harmonization of the social systems in EU, Art-153 that pertains to the support of the Union in case of Art.151, and Art.162 to improve the employment of workers and to raise standards of living within the EU. Regulation 883/2004 includes all the social security rights which include sickness, maternity and equivalent paternity benefits in Chapter I involving the insured persons and their family members except pensioners and their family members, the benefits regarding accidents at work and occupational diseases in Chapter II, death grants in Chapter III, invalidity benefits in Chapter IV, old age and survivors' pensions in Chapter V, unemployment benefits in Chapter VI, pre-retirement benefits in Chapter VII, and family benefits in Chapter VIII. The implementation of those kinds of benefits provided in Regulation 883/2004 can be seen in the provisions of Regulation 987/2009, in details. Nevertheless, for third-country national workers, Regulation 1231/2010 gives the social rights to all legal migrant workers from third-countries within the EU: which mentioned in Art-1 the following:

7. "Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 shall apply to nationals of third countries who are not already covered by those Regulations solely on the ground of their nationality, as well as to members of their families and to their survivors, provided that they are legally resident in the territory of a

Member State and are in a situation which is not confined in all respects within a single Member State.”

8. There are other specific enactments for each of the social benefits enacted by the EU, such as the Pension Act. By evaluating those regulations of the European Union, as far as the social regulations have been stated, European Union regulations are protecting not only European workers but also non-European workers against the infringement of their rights. And it ensures that European workers have no potential to lose their rights in the future. By looking at the amendments of the Regulations, systematically, the social rights of European workers can be improved to get better enjoyment because the provisions of the overlapping benefits were seen: which means that the EU is always trying to achieve the perfect protection for all of their European citizen workers. From the side of non-EU migrant workers, the fundamental social rights should be fulfilled, although perfect protections cannot be given.

3.3 The Nature of the EU Labour Market and Its Regulation

The nature of the labour market is expected to be flexible and adaptable in the supply and demand of the workforce in a specific region. It is important and essential for both employers and employees. Without its regulations, there would be a chaotic situation where employers do not have any mutual or multi-lateral agreements in order to find workers. The labour market can place members of the workforce in suitable places and balance the demand and supply for employment.

Before examining the nature of the labour market, we need to know first the terms of the supply of labour and the demand for labour. When the employers have a vacancy for some position in their employment, they have to find workers not only internally but also in international marketplaces. It is about the labour demand. In case the workers correspond to the skills of what the employers need, they can fill the vacant positions. This is about labour supply. The place that the labour supply and demand can be managed is the labour market.

The labour market or the job market refers to the supply of and demand for labour, in which employees provide the supply and employers provide the demand. It is a major component of any economy and is intricately linked to markets for capital, goods, and

services.¹⁹⁵ Angela Refill describes it as “a commodity, which is applied by humans and how this commodity is bought and sold by the employer within the job market.”¹⁹⁶ The Economic Times defines it as “the place where workers and employees interact with each other.”¹⁹⁷ In the labour market, employers compete to hire the best, and the workers compete for the best satisfying job. Beligrădeanu and Stefanescu define the labour market as the confrontation between the supply and demand of labour in a given timeframe and geographic area that is usually completed through employment (with an individual employment contract).¹⁹⁸ Therefore, it is a kind of market, where the workers can get job with their skills and the employers can fill their demand. The participants concerning the labour market are the workers, the employers and their representatives. In that market, many agreements and contracts for jobs can be implemented. Even the workers with low skills can find jobs in the labour market as the employers set their desired skills in accordance with their required vacancy. It makes things easy for the buyers and sellers and balances the demand and supply for both sides.

All labour markets have their self-regulation mechanism, which balances the labour resources of the national economy and the possibilities. Commonly the factors of the mechanism are supply, demand and price with the segmentation of primary, secondary and tertiary.¹⁹⁹ The primary sector means the workers with high qualifications and education level, the secondary sector includes workers who have low skills and education and the tertiary sector relates to undeclared work.²⁰⁰ For the workers with high skills, there are several positions and jobs of high remuneration. They can easily get a permanent position. The ones with low qualifications, normally, cannot get a great salary. In general, not every receiving country will provide a good opportunity for the uneducated or workers who have low skills. The market can also be divided into two types, such as flexible and strict labour markets. In this section, the flexible market will be favourably discussed. The regulations of the job market are important in order to create a market that would otherwise be invalid

¹⁹⁵ Will Kenton, ‘Labor Market’ (Investopedia, 31 August 2020) <https://www.investopedia.com/terms/l/labor-market.asp> (10/10/2022)

¹⁹⁶ Angela Refalo, ‘Labour Market Themes, Issues and Controversies’ https://www.academia.edu/3639736/Labour_Market_Flexibility (10/10/2022)

¹⁹⁷ <https://economictimes.indiatimes.com/definition/Labour-Market> (10/10/2022)

¹⁹⁸ Pașca Cornelia Serena, ‘Labour Market – Concepts, Functions, Features, Patterns’ (2016) 34(4) Management Strategies Journal 201.

¹⁹⁹ Pașca Cornelia Serena, *Ibid.*

²⁰⁰ Pașca Cornelia Serena, *ibid.*

and chaotic without the rules or regulations. Some countries build strict rules and regulations into their labour markets, while some are flexible. The policies in each region and state are different depending on the social, political and economic conditions. Regions such as Europe and America have some specific policies and conventions, but each Member State in its specific region has different legislation and policies regarding the national labour market. Labour market flexibility, as Will Kenton describes it, is “an important part of the labour market that allows companies to make certain decisions about changing their labour force as a response to fluctuations in the market and to help boost production.”²⁰¹ In every market, there is a fluctuation according to the current conditions.

The labour market also faces that situation, for example, wages, hiring and firing of workers, working conditions, etc. For dealing with these issues, labour market flexibility has to be established with the best regulations. Therefore, labour market flexibility is a kind of adjustment of some flexible rules in line with the agreements of the employers in the labour market. Some authors have other definitions for the term “labour market flexibility” based on their studies and their own way of thinking. Raul Eames and Tiiu Paas stated four different aspects, which are external numerical flexibility (worker hiring and firing), internal numerical flexibility (working hours), functional flexibility (changing the content of the work) and wage flexibility (remuneration) in accordance with OECD.²⁰² Friedrich Klaus and Axel Mittelstade also argue that there are four broad aspects.

These are real labour cost flexibility at the economy-wide level, adaptability of relative labour costs across occupations and enterprises, labour mobility and flexibility of working time and work schedules.²⁰³ Therefore, when we define labour market flexibility, basically, working conditions, wage and unemployment are important to every worker. In order to make the labour market flexible, the employers are essential and play the vital role in changing better rules of the market. It means that only the employers should create and do the flexible rules for all the affairs of the market. When labour market flexibility is being stipulated, security needs to be clarified as the terms of flexibility and security are mainly

²⁰¹ Will Kenton, ‘Labor Market Flexibility’ (Investopedia, 18 April 2021) <https://www.investopedia.com/terms/l/labor-market-flexibility.asp> (10/10/2022)

²⁰² Raul Eames and Tiiu Paas, ‘Labour Market Flexibility and Flexicurity’ (2006) . <https://www.researchgate.net/publication/236283207> (10/10/2022)

²⁰³ Friedrich Klaus and Axel Mittelstade, ‘Labour Market Flexibility’ (2014). www.oecd.org/economy/growth/35558438.pdf (10/10/2022)

connected to the labour market. The flexibility and security are the same, nevertheless, they depend on each other in the labour market.²⁰⁴ Peter Auer of International Labour Organization mentioned the dimensions of security that are job security, employment security/employability security, income security and combination security.²⁰⁵ In the case of flexible rules in the labour market, the security will be weaker than in the case of strict rules in the market. Peter Auer's security dimensions are necessary as they are the fundamental requirements, which the employer will set and, the nature of the flexible regime will be less secure, therefore, if there are so many job opportunities, the workers will get economic security, but not complete employment protection.²⁰⁶

At times of economic recession, flexible labour markets might provoke a decline in demand, which only worsens the recession.²⁰⁷ If labour market restrictions are high, the unemployment rate will be raised automatically and it would reinforce illegal behaviour. Flexibility is one of the great ways to create a larger workforce that develops the factories or industries with their vacancies and pushes them faster regarding the running of their industries.

Every market has its own rules and regulations to control illegal practices or behaviour within the market. The market without regulations or rules cannot carry on development for a long period and forces the workers to act in an illegal or irregular fashion. The International Labour Organization does not have any specific convention for labour markets, but instead each region sets its own policies or regulations regarding their labour market. Depending on the nature of a labour market, a question must be asked: should the legislation of labour market be made with so many restrictions? As far as the current and past policies are concerned, it is clear that there is no strong or perfect legislation regarding this. It would be an improvement on the current rules or policies if there would be an attempt to promote and develop the markets in order to protect the workers' rights. Labour market regulations restrict some limitations on employment

²⁰⁴ Peter Auer, 'Security in labour markets: Combining flexibility with security for decent work' (2007) https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/---analysis/documents/publication/wcms_113923.pdf (10/10/2022)

²⁰⁵ Peter Auer, 2.

²⁰⁶ Colin Crouch, 'European Employment and Labour Market Policy' (BBVA Open Mind, 2016) <https://www.bbvaopenmind.com/en/articles/european-employment-and-labour-market-policy/> (10/10/2022)

²⁰⁷ Colin Crouch, Ibid.

contracts, working conditions and working hours.²⁰⁸ It involves labour market institutions and labour market policies. Labour market policies include regulative ones influencing the interaction between labour supply and demand.²⁰⁹ In order to get better jobs and develop labour markets, the ILO stipulates the importance of the policies.²¹⁰ The ILO provides that “representatives of the employers and the workers shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies.”²¹¹ Types of employment contracts, wages and benefits, working conditions, employment practices and social protection are critical and included in the labour market regulations.²¹² Discrimination on wages and benefits, working conditions and social protections are a kind of infringement on the rights of workers. Before preventing the violation of their rights, firstly, the employers have to respect and recognize their basic or fundamental rights as human beings, irrespective of whether they are internal workers or foreign workers. The very vital role of the protection of their rights involves the creation of fair and non-discriminatory rules and policies in the labour market. Among the labour market regulations, minimum wages and working conditions will now be examined.

Minimum Wage: Each country or region has its own form of wages. Some countries regulate the minimum wage rate in their laws; on the other hand, some have a bargaining process involving employers and trade unions.²¹³ When they set the rate for the workers, it is sure that the rate will depend on their skills and status. Most people may comment that the wages for highly skilled and skilled workers will be higher than for less-skilled level

²⁰⁸ Annette Mummert, ‘Employment and Labour Market Policies in Times of Economic Crisis’ (2014) 19.

https://www.academia.edu/7021761/Employment_and_Labour_Market_Policies_in_Times_of_Economic_Crisis (10/10/2022)

²⁰⁹ <https://www.ilo.org/empelm/areas/labour-market-policies-and-institutions/lang--en/index.htm> (10/10/2022)

²¹⁰ Sandrine Cazes-Chaigne, ‘Employment For Social Justice and a Fair Globalization, Overview of ILO programmes: Labour market analysis’ https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_140946.pdf (10/10/2022)

²¹¹ Employment Policy Convention (1964) Art. 7. https://www.ilo.org/dyn/normlex/en/f?P=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C122 (10/10/2022)

²¹² Gordon Betcherman, ‘Labor Market Regulations: What do we know about their Impacts in Developing Countries?’ (2015) The World Bank Research Observer 125. <https://openknowledge.worldbank.org/handle/10986/24811> (10/10/2022)

²¹³ Gordon Betcherman, 129.

workers. It is the natural system in legislation dealing with employers and employment. Nevertheless, the ILO promulgates that the representative organizations of the employers and the workers, or if there is no organization, the representatives of the employers and the workers, shall negotiate and undertake to set the minimum wage.²¹⁴ Moreover, the ILO says that when they set the wage rate, they shall take into consideration two elements, the needs of workers and their families and economic factors.²¹⁵ Guillaume Rocheteau and Murat Tascam also show that there are two kinds of markets: competitive and non-competitive labour markets. In the competitive labour market, many firms have their competitive demand and attract workers, but they cannot set the wage. In non-competitive labour markets, the major employer can do the wage rate without any competition.²¹⁶ Nathalie Elgrably said, “minimum wage is the entryway to the labour market for the least qualified individuals.”²¹⁷ EU Member States are making progress regarding minimum wages for the workers in the region (see Section 4 below). In conformity with the facts mentioned above, the minimum wage is also crucial for the workers’ entry into the labour market. Under ILO standards, the negotiation to set a minimum wage rate shall be made without any discrimination together with the representatives of the employers and the workers.

Working Conditions: The working conditions are mainly maternity protection, rules for occupational protection and safety and working hours.²¹⁸ By seeing the working regulations, the job seekers can decide on their job situation. The ILO also mentions: “Working conditions cover a broad range of topics and issues, from working time (hours of work, rest periods, and work schedules) to remuneration, as well as the physical conditions and mental demands that exist in the workplace.”²¹⁹ Female workers need to get this kind of protection for their maternity leave. Moreover, maternity leave should be provided in a

²¹⁴ Minimum Wage Fixing Convention (1970) Art. 4.
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C13\(10/10/2022\)](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C13(10/10/2022))

²¹⁵ Minimum Wage Fixing Convention, Article. 3.

²¹⁶ Guillaume Rocheteau and Murat Tasci, ‘The Minimum Wage and the Labor Market’ (2007) <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/economic-commentary-archives/2007-economic-commentaries/ec-20070501-the-minimum-wage-and-the-labor-market.aspx> (10/10/2022)

²¹⁷ Nathalie Elgrably, The Minimum Wage and Labour Market Flexibility (2006) Montreal Economic Institute, 2. https://www.iedm.org/files/dec06_en.pdf (10/10/2022)

²¹⁸ Mummert (n 12) 19.

²¹⁹ <https://www.ilo.org/global/topics/dw4sd/themes/working-conditions/lang--en/index.htm> (10/10/2022)

just and fair way. Together with their leave, they should also get their remuneration and this should not affect their employment. As the working time is stated in the employment contract the rest periods should be mentioned. The work schedule shall not be unequal and unfair as they all have the fair working conditions under international human rights. Some working hours are much heavier for the workers, so they do not have enough time to rest. Therefore, working conditions are also essential for labour market regulations.

The European Union always attempts to bring about good cooperation between Member States by being flexible in some affairs. When the Union was organized, the labour migration flow was the focus for businesses because they also allowed free movement of workers. European workers have been migrating from their home countries to other Member States since the organization was founded. As the EU expanded with new members, the migration flow has also increased. It is related to the internal migration flow in the EU. There is another kind of migration flow from third country nationals who are not members of the EU. Gabor Mélypataki also mentions that there are two different migration processes in Europe: from the south to the north and from the east to the west. In any case, whether all migrant workers are allowed to take part in the labour market and opportunities made available to them shall be taken into consideration. It is certain that European citizens can get the same opportunities as the nationals of the receiving states. However, what is the situation concerning external migrant workers (third country nationals)? Economic growth raises labour supply and labour demand; therefore, it increases labour mobility and demands for balancing and filling the gaps and support. For the shortage of workers, migrant workers are needed as a labour force. Internal migration of workers represents a very important phenomenon to ensure labour market flexibility. Van Der Gag and Wissen stipulate that there are four categories in labour migration determination: gravity variables, economic variables, labour market variables and environmental variables. The four categories are helpful and supportive in scrutinizing the labour market and labour migration. Owing to the large organization of the EU, labour shortages often appear even though the free movement of workers is recognized. There are some reasons including this fact that allows migrant workers from outside the EU. Immigrants also can get jobs in many vacant positions, but the same protection to all migrants needs to be given. Many European Member States are requesting many workers, both within and outside of the EU.

The policies and protections of their employment security and rights are different in each Member States' system. However, the fundamental or basic rights shall be provided according to their internal legislation. EU labour market's evaluations and projections show the necessary migrant labour force in the future. The EU labour market policy should intend to complete the EES in the ways of accepting the international migrant workers to fill vacancies in intra-EU labour and skills supply. The simple model is that migrants and natives are homogeneous units of labour. Nevertheless, in practice it depends on different skills and abilities. If there are different skills in the labour market, the competition with the natives will be less. At the same time, immigrants' wages will be reduced due to their low skills. In accordance with the facts mentioned above, the migrant workers from outside the EU cannot get the competition and the equal remuneration because the EU can give a favour to the European citizens in the intra-EU migration. However, there is the fact that migrants from third countries get the opportunity to compete in the labour market even if they have the skills that the employers need and regulate. In the case that such skilful migrant workers do not have equal wages or security as nationals, we cannot say that it is fair.

Since 2020, the Covid pandemic is being felt around the world, and it affects every system (education, economic, social, health, etc.). While some employment can be kept by working from home, other types of employment such as manufacturing and production are necessarily closed down and cease during the time of the pandemic's duration. Unfortunately, by now this situation has not existed for only a short period, but continues to the present day. Most European countries are undergoing a rise in infected patients. The ILO also estimated that compared to other regions, Europe presents one of the largest losses in hours worked. When we consider the impact of the Covid pandemic on the labour market in the EU, not only workers but also employers are at risk of losing their decent living standards and business ties. The Euro area labour market has been severely hit by the coronavirus pandemic and associated containment measures. EU governments tried to devise policies to save the labour market. The EU's new measures to eliminate the risks are divided into five sectors (essential and fully active sectors): (1) active but via telework, (2) mostly essential and partly active, (3) not tele-workable, (4) mostly non-essential and inactive and (5) not tele-workable and closed. The measures effect women and young

workers more than any other groups. The most admirable thing is that businesses are not stopped and kept on operating under the confinement measures. In this situation, the rules of the EU labour market are in a condition of being handled carefully without any mistakes.

3.4. Active Labour Market Policies

European organizations are leading to a single market within their region and still trying to get better regulations. In the enlargement of Europe, the integration is also broader and stronger in the economic cooperation and social policies, especially, in connection to labour mobility. European Member States have the right to free flow of labour migration within the region. The European Union has to coordinate its economic, social rights, and their political integration. Therefore, the Member States take care of the social rights of the workers in their labour market. The EU is more interested in single labour market than common labour market. Its intention is to be just and fair regarding all the rules and regulations and not to cause conflict between the Member States about the equilibrium. By setting up the single market, the EU is a united organization and a real single space with the same rules and policies. It makes the EU more equitable and a uniform platform for many citizens. There were so many policies and regulations of the labour market in the EU from the past to the present. However, these initiatives and actions attempted to create a stable and high standard policy that will allow Member States to make higher profits and increase opportunities, and from the angle of the economic integration, their business increases and becomes more profitable because they give the effective machinery of their productivity. European countries always discuss labour market policies for the protection of jobseekers and for increasing employment. With the Maastricht Treaty, the European Union allows the people of the member countries to have the right to work throughout the Union. The European Employment Strategy (EES)²²⁰ integrated with the international labour market and employment policies of the Member States that intend to make the labour markets equal. European citizenship and unification of the law compel the Member States to act as a single state as the EU is focusing on social policy as one of the most important areas to improve upon, therefore, the social policy was built for the working conditions within the EU, to bring about a dialogue between employers and workers and to ensure compliance

²²⁰ European Commission, <https://ec.europa.eu/social/main.jsp?catId=101&langId=en> (10/10/2022)

between the Member States.²²¹ The provision of LMPs is highly heterogeneous across the EU.²²² When the market policies would be restricted for workers, the labour demand would not be supported and it is hard to fulfil the workers' needs. Furthermore, productivity would also be slower and slower.

However, if it is restricted for the employers, the workers' job opportunities will get higher and from the perspective of the employers, they would cost the expenditures of the labour demand, however, their productivity and the circuit of their business would be faster and more effective. European minimum wages play a vital role in the labour market by virtue of the worker's decent living within the region. There are two systems of setting a minimum wage in the EU, which are through the statutory minimum wage and through the collective bargaining.²²³ Twenty-one Member States of the EU are processing their rate with their statutory minimum wage, but six members (Austria, Cyprus, Denmark, Finland, Italy and Sweden) go through collective bargaining.²²⁴ In October 2020, the EU promulgated the Proposed Minimum Wage Directive to ensure that workers have a decent living in the Union wherever they work correlated to the two minimum wage systems mentioned above.²²⁵ The European Council adopted the Lisbon Strategy in 2000 for raising the employment rate. Its aim is "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion."²²⁶ The European Council provided a recommendation of the

²²¹ Sefer Sener and Burcu Kılınc Savrul, 'Europeanization of Labour Markets in New Member and Candidate States' (2011) 24 *Procedia – Social and Behavioral Sciences* 716 (DOI 10.1016/j.sbspro.2011.09.053).

²²² Lorenzo Ciapetti, 'Uncoordinated Job: EU Labour Market Policies' Reaction since the Crisis' (2017) Antares and Centre for Comparative Public Policy Policy Brief N. 1/2017 . [https://www.academia.edu/32793471/UNCOORDINATED_JOB_EU_LABOUR_MARKET_POLICIES_REACTION_SINCE_THE_CRISIS_\(10/10/2022\)](https://www.academia.edu/32793471/UNCOORDINATED_JOB_EU_LABOUR_MARKET_POLICIES_REACTION_SINCE_THE_CRISIS_(10/10/2022))

²²³ European Parliament [>\(10/10/2022\)](https://www.europarl.europa.eu/thinktank/hu/document.html?reference=EPRS_BRI%282020%29659294>(10/10/2022))

²²⁴ European Parliament [>\(10/10/2022\)](https://www.europarl.europa.eu/thinktank/hu/document.html?reference=EPRS_BRI%282020%29659294>(10/10/2022))

²²⁵ Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union [>\(10/10/2022\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?Uri=CELEX:52020PC0682&from=EN_(10/10/2022))

²²⁶ [>\(10/10/2022\)](https://portal.cor.europa.eu/europe2020/Profiles/Pages/thel Lisbonstrategyinshort.aspx_(10/10/2022))

integration of the long-term unemployed in 2016. It encourages the increasing of the employment rate and the reduction of poverty.²²⁷

The Directorate General for Economic and Financial Affairs always assesses the European labour market depending on the labour market indicators and on other aspects, especially the labour market issues and labour market reforms. Moreover, the European Commission also figures out the tax and benefits systems about the contribution of economic growth and higher employment for the social protection.²²⁸ European internal market law gives the guarantee directly for the business, free movement rights, self-employed persons and companies.²²⁹ Tito Boer, Giuseppe Nicolette and Stefano Scarlett argue that “the effective coverage or implementation of standard employment protection provisions influence the overall strictness of EPL regulations. For example, in many countries employment protection provisions for workers with regular contracts are often extended to those with fixed-term contracts after a given tenure or a number of renewals have been reached.”²³⁰ The European labour market policy includes labour taxation, unemployment benefits, other welfare-related benefits, active labour market policies, job protection (EPL), wage setting, working time and immigration mobility.²³¹ As far as these policies are concerned, active labour market policies and immigration mobility (labour migration and EU labour market) will be stipulated separately.

In this section, it is argued that flexible labour market in Europe needs to be stated as the EU is trying to get flexibility in its labour market. Active labour market policies in Europe will be extended by referring to some authors and European Commission policies. Furthermore, the expenditures on ALMPs have to be expressed more as training and other job seeking assistances are included. I will discuss the situation of labour migration and labour market in Europe and how much protection and security the migrant workers will

²²⁷ European Commission European Semester Thematic Factsheet: Active Labour Market Policies (2017) https://ec.europa.eu/info/sites/default/files/european-semester-thematic-factsheet-active-labour-market-policies_en_0.pdf (12/20/2020)

²²⁸ https://ec.europa.eu/info/business-economy-euro/growth-and-investment/structural-reforms/labour-markets_en (10/10/2022)

²²⁹ Dagmar Schiek, ‘Comparing Labour Laws in the EU Internal Market – A Social Actor Perspective’ (2017) 33(1) International Journal for Comparative Labour Law and Industrial Relations 171.

²³⁰ Tito Boeri, Giuseppe Nicoletti and Stefano Scarpetta, ‘Regulation and Labour Market Performance’ (1999) IGIER Working Paper No. 158 <https://ssrn.com/abstract=201748> (10/10/2022)(DOI 10.2139/ssrn.201748).

²³¹ <https://webgate.ec.europa.eu/labref/public/> (10/10/2022)

get from the labour market. After referring to the scientific literature related to my sub-topics, my theoretical factors will be added.

During the last decades, the European Union has been eager to be flexible in the labour market by revising their policies and regulations between Member States leading to a single labour market in EU because the EU gradually is moving towards that kind of market from 27 separate national labour markets.²³² The aim of the single market is to bring about just, fair and equal services, skill, promotion and performances within the region and to ensure the free movement of goods, services and workers. By creating the single market, the unfairness and wage problems will be reduced and workers and employers can cooperate freely without any dispute. It cannot be argued that the single market creates a flexible labour market. Somehow, even if the flexible labour market is implemented, the social dimension needs to be described as the substantial rule. The European Pillar of Social Rights protects social rights of the workers. Nora Jacob said that the principle of equal treatment is the vital social dimension of the EU and the pillars' principles are for the social and labour market agenda.²³³ The effort of the EU is targeting to the single labour market and to get a flexible labour market for better employment opportunities for the workers in the region. In the case of minimum wage setting of the member states, 21 member states process with a statutory minimum wage and only 6 member countries with collective bargaining. Going with the statutory minimum wage is constantly processing with fewer issues between member states but fewer chances to get increased salaries. The way of collective bargaining has the potential to get higher wages for the workers in line with all the situations such as the employment progression, inflation etc. Facing the economic crisis in 2008, the EU established the European 2020 Strategy that also includes a section of active labour market policies among the services. It is the main method for solving the challenge of unemployment.²³⁴ Whereas it is one of the parts of the European 2020 Strategy, it can be said that it is essential for employment development and for reducing unemployment within Europe. According to the LABREF Database, active labour

²³² Iván Martín and Alessandra Venturini, 'A Comprehensive Labour Market Approach to EU Labour Migration Policy' (2015). <https://op.europa.eu/en/publication-detail/-/publication/824e91bc-d642-4626-9267-676945e15053/language-en> (10/10/2022)(DOI 10.2870/753878).

²³³ Nóra Jakab, 'Social Dimension of the EU – The Pillar's Impact on European Labor Law' (2019) 26(2) LESIJ – Lex ET Scientia International Journal 53.

²³⁴ Jochen Kluve, 'The Effectiveness of European Active Labour Market Policy' (2006) IZA Discussion Paper No. 2018 2. <http://ftp.iza.org/dp2018.pdf> (10/10/2022)

market policies are public employment services (e.g. job counselling and job assistance, etc.), training, direct job creation schemes, and employment subsidies, special schemes for the disabled, and special schemes for youth, active labour market policies, among others.²³⁵ Many authors argue that there are six types of ALMPs, which are training, private sector incentive program, direct employment program in the public sector, service and sanction, youth programs and measures for the disabled. Training means specific vocational skills or education in order to enhance productivity and human capital. Private sector incentive programs are a kind of encouragement to the employers to provide new jobs for the unemployed and migrant workers. Direct employment programs in the public sector imply the direct creation and provision related to the public works for the public goods and services and aim at disadvantaged individuals. Some services and sanction for the unemployed are mainly relevant to the assistance of the job searching unemployed individuals. Youth programs are a kind of particular programs that are for the disabled youth and unemployed. Measures for the disabled give the opportunity for the physically, mentally or socially disabled. They include vocational rehabilitation, sheltered work program and wage subsidies.²³⁶ The restructuring of the labour market, the social welfare reforms and European employment strategy's agreements improvement are the causes of the emergence of ALMPs in EU.²³⁷ In 1990, it was an important policy in the EU in terms of entering the labour market for the unemployed and inactive persons. The European Pillar of Social Rights includes a reference to ALMPs.²³⁸ According to the facts mentioned above, the active labour market policies are principally in the contribution of job searching for the unemployed and even for the disabled to be preferred indeed. From my point of view, the ALMPs in Europe are nearly perfect in attempting to get more jobs for the unemployed. Besides, they can support and promote productivity and the skills of the workers. However, the Member States do not seem to have the same practice regarding ALMPs. They may differ depending on their country's economic situation. Nevertheless,

²³⁵ [https://webgate.ec.europa.eu/labref/public/ \(10/10/2022\)](https://webgate.ec.europa.eu/labref/public/ (10/10/2022))

²³⁶ Jochen Kluge et al., *Active Labor Market Policies in Europe* (Springer 2007).

²³⁷ Willibrord De Graaf and Andréana Khristova, 'Active labour market policies and social rights: wither subsidised employment?' (2005) International Conference: Employees' Resources and Social Rights 3. [https://www.boeckler.de/pdf/wsi_resore_de_graaf.pdf \(10/10/2022\)](https://www.boeckler.de/pdf/wsi_resore_de_graaf.pdf (10/10/2022))

²³⁸ European Commission European Semester Thematic Factsheet: Active Labour Market Policies (2017) [https://ec.europa.eu/info/sites/default/files/european-semester-thematic-factsheet-active-labour-market-policies_en_0.pdf \(10/10/2022\)](https://ec.europa.eu/info/sites/default/files/european-semester-thematic-factsheet-active-labour-market-policies_en_0.pdf (10/10/2022))

Europe is moving towards a single labour market to be fair and equitable between the workers of the Member States. Some differences in the use of ALMPs in certain EU countries will be stated in the following pages. Young job seekers have great opportunities to find jobs as ALMPs especially supported favour the unemployed youth as it is a kind of supporting platform for the workers and employers. Young European workers who are unemployed are targeted by the active labour market policies.²³⁹ The original intention of ALMPs for youth is that the unemployed youth enters the labour market to start their career by undertaking vocational training. There is an educational mismatch among the youth in the labour market. The unemployment rates are rising in Europe.²⁴⁰ Hence, the ALMPs can provide the low-skilled or unskilled youth with the effective training to prepare for employment. In comparing the skills of the youth to adults and old people, it is clear that their skills are much less than that of these two latter groups. Moreover, they do not have any experience in employment. The adults and the old do not need to be trained as most of them already have necessary skills and experiences. Regarding the youth, they move into employment when they finish school. This is the reason why ALMPs focus on the unemployed youth. The more skilled young people the labour market has, the more stable their employment and productivity can be. The labour market will be more effectively developed.

The expenditure on ALMPs is not the same in all countries, it differs depending on their financial systems and other practices among Member States. Before the economic crisis in 2008, France, Italy, Portugal, Spain, Greece and Austria (continental and Mediterranean countries) used less than 1% of GDP and the Scandinavian countries above 1% of GDP on ALMPs. In 2012 and 2013, several European Member States reduced their budget for ALMPs expenditure, nevertheless, Denmark, Finland, Norway and the United Kingdom increased their expenditure to a level higher than the expenditures in the economic crisis.²⁴¹ The public expenditure on ALMPs in 2007 before the job crisis was low in many European countries. Less than 0.2% of GDP was spent in Estonia, the Czech Republic, Latvia, Slovakia, and Slovenia. Over the next years, the expenditure on ALMPs

²³⁹ Jochen Kluge et al. (no. 43.) .

²⁴⁰ Marco Caliendo and Ricarda Schmid, 'Youth Unemployment and Active Labour Market Policies in Europe' (2016) 5(1) IZA Journal of Labor Policy 6. (DOI 10.1186/s40173-016-0057-x)

²⁴¹ Marwa Sahnoun and Chokri Abdennadher, 'The assessment of active labor market policies: evidence from OECD countries' (2018) 35(2) *Economia Politica* (DOI 10.1007/s40888-018-0102-x).

in the EU countries changed over time. The average ALMPs expenditure in selected European countries was 0.35% of GDP (2007) and 0.43% of GDP in the following years.²⁴² According to the economic, political and financial systems, the expenses differ in each Member State. In fact, the benefits are not based on the expenditure on ALMPs among Member States. The principal aim of the ALMPs is not to increase the unemployment rate in the future and to support long-term unemployment. In order to get an effective training in the employment skilled and talented trainees for the workers are needed. Nevertheless, the expenditures also play an important role in the labour market.

3.4 The Role of Trade Unions Regarding Migrant Workers in EU

The past economic recession caused in EU member countries unemployment situations and some human rights violations between employers and employees. The enlarged group of EU had to make a solution for that big issue and tried to give the fair rights relating to the problems of employers and employees.

The regulation of trade unions rights in the EU can be seen in the European Social Charter, the Charter of Fundamental Rights of the European Union, the Community Charter of the Fundamental Social Rights of Workers and the European Convention of Human Rights. Art-5 of the European Social Charters provides the right to association, Art-6 with right to bargain collectively, Art-21 with the right to information and consultation, and Art-29 with the right to information and consultation in collective redundancy procedures. Art-27 of the Charter of Fundamental Rights in the EU adopts the workers' right to information and consultation within the undertaking and Art-28 for the right to collective bargaining action. Art-11 of the Community Charter of the Fundamental Social Rights of Workers states the right to free association for all employers and all workers, Art-12 for the right to negotiate and conclude collective agreements between the representatives of the employers and the workers, and Art-17 to develop the information, consultation and participation for workers and to implement those in due time. The European Convention of Human Rights also gives the right to freedom of assembly and association in Art-11.²⁴³

²⁴² Anna Bánociová and Slavomíra Martinková (n 27).

²⁴³ European Convention of Human Rights, Council of Europe, 03/06/2013, https://www.echr.coe.int/Documents/Convention_ENG.pdf (10/10/2022)

As workers' central political actors, trade unions represent workers' interests within the political system of the EU as "intermediary organizations".²⁴⁴ Although, trade unions in Europe started to develop in the late nineteenth century, it took more time to the industrial conflict and collective bargaining in their institutionalization. Since 1945, the membership development is raised more and more until today.²⁴⁵ The efficiency of the trade union is high to all workers. The reasons why trade union is useful and essential to the workers within EU have been stated. Besides cooperation at the national or regional level, trade unions increasingly utilize transnational union structures such as the European Trade Union Confederation (ETUC) and industry-wide European federations to deal with cross-border mobility issues. For instance, the European Federation of Building and Wood Workers (EFBWW) and the European Federation of Food, Agricultural and Tourism Trade Unions (EFFAT) have recently intensified their efforts to combat social dumping practices in the EU and to enforce local labour standards.²⁴⁶ Hence, every trade union in the EU implies with the regulations of the ETUC. When we analyse trade unions in the EU, firstly, the European Trade Union Confederation needs to be clarified and initiated, as it is the foundation of European trade unions.

European Trade Union Confederation: For years, the European Union (EU) wished to influence their region with the workers. Therefore, the ETUC started to form speaking a single voice and taking part in EU decision-making on behalf of the European workers. Since 2008, Europe's economic and financial crisis and the introduction of austerity policies have reinforced the need for a body to defend workers' interests at EU level.²⁴⁷ Trade unions in EU rely on ETUC consideration and decision and ETUC is for the workers within Member States. If going back to the history of ETUC, European Coal and Steel Community (ECSC) needs to be examined to trace. Under ECSC, the first organization of the affiliates of International Confederation of Free Trade Union (ICFTU) could be created. In 1957 European Economic Community was established through the Treaty of Rome. In 1958, European Trade Union Secretariat was formed by

²⁴⁴ Martin Seeliger and Ines Wagner, How Trade Union Organizations at the European Level Form Political Positions on the Freedom of Services, MPIfG Discussion Paper 16/16, 2016.

²⁴⁵ Bernhard Ebbinghaus and Jelle Visser, Trade Unions in Western Europe Since 1945, January 2001.

²⁴⁶ Torben Krings (Johannes Kepler University Linz), Unorganisable? Migrant workers and trade union membership, Conference Paper, September 2014.

²⁴⁷ European Trade Union Confederation (ETUC), 2nd November 2017, <https://www.womenlobby.org/article296> (10/10/2022)

meeting of ICFTU's European affiliates. At about the same time the International Confederation of Christian Trade Unions (ICCTU) set up a European organization. In 1968, ICCTU changed its name into World Confederation of Labour. In 1969, European Trade Union Secretariat was changed into European Confederation of Free Trade Union (ECFTU). The Trade Union Committee for the European Free Trade Area (EFTA-TUC) was created in 1968. With this organization, the number of the European trade union bodies increased to five, meaning the European level trade union bodies. Denmark, the Republic of Ireland and the United Kingdom by 1970s made discussions about six times in the EC and EFTA countries about the outcome of the decision to establish an entirely new European trade union organization spanning both the European Community and the EFTA Member States and the agreement for a single unified trade union organization at European level. From these discussions, European Trade Union Confederation was established in 1973.²⁴⁸ The chief founders of European Trade Union Confederation are Bruno Sortie (CISL), Georges Debone (FGTB), Thomas Nielsen (LO Denmark), Heinz-Oskar Vetter (DGB) and Victor Feather (TUC). The proposal for establishing European Trade Union Confederation was first discussed in Frankfurt in June 1971, and the negotiation at a meeting that was held in Norway from fifth to sixth of November 1971. At that time, the drafting of basic principles for the cooperation of EU Member States was created from the first discussion.²⁴⁹ It is the very first effort and effective way to develop the trade unions in EU. Based on the drafting of the basic principle the next step can be made to create developed rules and principles.

National trade union federations and European trade union federations are included in the ETUC. European trade union federations are organizations of trade unions within one or more public or private economic sectors. They represent the interests of the workers in their sectors at the European level, principally in negotiation. All trade unions related to member federations always connect to each other. The negotiation shall be made with employer organizations.²⁵⁰ With the Constitution of ETUC, European trade

²⁴⁸ European Trade Union Confederation, published by the Trade Union Division of the Directorate-General for Information, European Communities (DG X Information) - 200 rue de la Loi, 1049 Brussels - Belgium.

²⁴⁹ Christophe Degryse and Pierre Tilly, 1973-2013 40 years of history of the European Trade Union Confederation, European Trade Union Institution, 2013.

²⁵⁰ ETUC Constitutional, https://www.etuc.org/sites/default/files/publication/files/ces-congreco_2015-statuts-ukld_def_1.pdf. (10/10/2022)

union federations are the main organizations standing for the workers and their real responsibility in serving for the ETUC. Social dialogue is often made in the case of the labour affairs to ensure human and labour rights. It is an effective way to solve the problems of worker affairs. Without social dialogue or negotiation, the confederation cannot go on and can miss the correct way. Therefore, the ETUC cooperation for the trade unions in Europe is essential to take part in the organization.

European Trade Union Confederation (ETUC) has a long history and is still active nowadays. It was 1973 when the ETUC was created. On the other hand, it was after World War II when Western Europe was being rebuilt again and it was the period of the origin of the ETUC.²⁵¹ Rebuilding Western Europe was a kind of attempt to develop economies that allow the free movement of labour migration. The ETUC currently has 89 member organizations from 39 European countries. By establishing the ETUC, trade unions can participate in the role of labour migration management and be a kind of effort to the solution between the workers and employers. The ETUC's statute identifies its aims as representing and promoting the economic, social and cultural rights of the workers on European level and strengthening democracy in Europe.²⁵² The main purpose of the foundation of the ETUC was to build a lobbying organization to counter the increasing activity of multinational companies in the European market.²⁵³ The objective of the ETUC is the interest of the workers in Europe and to maintain an important social dimension in the EU that protects the interests of all citizens.²⁵⁴ The ETUC believes that workers' consultation, collective bargaining, social dialogue and good working conditions are the keys to promote innovation, productivity, competitiveness and growth in Europe. In consulting, collective bargaining, social dialogue and good working condition, ETUC points out the solution and making decision between workers and employers.²⁵⁵

The ETUC cooperates with the European Commission in the legislation that leads the ideal framework for labour regulation, however, the unionist from the sectorial

²⁵¹ Christophe Degryse and Pierre Tilly.

²⁵² Willy Buschak, The European Trade Union Confederation and the European industry federations, <http://library.fes.de/library/netzquelle/english/eugew/history/pdf/buschak.pdf> (10/10/2022)

²⁵³ Martin Seeliger and Ines Wagner, Workers United? How Trade Union Organizations at the European Level Form Political Positions on the Freedom of Services, 2016.

²⁵⁴ Jacky Barry, Margaret Bremner, Peter Donaghy, Vidia Ganase and Joan Hewitt, English for European trade unionists: Level Four European Works Councils, 2006.

²⁵⁵ European Trade Union Confederation (ETUC), 2nd November 2017, <https://www.womenlobby.org/article296> (10/10/2022)

federations expresses criticism as they favour the national legislative area.²⁵⁶ On the side of unionists who highlight the national legislative area, the unionists disagree the legislation at EU level or international level. Nevertheless, the EU is formed with many Member States and has to legislate at EU level by considering both the developed and the less developed countries. When the national legislation is leading within the EU, it is sure that it is not fair and perfect that the legislation is based on the nation-state.

Migration and refugee flows cause European crisis and its aftermath, environmental issues and post-Bruit political concerns are recent events and problems of trade unions in Europe. However, trade unions in Europe can show the real and good consequences not only at the national and transnational level. After the formation of the ETUC, several guidelines of the ETUC emerged, that can develop the labour migration situation. Those guidelines are a number of milestones in his historic journey.²⁵⁷ In fact, it is too hard to stand and serve in the cooperation with the ETUC, since the 39 European countries have the ideological diversities in accordance with their tradition, their economic sectors and other reasons. However, they can greatly cooperate within European unions by their provisions and steps.

Since trade unions are European organizations, the workers from European Member States can be given the protection of their rights with the reason of the regional integration between Member States. Free movement of labour migration is a part of European organization in developing their economies and financial affairs. By allowing free movement of labour migration, European Union can be entitled their shared interests with the growth of their regional economies and can share their workers in the requirement of the vacancies of the factories or industries. It is solidarity of an enlargement of the European Union that affects the harmonization of the rules and regulations with regard to labour migration. Therefore, there are no big issues in respect of workers coming from EU Member States. With the great contracts, the great interests, the full rights given to European workers, they can more safely work in the employment than migrant workers, who come from non-European countries.

²⁵⁶ Martin Seeliger and Ines Wagner, *How Trade Union Organizations at the European Level Form Political Positions on the Freedom of Services*, MPIfG Discussion Paper 16/16, 2016.

²⁵⁷ Andrea Ciampani and Pierre Tilly (eds), *National Trade Unions and the ETUC: A history of unity and diversity*, European Trade Union Institute, Brussels, 2017.

However, the EU has many migrant workers earning in their regions because of job opportunities for the third countries. In this paper, migrant workers mean the ones coming from non-European countries. To what extent does the EU give the rights to the migrant workers when they work within the EU? This question is a very important and interesting question for them. When they face the infringement of their rights from the employment, it has to point out whether ETUC or trade unions can represent them to claim their rights or not. The chapter will show how to assess the advantages or disadvantages of participating in trade unions, and my theoretical point of views connected to labour migration.

Some authors and articles in EU have theorized three dilemmas for trade union and migrant workers. The three dilemmas are the following:

1. Should trade unions resist employers' efforts or cooperate in recruiting workers from abroad or not?
2. Should migrant workers be regarded as an integral part of the trade union regular member, and therefore, be actively recruited as members with the same rights as any other worker?
3. Should trade unions exclusively represent the common interests of native and migrant workers, treating all workers the same way? Alternatively, should trade unions develop targeted policies and strategies that care about the special interests and needs of migrant members?²⁵⁸

The above questions can establish the solutions connecting the issues between trade unions and migrant workers. These are the real problems for European Union, although; the trade unions' rights are different in every Member State. Critically, the problematic issues can be confronted in every developed country and region received so many foreign workers in their employment industries or factories.

The first dilemma is concerned with the resisting employers' efforts or recruiting workers from abroad. Rinus Penninx and Judith Roseland express that if trade unions do cooperate, it could depress wages of union members and trade unions' bargaining power

²⁵⁸ Stefania Marino, Rinus Penninx and Judith Roosblad, *Trade Unions, Immigration and Immigrants in Europe revisited: Unions' attitudes and actions under new conditions*, European Work and Employment Research Center, University of Manchester, UK, 2015.

might be weakened. In addition, economic growth would be slow.²⁵⁹ In times of plentiful national supply of labour, trade unions are likely to oppose the recruitment of migrant workers; while in times of labour shortages, unions will probably be more willing to cooperate.²⁶⁰ The recruitment of workers from abroad adds not only to the quantitative supply of labour but also brings about qualitative changes in the workforce. As labour migration became permanent and 'guest workers' transformed into ethnic minorities, there has been a certain convergence in union attitudes insofar as they increasingly aimed to recruit migrant workers into unions and eventually also recognized the need for some special policies tailored towards the needs of migrants.²⁶¹ Trade unions can resist employers in recruiting foreign workers when the employers need the labourers for their labour supply. Trade unions may be the key platform to recruit workers from abroad and internally and to negotiate between the workers and employers. Nevertheless, it is not the best way to solve the problems between the workers and employers, since the objective of trade unions is to represent the workers in the case of the violation of their rights in the employment. In resisting employers' efforts, trade unions cannot serve the workers to get fair and just working conditions in the employment, as they have to help the employers in recruiting workers and resisting for their benefits. According to Rinus Penninx and Judith Roseland's commentary, the economic growth can be slow by cooperating with the employers in recruiting. On the other hand, if trade unions cooperate with them in a way not taking care of bargaining power, it will not be the organization for the workers' favour to represent their complaint. Furthermore, as the workers' rights will be violated, however, finally they get their rights properly, the labour supply will be bigger and bigger and the economic expansion will be gradually affected. Therefore, for this dilemma, it is better if trade unions should not participate in the recruitment of the foreign workers so as not to lose their rights in the employment.

The second dilemma is whether migrant workers should be regarded as an integral part of the trade union rank and file and therefore, be actively recruited as members with the same rights as any other worker or not. Rinus Penninx and Judith Roseland state their

²⁵⁹ Stefania Marino, Rinus Penninx and Judith Roosblad, *Ibid.*

²⁶⁰ Stefania Marino, Rinus Penninx and Judith Roosblad, *Trade Unions and Migrant Workers (New Contexts and Challenges in Europe)*, 2017, ILERA Publication Series, ILO.

²⁶¹ Torben Krings, *Ibid.*

comment about the question that on the formal ideological level, none of the unions excluded migrant workers, nevertheless, the practice of inclusion differed markedly across the seven countries. Firstly, the degree of organization of migrant workers turned out to be much more determined by structural (national) characteristics of the trade unions than by characteristics of migrants themselves. Secondly, being a member of the union does not always mean having the same rights.²⁶² From my point of view, migrant workers should be regarded as an integral part of trade union rank as they need to get and claim their rights through trade union and it is better than their right to organize. Integration of trade unions rank causes the native workers not in favour of their special rights than migrant workers, which may be high wages or good opportunities for jobs. In case the migrant workers are members of trade unions, they will get the common rights together with the native workers. Every country can give the special rights only to the native workers and not to migrant workers. It is globally a formative norm that no one can deny. Therefore, migrant workers should be allowed to be members of trade unions, but on the other hand, they should accept the traditional norm and try not to lose their human rights and not to face the infringement of their rights from the employment. If migrant workers are not allowed to be members, in case there are some problems, they cannot claim their rights, they cannot get the opportunities and they have to accept the precarious jobs, and they cannot get the fair salary fully from the employers. To get the workers' rights, trade unions need to have the right to organize migrant workers or to have right to participate in trade unions.

Finally, if migrant workers even cannot be members of trade unions, they should get the right to organize themselves. This way, they should be accepted as the representatives of the migrant workers in trade unions, not as members. By participating in the negotiation of trade unions, the native workers and migrant workers will not lose their rights.

The third dilemma is whether trade unions should exclusively represent the common interests of native and migrant workers, treating all workers the same way or they should develop targeted policies and strategies that care about the special interests and needs of migrant members. The second dilemma's answer will decide if the third dilemma will be moved forward. The inclusion of migrant workers in the trade unions can continuously and critically keep thinking about the third dilemma. The special versus general treatment

²⁶² Stefania Marino, Rinus Penninx and Judith Roosblad, *Ibid.*

dilemma manifested itself most clearly in the internal organization of trade unions. The awareness that it was difficult for migrant workers to be properly represented within the union organization has in many cases led to special commissions and secretariats, but generally, they have remained marginal within the unions. In all countries, trade union policies towards immigration and migrants proved to be influenced by national contextual factors such as the public discourse, institutional arrangements, legislation etc.²⁶³ National context is an important role in criticizing the third dilemma according to Rinus Penninx and Judith Roseland. There is no need to develop for the special interests of migrant members in the trade unions. Nevertheless, migrant workers and native workers should be treated in the employment, otherwise, native workers shall get the special rights migrants do not. However, under human rights laws, all the workers have to be equal in the employment. It does not refer to the public or out of employment activity. If migrant workers have high skills supporting the jobs to get the best interests of the employment, they should be given the common interest, such as the salary, job positions, the same bonus for overtime, etc. Eventually, migrant workers should get the right to participate in the trade unions and get the common interest in conformity with their skills. They do not need to get the same rights out of the employments in comparison to the native workers.

The three basic dilemmas are crucial to all questions for establishing the good perspectives in European trade unions. They were started and pointed out by Rinus Penninx and Judith Roseland as real and fundamental questions. In order to build the systematic and influential trade unions, negotiations will be made between the authorities and initiatives based on these three dilemmas. If migrant workers are not allowed to be members of trade unions in the second dilemma, the third dilemma cannot be moved forward. Consequently, the second and the third dilemmas are connected to each other and the third dilemma relies on the second one. The very great thing is that migrant workers should be able to participate in the trade unions as the representatives of all migrants, which does not mean that they should get the equal rights and interests comparable to the natives. Regarding to the native workers, we can state that they are European citizens working within the boundaries of Europe.

²⁶³ Stefania Marino, Rinus Penninx and Judith Roosblad, *Ibid.*

Therefore, they have to get the protection of their full rights under the conventions, laws and regulations of EU region.

In fact, migrant workers' unionization rates invariably are slower than that of native workers. In general, across Western Europe, trade unions have lost their significant influence over the last 25 years, or at least it seems that they are severely weakened. Migrant workers who may be in the greatest need of union representation because of their vulnerable status lag behind local workers in their rate of unionization. The gap between the unionization rates of the locals and the migrants is one reflection of the extent to which the incorporation of migrant workers into the labour market, and their acquisition and exercising of certain economic and social rights, remains problematic.²⁶⁴ From a trade union perspective, the best way to ensure that pay and working conditions are protected is to get migrant workers organized. Trade unions face multiple challenges at the beginning of the twenty-first century, including economic internationalization, the rise of the service sector, new forms of 'atypical' employment and an erosion of collective forms of activism.²⁶⁵ Until today, trade unions' obstacles do not seem going forward the easy way in the case of the affairs of migrant workers. Since the twenty-first century, the trade unions cannot recruit and organise the migrant workers to be facilitated in the collective bargaining.

Migrant workers are also human beings and have the right to organize under Human Rights Laws. Especially, they face discrimination at several workplaces more than natives based on gender, sex, ethnicity, religion, etc. Most migrant workers have to work 3 D jobs, so a lot of rights are being failed without getting the chance to claim. By establishing the organization of migrant workers, the claim can be done through their representatives. It means that trade unions are the only chance for them in participating as members of it. As mentioned above if they are allowed to be members of trade unions, the natives will lose their rights and are not more favoured than the migrants are. Therefore, two organizations into trade unions will be split between migrant workers and native workers. Each organization represents for each member in order to get good bargaining from trade unions.

²⁶⁴ Anastasia Gorodzeisky and Andrew Richards, Trade Unions and migrant workers in Western Europe, *European Journal of Industrial Relations*, 2013, <http://ejd.sagepub.com/content/19/3/239> (10/10/2022)

²⁶⁵ Torben Krings, *Ibid.*

The ETUC has been working together with Union Migrant Network for the migrant workers. Union Migrant Network was launched in 2015 and comprises a network of trade union contact points across the EU. A network assists migrant workers to support integration into the world of work and into host communities, and to promote equality, fairness and non-discrimination. Although, migrant workers can get the chance to take part under the Network, several challenges for trade unions can still be found. The factors, those migrant workers are working in some informal sectors and have difficulties with their language; culture and community, there are challenges for trade unions in their efforts.²⁶⁶ It is hard to overcome these challenges within a short time. It will take a long time to pass the difficulties by making social dialogue. Social dialogue causes trade unions stronger in the negotiation with the employers' and workers' organizations. The apex bodies of trade unions at national and international levels should, in their roles social partners, continuously engage with, and seek to influence national and global policy in relation to the protection of migrant workers. Support from trade unions and consultation with employers and workers' organizations in Spain led to the adoption of new rules (in April 2005). Without the support of social partners, no government could risk embarking on such a major operation.²⁶⁷

The European Trade Union Confederation (ETUC) adopted a proactive position in March 2005. One of the key elements of proactive approach for migrant workers is the following:

“To provide for a clear legal framework of equal treatment in working conditions for all lawfully employed third country nationals as compared to nationals, and respect for the host country's rules and regulations and industrial relations system.”²⁶⁸

By reviewing this approach, we can understand the ETUC agenda for migrant workers. It is clear that this approach establishes for working condition a clear legal framework of equal treatment. Nevertheless, migrants are still facing the inequality

²⁶⁶ European Trade Union Institute, HesaMag Magazine, Migrant Workers in Fortress Europe, Special edition with ETUC insert, file:///C:/Users/DELL/Downloads/HesaMag_20_Migrants_EN_Special_edition_ETUC_EN.pdf . (10/10/2022)

²⁶⁷ International Labour Office, Geneva, In search of Decent Work – Migrant workers' rights:, https://www.un.am/up/library/Search%20of%20Decent%20Work_eng.pdf . (10/10/2022)

²⁶⁸ International Labour Office, Geneva, In search of Decent Work – Migrant workers' rights:, https://www.un.am/up/library/Search%20of%20Decent%20Work_eng.pdf . (10/10/2022)

in the working conditions. Thus, the question is whether the ETUC can stand or give the right to equality for all workers, natives and migrants.

The nature of collective bargaining is a kind of negotiation as mentioned in Chapter I, which is between the employers and the workers for the issues arisen from the employment. Among EU members, the collective bargaining negotiation is dissimilar with their national policy depending on the legislation providing their labour market. Collective bargaining especially targets the issues of wage and working time. The Charter of Fundamental Rights of the European Union also gives some rights for the workers relating to the collective bargaining. In the Charter, the workers have the right given by Article (5), stating, “No one shall be held in slavery or servitude and performed to forced labour or compulsory labour.” If they face the infringement of their rights of Article (5) or other labour rights, Article (27) and (28) express the collective bargaining rights that are entitled to negotiate and conclude the collective agreements in the appropriate level.²⁶⁹ Those are the fundamental rights relating to the collective bargaining for all the European workers who are working legally within EU. The process functions, the protective function, voice function and distributive function for the workers, and peace function for the employer are crucial not only from the perspective of workers that is for the protection of the decent working conditions, though allowing the expression of the grievances and for giving a share in the economic progress, and of employers for the social peace and for the legitimacy of the managerial control. Additionally, the DICE Report (2016) also refers that two principles are divided in the case of getting agreements: which firstly, the companies organized in the employers’ organizations, and secondly, all the workers in those companies are also involved.²⁷⁰ The functions of the employers and the workers give the efficient performance in the negotiation and consultation going forward the great solution and agreements for both sides. In order to get this collective negotiation, the workers need to be those in the covered companies, but those out of the companies are not included in the right of collective negotiation.

²⁶⁹ Charter of the Fundamental Rights of the European Union, 2000 C/364/01, Official Journal of the European Communities, https://www.europarl.europa.eu/charter/pdf/text_en.pdf (10/10/2022)

²⁷⁰ Katrin Oesingmann, CESifo DICE Report 2016, Journal for Institutional Comparison, 2016, <https://www.cesifo.org/DocDL/dice-report-2016-2-june.pdf> (10/10/2022)

Regarding the different practices of collective bargaining systems in EU, Niles-Erik Bergin expresses that there are two kinds of collective bargaining in EU: Europeanization and decentralisation that are depending on each other. Under his clear example: “while decentralisation means that collective bargaining increasingly occurs at plant or company level, Europeanization does not mean that collective bargaining increasingly takes place at European level”.²⁷¹ Generally, the EU Member States use the decentralization for the collective bargaining, such as Germany: it gives only some aspects of collective bargaining to the company level. In considering whether decentralization or Europeanization is better, the country will choose the effectiveness compatible to their benefits in conformity with their national legislation or their policies.

However, the level of the coverage of collective bargaining in all Member States is divergent: in some countries it is very high level of coverage (80%) such as Sweden, Finland and Denmark, Austria, Belgium, France, Italy, the Netherlands and Portugal and in other countries it is getting 60% coverage level. Furthermore, some countries set a framework with their national agreements for the negotiations at lower level to follow. The figures of the coverage are certain in most of the countries and in some, the agreements can only affect with a bit impact on the workers’ conditions.²⁷² In general, three levels of bargaining can be differentiated across Europe: intersect oral, sectorial and company²⁷³, though, most of EU countries are going with sectorial bargaining.²⁷⁴ Normally, wage levels and working conditions are set in the negotiation through the collective process by the limited number of the employers and a union, though, if they are not in the participating companies owing to the extension of the bargaining in Europe, which varies especially by three factors:” who takes the initiative, whether there are minimum requirements, and how frequently they are used.” Belgium, Finland, France, Luxembourg, Netherlands and Spain often extend the collective agreements.²⁷⁵ Sometimes the extension seems better than the restrictions; nevertheless, it may frequently affect the employment as the government

²⁷¹ Niles-Erik Wergin, Collective Bargaining in Europe- Europeanization or Decentralization?, 2004.

²⁷² ETUI Collective Bargaining Newsletter, <https://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Collective-Bargaining2> (10/10/2022)

²⁷³ Eurofound, Collective Bargaining, <https://www.eurofound.europa.eu/topic/collective-bargaining> (10/10/2022)

²⁷⁴ International Labor Office, Collective Bargaining in the Public Service in the European Union, Working Paper No.309, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_727338.pdf (10/10/2022)

²⁷⁵ Niles-Erik Wergin.

servants get their full rights. The foremost effort for the workers by the bargaining is to get the common agreements for the remedy of the grievances.

There are two kinds of bargaining systems generally; centralization that is toward the systematic and consistent reservation of authority and decentralization toward the systematic dispersal of authority²⁷⁶. Most of the EU countries are functioning with the decentralised system. The collective bargaining system of some European countries is in the following:

Denmark: There is no legislation for the collective bargaining, but it just takes place with the negotiation bodies for the bodies; two kinds of negotiating bodies at the regional and municipal level that are Danish Association of Local Government Employee's Organization and Health Organization. However, an Act on Conciliation in Industrial Disputes in the last amendment 2020 was promulgated to conciliate the parties. Danish Region and Local Government Denmark represent the employers. In Denmark, minimum wage setting is made at the sectorial level and after all the negotiations; the Minister of Finance must approve the final decision.²⁷⁷ Normally, the state permits the social negotiation between the employers and the unions without intervention with the recognition of their rights.²⁷⁸

Finland: Finnish collective agreements are being served according to the Act on Collective Agreements for State Civil Servants. The Finnish negotiation system discourages multiple unions representing the same group of staff, which promotes centralisation of the organisational structure. Collective agreements have been concluded primarily for a fixed term, by agreement period.²⁷⁹ The Laws relating to the collective bargaining in Finland are the Law on Collective Agreements, which sets the role of the unions, the Law on Employment Contracts that is for the collective agreements in the

²⁷⁶ Surbhi S, Differences between Centralization and Decentralization, 2017. <https://keydifferences.com/difference-between-centralization-and-decentralization.html> (10/10/2022)

²⁷⁷ International Labor Office, Collective Bargaining in the Public Service in the European Union, Working Paper No.309, 2015. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_727338.pdf (10/10/2022)

²⁷⁸ Jens Lind, Denmark: the sacred cow of collective bargaining is still alive, Collective bargaining in Europe: towards an endgame. Volume II, Brussels, ETUI, 2019.

²⁷⁹ International Labor Office, Collective Bargaining in the Public Service in the European Union, Working Paper No.309, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_727338.pdf (10/10/2022)

employment contracts and the Law on Labour Conflict Mediation that asserts the process of the National Conciliator and the procedural aspects of strikes and lock-outs.²⁸⁰

Norway: There is no statutory minimum wage for public servants. The bargaining coverage for the public sector is given 100% in Norway although minimum wage is not provided. The negotiation is made with two organisations; Norwegian Confederation of Trade Unions (LO) and the Confederation of Vocational Unions (YS), which represent the workers and the union confederation Union and Akademikerne, for getting the substantial agreement, making the negotiations every four years.²⁸¹ Minimum Wage Level might be dialogued on three levels in the private sector; central level, sectorial level and local level, and all the negotiations are made with the workers at the local too.²⁸²

Sweden: The vital legislations for the collective bargaining in Sweden are Civil Service Disputes Act, the Civil Service Act and the Working Environment Act. The basic service like childcare and health care are given mainly. One hundred and thirty separate collective agreements have been made from the past to the present. The Swedish Municipal Workers' Union representing the workers and the Swedish Association of Local Authorities and Regions for the employers negotiated sectorial agreement in 2007, which can cover over 400,000 workers that is even more than the Swedish labour market.²⁸³

Cyprus: Cyprus has a basic negotiation framework, made from 1977, which gives the right to organize and the right to bargain and is not legally binding, though it is still useful and effective to all the negotiations. Bargaining systems are both at the industry level with the conciliation between the appropriate industrial federations or in some industries and at

²⁸⁰ Paul Jonker-Hoff r n, Collective bargaining in Europe: towards an endgame Volume I, 2019. <https://www.etui.org/sites/default/files/Collective%20Bargaining%20Vol%20I%20final%20web%20version.pdf> (10/10/2022)

²⁸¹ International Labor Office, Collective Bargaining in the Public Service in the European Union, Working Paper No.309, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_727338.pdf (10/10/2022)

²⁸² Fagartikkel, NHO , <https://www.nho.no/en/english/articles/collective-bargaining/> (10/10/2022)

²⁸³ International Labor Office, Collective Bargaining in the Public Service in the European Union, Working Paper No.309, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_727338.pdf (10/10/2022)

the company level with the conciliation between the employer and the local trade union. The bargaining coverage is nearly 100% (ETUI).²⁸⁴

For the public workers or servants, there is the Constitution and Rules of the Joint Staff Committee for the Civil Service (JSC) , enacting about the consultation concerning all general principles; recruitment, promotion, working hours, leave, holidays, health care, discipline, pay and other economic benefits and any other matters affecting terms and conditions of service of public officials.

Ireland: Industrial Relations (Amendment) Act 2015 is the vital legislation of Irish collective bargaining. This country's collective system is disparate to other member countries, which means that the parties do not need to go to the trade unions for setting the terms of the employment. Nevertheless, the Act 2015 entails to give the authority to the labour courts to set the rules in the event of non-unionised companies.²⁸⁵ There is no constitutional provision relating to the conclusion of collective agreements. The Irish Constitution gives the citizens the right to join a trade union, but no specific provision in the Constitution about the conclusion of the collective agreements and no right to engage in collective bargaining through trade union.²⁸⁶ In a current negotiation of the private sector, the collective bargaining is between the unions and the employers' federation, firstly they need to register and to have a license before the negotiation.²⁸⁷

Italy: Over the years, the Italian collective bargaining system has encountered practical limits, as well as significant criticism. The growth of productivity and wages, which largely depends on company-level bargaining, has suffered from the failure of the latter to take off. Italy is the only EU Member State, besides Sweden and Denmark that has neither a statutory minimum wage nor a formal administrative extension procedure to guarantee universal coverage of collective agreements. Since the signing of the tripartite agreement on 23 July 1993, the Italian collective bargaining system has been two-level and articulated hierarchically, with priority given to national industry-level collective labour

²⁸⁴ ETUI, National Industrial Relations, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Cyprus/Collective-Bargaining> (10/10/2022)

²⁸⁵ PENINSULA, <https://www.peninsulagrouplimited.com/ie/guides/collective-bargaining/> (10/10/2022)

²⁸⁶ Judge Kevin Duffy, Collective Agreements, 2006. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_159946.pdf (10/10/2022)

²⁸⁷ ETUI, National Industrial Relations, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Ireland/Collective-Bargaining> (10/10/2022)

agreements, followed by company-level agreements or alternatively, territorial agreements where firms are too small and there are no workers' representatives, as in such sectors as crafts, agriculture, construction, retail and tourism.²⁸⁸ Two levels of industry level and company level are taken place in Italy; furthermore, national level is used for the implementation of EU-level initiatives. Nevertheless, the extension of the collective bargaining for the employees cannot be brought if they do not cover for them.²⁸⁹

Austria: It is one of the groups of Central European Countries, thus it has different features of collective bargaining. However, Both parties get the coverage of the collective agreements, regardless of the members of the signatory unions, though they have to be members of the chamber, the existence of statutory bodies that are Austrian Chambers of Labour (AK) for the workers and the Austrian economic chambers (WKO) for the employers, to get the coverage that normally covers 98% of the workers for 800 collective bargaining. The title for the collective negotiations is concerning with the pensions, humanized working conditions, wage pay, and basic conditions.²⁹⁰

Germany: German collective bargaining gained access to the increased fragmentation and partial erosion of collective bargaining since the middle of 1990 and at that time the system got the critical comments from some employers owing to be too rigid at the company-level. German collective coverage is more than 81 percent for the majority of the workers in the public administration, education, financing, energy or postal services. German bargaining system used extraordinary pattern and could increase the coverage and wage level amongst the EU Member States. German Collective Bargaining Act (Tarifvertragsgesetz) includes the possibility that allows the companies to achieve temporary downward derogations. German collective agreement is valid for two years or more frequently. Conclusively Germany collective bargaining system is being processed in

²⁸⁸ Salvo Leonardi (Fondazione Di Vittorio), INCLUSIVE GROWTH THROUGH COLLECTIVE BARGAINING IN ITALY, 2018, <https://www.fondazionevittorio.it/sites/default/files/content-attachment/Leonardi%20-%202018%20-%20Inclusive%20growth%20through%20collective%20bargaining%20in%20.pdf> (10/10/2022)

²⁸⁹ ETUI, National Industrial Relations, <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Italy/Collective-Bargaining> (10/10/2022)

²⁹⁰ ETUI, National Industrial Relations, <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Austria/Collective-Bargaining> (10/10/2022)

the two legislations, the German Collective Bargaining Act and the German Posted Workers Act.²⁹¹

France: In France, the social dialogue can be done without the inclusion or under the control of the government. The minimum wages conciliation at industry level is made by the trade unions and employers' organisations. In the private sector, the bargaining coverage is 92 percentages in the OCED countries. From the Aurous Law of 1982, annual bargaining on wages and working time has been compulsory at sector level and in any company hosting one or more unions. The extension of the legislation sets a regulation that is relating to the chances for the non-union representatives the negotiation of the workplace level. The union delegates signed 85 percentage of the agreements until 2015, nevertheless, 14 percentage by elected employee representatives and a few by mandated employees. All the trade unions present at the workplace generally sign agreements.²⁹²

Spain: trade unions are recognized as representatives of the social and economic interests of workers (Article (7) Spanish Constitution, SC), as well as in collective bargaining and the exercise of the right to strike (Articles (28) and (37) SC), thereby they give essential content to the right of freedom of association. This is a clear development of the constitutional mandate (Art. (37)(1) SC), whereby 'the law shall guarantee the right to collective bargaining between the representatives of workers and employers, as well as the binding force of the agreements'. In Spain, the negotiation of National Reform Programmes (NRP) with the social partners has no formal mechanism or pre-established process. Social partner involvement depends very much on the government's willingness to invite them. The wage model is completed by the minimum wage, which is set by the government, which can consult with the social partners. In sum, collective bargaining has changed with regard to practices and positions. As a result, a more authoritarian pattern of industrial relations has emerged, with potential consolidation of a model of 'disorganized decentralization' of collective bargaining.²⁹³

²⁹¹ Bispinck, Reinhard; Schulten, Thorsten, Wages, collective bargaining and economic development in Germany: Towards a more expansive and solidaristic development?, WSI-Diskussionspapier, No. 191, 2014.

²⁹² Udo Rehfeldt and Catherine Vincent,

²⁹³ Jesús Cruces and Francisco Trillo, INCLUSIVE GROWTH THROUGH COLLECTIVE BARGAINING IN SPAIN, 2018.

Greece: The current Greece collective system is going toward the decentralization but in the past, it was functioning with the centralization system, before 1980s.²⁹⁴ The levels of collective bargaining are at the national level, industrial level and company level. Collective agreement nationally becomes less important than in the past. There is a law in 2012 for the minimum wage, but now it is set with the conciliation between the employers and the unions.²⁹⁵ On 31 March 2016, the Greek national level social partners signed a new National General Collective *Labour* Agreement. The agreement adopts the European framework agreement on inclusive labour markets and contains general statements of intent about actions to be taken regarding the refugee crisis and unemployment. It does not refer to the minimum wage.²⁹⁶

Hungary: In line with the Constitution and the international treaties, the Labour Code grants the right of concluding collective agreements for the trade unions as a basis freedom. Therefore, Hungarian Constitution clearly states the collective bargaining rights for all the workers, which is exactly in Article (4) of the Hungarian Constitution, the employees have the right to be protected through the labour unions and other representative bodies and besides Article (70/C) Para (1) ensures for “everyone the right to establish or join organizations together with others with the objective of protecting his economic or social interests”.²⁹⁷ In Hungary company-level bargaining is the dominant level. However, the company level agreements say very little about employers’ strategy on human resource development. Instead, the majority of agreements contain only general intentions of the employer to support training and broad prescriptions and framework rules, leaving the details for the individual ‘study contract’.²⁹⁸

Poland: Decentralisation system is being used strongly. Two kinds of collective agreements given by the Labour Code are single employer collective agreement and multi-

²⁹⁴ Stella Zambarloukou, *Collective Bargaining and Social Pacts: Greece in Comparative Perspective*, *European Journal of Industrial Relations*, 2006.

²⁹⁵ ETUI, *National Industrial Relations*, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining> (10/10/2022)

²⁹⁶ Eurofound, *Greece: 2016 National General Collective Labour Agreement signed, 2016*, <https://www.eurofound.europa.eu/publications/article/2016/greece-2016-national-general-collective-labour-agreement-signed> (10/10/2022)

²⁹⁷ Tünde Handó (Judge), *XIVth Meeting of European Labour Court Judges*, 2006. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/-dialogue/documents/meetingdocument/wcms_159944.pdf (10/10/2022)

²⁹⁸ Eurofound, 2009, <https://www.eurofound.europa.eu/publications/report/2009/hungary-collective-bargaining-and-continuous-vocational-training-in-europe> (10/10/2022)

employer collective agreements. The Act on the Social Dialogue Bodies is divided into seven main social organisations for the intention of the social conciliation between the respective parties. The social dialogue council was established in 2015, a central tripartite social dialogue body for the replacement of the previous Tripartite Commission for Social and Economic Affairs. NSZZ Sp; odarmpsc. The All Poland Alliance of Trade Unions and the Trade Unions Forum are the three national level trade unions through RDS besides the four employers' associations in RDS. Regarding the collective agreements, the Minister of Labour may extend the agreements with discretion if they think fit.²⁹⁹

Croatia: Three main patterns are working for the bargaining level over 15 years; (1) public services, state administration and some other industries of the economy, (2) industries like construction, catering and tourism that happens with the industry level and company level, and (3) industries that happen only at the company level. Nevertheless, even though the decentralized system has been provided, the decentralization of collective bargaining is not going forward clearly. The Minimum Wage Act (OG 118/18) came into effect in 2019. In Croatia, the minimum wage is set under the Minimum Wage Act, 2019, which was formed by the Commission for Monitoring and Analysis of the Minimum Wage with trade union, employer representatives and members of the academic communities.³⁰⁰

3.5 Summary of European Labour Migration

The aim of the labour market is to fill the gaps in employments and to balance the labour supply and labour demand. The European Union emphasizes the labour market in order to integrate economic growth and to create a single labour market among Member States. The intention of the single labour market in the EU is to bring about common policies, common services, common goods, and the free movement of workers. The EU is implementing active labour market policies to reduce the unemployment rates and to increase the number of skilful workers in order to promote productivity and employment. The active labour market policies are especially for the youth who are not skilful and do not have any work experience. According to these policies, the youth will receive training, the

²⁹⁹ Jan Czarzasty, Collective bargaining in Europe: towards an endgame. Volume II, Brussels, ETUI, 2019, [https://www.researchgate.net/publication/334697363_Collective_bargaining_in_Europe_towards_an_endgame_Volume_II_Brussels_ETUI_\(10/10/2022\)](https://www.researchgate.net/publication/334697363_Collective_bargaining_in_Europe_towards_an_endgame_Volume_II_Brussels_ETUI_(10/10/2022))

³⁰⁰ Eurofound, Croatia: Latest Development Q4 2019, 3rd of March in 2020, [https://www.eurofound.europa.eu/publications/article/2020/croatia-latest-developments-in-working-life-q4-2019_\(10/10/2022\)](https://www.eurofound.europa.eu/publications/article/2020/croatia-latest-developments-in-working-life-q4-2019_(10/10/2022))

opportunities to get jobs and finally, it is essential to the EU Member States. Therefore, they have better chances than adults and the elderly who have more experiences in employment. ALMP is based on employers' setting the rules and regulations within the workplace or employment. With providing training to unemployed workers, they will contribute to the expenditures in supporting the guidance of the improvement of the workers. Finally, I wish to talk about labour migration and the labour market within the EU. Because of the enlargement of European Union, the migration flows have also increased in the last few decades. Labour migration is allowed in terms of the free movement of workers. Therefore, for intra-EU immigrants it is easy to get jobs through the labour market. It can also guarantee the opportunities to possess equal rights as nationals in the receiving countries. The European Union has the agreement of the Member States in the area of social rights. However, the important point and fact is that workers who are not European citizens cannot get the same rights as nationals in the receiving countries. Nevertheless, the labour market can also give opportunities to find jobs for third country workers. Although the workers can find job opportunities through the European labour market, they tend to get jobs in agriculture, dangerous places, etc.

The EU needs many engineers for their technology promotion that third country nationals can be applied as engineers within the EU. However, we cannot say it is not fair and just with the measurement of the international labour standards and human rights standards. Since the EU was organized among Member States with their agreements, it means that they will cooperate and collaborate in the social, political, economic, educational areas. Every region has its own policies and protocols and the member countries are in a favourable position and are trying to raise their economic and social affairs. For non-Member States, they cannot give the same favourable conditions and rights to the employees as for their own nationals or Member State citizens. This is because they do not have any cooperation for a long term and there is not support in the affairs among them. Moreover, labour market regulations need to be flexible not to face illegal migration. If the market rules or policies were too strict, many challenges about the irregular cases would be faced. By restricting the labour market with certain strict rules, workers would find another way to get jobs and opportunities. It may be done by illegal means or the ways the receiving country is deterring as a block manner. The employers and

businesspersons are likely to get cheap labour or immigrants entering the states in an illegal manner. The only reason is that they can reduce their expenditures on the labour costs and can make their industry or improve their productivity within a short time. They do not need to spend such long periods in their factories.

From my point of view, a flexible labour market should be created to prevent the issues of illegal workers and unequal social rights within the workplace because the rigid labour market regulations force the migrant workers into illegality by monitoring the causes of the illegal labour migration in the world. Under the factors mentioned above regarding irregular labour migration, if the migrant workers get the flexible regulation from the labour market, most of the irregular population could be reduced with the collaboration of the employers. Actually, it depends on the employers who can set the rules and regulations within their company or employments. The rights of the workers are depending on the labour market regulations or policies. Therefore, I have to give my answers to the questions asked in the hypothesis: (1) the role of the labour market for migration is good in the EU as it allows every worker to participate in the labour market according to the market regulations. Nevertheless, as far as non-European workers are concerned, they will not have the same or equal rights and security as the European national workers. (2) Yes, the EU should have a flexible labour market, but if there were such flexible regulations, the opportunities would be less. The labour market should be flexible with some limitations for the prevention of shortages in employment. (3) Yes, the pandemic situation totally affected the EU labour market.

I have analysed the topic of trade unions in Europe and migrant workers. Migrant workers in Europe do not mean EU-citizens from European Member Countries, however, just all the workers coming from the countries, which are not European ones. EU-citizens are regularly employed as employees or workers. This paper intends to think about critically how to connect European trade unions and migrant workers. Regarding the migrant workers, we can state that they are weaker in getting their rights than native workers. Moreover, they cannot get the collective bargaining fully about their employment rights contrary to native workers.

European Trade Unions Confederation is standing for the interests of workers relating to the labour market and their employments' rights, by negotiating with the

employer organizations or by creating social dialogue. It has two organisations, national trade union federations and European trade union federations. The main federation is European trade union federations, which are open to all the national trade unions to cooperate. The ETUC has developed some milestones and good consequences in the cases of work affairs, economic sectors, political diversity, ideological diversity, etc. For the European Union this institution makes working conditions and wages to be fair. Nevertheless, the vital responsibility of the ETUC is to protect the interests of the native workers. The stand for migrant workers is still weakened despite the adoption of the proactive position for them in May 2005.

The labour migration inflows get bigger and bigger these days. It is crucial to protect all of the migrant workers within their region. How can the migrant workers be protected? Firstly, they need to get the right to organize and the right to participate in the organization of workers. Secondly, they should be enrolled as members of the trade unions in Europe. Thirdly, they should be entitled to the rights of negotiation, fair rights to participate like native workers, although, they cannot get the same rights like natives.

I have stated about the nature of the trade unions in Europe, including the European Trade Union Confederation. The reason of my statement is that only trade unions in Europe can support and help migrant workers in their efforts for collective bargaining. Therefore, the trade unions' agenda needs to be transparent. There is no specific provision of the Constitution of the ETUC to support the migrant workers. It cooperates with Union Migrant Network for the interests of migrant workers. Their effort about migrants is still not strong enough.

The discussion of three dilemmas well-known in Europe was mentioned. As the first dilemma, trade unions should take part in recruiting migrant workers because it can make migrants to negotiate between workers and employers in the future easily. My opinion on the second dilemma is that migrant workers should be taken into consideration as the members of the trade unions because the support of the trade unions is very essential to them in the collective bargaining without losing the fundamental rights in the employment or working conditions. In addition, for the third dilemma, equal treatment between native workers and migrant workers needs to be considered carefully. Current age is concerned with the social diversity, solidarity between member countries and regional integration. It

is natural to favour the native workers in the employment regarding wages. The rights of migrant workers will be less than the natives' as they are not from any member countries of the European Union. However, the negotiation, participation and the right to organize into trade unions should be allowed and not favoured only to native workers.

3.6 German Policies on Migration

Germany is an EU member state, supporting the EU mostly with the great systems of labour migration. It can highly stand and it exists as a brilliant country in resolving the obstacles among the EU Member States. German labour policies and the way they get up from the economic crisis are really interesting around Europe. How could Germany resolve the crisis? What are their labour migration policies? We need to trace back the history and evaluate to answer those questions.

First, the German Employment Law is the substantial factor for managing the labour systems: how to control the workers and the employers not to get the disadvantages and the side effects. German Employment law especially gives the protection to the employees against unlawful dismissal in order to avoid the recent infringement of this kind, violations of various social rights of the employees and the co-determination rights for them through the Works Council with the rights of being a member in the union. Since 1960s, a large number of social rights are included in the relevant regulations. In Germany, there is Works Council that is established with the workers, who have to opt out the representative every four years, and the employers are responsible to inform all the employment-relevant matters to get the Works Council's consent but when it happens in dispute, the employers may request the labour court to substitute the Works Council under the rules. Sometimes co-determination is needed with the support of the employment lawyers.³⁰¹

From the Employment Law of Germany, there are some important rights for all the employees who need to be pointed out; types of employment contract, remedies of employees, working time and equal opportunities. There are two kinds of employment contracts, they are permanent contract and fixed-term contract that is valid for a maximum of 2 years. The employees have the remedies relating to the cases of employers' break of the contractual duties, which means that if the employers break their contract regulations,

³⁰¹ Aspatore, *Navigating Employment Law in Europe: Inside The Minds*, 2011, page 53-57.

the employees are entitled to take legal action, to claim their damages, to withhold their work, to terminate the contract without any notice and lastly to apply the interim injunction. The working time is such that the employees have to be asked to work at least two hours during the night, and they are entitled to take a rest of 11 hours continuously each day, and they have the right to get a day off on Sundays and public holidays. In the performance of the equal opportunities (especially equal treatment), two means are still being applied: General Equal Treatment Act and constitutional right to equal treatment.³⁰² Under the Employment Law, one more interesting and effective thing is pension right, according to which all the employers and the workers usually pay the compulsory contribution money for the pension program, but most of the companies offer the workers to cooperate in this program. Germany has always focused on the skilled workers regarding the effectiveness of the country's economy, therefore, the recruitments from the European Member States still serves to fill the vacancy. The German people also welcome the foreign workers outside the European Union.³⁰³ This is the summary of German Employment Law all the workers and employers have to apply. In monitoring the law, Germany's target is to finish their economic processes effectively without delaying at all and to find the skilled workers from within the country, from the region and from the third countries. The concept is simple: there is no desire to use the low skilled workers so as not to make their business delayed. The Works Council is also a kind of great option, which can prevent the infringement of the workers' rights in conformity with the EU Charter and Human Rights. Not only the government servants but also other workers will get the pension if they work faithfully in their employment.

In the mid-1950s, the recruitment of foreign workers emerged with respect of the labour shortage of the high demand and then in spite that the foreign worker population was about 200,000 until 1961, the recruitment was stopped in 1973. It was a kind of incentive for the foreign workers to stay in Germany permanently, which is the cause why the employers also needed to keep their workers in case of working for a long time. Between 2000 and 2004, Green Card was issued for the recruitment of IT specialists. In 2005 the new immigration law was enacted. The vital migrant workers are from Germany, Turkey,

³⁰² Constanze Moorhouse and Elizabeth field, *Employment Law in Europe*, 3rd Edition, 2013, page 455-472.

³⁰³ . Aspatore, *Ibid*.

Italy, and Poland at that time. But 60% came from EU Member States; one-quarter from Poland, 11% from Romania, 4% from Turkey, and 24% from non-European countries in 2010. Later EU Blue Card for non-EU migrants was introduced and had been in force to 1st of August in 2012. EU Blue Card means that he/she will get a work permit for two to four years for owning a resident permit in terms of social security and the employment law, additionally, after three years, he/she will be granted to live in Germany with the settlement permit. Since 1st of April, 2012, foreign education certificates have been recognized.³⁰⁴ The main intention to change the policies in Germany is to preserve the foreign workers with a long term and high skilled level to be permanent and to obstruct the high demand of workers without any hesitation of the businesses. The Green Card and EU Blue Card were created for the inducement of the temporary migrant workers in Germany.

There were over 80 million residents in Germany, however, many emigrants left for the reasons of some affairs, which was made Germany alert to improve their systems. Germany recruited the foreign workers from Southern Europe and the Mediterranean Region in 1955³⁰⁵, then the recovery was started with the agreement of Italy; “Agreement on Recruiting and Placement of Workers” depending on the negotiation in 1955. After the first agreement with Italy, Greece, Spain, Morocco, Portugal, Tunisia, and Yugoslavia also followed and carried out the recruitment of workers in good cooperation. Those workers started to fulfil the demand of the German labour market of the demand in the employments and made the immigrants increased after 1959. Guest workers population is much larger than permanent foreign workers are, but they had to work in the positions for the unskilled owing to non-recognition of foreign education certificate. The post-war Germany became habitual with the recession and the country can try to get the growth although the economic crisis affects Germany negatively. On 23rd November, 1973 there was a directive, Recruitment Ban, which fully blocked the guest workers who are not the members of the European Economic Community. It looks deterring for the temporary workers that the permanent workers are preferred to within the country. After that, Germany gave the opportunities of dual citizenship to them. Besides, the new Immigration Law was enacted

³⁰⁴ WERNER EICHHORST and FLORIAN WOZNY, Migration Policy in Germany, 2012.

³⁰⁵ Federal Ministry of Interior, Building and Community, Labor Migration, [https://www.bmi.bund.de/EN/topics/migration/immigration/labour-migration/labour-migration-node.html\(10/10/2022\)](https://www.bmi.bund.de/EN/topics/migration/immigration/labour-migration/labour-migration-node.html(10/10/2022))

in 2005 that includes the temporary resident permit and permanent resident permit for the people who entered with different purposes.³⁰⁶ The process mentioned above is the steps to control and change the systems with their immigration law. The strange thing is that Germany had to face the shortage of workers and the problem that many people left before the crisis. After the crisis, Germany could carry on steadily with their carefulness by learning their past lessons. With the new Immigration Law, Germany showed that it is a kind of immigration country.

One of the integration methods is the enactment of a new Alien Act in 1990, the allowance of the family reunification. In 2000, the citizenship law was established; the right to give birth to a child in Germany or on the other hand, the birth-right citizenship that means that this kind of baby gets the right to be a German citizen.³⁰⁷ In 2005, almost 7% of all and 4.5% of the highly skilled employees in Germany have a foreign nationality.³⁰⁸ The shortage of foreign workers was persuaded by allowing all the guest workers to call their family reunification, a kind of labour integration. It is clear that Germany was trying to change their system of integration to get better of their economic crisis as their economy also depends on the foreign workers in their labour demands of the employments and the very first reason to face this problem is that their national workers are not enough to circle of their machinery of the productivity. That is why the migrant workers have to be replaced completely.

Concerning the current conditions of labour migration in Germany, there is a new rule, Skilled Immigration Act, which was in force on 1st of March 2020; the summary is the following:

1. A worker is regarded skilled worker is the worker if she/has university certificate or vocational training certificates (but at least two years training),
2. Generally the work visa is issued after four weeks of applying,

³⁰⁶ DOMid, Essay: Migration History in Germany, <https://www.domid.org/angebot/aufsaeetze/essay-migrationsgeschichte-in-deutschland> (10/10/2022)

³⁰⁷ Sude Ünal, Labour Migration to Germany and its Effects on German Politics of Cultural Diversity, 2019.

³⁰⁸ Burkert, Carola; Niebuhr, Annetrin; Wapler, Rüdiger, Regional disparities in employment of high-skilled foreigners: Determinants and options for migration policy in Germany, HWWI Research Paper, No. 3-7, 2007.

3. The foreign workers can apply to the immigration office for job offer or work contract despite of being recognised with qualification lower than two years vocational training level,

4. The duration of the residency in the work visa is four years or depending on their employment contract,

5. The permanent resident permit can be applied after four years of residency,

6. If the skilled foreign workers are older than 45 years, they need to prove that they can earn 3685 Euro per month,

7. The skilled professionals, for instance, medical doctors, nurses, etc. do not need to show their certificate but just five years of working experience is required.³⁰⁹

It is clear that Germany always offers the workers to be skilled workers in their employment and their productivities because they just want the high skilled workers from abroad. Nevertheless, the foreign workers always had to work in the position of the low skilled workplace employment in Germany in the past. It was a problem for the migrant workers although the German workers get the high opportunities like the high positions and the high skilled level positions within the country. The employers in Germany always preferred to call their German workers in their business to give the high salaries but for the migrant workers they did not want to give the high salaries instead of the German workers. They had a reason that the foreign workers had no skills and did not work effectively in their business and they would not allow and recognize their certificates and their educations of their original countries. However, there was an Immigration Law in 2005, which also divided the foreign workers into two parts, namely, for the foreign workers as the temporary workers and permanent workers and a new Immigration Law has been promulgated on 1st of March in 2020 that calls the high skilled workers from abroad. On the other hand, Germany gives another opportunity to the migrant workers to get the higher positions in their employment and their productivity. It is a kind of protection for their country, which means that they will not face the shortage of the workers in the future

³⁰⁹ Sabine Kinkartz, Germany's New Labour Migration Law Explained, 2020 <https://www.dw.com/en/germanys-new-labor-immigration-law-explained/a-52575915> (10/10/2022)

because they had already faced in the past about the workers' problem and they had to accept the guest workers. Moreover, they already faced the fact that many workers left Germany because of some affairs and obstacles in Germany. It looks preventive for their workers in their country and the German workers have to be motivated, for example, if the German workers are not working with high skilled in their employment, they will lose their opportunities in the employment and they can lose their jobs easily and it will be the same for the foreign workers.

According to the EU laws and regulations for the migrant workers, Germany also has the responsibility of obeying their EU standards and human right protection in the case of labour migration. From the past to the present Germany is a country of immigration even though the government denied it under most of the discussions or debates. Nevertheless, German labour laws are a kind of great laws and regulations among European Member States as the other Member States should imitate the relevant standards and use the norms in their national labour laws. All Member States have the responsibility to protect the workers. Knowledge of the German language is also essential for the foreign workers, and it can make them live much longer, and they can get better opportunities.

3.6.1 How Germany sets their policies differently in their active labour market policies as an EU Member State

Active labour market policies are the main principles play in Europe as far as the workers' rights through the labour market, and so all European member countries have to implement ALMP supporting their national labour legislations. Germany has been trying the best to set active labour market policies based on demanding the skilled workers only, since after World War II.

The Key Role of Hartz Reform with the Convincing on the Effectiveness of Profound Labour Market

Before German ALMP currently, so-called Hartz Reform needs to be acknowledged; which is the outset of active labour market policies reform in Germany? When did ALMP come out? A compulsory unemployment insurance was established in 1927 and ALMP in the 1970s whilst in a high rate of unemployment. In 1990, the active labour market policies

became famous as an important role, which was administered by the federal employment office. At that time, the unemployment benefits depended on the workers' previous unemployment duration and wage; the employers and the workers had to share the unemployment insurance, however, in the comparison of other countries German ALMP expenditures were higher and valid with long duration. Until 1990s Germany's unemployment rates got worse and worse, and its financial services collapsed. Therefore, Germany needed to change to a comprehensive reform, notwithstanding anything, it was still controversial with so many criticisms in every systems. In fact, from the 1990s to the early 2000s Germany was in the weakest situation in Europe in the reasoning of higher unemployment, too slow growth, public debt and budget deficit, afterwards the Hartz Reform could change the hardest condition and brought to the better position by changing in their labour market regulations.³¹⁰ The government initiated a Commission for Modern Labour Market Services that created Hartz Reform implemented in 2002-2005, with three aims that are the increasing effectiveness and efficiency of labour market, activation the unemployed, and fostering employment demand by labour market deregulation.³¹¹ Especially Hartz Reform was performed with four stages. It was organized with eight experts; two academics, two trade unionists, the representative from the employer organization, the representative from management consultant, company boards and the government. It can be said that the Hartz Reform has brought positive and negative results by evaluating the past conditions that within three years from 2005 the unemployment rate fell down from 11% to 7.5%, otherwise, it could make the unemployment decreased and the employed people increased but most of the people were in the low-quality employment conditions.³¹² Somehow, it is clear that the main objective of Hartz Reform is to reduce unemployment rates. It is a very efficient way to control and tackle the labour issues in Germany. It can be said that in learning the systems of labour legislation in Germany the Hartz Reform plays a key innovation to change the situation for the better and no one can deny and reject this Hartz Reform, though there were some defeats or weaknesses and low-

³¹⁰ Thomas Beissiger, Nathalie Chusseau and Joel Hellies, *Offshoring and Labor Market Reforms in Germany: Assessment and Policy Implication*, Economic Modelling Journal 53, 2016.

³¹¹ Lena Jacoba and Jochen Klave, *Before and After Hartz Reform: The Performance of Active Labour Market Policies in Germany*, Discussion Paper No. 2100, 2006.

³¹² Center for Public Impact A BCG Foundation, *The Hartz Employment Reforms in Germany*, 2nd September, 2019. [https://www.centreforpublicimpact.org/case-study/hartz-employment-reforms-germany\(10/10/2022\)](https://www.centreforpublicimpact.org/case-study/hartz-employment-reforms-germany(10/10/2022))

quality employment was high by virtue of getting free from the unemployment obstacles at least. Hartz Reform stages put into practice with the dissimilar goals that Hartz I was leading to the setting up new personnel service agency, the support of the vocational trainings and the deregulation of temporary work sector, Hartz II targeted the commencement the subsidy for one-person companies and low paid jobs (Mini and Midi jobs), Hartz III that is for the restructuring of the federal labour office and the last stage in the changing of unemployment assistance and social assistance. Meanwhile, the Reforms could cease the regulation on temporary agencies, reorganised the federal employment agency, reshape the unemployment insurance, and tighten job search obligations.³¹³

Hartz I facilitated jobseeker training and back-to-work measures for the unemployed with the overhauling of the rights and obligations of jobseekers, such as the burden of proof for the rejected job offers that was not reasonable and with the extending of the potential for temporary employment. Hartz II created a new grant to facilitate the transition from unemployment to entrepreneurship, by forming a new start-up subsidy and by extending the range of the marginal jobs (Midi-jobs and Mini-Jobs). Hartz III restructured the management at the federal level by providing greater local autonomy, increased the ratios of the counsellors to jobseekers and made the conditions for unemployment for insurance benefits stricter.³¹⁴ Nevertheless, Hartz IV has a controversial case between the economists' comments, for instance, Laune and Walden argued that Hartz I to III could lead to the effective systems but Hartz IV is not efficient with the reason that it is leading to excessively high unemployment benefits as the incentives of the unemployed people, which made the labour market inefficient and too rigid.³¹⁵ Gianni C. Minnelli, Ursula Janice and Thomas Rother (2013) mentioned the disadvantages of the Hartz Reform IV concerning the decreasing of the employment rate, though Hartz I, II and III could make the rate of unemployment reduced, the combination of the unemployment and social assistance into one means-tested unemployment benefit type II, depending on the previous wage, duration

³¹³ Niklas Engbom, Enrica Detragiache, and Faezeh Raei, The German Labor Market Reforms and Post-Unemployment Earnings, IMF Working Paper/15/162, 2015.

³¹⁴ Jean-Philippe Vincent, Tresor Economic No.110, March 2013, page 2.

³¹⁵ Innovation Reports, Hartz Reform IV did not reduce the Unemployment rate, 2013, [https://www.innovations-report.com/social-sciences/hartz-iv-reform-reduce-unemployment-germany-222355/\(10/10/2022\)](https://www.innovations-report.com/social-sciences/hartz-iv-reform-reduce-unemployment-germany-222355/(10/10/2022))

and other household members' income.³¹⁶ As the situation and the reviews of some experts, Hartz Reform IV is a kind of reduction of the benefits compared to the previous benefits range by the terms of depending on the working wage and duration and on the income of the other family members and a type of forcing the workers to be at a workplace for a long time and to keep their chances not by quitting the job. The worst thing about the Hartz IV is reduced the advantages of I, II and III effort advantages to be down and mitigated the high rate of the employment under the study of some literatures and some date.

German unemployment range is lower than EU27 as the percentage of Germany unemployment was 5.5% while EU27 range of unemployment was 8.1% in 2012. Germany could reduce their rate level from 13% in 2003 to 7.5% in 2008, besides; during the economic crisis in 2008 /2009, Germany could preserve not to effect on their labour market with their Hartz reforms. Overall evaluation of German unemployment reduction reason is their job creation on the mini and midijobs that are especially for the women more effective than for men in lieu of two-third of mini jobbers of women or the expansion of the female labour force. What are the nature and aims of German mini jobs? Answering this question, the main features of mini jobs need to be mentioned; the maximum earning money with 450 Euros monthly or less, just 30% of the employer's payment of tax, and without supporting the living accommodation and social insurance rights for the workers. Therefore, the mini jobs workers are not entitled to the social insurance contribution but the midi jobs are not the same as mini jobs nature to which the workers will be entitled to the right of getting lower social insurance when their monthly earnings reach 850 Euros.³¹⁷ To sum up the overall review on the German labour market it runs with the non-standard employment with low wages owing to the Hartz Reforms.³¹⁸ The different steps of performance of the German Active Labour Market Policies are the extraordinary view for their management of the lack of employed people in their previous history and to promote their economic machinery in ways different from the consideration of others. Each of the Hartz Reforms had its success to be supportive of both sides of the employers and all the workers systematically, except Hartz reform IV which has a controversial situation among

³¹⁶ Gianna C. Giannelli, Ursula Jaenichen and Thomas Rothe, *Doing Well in Reforming the Labour Market? Recent Trends in Job Stability and Wages in Germany*, 8/2013.

³¹⁷ TRÉSOR-ECONOMICS No. 110, 2013.

³¹⁸ Janine Leschke, *Labor Market Development, Non-standard Employment and Low Wages in Germany*, ISSN:2339-5793, 2014, Vol 2.

German experts and counterparts. The satisfactory factor among those performances is still covering and protecting the unemployed people. Nevertheless, for Hartz IV, instead of the argumentation and objection, how it works is more interesting.

3.6.2 The role of Migrant Workers in the Labour Market in Germany

According to the past labour market regulation in Germany, the migrant workers who were outside the EU had to work in the industrial sectors arduously with low social status. Some authors referred to three reasons in the former labour market in Germany; the migrant workers with low education in comparing of the domestic education, non-stable working or movement from one country to another country prospectively and working temporarily that was the cause why the employers did not want to invest the job training for them. Tracing back to 1960s-1970s, 70% of migrants were employed in the industrial sectors while the national workers were in the service sectors, though, 50% of migrants were employed in the less-skilled manufacturing jobs in a long-term in 1990. Between 1992 and 2008, the industrial employment declined with the growing of service sector employment. The comprehensive monitoring remarked that the labour market became worse and made the rate of unemployment population raised, thus the wage payment and working conditions were also to the down clearly, which was the case especially for the foreign workers or non-EU workers. Hence, the foreign workers had to work in low-wage jobs (1 in 3 workers) and then up to 35% before 2015.³¹⁹ In 2020, over 11 million foreign people entered Germany; 5% from EU Member States and 5% from non-EU countries. Among non-EU foreign people, 259000 were for the employment.³²⁰ Nevertheless, for the foreign workers from the third countries it was not easy to get job since the old immigration law gave the job opportunities for the national workers but EU workers could not work at all. But later the foreign workers have the opportunities in working in Germany if they have the qualifications or university degrees that can compare to the German education or if they are skilled workers under the new immigration law that is named “Skilled Immigration Act”. However, if the foreign workers do not have the qualified education or vocational training but have the job offer or contract from the company founded in Germany, they are

³¹⁹ Torben Krings, ‘Good’ Bad Jobs? The Evolution of Migrant Low-Wage Employment in Germany (1985–2015), 2021.

³²⁰ Jan Schneider, Toward An EU Toolbox for Migrant Workers: Labour Mobility and Regularization in Germany, Italy and Spain, 2020.

entitled to get the right to stay in Germany for six months (the visa for job seekers) while the employers are evaluating his/her trial working in the employment. Additionally, the foreign students also have the chances to work in Germany for 18 months after their study duration.³²¹ Nevertheless, Germany decided to receive the foreign workers with low skills, and then they can be trained with the vocational trainings.³²² Comparing the policies of the past and the present in Germany, it can be stated that the restricted rules of entering the labour market for the non-EU workers were very serious and hard, and on the other hand, it was possible to work only at places that were neglected by the national workers or which places they didn't choose, but in the later situations the migrant workers can work in the high position if they have high skilled qualifications that can be compared to the German quality. It is obvious that Germany is just concentrating on high productivity and exports competitive in the global and EU market , and they do not have any desire to go back to their bad past situation that was in a low dignity in Europe. The Hartz Reform cannot effect on the foreign workers because they can only be accepted with the high skilled qualification. Under the Hartz Reforms the local workers with the employment escape from the unemployment position to working in every sector.

The percentage of foreign workers in Germany is the same as in the EU in accordance with the factors mentioned above. Although Germany does not want to get any bad impact for their economic or productivity quality, the foreign workers also support their economy from their perspective like the same population of EU national workers. Those migrant workers need to enjoy the same protection and social insurance as the EU national workers. There is one chance that is likely regarded to be the best one; job seeker visa with 6 months. That duration is not short that is why the migrant workers have time to find jobs and the tendency is that they can get jobs. If so, what are the social security rights for the migrant worker? To answer this question, the next topic will explain the provided policies.

3.6.3 Social Rights in terms of the Laws in Germany

Germany is also a Member State of EU that provides some social rights for the migrant workers within EU with the conventions and regulations, hence, it has the

³²¹ Amar Ali, The New Skilled Immigration Law in Germany, 11/2020, <https://immigrationlawyers-london.com/blog/the-new-skilled-immigration-law-in-germany.php> (10/10/2022)

³²² Jan Schneider, Ibid.

responsibility to obey the regulations and policies of EU in the protection of the migrant workers because Germany is a country that runs with the migrants in their machinery of the economics. In 1967, the Federal Republic of Germany gives the migrant workers the following advantages: sickness benefits, maternity benefits, death grants, accidents at work and occupational disease, pensions, and unemployment.³²³

For all the social security benefits, the workers are responsible for paying the contribution for their social insurances. However, the limitations of the social rights rely on different situation and rights of the workers. Jean-Michel Lafleur considered the German social system divided into two types: through the contributions of workers and employers and through the tax (but it is restricted more for the foreign workers). The insurance systems involve five categories that are public pension, health care, unemployment, work-related injuries, and long-term care insurance. Social insurance is concerning with the labour market status and the job type, somehow the migrant workers need to get the work permit and the formal employment importantly.³²⁴

The social benefits for migrants in Germany currently are:

Unemployment: Whoever working in Germany and temporarily abroad is covered, by the deduction of 165 € from their income remuneration. They will get 60% for the persons without children and 67% for the persons with children. After paying the contributions for 12 months and become unemployed, the unemployment benefits for six months will be covered. Moreover, pensions, health care, and long-term care have the right to be covered during the benefit of the unemployment.³²⁵

Health-Care: 80% of the population in Germany is supported with the health care system. Normally there are two types of health care benefits: in-kind medical treatment and sickness pay after six weeks of sickness leave. Deloitte expresses: “All workers in Germany with the regular annual remunerations less than € 64,350 must be enrolled in the compulsory health insurance scheme. In addition, the contributions are 2.4% of the gross salary that is paid half by the employer and another half by the workers. For the long term nursing care and disability insurance, the contributions are 3.05% half by the employer and

³²³ European Communities, *Social Security for Migrant Workers in Germany*, 1967.

³²⁴ Jean-Michel Lafleur and Daniela Vintila, *Migration and Social Protection in Europe and Beyond (Vol I): Comparing Access to Welfare Entitlements*, IMISCOE Research Series, 2020.

³²⁵ Jean-Michel Lafleur and Daniela Vintila, *Ibid.*

the worker.”³²⁶ Three options of health insurance are categorized in Germany, which are the government-regulated public health insurance schemes (GKV), the private health insurance from a German or International Insurance Company (PKV), and a combination of GKV and PKV, for all the workers employing in Germany. If the gross salary is less than 62550 Euros per year, the worker will be mandatory to be membership of GKV; however, while the annual salary is higher than 62550 Euros, he/she may opt out the PKV.³²⁷

Pensions: three divisions are split out mainly with old age, disabilities, and survivors. German pension system has three main pillars; mandatory state pension, company or occupation pension and private pension.³²⁸ Germany is working with the pay-as-you-go system for the pensions benefit. For the pensions, all residents comprising of non-EU citizens who are residing in EU and having German public pension record, are allowed to pay the contributions in the waiting for 5 years at least. After 5 years, they have the right to get the pension depending on the sum of their earnings.³²⁹ If the workers work for an employer who contributes for the pensions, they are eligible to get pension in Germany.³³⁰

Family Benefits: EU citizens are surer to get the family benefits than non-EU citizens relying on the resident permit. EU citizens get six weeks before and eight weeks after the pregnancy and child allowance even if the children are abroad and the parents are still in Germany. This allowance will end when the parents leave Germany and their income tax stops.³³¹ Both EU citizens and non-EU citizens also have the parental benefits in terms of their working time (30 hours/ a week) and their annual net income.³³²

Minimum income benefits: EU employed nationals with the income below the social minimum income can accept a supplementary minimum income benefits, if they are

³²⁶ Deloitte, Working & Living in Germany: Moving together and making together, 2021.

³²⁷ Cathy J. Matz-Townsend Health Insurance Option in Germany, 2020.

³²⁸ EXPATICA, The German State Pensions: Guide to the German Pension System, [https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem\(10/10/2022\)](https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem(10/10/2022))

³²⁹ Jean-Michel Lafleur and Daniela Vintila, Ibid.

³³⁰ EXPATICA, The German State Pensions: Guide to the German Pension System, [https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem\(10/10/2022\)](https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem(10/10/2022))

³³¹ Jean-Michel Lafleur and Daniela Vintila, Ibid.

³³² Deloitte, Working & Living in Germany: Moving together and making together, 2021, Ibid.

employed for one year continuously, they will be treated like the Germans in this case if they become unemployed. Non-EU citizens can also get the minimum income benefits with entering Germany with the employment but not the asylum seeker.³³³

The migrant workers also have the right to get the fundamental social security rights in Germany according to the German legislation and EU regulations. In comparing the EU nationals and non-EU nationals, it cannot be assumed that non-EU national workers struggle against 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.

3.6.4 Trade Unions Rights regarding the migrants

The migrant workers require getting the right to be members in trade unions in Germany. German Constitution entails to have the right to freedom of association in Article 9 in the following:

“All Germans shall have the right form corporations and other associations.”

In accordance with the rule mentioned above, only the Germans have the right to the freedom of associations. In 2018, 78 million people were involved in the trade union memberships.³³⁴ Prior to the course of the membership of migrant workers in the trade unions in Germany, the general trade unions of Germany need to be stated. In general, there are three main biggest trade union confederations in Germany, which are the German Confederation of Trade Unions (DGB)³³⁵, German Civil Service Federation (DBB)³³⁶ and the German Christian Trade Unions Confederation (CGB)³³⁷. Moreover, other trade unions also exist without comprising any of these three confederations and the total membership is 280000 in 2014 by WIS. The German biggest trade unions are slightly concerning with the politicians. Nevertheless, DGB was partly close to the political party; currently they are defined as non-partisan that is why they do not have any financial support from the political party. The other two, DBB and CGB have little connection politically; therefore, they get

³³³ Jean-Michel Lafleur and Daniela Vintila, Ibid.

³³⁴ Heiner Dribbusch and Peter Birke, Trade Unions in Germany Challenges in a Time of Transition, 2019.

³³⁵ German Trade Union Confederation (DGB), [https://en.dgb.de/ \(10/10/2022\)](https://en.dgb.de/ (10/10/2022))

³³⁶ German Civil Service Federation (DBB), [https://www.cesi.org/member-union/dbb/ \(10/10/2022\)](https://www.cesi.org/member-union/dbb/ (10/10/2022))

³³⁷ German Christian Trade Union Confederationv (CGB), [https://www.cesi.org/member-union/cgb/ \(10/10/2022\)](https://www.cesi.org/member-union/cgb/ (10/10/2022))

the financial support from them.³³⁸ By viewing those factors, most of the employees are going with the three biggest trade union federations. Getting the main support of the trade unions relies on whether they cooperate with the political parties due to the cause of financial support from them in the improvement of trade unions rights. It is a matter if the workers get the membership of famous big trade unions or non-famous trade union, with the reason that they think that only the biggest trade unions can guarantee to give the protection and security of their lives.

The German Confederation of Trade Unions (DGB) is the first biggest trade union confederation in Germany, with eight affiliated trade union members, over six millions people with 20% pensioners, 5% unemployment, and 35% women workers in 2018, founded in 1949.³³⁹ Eight affiliated trade union members are Industrial Union Mining, Chemicals, Energy (IG, Bergh au, Chemise, Energy) (IG BCE) with the members 274.182, Industrial Union Construction, Agriculture, Environment (IG Bauen-Agrar-Umwelt) (IGBCE) with the members 632.389, Union For Education and Science (Gewerkschaft Erziehung und Wissenschaft) with the members of 279.389, Industrial Union for Metal Workers (IG Metal) with the members of 2,270595, Union for Food, Beverages, and Catering (Gewerkschaft Nahrung-Genuss-Gaststätten NGG) with 198.026 members, Police Union (Gewerkschaft Der Police GDP) with 190.931 members, Railway and Transport Union (Eisenbahn-und Verkehrsgewerkschaft EVG) with 187.396 members and United Service Union (Hereinto Dienstleistungsgeuerkschaft) with 1,969.043 members.³⁴⁰ DGB financial affair is managed with the union membership fees.³⁴¹ The German Civil Service Federation (DBB) is the second largest trade union organization with 40 affiliated trade union members and the total members with 1,317000 in 2018, 32% of women, and 11% of young workers. The Christian Trade Unions Confederation of Germany (CGB) is the third biggest organization in Germany with 13 individual trade union members, the gross member with 270,000 in 2017 and under 24% of women. CGB is a bit different from the other two unions with the reason that it is with a distinct politician orientation.³⁴²

³³⁸ Heiner Dribbusch and Peter Birke, Trade Unions in Germany Challenges in a Time of Transition, 2019. And Trade Unions in Germany, Organization, Environment and Challenges, 2012.

³³⁹ Heiner Dribbusch and Peter Birke, Ibid.

³⁴⁰ DGB Member Unions, <https://en.dgb.de/member-unions> (10/10/2022)

³⁴¹ Heiner Dribbusch and Peter Birke, Ibid.

³⁴² Heiner Dribbusch and Peter Birke, Ibid.

Nevertheless, the civil servant workers are not entitled to the right of collective bargaining and right to strike through those trade unions once their salaries are fixed by the government. No one can deny that the three biggest trade unions are leaned on by most of the workers in Germany in the condition of memberships and running faster than other trade unions in reviewing their success and well-known service or performances.

In the case of migrant workers in German trade unions, the recruitment system for them began in 1950s, and the first largest trade union DGB accepted the migrants in terms of the government labour migration policies, as the second class people, in the unskilled jobs are not the same as the German workers without permanent residence. In fact, the German government and all trade unions treated the migrant workers as equal members like the nationals from the outset. However, the foreign workers were participating in the Spontaneous Strike Movement 1973 mainly, which caused the German government decision changed to not allowing the foreign workers enter the trade unions with the support of DGB.³⁴³ Since the 2000's, German trade unions and trade union-affiliated academics concerning strategies had an intensive debate regarding the acceptance of migrant workers in their trade unions. DGB and its sectoral affiliates started several initiatives aimed at integrating migrants into worker representative's bodies, with IG Metall launching an initiative to accept the migrant workers for the protection of equal labour and social rights.³⁴⁴ After 1982, the Christian Democratic Union party (CDU) got the power in the country that has different policies for the migrant workers, DGB also went along with its policies leading to the integration and better rights for the migrants.³⁴⁵ DGB actually gave the agreement to focus on the trade union representations of migrants and non-migrants, thus, it founded the Central Office for the Foreign Workers in Hamburg but existed only until 2000s; which functioned the meetings between the migrant workers and trade unions. In 1984, the foreigners' committee was established in IG Metal with the purposes of solving the affairs of the foreigners. In 1985 the complicated policies for the

³⁴³ Stephen Castles, Labour migration and the trade unions in Western Europe, Center for Multicultural Occasional Paper, 1990

³⁴⁴ Ines Wagner, Trade Unions and Migrant Workers: New Contexts and Challenges in Europe, 2017, page.158-171.

³⁴⁵ Stephen Castles, Ibid.

acceptance of the migrant workers was promulgated to the government.³⁴⁶ One of the internal studies of IG Metal stated that over 3000 foreign work council's representatives, 400 work council leaders and 7500 foreign shop stewards currently exist. German trade unions are in an effort to combat anti-racist by engaging with some association such as "Kummel" association though the foreign workers have less rights. The government also confirmed to accept the refugees from Syria in 2015, made trade unions change their focus point, for instance, DGB built an advice centre for the migrant workers, which means that German trade unions work in accordance with the government policies by means of accepting the refugees.³⁴⁷

In fact, DGB was for the foreign workers with their commitment and consensus, for the stance on their sides, nonetheless, it targeted to support the policies of the government. Trade unions in Germany seem standing to carry out the government's decisions without targeting the migrant labour's equal rights, though they do not take part in the activities of political parties clearly.

3.6.5 German Irregular Labour Migration

Irregular migration affairs have become worse and more important from 1990s to the present, especially Germany seems to face EU borders and Member States. Barbara Laubenthal and Patricia Pelage argued that the government amended German Residence Law many times but not untouched the part of the irregular migration.³⁴⁸ The migrants from EU countries, which joined EU before 2004, have the right to stay unlimited in Germany but the ones from non-EU countries need to get the work permit or resident permit. If the given person does not meet the factors mentioned, illegal residence will be deserved deportation and the government will deport those migrants. Despite the legal status of living in Germany, they will be fined if they work in the irregular employment and then the employers will get the punishment of the imprisonment because of the fact that they hire the illegal workers. The German authorities had been trying to detect the illegal employment in conformity with "Law to Combat Undeclared Work" in 2004 and some

³⁴⁶ Lisa Carstensen, Challenging the Trade Union Agenda: Migrants' Interest Representation and German Trade Unions in Hamburg in the 1970s and 1980s, 2021.

³⁴⁷ Mark Bergfeld, International Unions Rights, Vol 28, No 1, 2021, https://www.ictur.org/pdf/IUR281_BERGFELD.pdf (10/10/2022)

³⁴⁸ Barbara Laubenthal and Patricia Pielage, European Task Force on Irregular Migrations: Country Report (Germany), 2011.

amendments of “Fourth Social Law Book”, to ensure that all workers need to have their passport; moreover, the punishment level was raised.³⁴⁹

Around the 1990s Germany served actively of setting the common policies in EU regarding to the irregular migration, then tried to transpose two directives, the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals and the Directive 2009/52/EC providing for minimum standards on sanction and measures against employer of illegally staying third-country nationals, into its internal legislation by virtue of the “Return Home” policy in 2011.³⁵⁰ Hence, the government issued a first draft for the first directive in the case of illegal migrants to be detained for 18 months in a maximum, got criticism from the NGO and a second draft was issued for the second directive in the event of the sanction to the employer who employed the irregular migrants. On the other hand, the fundamental rights of the irregulars are endeavoured to give at least under the political federal system, which is that all the cities in Germany have different systems for controlling and managing those migrants.³⁵¹ In spite of different policies in the several cities, generally they focus on the social dilemma of the illegal migrants, for instance, Munich that regulates right to education and health and Freiburg regulating the right to education relating to the irregulars and their children and some other cities, Bonn, Leipzig, Menschen, Nurnberg, Augsburg, Stuttgart and Gelsenkirchen were reporting to the federal government for the access of the social and human rights.³⁵² Social rights are essential to all human beings and substantially right to health care is necessitated more to be reliable on the right to life (UDHR Art (1)³⁵³). Under International labour standards, all workers have to get the fundamental human rights in the employment country, furthermore, EU standards are also compatible to the global norms. It is such a type of greatest humanitarianism to treat all humans equally and horizontally that Germany goes to the general social rights in the cities once Munich and Freiburg are the sample cities in the condition of right to education for the irregular migrants and their children.

³⁴⁹ European Community Programme for Employment and Social Solidarity PROGRESS, *Illegal Works of Migrants on European Union*, 2013.

³⁵⁰ Barbara Laubenthal and Patricia Pielage, *Ibid.*

³⁵¹ Barbara Laubenthal and Patricia Pielage, *Ibid.*

³⁵² Barbara Laubenthal and Patricia Pielage, *Ibid.*

³⁵³ Universal Declaration of Human Rights, 1948, Article 1, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> (10/10/2022)

There is a regularization system for the irregular migrant people in the Member States of the European Union. In 2010 2% of the foreign population had been regularized in Germany, since 2000s the government specified several measures of regularization based on the humanitarian ground with the extent that the employability was their main criteria in the system.³⁵⁴ Three kinds of targets were focused on asylum seekers who entered before 1990, asylum seekers who entered before 1993, and for 8 years residency in 1999 and long term tolerated persons in 2000.³⁵⁵ In this case, only the irregular people entered Germany legally but they become illegal once their resident permit expires, they will get these kinds of opportunities that are right to education, right to health care and right to regularize their status, nevertheless, the people who are illegally entering the country already infringed the law under Resident Act.

3.6.6 Summary of German Policies on Migration

Germany is a country that faced the big labour shortage more than other EU members before their labour regulations had been provided in the past. Therefore, the recovery for getting back to fulfil the labour demand was tried with the Hartz reforms that were totally transferred into the best situation of labour shortage issues. Among four Hartz steps, the fourth step has a controversial problem regarding the social security rights differently from the other three steps. Before that, the treatment of the past defeat was started to change with the cooperation of Italy, Greece, Spain, Morocco, Portugal, Tunisia, and Yugoslavia by accepting the migrant workers from those countries. Then the German government blocked the foreign workers migrating into the country because of some cases in 1973. In 2005, the new immigration law was issued. Later EU Blue Card for non-EU migrants was introduced and had been in force in 1st of August of 2012. The new Skilled Immigration Law was in force on 1st of March, 2020.

The Hartz Reform has no effect on the foreign workers because they can only be accepted with the high skilled qualification. Under the Hartz Reforms the local workers move to the employment from the unemployment position in working every sector. Regarding social security rights, they have options to choose to be valid of getting the

³⁵⁴ Albert Kraller, Regularization of Irregular Migrants and Social Policies: Comparative Perspectives, *Journal of Immigrant & Refugee Studies*, 2018, <https://doi.org/10.1080/15562948.2018.1522561> (10/10/2022)

³⁵⁵ Kate Brick, Regularizations in the European Union: the Contentious Policy Tool, 2011, <https://www.migrationpolicy.org/sites/default/files/publications/EURegularization-Insight.pdf> (10/10/2022)

social insurance once they are holding the valid resident permit and can work in the harmony with the labour policies of Germany. If the German Constitution is viewed, there is no trade union right for the migrant workers but just for nationals. Virtually they also have the right to be members of trade unions in Germany in lieu of the government policies and different trade union regulations. Among three biggest trade unions, DGB mostly accepts the foreign workers in the membership despite breaking of the commitment to stand up for the migrant workers in the past, built an advice centre for the mobile workers and it is a part of Federal Employment Agency that gives the job opportunities for the migrant workers. Trade unions in Germany seem standing to carry out the government's decisions without targeting the migrant labour's equal rights though they are not participating with the political parties clearly.

Until today Germany is a good country and famous for the systematic policies comparing to other EU members once it could stand up strongly with their great rules and policies without falling down in the last recession 2007/2008. In the case of foreign workers, Germany sets their rules distinctly for the labour migration that can allow the skilled immigrant workers and does not give the chances to the foreign workers easily to enter and work in Germany. The preservation of the high skilled workers, the highly qualified productivity, and the more lasting rules are only accepted. However, if the employers give the job offer or work permit to the foreign workers, the workers can enter and work in Germany easily, though they will not get high remuneration. Owing to the new Skilled Immigration Law, the foreign workers' entrance is restricted setting on the skills of the foreign workers and giving to them the equal rights like the nationals relying on their skills. Regarding the regularization system, Germany never allows the irregular migrants, entered first into the country illegally, transforming into the legal status, though the people who enter the country legally and become irregular due to their expiration of the resident permit, are only given to the regularization chance with the document of the suspension of removal order. Moreover, they also have the right to education and health care within the country based on the humanitarian ground by virtue of the EU directives.

Conclusion for Chapter II

Under the general review, a variety of regulations for the labour migration in EU has been stated by looking towards the benefits of the member states, especially to reduce

the poverty level. The outset of the labour migration of the European Union is the free movement after the Second World War with the Treaty of Rome, not including the family members of the workers, the Schengen Agreement in 1985, the European Single Act in 1986 and the Maastricht Treaty in 1992 which all included the free movement of goods, services and pensions with family members. And it was implemented with a uniform passport and visa for every EU citizen. The first permission of free movement of third country nationals had been started with the Treaty of Rome that the member states did not get an agreement for, and later a consensus referring to the Green Paper in 2004. Then, the EU proceeded to try to harmonize the national labour laws for the protection of the substantial rights without replacing or disturbing the national legislation of each member state. In the case of the harmonization of the national legislation, social security rights are particularly appreciated and made an effort to be revised in the national labour laws. In terms of Social Security Rights, the current social security regulations are Regulation No-883/2004, Regulation No-987/2009, 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 the EU to treat equally all the nationals together with their national people. Based on those provisions to equal treatment, the social security rights for all nationals within the region have been fabricated. For third country nationals, Regulation 1213/2010 gives social security rights for all the migrant workers from third countries by extending Regulation No-883/2004 and Regulation No-987/2009. Regulation 1231/2010 relates to the third party nationals who are already legally staying in one of the European Member States, but not for the third party nationals who are trying to enter, to stay or to reside in the EU. Besides, Article 13 of the Regulation 1231/2010 expresses that the legal third country nationals shall not affect the rights of invalidity benefits and old age or survivors' pension benefits from Regulation 883/2004, and in case of unemployment benefits, the third country nationals should be the ones who have 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 certain special rights or some social security

rights such as 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. All kinds of social security rights have been stated in Regulation No. 883/2004 and Regulation No-987/2009 which are the regulations concerning social rights but some further descriptions in the European Social Charter, the Community Charter of the Fundamental Social Rights of the Workers, and the European Convention on the Social Security. In my view of the social rights of the EU, a perfect regulation for all European citizens are being given an effort depending on the various kinds of situations, such as the replacement of the new regulations in place 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 are no provisions referred to third country national workers in those regulations for social security rights, a specific reference and provision has been announced with Regulation No.1231/2010, which gives all the social rights except invalidity benefits and old age pension benefits. Therefore, third country national workers also have the substantial social rights in the EU, although they cannot claim the level of the social rights like the national workers. Among those substantial rights, the EU's provision to the unemployment benefits for third national workers need to be praised, as it can be said "the special rights" and even the member citizen workers of ASEAN have no right to unemployed benefits.

Labour market regulations in the EU have also been divided into two parts: for the intra-EU which are from the south to the north and from the east to the west, and for outside of the EU. The labour market policies of the 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 a more equitable and uniform platform for all EU citizens. The European Employment Strategy (EES) is integrated with the International Labour Market. In case of minimum wage setting, the EU has split into two parts which are through the statutory minimum wage that 21 member states apply, and through the collective bargaining that 6 member states are doing. For raising the employment rate, the

Lisbon Strategy 2000 has been adopted and the Directorate General for Economic and Financial Affairs assess the EU labour market depending on the labour market indicators, labour Market issues and reforms. There are six types of Active Labour Market Policies in the EU that are training, private sector incentive program, the direct employment program in the public, service and sanction, youth programs and measures for the disabled. The programmes are the very interesting programs for all the potential workers in EU in view of the fact that the detailed or scrutinized performances for all the potential job seekers have been served. The programmes include even for the disabled, the youths, and the private sector incentive program for the encouragement to the employers to give new jobs for the unemployed people and migrant workers. Prominently, the EU considers even for all the potential workers such as final year students and unemployed people. That factor is clear that the EU's desire to be free of poverty in all member states is going forwarded. 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.

Trade unions rights in migrant workers in the EU are classified into national trade unions federations and European trade unions federations: which both are in the European Trade Unions Council (ETUC), which includes 89 member organisations. ETUC works with the Union Migrant Network, which assists migrant workers and promotes equality, fairness and non-discrimination. The regulations of the European Union for trade unions rights for workers are the right to organise or associate, right to bargain collectively and negotiate between the representatives of workers and employers, and the right to information and consultation within the undertakings. Thus, the definite rights to organise and bargain collective are adopted for the European Workers. In the two kinds of bargaining processes, decentralization is being used by most of the EU states but a few states use centralization. Some unionists prefer the national legislations relating to trade unions instead of European legislation. However, the EU has the harmonisation of national labour laws, and thus the workers get the European protection through the national legislation. The harmonisation of the legislation in the EU seems effective and supportive

in the implementing of the European conventions and regulations in the national laws of the member states. The cause of the stronger integration of the European Union is the reason for the better harmonisation fairly and equitably without affecting national sovereignty. The regulations expressed above are relevant only to the European citizen workers. For third country nationals, the three dilemmas are still defended among the experts. The first dilemma is: should trade unions resist the employers' efforts or cooperate in recruiting workers from abroad or not? It shows that the EU has the potential to pull the migrant workers or third country nationals into their trade unions, but some countries argue against it. Under the situation of the shortage of the workers or not enough with the European workers, the EU has to meet the demand for the supply for workers from third countries. The recruitment system is a good platform between the employers and the workers, but the trade unions should not participate in the recruitment case as it might face the bias in favour of the employers and they might lose their fundamental rights. The trade unions' work is to bargain collectively and negotiate to get a collective agreement between the workers and the employers. If it interrupts the recruitment case, their performance can be worse. The second of the dilemmas is whether the migrant workers should be regarded as an integral part of the trade unions regular members, and therefore be actively recruited as members with the same rights as any other workers. As I mentioned before, the migrant workers have fundamental labour rights under the international labour standards including their trade unions right and right to organise. Prominently, the EU region prefers giving special rights to their native workers but not to migrant workers from outside of the EU; which looks like the global norm of automatic acceptance. About the trade unions right, the migrant workers should get the protection and the effort to prevent the infringement of their rights by being members of trade unions. It is not easy to claim their rights without being a member of a trade union when they face problems about their labour rights. It means the protection of their fundamental rights. Even though they cannot be a member because of the strict rules of the host countries, the participation of the migrant workers in the union should not be forgotten. The third of the three dilemmas is whether trade unions should exclusively represent the common interests of native and migrant workers, treating all workers the same way, or whether they should develop targeted policies and strategies that care about the special interests and needs of migrant members. As the third dilemma relies on the

second dilemmas and the review on the second dilemmas is that the migrant workers should have the right to participate at least or be members of trade unions, it is distinct that the migrant workers should get the common interests relating to employment. However, if there is a rigid rule for giving the same rights to all migrant workers like the national workers', they do not need to get the special rules such as job opportunities, but the basic or fundamental rights should not be overlooked and should be treated together with the nationals in the trade unions.

German Policies on Migration: In the employment law of Germany, it provides types of employment contracts, which are permanent and fixed, remedies of employees, working time and equal opportunities. The policies of Germany on migrant workers 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 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 term "skilled workers" means someone with at least two years training, and they can apply for a work visa and get it four weeks after applying. The duration of the work visa is four years or depends on the employment contract, and then skilled workers can apply for a 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 a chance for permanent residence to the migrant workers if they get a 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 Germany with labour migration is not flexible and not rigid.

Germany implemented the active labour market policies with Hartz Forms that 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 the three aims mentioned in Chapter II. Hartz I leads to new personnel service agency, the support of vocational training and deregulation of the 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 the federal labour office and in the changing of unemployment assistance and social assistance, and Hartz IV for a kind of reduction of benefits depending on the wage and the income of the other family members. Hartz I, II and III has its own successes for the reduction of 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 vocational training and by the deregulation of the temporary work sector. Hartz II innovates the jobs opportunities of Mini-jobs and Midi-jobs for most women, like housewives, 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 remedy for the occupational disease. Hartz III made the conditions for unemployment insurance benefits stricter. Hartz IV tried to reduce the unemployed population by forcing the workers to work in any job like low paid jobs or any physical job that they would not like to do. Each of the Hartz reforms has its different changes and regulations, and 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 unemployed population, which was in the highest range than other member states. In addition, many positive reviews and comments were given for those reforms I, II and III. Particularly, the German employment system could be improved and successfully processed. However, Hartz IV was notorious in the implementation of the unemployed reduction because it made the status of skilled workers lower by forcing them to work in any level of job which may be inconsistent with their qualifications and by paying them 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 third country national workers can be viewed as the restricted regulations since the 1990s, though, they have more chances currently if they have the high skill level recognised by the Skilled Immigration Act in contrast to the past and the present, as they had to work in dangerous workplaces 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 sickness benefits, maternity benefits, death grants, accidents at work and occupational disease, pensions, and unemployment benefits. They also take into consideration the two kinds of social systems that are made through contributions and through taxes. Their labour market status and job type are very important to get the social rights, which means that they must work in the formal sector and should hold a valid work visa. The satisfactory factor 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, a 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 discrimination 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 hold a valid resident permit and can work in harmony with the labour policies of Germany.

Trade union rights for migrant workers in Germany seem fragile, as the German Constitution does not prevent the rights of trade union rights for migrant workers or for all the workers in Germany. The biggest trade unions organization, DGB, accepts the migrant workers' representatives joining their union in order not to lose their social rights and fundamental rights in the workplace.

Normally, Germany confronts irregular labour migration through the Border States of the EU, but previously they could stay unlimited in Germany. Nevertheless, non-EU citizens need a resident permit. The agenda for 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 irregular migrant workers. Germany fosters fundamental human rights for all irregular migrant workers and performed the regularization system up to 10% of the irregular population within the 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 by reason that they are not legal.

It is a satisfactory factor from the humanitarian angle, while the stricter rules for labour migration are being promulgated.

Chapter III

4. Analysis on the Policies of ASEAN Labour Migration

With the development of regional integration, ASEAN is one of the organisations in the world, which is implementing the cooperation of the social, political, economic, cultural affairs and other affairs in accordance with rules and regulations of the organisation. There are 10 Member States in ASEAN, Thailand, Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, The Philippines, Singapore and Vietnam. When the integration within ASEAN is being implemented, labour migration is the most important cooperation to be fair and safe in the employment. ASEAN has the rules and regulations for the labour migration of the receiving and sending countries. Citizens of all Member States can enter another Member State without visa. It makes for the workers comfortable and easy to get a job with the big flows of labour migration. However, illegal labour migration issue causes for the ASEAN governments controversial and complicated situations, as it is the largest sector. Some agreements and conventions have been promulgated and all the Member States function according to the conventions for the labour migration.

ASEAN was organized by five countries, Indonesia, Malaysia, The Philippines, Singapore and Thailand in 1967. In 1984, Brunei Darussalam entered ASEAN. In 1995, Vietnam participated in the organisation. In 1997, Myanmar and Laos had agreed to be members of ASEAN. Finally, Cambodia also was a member in 1999.³⁵⁶ Nowadays, two states, Papua New Guinea and Timor Leste, are observer nations to ASEAN. After establishing ASEAN, the initiated activities of ASEAN started together with ACRC (ASEAN Conference on Reforms in the Civil Service). It was renamed ASEAN Conference on Reforms on Civil Service Matters (ACCSM) in 1987.³⁵⁷ ACCSM was established in 1981 for promoting the role of civil service in contributing to the development of the three pillars of the ASEAN Community, namely, political and security, economic and socio-cultural agenda.³⁵⁸ In 2003, ASEAN pledged to establish an ASEAN Community in Southeast Asia by 2020 by cooperating in three ‘mutually reinforcing’ areas – politics and security, especially, the broader area of non-traditional security, economics

³⁵⁶ Helen Nesadurai, (2008) *The Association of Southeast Asian Nations (ASEAN), New Political Economy*.

³⁵⁷ Richard K. Common, (2007) *The Association of the Southeast Asian Nations (ASEAN)*, [https://www.researchgate.net/publication/301635706_\(10/10/2022\)](https://www.researchgate.net/publication/301635706_(10/10/2022))

³⁵⁸ Adopted by the Heads of Civil Service Meeting for the 18th ACCSM 17 November 2016, Manila, the Philippines, Article 5.

and the sociocultural realm. ASEAN community was established to cooperate in the political, economic and sociocultural field in 2003.

ASEAN Community has three pillars, the ASEAN Security Community (ASC), the ASEAN Economic Community (AEC) taking the responsibility of the free movement of the goods, services, skilled workers, and human capital and the ASEAN Socio-Cultural Community (ASCC) leading to the enhancement the well-being, livelihood and welfare of the people³⁵⁹. ASEAN Charter initiated in 2005 and the constitutional document of the Association was drawn up and adopted by ASEAN leaders in 2007.³⁶⁰ For the regional economic integration, ASEAN has ASEAN Free Trade Agreement that was signed in 1992, Singapore.

4.1 Integration on the policies of ASEAN migration

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (DPPMW) has also established the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), which would report to the Senior Labour Officials Meeting in 2008. The ASEAN Forum on Migrant Labour (AFML) was established to implement and advance the principles of the DPPMW.³⁶¹ It is a kind of platform to negotiate between the workers and employers and between the governments. AFML annually holds the meeting together with the Member States. It finished the 12th meeting on September, 2020. At the 12th ASEAN Forum on Migrant Labour, the ASEAN Heads of governments established two themes. They are the challenges on sustainable, fair and equal protection and the challenges on migrant workers' employability. Leading up to the 12th AFML, the ILO's TRIANGLE in ASEAN programme supported the conduct of national preparatory workshops in eight ASEAN Member States, with the aim of taking stock of the progress of stakeholders in implementing the previous AFML recommendations and to discuss the themes of the 12th AFML.³⁶² On November 2020, 13th Meeting of AFML was held in Vietnam with the theme

³⁵⁹ Ignatia Bintang Filia Dei Susilo and Dian Pujiatma Vera Subchanifa, ASEAN LABOR MARKET INTEGRATION AND ITS SOCIAL EFFECTS FOR UNSKILLED LABOR MIGRATION, 2016.

³⁶⁰ Helen Nesadurai,(2008) The Association of Southeast Asian Nations (ASEAN), New Political Economy.

³⁶¹ Ashley William Gojs,(2015) *Labour Migration in the ASEAN Region*, Heinrich Boll Stiftung, The Green Political Foundation, [https://www.boell.de/en/2015/11/23/labour-migration-asean-region.\(10/10/2022\)](https://www.boell.de/en/2015/11/23/labour-migration-asean-region.(10/10/2022))

³⁶² The Future of Work and Migration,(2019) Thematic background paper for the 12th ASEAN Forum on Migrant Labour (AFML), International Labour organization. [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_733923.pdf\(10/10/2022\)](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_733923.pdf(10/10/2022))

“Supporting Migrant Workers during the Pandemic for a Cohesive and Responsive ASEAN Community” which discussed the impact of Covid-19 on migrant workers and responses in ASEAN and the inclusive and responsive labour migration policy for future preparedness in ASEAN. The 14th Meeting was held in Darussalam, Brunei, in September of 2021 with the theme “Recovery and Labour Migration in the Post-Pandemic Future in ASEAN”, which went forward with the protection of migrant workers during Covid-19, for the equal access of social protection and the access to members for wage and other labour rights violations, and the recovery and the post pandemic future..³⁶³ In 1995 the fifth ASEAN Summit was held to identify immigration area for the ASEAN economic cooperation. Moreover, ASEAN Heads of Government and States adopted ASEAN Vision 2020 and held the second Informal Summit in Malaysia in 1997 for the purposes of creating the broader ASEAN Vision 2020. ASEAN Economic Community (AEC) was established to create the free flow of goods, services, investment and capital. The AEC will establish ASEAN as a single market and production base, turning the diversity that characterizes the region into opportunities for business complementation and making the ASEAN a more dynamic and stronger segment of the global supply chain..³⁶⁴ ASEAN governments also built Ha No Plan of Action (HPA) that could adopt the 6th ASEAN Summit to address transnational crimes (drug trafficking, money laundering, terrorism, arms smuggling and trafficking in persons). ASEAN Summit is the highest policy-making body of the member states, holding the meeting twice annually 38 ASEAN Summit has been done to this date..³⁶⁵ The other legal and law enforcement matters are working towards the harmonization of relevant national policies on immigration matters among ASEAN Member Countries, coordinate with the ASEAN Senior Law Officials Meeting on the implementation of the ASEAN Legal Information Network System and strengthen the mechanisms for effective protection of the integrity of travel documents, permits and government control of the ingress/egress of people..³⁶⁶ Although, ASEAN was founded in 1967, the progress of the

³⁶³ International Labour Organization (ILO), https://www.ilo.org/asia/events/WCMS_755357/lang--en/index.htm (10/10/2022)

³⁶⁴ Rosabel B Guerrero, Regional integration: the ASEAN vision in 2020, <https://www.bis.org/ifc/publ/ifcb32c.pdf> (10/10/2022)

³⁶⁵ Association of Southeast Asian Nations, <https://asean.org/38th-and-39th-asean-summits-and-related-summits/> (10/10/2022)

³⁶⁶ ASEAN Plan of Action for Cooperation on Immigration Matters, Association of Southeast Asian Nations, https://asean.org/?static_post=asean-plan-of-action-for-cooperation-on-immigration-matters. (10/10/2022)

implementation of the fundamental human rights' protection within the region is still less and weak. Nevertheless, ASEAN Heads is trying to be great protection for the migrant workers among the issues and problems of the undocumented migrant workers. Especially, ASEAN Forum on Migrant Labour is a good platform to discuss and solve the problems between the workers and employers.

Migration for living in an ASEAN country is not so wide and it is rare to live in another Member State. Only after people migrate to another Member State to work for many years, they decide to live in that country. However, the people living in the Border States are likely to migrate into another neighbouring country easily without this being valid. In addition, there are different kinds of people who are migrating with the reason of politics, poverty, education, training courses and development projects imposed by the government. Because of the domestic wars, some people are fleeing away from their origin country to another neighbouring country. Young people go and learn to get their degree and improve their educational level in another Member State. So many reasons to witness migration within the region can be found depending on the Member States.³⁶⁷ The best solution for that is bilateral agreement between the respective two countries. Some countries are sending immigrants to their native ones, but some are trying to give the validity to change illegal conditions.

When the migration is interpreted within ASEAN region, labour migration is the most popular and effective in promoting the economy through the regional integration. There are some rules and regulations for the migration in ASEAN. As far as migration is concerned, ASEAN Consensus on the Protection and Promotion of Rights of Migrant Workers and their Families, especially, is influential within the region.

Labour migration has been permitted by the Member States because it makes their economy and business to promote and improve as no one can deny that it is a kind of reason to raise the economic integration. By working in another state, the workers can send money to their home country, making the bank business developed for the receiving and sending countries. Labour migration can give some benefits relating to higher wages and

³⁶⁷ Sriprapha Petcharamesree, ASEAN and its approach to forced migration issues, *The International Journal of Human Rights*, 2015, <https://doi.org/10.1080/13642987.2015.1079021> (10/10/2022)

job opportunities for the workers and financial remittances for sending countries.³⁶⁸ Therefore, ASEAN gives all the Member States the free movement within the region without visa. Furthermore, skilled workers can fill the gaps of the demand of the industry or factories when there are not enough native workers. However, there is a problem for the workers when migrating from their home country, they may face discrimination and working in a dangerous place. In the next part of my study, the statistics and rights of the migrant workers and the issues of labour migration will be analysed.

The population of South-Eastern Asia is 668,280,918 as of Saturday, June 13, 2020, based on the latest United Nations' estimation.³⁶⁹ Thousands of migrant workers usually migrate between the Member States, six million citizens residing in ASEAN Member States. The majority of migrants are low skilled, and irregular.³⁷⁰ There is a protocol for the migrant workers that are ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. ASEAN Consensus shows the rights of migrant workers within the region; every Member State has to adhere and implement these rights into their national legislation in accordance with ASEAN Consensus. Fundamental rights and specific rights of migrant workers, the obligations of sending countries and receiving countries, and the commitment of Member States can be seen in the Consensus. In pointing out of fundamental and specific rights of migrant workers, non-discrimination, trade union membership, employment contract, right to file a complaint, right to get accommodation and social security rights have been given to the workers. Article 8 provides all the family members of the workers the right to reunify with the workers in the receiving countries. When they arrive and work at the receiving states, they have the right to free movement in accordance with the rules and regulations of receiving states.³⁷¹

All migrant workers have the rights not less favourable than the nationals of the receiving countries in the case of detaining and custody (Article 10). It has to be equal under the laws and regulations of the receiving countries (Articles 11, 19 and 42). Article

³⁶⁸ Sarah Huelser & Adam Heal, Moving Freely? Labour Mobility in ASEAN, ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE, 2014.

³⁶⁹ Worldometer, [https://www.worldometers.info/world-population/south-eastern-asia-population/\(12/10/2022\)](https://www.worldometers.info/world-population/south-eastern-asia-population/(12/10/2022))

³⁷⁰ Sarah Huelser & Adam Heal.

³⁷¹ ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and their Families, The ASEAN Secretariat Jakarta, Article 8. <https://asean.org/storage/2019/01/3.-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf> (10/10/2022)

15 gives the right to get fair treatment at the workplace. The receiving states have the responsibility to provide the migrant workers the fair treatment about the occupational safety and health protection, protection from violence and sexual harassment, and protection of gender and nationality at the workplace (Article 40). Article 17 also provides the right to get fair remuneration and benefit under the laws and regulations of the receiving countries, which means that all migrant workers have to be the same with the nationals. To get the fair remuneration, the receiving countries have to ensure that migrant workers have to get that right (Art 37). Migrant workers in ASEAN have also the right to join trade union and association of workers under Article 20. The receiving states also have to provide them the right to join trade union and association in accordance with Article 38. Moreover, before they work in the employment, they have the right to get employment contract together with the employer (Article 14). When the employers breach the contract or terminate them without any valid reason, they have the right to file a complaint to get the fair and just remedy (Articles 11, 19 and 14). On getting the employment, the employers have the responsibility to give the same accommodation as the nationals (Articles 16 and 19). According to Article 41, they have the right to get medical care and health care conditions under the laws and regulations of the receiving countries.

In reviewing ASEAN Consensus, it is clear that social security rights of the migrant workers, trade union rights and family reunification have not been provided specifically and exactly. The fundamental rights are neither perfect nor enough. In general, the right to life that they need essentially in their workplace is only stated. There is no regulation in the consensus about the regularization of irregular migrant workers or undocumented migrant workers, unlike like in the European Union. For the workers, social security rights are very important and essential rights not only at their workplace but also in the receiving states.

2018 ASEAN Declaration on Strengthening Social Protection is to give the ASEAN workers the social security rights. Article 1 state that everyone has the right to have equitable access to the social protection.³⁷² In accordance with this article, the workers also have the right to social protection. Under Article 5 and 11, Member States have the responsibility to implement it by providing in their national legislations. Moreover,

³⁷²ASEAN Declaration on Strengthening Social Protection and Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection, 2018, Article 1. [https://asean.org/asean-declaration-on-strengthening-social-protection/\(10/10/2022\)](https://asean.org/asean-declaration-on-strengthening-social-protection/(10/10/2022))

Member States have to promote multi-sectorial responsiveness of social protection by consulting, cooperating and sharing information between each other (Art 19). In addition, they have to assign the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) (Article 20).

4.2 Evaluation on the performances of the labour market policies in ASEAN

ASEAN labour market can be evaluated with the reference of the member countries' conducting and demanding shape on the workforce. Notwithstanding ASEAN labour market seems unchallenging for all the workers; for instance, Thailand and Malaysia give opportunities to all workers in an easy way, both in ASEAN and out of ASEAN. Ignatius Bintang Filial Dei Susilo and Dian Pujiatma Vera Subchanifa pointed two criteria in the ASEAN labour market; high skilled workers entitled to the rights and benefits facilitated and low skilled workers with the limited rights. Furthermore, three main characteristics meeting the role of ASEAN labour market policy are also mentioned, such as temporary workers, and low skilled workers as the international labour migration, government-to-government agreements, and the private recruitment agencies' competency upon the administration and responsibilities, which cause so many irregular migrant workers rising up within the region. On the other hand, ASEAN Forum on Migrant Labour entails in the implementation of the labour market policies depending on three themes, which are to detect firstly, the exploitation, discrimination and violence, secondly, to carry out the labour migration governance and thirdly, to combat the trafficking in person, despite of the weakness of the occupation on their accountability.³⁷³ With regard to the cooperation it is clear that it is possible to reduce the number of low skilled workers primarily by giving the effective training. Moreover, the workers' job opportunities should not be decreased although the low-skilled workers make the productivities affected in the condition of focusing on the export-orientation, but the skilled workers are always in large range of demand for the developed Member States to increase the economic competitiveness.

The labour market regulations do not adjust or balance the equal remuneration in the Member States, and do not sustain too different salaries unequally. Mita Adhisti exposed there is a high unequal income facing for ASEAN together with the ILO indicators, for

³⁷³ Ignatia Bintang Filia Dei Susilo and Dian Pujiatma Vera Subchanifa, *Ibid.*

instance, in comparison, in Singapore the highest average of income is \$3547 and in Cambodia the lowest average income is \$121. Six main countries that are with low skilled, Laos, Myanmar, Cambodia, Indonesia, Vietnam and Philippines, are lower income countries, and thus most of the migrating workers get incentives to earn higher salary in the higher income countries, as a kind of pull factor.³⁷⁴ It is not a big deal to show the income differences, however, the problem is that from the low-income countries people migrate to the high-income countries that no one can argue, and then the receiving countries may face the problems of crowds of migrant workers that gets hard to control and maintain.

The past economy system of ASEAN was like the command economy, such of that economy regulating and planning only by the government, and then moved to the market economy aiming to provide the intellectual capital in the reason of lack of necessary natural resources as the labour demands were mostly for the agricultural sector and later directing to the industrial and service sectors, a ground of the economic growth.³⁷⁵ Instead of basing on the natural resources that are rare material for the business and depending on the geographic line, the focus is being directed to the human resources to increase business. The labour norms and labour market system of some countries as the main destination countries, which have to accept the huge migration, are summarized in the following.

Singapore: Singaporean economic growth was the fastest range globally in the last three decades, which was that pivoting on the foreign manpower, a large part of the labour force, intending towards the low cost countries like India and China, which is why it persuades the low skilled workers into their economy basing the impetus of the production cost reduction, but as a side effect the local workers' wages impacted.³⁷⁶ The minimum working age is 15 years and from 16 years to 18 years for the young seafarers, it is not allowed to work more than 8 hours per day and 40 hours per week, furthermore, they get 1 hour for their mealtime and 15 minutes break every after 2 hours working continuously. Young workers have been offered and preferred to fill the unemployment gaps of the youth since the crisis, therefore, the Development Framework for Youth Workers places them in

³⁷⁴ Mita Adhisti, Free Movement of Skilled Labor within the Asean Economic Community, Economics Development Analysis Journal EDAJ 6 (2) (2017).

³⁷⁵ John Walsh, Labour Market Issues for the ASEAN Region, the 4th International Postgraduate Research Colloquium IPRC Proceedings, 2017.

³⁷⁶ Shandre Mugan Thangavelu, Labour Market Integration with the World: Case of Singapore, Journal of Economic Integration Vol.32 No.3, 2017.

seven sectors, case management and counselling, career coaching, social media in relationship management, outreach, family work, and school social work. If the employers do not give to the employees the real minimum wages, the Minister of Manpower supports them by giving the order to the employer, who can accept the result of the breach of the Employment law with the fine \$5000 or six months of imprisonment.³⁷⁷ Nonetheless the Work Pass (WP), which means a work permit, is purposed for the unskilled migrant workers. The Government also offers the unskilled workers into their economy in lieu of reducing the production cost, and employer for their workers as their duty applies the WP under the law of Singapore.³⁷⁸ Skilled foreign workers and semi-skilled workers mean the people who work as their professional skills or qualifications, technicians. Generally Singapore fills the migrant workers in the gaps of the physical working places, who are with the work permit and can earn under \$ 2000, most of the time in the construction companies, but with weak social rights.³⁷⁹ About the health care rights for the migrant workers, they are not entitled to the same right like the Singaporeans and permanent residence though they are awarded with the health insurance system.³⁸⁰

Consequently, the Singapore's labour market is divided into three types of migrant workers, skilled, semi-skilled or low skilled and unskilled workers. Depending on their status their rights in the labour market is different, and not all workers get the same rights like the nationals in the employment and outside. Singapore relies on the foreign labour to improve the economic competitiveness mainly, thus calling the foreign workers, skilled or unskilled, having benefits on different perspectives.

Thailand: Considering Thailand's labour migration, all migrant workers in formal sector and informal sector have to be accounted in the labour market, a segmented labour market, surely formal sectorial workers with higher wages and informal sectorial workers with lower wages due to their status of illegality.³⁸¹ Hence, undocumented migrant workers get worse salary in Thailand than earlier, owing to the Border States of Myanmar, Laos,

³⁷⁷ International Labour organization Youth Employment Policy Summary: Singapore, 2016. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_534104.pdf (10/10/2022)

³⁷⁸ Shandre Mugan Thangavelu, Economic Growth, and Foreign Workers in ASEAN and Singapore, 2011.

³⁷⁹ Junjia Ye, Labour Recruitment Practices and its class implications: A Comparative Analysis of Constructing Singapore's Segmented Labour Market, 2013.

³⁸⁰ Sapna P. Sadarangani, Poh Lian Lim and Shawn Vasoo, Infectious diseases and migrant worker health in Singapore: a receiving country's perspective, 2017.

³⁸¹ Worawan Chandoevrit, Labour Market Issues in Thailand, 2004.

and Cambodia and thus Maximilian March evaluated in 2018 in such a way affecting Thai economic growth. The problem is that even the Thai government allowed the irregular migrant workers in the registration, though in the current legislation, every migrant worker must have a work permit, and if they do not have, they will be taken action under the Royal Ordinance on Foreign Worker Management, which was implemented on 23, June 2017.³⁸² Normally, Thailand preferred the skilled labour from another member country due to the occasion that the national skilled workers migrated into Singapore, like doctors and technicians. On the other hand, the employers also want less bargaining with the labour union since they can give the great opportunities and protection to the skilled workers, who are mostly supporting their productivity and business. Therefore, the labour market is open not only regionally but also globally to maintain their economic competitiveness, such as China, Japan, US, UK and other EU countries for the sectors of medication, engineering, IT, accountant and others.³⁸³ In the labour market of Thailand the skilled workers are given great opportunities and big protection, it means that the government handles the labour market regulations by dividing it into the skill levels with different rights and opportunities, notwithstanding the irregular migrant worker issues are still being faced, which is difficult to handle mostly in the region because there are no strict rules for the Border States permitting the migrant workers without any valid document.

Malaysia: Before 1990s, the recruitment system for foreign workers was performed secretly, since there was no legal regulation for that sector. At that time the migrant workers needed to be filled in the plantations and construction areas, the salary could attract a mean of hard job and no local workers, although the low wages were not any attraction for the local workers, it could induce the less developed countries than Malaysia. Foreign workers inclusion into the labour force was higher than the Malaysians, which was declining from 81 % in 1990 to 73 % in 2010.³⁸⁴ Up to this point Malaysia offered work to the foreign workers in the sectors of agriculture, manufacturing and construction and the high demand is still being necessitated more than for the Malaysians, therefore, the local

³⁸² ROYAL ORDINANCE Concerning the Management of Employment of Foreign Workers, [https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf\(10/10/2022\)](https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf(10/10/2022))

³⁸³ Sujinda CHEMSRIPONGa, Skilled Labor Mobility in the ASEAN Economic Community (AEC): Experience from Thailand Labor Market, *Journal of Economics and Political Economy* Vol-3, 2016, 769-771.

³⁸⁴ Mohamed Marouani, Bjorn Nilsson and Mathis Wagner, *Foreign Workers in Malaysia: Labour Market and Firm Level Analysis*, 2015.

business economy depends on the foreign worker supply. Moreover, the workers' informal sectors are still increasing, under the Employment Statistics (DOSM). Moreover, low skilled workers and semi-skilled workers in the formal sector are increased; nonetheless, the compensation regarding the cases arisen from the employment is higher and fairer comparing to other ASEAN countries.³⁸⁵ Summary of Malaysia is short as Malaysia's economy is totally relying on the foreign workers; on the other hand, it attracts all the neighbouring countries where people get fewer wages, nowadays reducing the dependency on the foreign workers apparently by reviewing the Twelfth Malaysia Plan and runs both in the formal and in the informal sectors.

Brunei: Public departments are filled with the local workers but the private sectors with the migrant workers, in accordance with the Long Term Development Plan, such projects intend to improve and diversify the labour market policy.³⁸⁶ The labour market, which is open regionally and internationally for migrants, is served with the government regulations, issuing the work permit only for short term, which is necessary to be extended more and more, meaning that there is no long term residence permit for the migrant workers under the immigration policies of Brunei.³⁸⁷ In 2016, Foreign Worker License labour processing system was promulgated, providing the recruitment of foreign workers that the companies have to report the vacancies and the details to the government before calling the foreign workers, wrote by Shareen Han in the Scoop Journal. Through the local contractors, the foreign technicians were called, with the high skilled level, predominantly in the export-orientation industrialization program hanging on the foreign labour for their economic growth in view of the fact that it is a country with the least population and demanding to the work force.³⁸⁸ The labour market system of Brunei is controversial, the foreign workers influence the private departments with the skilled level in the different

³⁸⁵ Shaftbury Asteria, Labour Market Strategic: Twelfth Malaysia Plan (2021-2015), 2019. https://www.ilmia.gov.my/images/newsandevents/PersidanganSumberManusia2019/PEMBENTANG_2.pdf (10/10/2022)

³⁸⁶ International Labour Organization, Revision and Enhancement of the Labour Market Data Sources: Towards Setting Up the Labour Market Information System in Brunei Darussalam, . https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_372779.pdf (10/10/2022)

³⁸⁷ Lutfi Abdul Razak, Brunei Darussalam's Labour Market: Issues and Challenges, CSPA Strategy and Policy Journal, Volume 3,2011.

³⁸⁸ Hairuni Haji Mohamed Ali Maricar, MIGRATION, DEVELOPMENT AND SEGMENTATION OF WORKERS IN BRUNEI DARUSSALAM, 2017.

sectors of the economy, and the local workers cannot enter the private sector in the labour market because they do not have the qualifications and experiences in the private sector. Working only in the public sector, all workers are due to the diversification of the economy of the Brunei government, which needs and targets to get the labour force for the economic growth compared to the possibilities of the private sector. Indonesia: The Manpower Law was provided in 2003 with the reasons of increasing the cost of the hiring and firing the workers, it is a kind of contract in that the management of the wage is mostly controversial, then doing the promoting of the cost of the hiring and firing the workers that causes the Indonesia's labour market policies are the most restrictive in ASEAN,³⁸⁹ but in lieu of the law it is the highest rate of severance pay for the workers globally. Hence, the labour market regulation is generally flexible leading to the low contribution to the social security system. Principally Indonesia seems standing as the sending countries of migration, as the third lowest rate of immigrants in ASEAN, but a few migrant workers are not required to have the work permit and just the notification to the government department.³⁹⁰ Virtually Indonesia is the main country that is sending the migrant workers but not standing as a receiving country as it has just a few migrant workers from foreign countries that are not from ASEAN countries.

International Labour Migration Statistics 2016 states that the population of migrant workers of nationals and from abroad are the following: Vietnam received 25600 migrant workers, the Philippines work with 6300 migrant worker, Cambodia with 69600 migrant workers, Myanmar with zero, Malaysia with 1747100 workers, Laos with 14600 migrant workers, Indonesia with 44900 migrant workers, Brunei with 32200 migrant workers, Singapore with 2323300 migrant workers and Thailand with 3618400 migrant workers respectively in 2015. The statistical data for the sending national workers to the region ASEAN are 95000 national workers from Vietnam, 449300 national workers from The Philippines, 1982700 national workers from Myanmar, 1056800 national workers from Malaysia, 931000 national workers from Laos, 1241800 national workers from Indonesia, 771100 national workers from Cambodia, 1200 national workers from Brunei, 68800 national workers from Singapore and 190400 national workers from Thailand

³⁸⁹ Dionisius Narjoko and Chandra Tri Putra, Industrialization, globalization, and labor market regime in Indonesia, *Journal of the Asia Pacific Economy* Vol-3, 2015.

³⁹⁰ Fitch Solution, Indonesia Labor Market Risk Report, 2021.

respectively.³⁹¹ The statistics mentioned above reflect that Singapore, Thailand, Brunei and Malaysia are the principal countries, which mostly received the migrant workers from the region, but the other countries, Myanmar, Laos, Indonesia, Cambodia, Philippines and Vietnam as the main sending countries. Therefore, the last part of this chapter will show the protection of the rights of the migrant workers from Myanmar, Laos, Indonesia, Cambodia, Philippines, and Vietnam of the ASEAN.

The regulations of the labour market of ASEAN Member States generally are reviewed with the comments of weak labour market policies and the defeated handling on the case of irregular migrant workers, except Singapore. In comparing to EU policies of the labour market, the same free movement can be seen, nevertheless, the regional workers do not get the same rights, for instance, ASEAN workers still need the work permit for working in another Member State, and they do not get the same rights like the nationals similarly to EU countries' policies. Once the regional organisation has been formed, the same rights and protection should be given to the migrant workers regionally. Furthermore, ASEAN main receiving countries do not discriminate on the third country nationals working in the region.

4.3 Substantial right to free association as part of the trade union proceedings

Concerning the trade union' rights, it is important that there is an organisation that composes of civil society organisations, trade union, and migrant worker associations. Besides, there is ASEAN Trade Union Council that was established with 18 national labour centres except Brunei. The Council especially serves for the collective bargaining of workers.³⁹² In case of trade union rights of the migrant workers in ASEAN primarily ASEAN Trade Union Council (ATUC) is the vital movement for the affairs of the freedom of association, with the membership of 9 countries and 18 national trade union, serving under the guidance of International Labour organization (ILO) and ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and Their Families.³⁹³

³⁹¹ International Labour organization, Migration in ASEAN in figures: The International Labour Migration Statistics (ILMS) Database in ASEAN, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_420203.pdf (10/10/2022)

³⁹² ASEAN Trade Union Council, <http://aseantuc.org/> (10/10/2022)

³⁹³ ASEAN Trade Union Council, Realizing the Rights of Migrant Workers to Join Trade Union, https://r.search.yahoo.com/_ylt=AwrIdF7T0B1iUWIANxgM34IQ;_ylu=Y29sbwNpcjIEcG9zAzEEdnRpZA

ASEAN Consensus entails the right to organize among migrant workers in the receiving states. There is Task Force on ASEAN Migrant Workers (TF-AMW), which was founded in Singapore in April 2006 with the ASEAN Member States, endeavouring for the trade union of the Member States based on the rights of migrant workers under the ASEAN Declaration on the Protection and Promoting of the Rights of the Migrant Workers and Their Families, holding the meeting or workshop very often within the regions in the consultation with the leaders of the affairs.³⁹⁴ Furthermore, ASEAN Triangle Project is going on working on the trade union of the sending and the receiving countries not to lose the rights of the migrant workers in ASEAN region; on the other hand, ATUC has collaboration with it in the case of trade union.³⁹⁵ ASEAN Services Employees Trade Union Council (ASETUC) was formed by three Global Union Federations (GUFs): Union Network International Asia-Pacific Regional Office (UNI-Apron), Building and Wood Workers International Asia-Pacific (BWI-AP) and Public Service International Asia-Pacific (PSI-AP), for the cooperation of the association power improvement, with the aim of trade union rights implementation, therefore, the trade union federations of seven ASEAN countries, except Brunei, Laos and Myanmar, affiliated to the GUFs, especially focused on ASEAN project and objectives, holding a regular social dialogue with ASEAN organs and bodies as an effective way for the effort of the protection of the rights of trade union for the migrant workers within ASEAN.³⁹⁶ The movement and machinery mentioned above is that some organisations and projects are trying to protect the rights of trade union of the migrant workers in ASEAN from their sides. Furthermore, ASEAN is making an effort to get an effective and beneficial way to make advancement in the case of workers' rights.

One more way is bilateral agreement for the trade union projects between the sending countries and the receiving countries. Regarding this factor, each single state's rules and regulations of their national labour law are necessary to be shown and mentioned. Therefore, the ASEAN Member States' trade union organisation and rules are described in

[MEc2VjA3Ny/RV=2/RE=1646149971/RO=10/RU=http%3a%2f%2faseantuc.org%2fwp-content%2fuploads%2f2014%2f12%2frealizing-rights-of-migrant-workers-to-join-trade-unions-online.pdf/RK=2/RS=G6lgiGYOL7fIXqZ.NHL91R_ddkE- \(10/10/2022\)](http://www.aseantuc.org/wp-content/uploads/2014/12/realizing-rights-of-migrant-workers-to-join-trade-unions-online.pdf/RK=2/RS=G6lgiGYOL7fIXqZ.NHL91R_ddkE- (10/10/2022))

³⁹⁴ Task Force for ASEAN Migrant Workers ASEAN Civil Society organisations (CSOs)-Trade Union Consultation and Promotion of the Rights of Migrant Workers 12 May 2007, Jakarta, Indonesia.

³⁹⁵ International Labor organisation, Good Practices on the Role of Trade Union in Protecting and promoting the rights of Migrant Workers in ASIA, 2015-2016.

³⁹⁶ MELISA R. SERRANO, Trade Union in Transformation Institutionalizing Labour's Voice in ASEAN: The ASETUC Initiative, 2017.

the following paragraphs, although the receiving states are more important in the issue of trade union membership and the right to get freedom of association between the workers.

An Asian lawyer prescribed in the overview of the Singapore Labour Law: “Trade union is quite rare. Furthermore, the rights of trade union are considerably restricted, and the rights to strike and employ collective bargaining are also considerably restricted. From this perspective, it could be said also that Singapore is a jurisdiction where companies can manage their employees extremely easily.” However, under Trade Union Act (1985 in the revised year), all workers have the right to be a member of a registered trade union, which has to be registered in conformity with the processes of the Act. The Trade Union Act is generally for the formation of trade unions and for the registration of trade unions, but no inclusion of collective bargaining. The collective agreements and negotiations between employers and workers are provided for in the Singaporean Industrial Relations Act, which enacts that all workers can get collective bargaining rights and invites employers to negotiate excepts the promotion, the transfer, the vacancy, the termination, the dismissals and the duties of the workers in terms of his employment in accordance with Art-18 and Art-25 of the Industrial Relations Act.³⁹⁷ The rules of industrial action and lockout relating to the workers are regulated in the Trade Dispute Act (Cap 331), but for the strike rights of the workers, Part III the Criminal Law (Temporary Provisions). Act (Cap 67) provides the prevention of strikes and lockouts in the essential services. Besides, according to the Singapore Labour Foundation Act (Cap 302), the workers have to give the entrance fee and annual subscription, which is to improve the trade union movement and the welfare of trade union members and their families.³⁹⁸ Monitoring Singapore trade union rights, right to organise and the collective bargaining rights are provided but with some exceptions including the duties of the workers in terms of the employment, termination and dismissals. In the affairs of unfair termination, unfair dismissals and unfair duties, the workers should also get the right to negotiate to get the collective agreements. On the other hand, the right to strike has been restricted. Singapore trade union rights might be monitored as non-powerful and non-flexible provisions for all the workers.

³⁹⁷ Industrial Relations Act 1960, The Statute of Republic of Singapore, 2020 revised edition, <file:///C:/Users/DELL/Downloads/Industrial%20Relations%20Act%201960.pdf> (10/10/2022)

³⁹⁸ Ministry of Manpower, <https://www.mom.gov.sg/employment-practices/trade-unions/about-trade-unions> (10/10/2022)

Thailand's government gives the right to freedom of association under the national laws, the Constitution, the Civil and Commercial Code, the Labour Relations Act B.E.2518 (1975) and the State Enterprise Labour Relations Act B.E. 2543 (2000). Section 42 of the Constitution mentions the freedom of association and the right to join trade union; "A person shall enjoy the liberty to unite and form an association, co-operative, union, organisation, community, or any other group"³⁹⁹. But every association is required to be registered under the guidance of the Civil and Commercial Code, in the case of rights to organize, the Labour Relations Act B.E. 2518 (1975) and the State Enterprise Labour Relations Act B.E. 2543 (2000) provide only to the private sector workers and self-enterprise people. Nevertheless, not to the workers in the agricultural and informal sector, the civil servants and the government employees who do not have the right to the freedom of association, therefore, 1408 private trade union is still running for the affairs of the member workers.⁴⁰⁰ Section 113 of Labour Relations Act 1975 provides the entitlement for the trade union to set up the federal union with two or more union to make the relationship better between the labour unions. In practise, the workers from the informal sectors are organised but with not much bargaining power, on the other hand, the migrant workers have the right to join the existing trade union in spite of not having the right to organize because they are not the national workers in Thailand, however, the migrant workers are rare to join the existing trade union; as the result of the cause, they do not get the developed working conditions in the employment.⁴⁰¹ Furthermore, SERC that was established by the eight public enterprise-based unions in 1980 leads to work to the migrant workers' greater protection by cooperating with the Thai Labour Solidarity Committee and NGOs.⁴⁰² The MOU signatories are made together with Cambodian trade union. In contrast, the private workers are entitled to form the association and join the trade union, but the migrant workers can only join the existing trade union without getting the freedom of association. Hence, migrant workers look like the vulnerable people who cannot get the better working

³⁹⁹ The Constitution of the Kingdom of Thailand, Section 42, [https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+\(B.E.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+(B.E.+2560+(2017)).pdf) (10/10/2022)

⁴⁰⁰ Sutharee Wannasiri, Freedom of association in Thailand: an assessment of the enabling environment for civil society, 2020.

⁴⁰¹ SAKDINA CHATRAKUL NA AYUDHYA, The Thai Labour Movement: Strength through Unity Challenges and Recommendations, 2010.

⁴⁰² Eliza Marks and Anna Olsen, The Role of Trade Union in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion, 2015.

conditions, at least they should have the right to organize and have better working conditions if they are regular migrant workers. Thailand is one of the regional countries, which is collaborating with the bilateral agreements of the other Member States.

Brunei Darussalam is one of the net receiving countries of the migrant workers within the region, with three trade unions under Chapter 128 Trade Union Act (No.5 of 1961), but not affiliating to the International Trade Union Bodies without the agreement of the Government, unfortunately the national Labour Laws in Brunei, which deal only with the national workers, and have no binding on the migrant workers and then they have no right to be members in any trade union.⁴⁰³ The summary of trade union rights for migrant workers in Brunei Darussalam is simple since there are no trade union rights for the migrants, thus, they do not have the enjoyment of the freedom of association, the collective bargaining rights and right to strike whenever they are facing discrimination, or weak working conditions.

In Malaysia, trade union rights can be entitled to all workers entailing the migrant workers under Trade Union Act 1959, in the right to strike with two –thirds of the members in the union, therefore, migrant workers also have the right to join trade union. For instance, the ILO statistics in 2010 show the rate of joining of the migrants from Laos, which was the highest rate 15.5%, in Vietnam and Thailand. Malaysian Trade Union Congress (MTUC) mainly works where the migrant workers can join the trade union and demand their infringed rights, for example, the employers usually withhold the official documents of the migrant workers, because of the unionization of the migrant workers is a key point of MTUC, which has a bilateral agreement with other foreign countries to get an agreements of the collective bargaining in the case of migrant affairs, such as Vietnam Federal Confederation of Labour (VFCL) by signing in 2015⁴⁰⁴ In summary the Malaysian law permits the foreign workers to join trade union, in practise, the MTUC is endeavouring the fair protection of all workers entailing migrant workers and, in some tries it makes effort with the bilateral agreements to implement the protection of the workers.

In the net receiving countries of migrants as in Singapore, Malaysia, Brunei and Thailand trade union policies are diverse based on their national legislations, among them,

⁴⁰³ Annual Survey of Violation of Trade Union, <https://unhcrsurveys.wordpress.com/category/brunei-darussalam/> (10/10/2022)

⁴⁰⁴ Eliza Marks and Anna Olsen, Ibid.

Brunei does not give the trade union rights to the workers, Singaporean employers are influencing the worker's right in trade union, Thailand and Malaysia are trying to give the trade union rights to all workers under their national laws and bilateral agreements though some migrant workers are still in lack of collective bargaining through the union. The other ASEAN countries have not been shown by virtue of the net sending countries, because labour migration case is only relating to the rules of the receiving countries.

4.4 ASEAN challenges struggling against the irregular workers and their resolution

ASEAN countries are facing mainly the irregular or undocumented migrant workers working in the informal employment, coming from the Border States to work there, but mostly working in the informal sector. All the governments are solving these issues through bilateral agreements or send the undocumented migrant workers back to their origin countries. Nevertheless, Bangkok Declaration on Irregular Migration with Australia, Bangladesh, China, Japan, Republic of Korea, New Zealand, Papua New Guinea, Sri Lanka and Hong Kong, initiated the ASEAN leaders to target greatly on the irregular migrant workers issue, to behave fairly and humanely. Before the Declaration the Cebu Declaration was started by signing in 2007 in the three components: ASEAN Committee on the Implementation of ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, a group of experts and ASEAN Forum on Migrant Labour (AFML), then finally goaled to get the ASEAN Consensus on the Protection and Promotion of Migrant Workers.⁴⁰⁵ Then ASEAN Committee on Migrant Workers carries on processing the affairs of migrant workers, in its third meeting one of their discussions relating to “cover undocumented or irregular migrants”.⁴⁰⁶ About the undocumented migrant workers the integration will be made in the case of the humanitarian reasons under Article 56 of ASEAN Consensus, it mentions that “for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently

⁴⁰⁵ Thuy Duong Nguyen, ASEAN's Efforts, and Limitations on Protecting Migrant Workers' Rights: In Search of Solutions through the Lens of Regulatory Regionalism, 2020.

⁴⁰⁶ Human Rights in ASEAN, [https://humanrightsinasean.info/mechanism/asean-committee-on-migrant-workers/#:~:text=Bangkok%20Declaration%20on%20Irregular%20Migration%20%281999%29%3A%20ASEAN%20Member.and%20taking%20steps%20to%20prevent%20trafficking%20in%20persons.%20\(10/10/2022\)](https://humanrightsinasean.info/mechanism/asean-committee-on-migrant-workers/#:~:text=Bangkok%20Declaration%20on%20Irregular%20Migration%20%281999%29%3A%20ASEAN%20Member.and%20taking%20steps%20to%20prevent%20trafficking%20in%20persons.%20(10/10/2022))

become undocumented”⁴⁰⁷. Furthermore, there is no chance to change their status with the regularization from the undocumented status. Thuy Duong Nguyen reviews ASEAN concept upon the migrant workers protection that due to their concern on their sovereignty and stipulating the migrant workers as the national security issue, human rights based approach is not productive, and their performances on the protection of migrant workers are weak among Asian organisations.⁴⁰⁸ Eventually, regional integration is being processed focusing on the irregular migrant workers within ASEAN regions, however, the effective ways cannot be found in the event of hunting and basing on the national sovereignty and viewing the migrant workers as their national security concern.

In accordance with ASEAN Consensus, the main goal is to protect the rights of irregular migrant workers that is totally relating to the national policies of the receiving countries; those laws normally caused the regular workers changed into irregular status if they are dismissed from the employers or change to another employment. Salawati Mat Baser argues that the cause of irregular migrant workers occurs because of strict rules or difficult employment in the host countries.⁴⁰⁹ It is notable that the diverse regulations of the Member States are hard to compound for the regional regulations, despite of the fact that the regional policies and declarations are established, which are not legally binding and cannot affect the Member States and that make the national policies depending on their sovereignty once the norms of the ASEAN include the non-interference in the internal affairs of another Member State and the respect of the sovereignty. Notwithstanding anything, the regional policies are not affecting to the national policies of the host countries (Singapore, Thailand and Malaysia that have 10 million migrant workers under the ASEAN Post Journal on January 2020⁴¹⁰) ASEAN Intra-migration was gone ahead with the Vientiane Action Programme in 2004, through it ASEAN Committee for the Declaration of the Promotion and the Protection of the Rights of Migrant Workers could be built up, that created the drafting team with Malaysia, Thailand, Philippines and Indonesia, with three

⁴⁰⁷ ASEAN Consensus on the Protection and Promotion of the Rights of the Migrant Workers and their Families, Article 56, <https://asean.org/wp-content/uploads/2018/03/3.-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf> (10/10/2022)

⁴⁰⁸ Thuy Duong Nguyen, *Ibid.*

⁴⁰⁹ Salawati Mat Baser, *IRREGULAR MIGRATIONS IN SOUTHEAST ASIA: CHALLENGES FOR PROTECTION AND MIGRATION POLICY*, 2020.

⁴¹⁰ The ASEAN Post, January 2021, <https://theaseanpost.com/article/aseans-migrant-worker-clusters> (10/10/2022)

meetings in 2009, despite the controversies upon three issues including the instrument covering the irregular migrant workers. Then there was an extended year for the consultation of the drafting team but they could not resolve the issues.⁴¹¹ The key ASEAN dispute on the case of migrant workers causes the irregular migrant workers' right weakened and are unsafe even in the fundamental human rights due to the reason of non-interference in the affairs of the national sovereignty. Only the national policies and legislation have influence on the protection of the rights of the workers; if the national laws have not protected the infringement of their rights, they are still weak in getting their rights in the destinations. Otherwise, there is a way to solve the issues of the migrant workers among the Member States, that is the Memoranda of Understanding (Moue) that are accepted in Cambodia, Thailand, Vietnam and Malaysia, Indonesia-Malaysia, Laos-Thailand and Vietnam, Myanmar-Thailand, Philippines-Indonesia and Laos; they all are for the prevention of the trafficking in person mostly.⁴¹²

The complexity of the irregular migrant workers in ASEAN is not a small deal to find out the trajectories, which is due to the weak cooperation of the regional performances. Thus, each host country makes an effort enacting national laws or policies, such as Malaysia deported 30% of irregular migrant workers in their history in spite of knowing that it will happen again. Then going in accordance with the way of biometric, which also causes the surge of irregular migrant workers on the same level of regular workers and finally it is in accordance with the cooperation of the sending countries. Thailand contributed to the legalization of the irregular status that means that the irregular migrant workers were allowed to do registration but they received the hard implementation because of some troubles comprising the employers' unwillingness to give the registration fees.⁴¹³

47% of the population in Singapore is foreign-born people, among them 30% of temporary migrant workers and 4% of illegal migrant workers.⁴¹⁴ For the labour migration in Singapore, there are three main laws relating to the migrant workers: the Immigration Law that articulates the violation of the immigration laws upon the employers and

⁴¹¹ Charanpal S. Bal and Kelly Gerard, ASEAN's governance of migrant worker rights, 2017.

⁴¹² Laura Allison-Reumann, Integrating ASEAN in Labor Migration Policy: From Disjointed to Complementary Actor, 2017.

⁴¹³ Aniceto Orbeta, Jr. and Kathrina Gonzales, Managing International Labour Migration in ASEAN: Themes from a Six-Country Study, 2013.

⁴¹⁴ Alex Nowrasteh, Singapore's Immigration System: Past, Present, and Future, 2018.

unauthorized migrant workers, Employment for Foreign Workers' Act that is setting the conditions of the migrant workers' employment with the official permission cards, and the Penal Code associated with the non-payment and the physical abuse of workers. These laws are just for the skilled and low skilled migrant workers but not for the domestic workers who are not getting the protection and coverage of the laws in Singapore, nevertheless, a standard employment contract with the employment regulations for the domestic workers, regardless of different nationality.⁴¹⁵ This means that with those three laws the irregular migrant workers are prohibited and there are no provisions to protect and to legalize them in other ways in Singapore. The domestic migrant workers' rights are predominantly weak in a situation comparing to the migrant workers, a type of minority group in Singapore. Singapore seems to be able to control and manage the prevention of the irregular migrant workers' entering in comparing to Thailand and Malaysia, which get full of irregular migrant workers issue.

Malaysia is also one of the main destination countries in ASEAN; that is why the economy of Malaysia relies on the migrant labour since it changed from labour exporter to labour importer, and their domestic labour force growth rate is higher than that of the other member countries. Especially, the low skilled migrant workers are in a fragile condition with being more likely to become illegal migrants with respect of Malaysia's weak governance and harsh restrictions.⁴¹⁶ Malaysia has the regularization and amnesty system for all the irregular migrant workers.⁴¹⁷ Amnesty was effective and gave pleasure to both the sending and the receiving countries, which was made with the regulated duration and then the workers had to return to their home country and enter Malaysia with the legal ways back, but accepted all the irregular migrant workers with the amnesty program in the condition of the legal entry or legal workers by entering the country. Regularization program was firstly tested with the Indonesian workers by giving opportunities to be legalized, but according to most criticism, the government tried to control and reduce the number of the irregular workers with the enactment of the harsh approaches. Moreover,

⁴¹⁵ Amarjit Kaur, Labour migration trends and policy challenges in Southeast Asia, 2010, page 389-390, ISSN: 1449-4035 (Print) 1839-3373 (Online) Journal homepage: [https://www.tandfonline.com/loi/rpas20\(10/10/2022\)](https://www.tandfonline.com/loi/rpas20(10/10/2022))

⁴¹⁶ Amarjit Kaur, Ibid.

⁴¹⁷ Azizah Kassim and Ragayah Haji Mat Zin, Policy on Irregular Migrants in Malaysia: An Analysis of its Implementation and Effectiveness, DISCUSSION PAPER SERIES NO. 2011-34, 2011, <https://dirp4.pids.gov.ph/ris/dps/pidsdps1134.pdf> (10/10/2022)

Malaysia is one of the countries in cooperating to the bilateral agreement with the sending countries with respect of irregular migrant workers' issue, for instance, with Indonesia which is predominantly influenced by the Indonesia workers.⁴¹⁸ The Malay government tried to resolve the problems of irregular migration in different ways including the legalization programs, which means that the government does not want the workers faced the deportation and infringed of their human rights, however, it is a way of respect of the social affairs with the sending countries. However, Malaysia has not controlled the irregular migration and is trying hard to disappear this problem, compared to Singapore, which implements their national legislations and the real punishment of the employers.

Thailand's government utilized the way of MOU agreement with the sending states, namely, Cambodia, Laos and Myanmar, however, it didn't work due to the complicated procedures, and then the agreements have been added some technique for providing the better resolution including the regularization system, according to which the undocumented migrant workers are allowed to enter the country and to work in the easy registration process. Therefore, there are 2,323,124 registered migrant workers in 2020 because of the effective regularization system for all the migrant workers.⁴¹⁹ Thailand's government regularization process can be seen as it is working for all the irregular migrant workers and for the economic growth of the country; furthermore, it can establish the social cooperation between the host and original states.

As mentioned above, the weakness of ASEAN Consensus is that it does not include the full rights of social security. Even legal migrant workers cannot get the right to social security fully. Therefore, undocumented migrant workers are in the worst situation in getting the fundamental social security rights like medical care or sickness benefits. Some social security laws might exclude them with the reason of non-nationals. It is closely related to the previous point that the broader issue that migrant workers whose employment contract has ended often have to leave the destination country within a short period. Even though the migrant workers are regular, they receive the different treatment in social security terms in comparing to the nationals. The main ASEAN countries, Brunei

⁴¹⁸ Choo Chin Low, IRREGULAR MIGRATION AND IMMIGRANT LEGALISATION IN MALAYSIA, 8th International Conference on Multidisciplinary Research, 2019.

⁴¹⁹ International Labor organisation, TRIANGLE in ASEAN Quarterly Briefing Note, 2021, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_735108.pdf (10/10/2022)

Darussalam, Malaysia, Singapore and Thailand have reduced for migrant workers the public healthcare facilities.⁴²⁰ Another problem concerns the recruitment of agencies and agents. There are so many agencies and agents to recruit the workers for the employers who need the cheap workers and pay the low wages. Some agencies are not legal, but they are cheap to pay the fees and costs for the workers. Therefore, migrant workers always make a choice to migrate with a low-paid agency. Some illegal agents that are committing the criminalization like trafficking in persons, smuggler of persons, exploitation abuses, etc. Trafficking in persons can often be faced by ASEAN due to entering another Member State illegally and because of poverty. ASEAN also has faced the issues of trafficking in persons for a long time. Nowadays, this crisis could be reduced significantly. Some imitated agencies are trying to collect the people for the sector of the sexual exploitation from the non-developed countries once the labour demand in the labour market cannot be filled up with the national workers and the recruitment agencies can find the cheap foreign workers without any difficulty by inducing the workers with the wrong information. Moreover, the discrimination between men and women still exists in ASEAN relating to the remuneration and job opportunities.

4.5 Summary of the Analysis on the Policies of Labour Migration in ASEAN

ASEAN includes countries that cooperate within social, economic, cultural and educational issues. After establishing ASEAN, the initiated activities of ASEAN started with ACRCs (ASEAN Conference on Reforms in the Civil Service). It is trying to promote the role of civil service in contributing to the development of the three pillars of the ASEAN community, namely, political and security, economic and socio-cultural. There are two kinds of migration, for working and for living. Within ASEAN, migration for working is so popular that labour mobility rate is growing each year. Hence, when the member citizens migrate to another state, they have mostly a reason of finding a job and working there. So many people migrate to work within the region. Nevertheless, some people migrate for the reason they get education and professional courses. In addition, some have a reason to meet their families who are already working there.

⁴²⁰ Marius Olivier, Prof., Social protection for migrant workers in ASEAN: Developments, challenges, and prospects, ILO, 2018, [https://www.social-protection.org/gimi/ResourcePDF.action?id=55654\(10/10/2022\)](https://www.social-protection.org/gimi/ResourcePDF.action?id=55654(10/10/2022))

ASEAN Consensus on the Protection and Promotion of Rights of Migrant Workers and Their Families and ASEAN Declaration on Strengthening Social Protection are the vital protocols for the rights of migrant workers. The Consensus does not seem to be perfect; neither does the great convention for the protection of their rights. Full fundamental or basic rights cannot be seen in the ASEAN Consensus. Member States solve their illegal migration problems with bilateral agreements or multilateral agreements and by holding meetings and conferences. Therefore, the issues of labour migration in ASEAN are also relating to large undocumented population, fake agencies and agents, low wage and long working hours. In the collaboration of the labour migration among Member States, the workers still feel discrimination while the governments discuss the undocumented migrant workers. ASEAN has been making effort in the event of the protection of the fundamental rights of the irregular migrant workers since the foundation of the organisation, but there are still defeats in the implementation of the protection. ASEAN Forum on Migrant Labour annually calls the Member States to negotiate the problems. It can be said that it is a platform for the collective bargaining. However, the negotiations can be served only once a year. For the growth of the economic integration, undocumented migrant workers should be given the chance to change their status and ASEAN should have the policy and rules to change regularization.

Finally, ASEAN is a strong organisation and actively performs for the stability of the peace and regional integration. During 53 years of the cooperation of ASEAN, the Member States can cooperate in the cases of human trafficking and reduce the number of cases. The integration of the region is weak because of non-interference of the politics and the sovereignty. However, ASEAN Member States need to manage the flows of undocumented workers entering the neighbouring states under the rule of law. By doing this they can control the population of illegal workers.

It is clear that ASEAN is facing the problems of the illegal migration and trying to reduce the number of the illegal or undocumented migrant workers. But ASEAN protection for migrant workers is still lack of effectiveness because there are only two main agreements for the protection of the fundamental rights of the migrant workers. ASEAN Consensus cannot give the effective basic rights. Social security rights are the main fundamental rights that all the workers should have to get at their workplace and in the

receiving countries. ASEAN Declaration on strengthening social protection is desirable for all kinds of people including migrant workers within ASEAN. Neither can the Declaration state what kind of social security rights the workers are entitled. Under the Declaration all Member States need to collaborate and enact the social protection in their national legislations. Therefore, ASEAN Consensus and ASEAN Declaration do not show the details of the rights for migrant workers.

Associating with the illegal migrant workers, the Heads of the ASEAN governments proceed in the bilateral agreements or multilateral agreements to make a solution. Virtually their decisions are to send the illegal workers to their origin countries. There is no regularization system that gives the illegal workers to change their status. In EU and America regularization system is official and useful. Furthermore, the system causes the complicated issues of labour migration to be decreased and their productivity increased.

For trade union rights, ASEAN Trade Union Council and Task Force for ASEAN Migrant Workers have not shown the way to participate and to join the trade union. All the workers should know how they can join, what kind of benefits they will get and that their fundamental rights are. Although ASEAN is a sustainable and developed organisation, conventions that are more effective or declarations still need to be promulgated.

4.6 An approach to Thailand in the case of labour migration

Thailand is a wealthy and developed country based on the manufacturing, gets involved in the main destination countries within the region, accepting the migrant workers mostly from Cambodia, Laos and Myanmar, thus it is a state in which the economic growth depends on the migrant labour. Half of the migrant workers from ASEAN members are permitted to work due to the following causes: the country's structural transformation from the agricultural economy to the industry base, the non-restriction of the border controls and the increasing income disparities between Thailand and the sending states. Normally seven administrative sub-regions, Bangkok and Vicinities, Central, Western, Eastern, Southern, Northern and the North-Eastern regions, but Bangkok and Vicinities, Eastern, and Southern regions are the main spaces of the migration from the foreign countries (80%) and the other sub regions with low labour migration by virtue of their poor economic situation.⁴²¹ Since

⁴²¹ Katikar Tipayalai, Impact of international labor migration on regional economic growth in Thailand, Tipayalai Economic Structures, 2020.

World War II, the migration laws have been implemented to control the migrant workers from the neighbouring countries, namely, in 1950s there are the Alien Registration Act and the Immigration Act describing the types of migrant workers, being revised several times. Then the Cabinet was built with the members to handle the disputes of the workers, especially the low skilled workers' issues, for whom the government permitted first to work within the country in 1992. Then a surge of low skilled migrant workers had to be received from the neighbouring countries, Cambodia, Laos, Myanmar and Vietnam, though the local Thai workers criticized the acceptance of the migrant workers and according to 64% of 1000 local workers the migrant workers should not be given the high wages. Nevertheless, the government promulgated the non-discrimination in 2016 the Constitution and 2015 Thailand's Gender Discrimination Act.⁴²² Thailand joined the ASEAN Economic Community in 2015, then it started the free labour movement for other Member States with the free labour movement according to their labour shortage within the country, differentiating the workers of Thailand including the local workers who are two kinds of workers; professionals and skilled workers from the Philippines (55%), Malaysia and Singapore, and low- and semi-skilled workers from Cambodia, Laos and Myanmar.⁴²³

Nowadays the legislations relating to the migrant workers in Thailand are the Alien Working Act, B.E. 2551 (2008), the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Labour Protection Act (Second), B.E. 2551, Immigration Act, Employment and Job Seeker Protection Act, B.E. 2528 (1985), the Royal Decree on Managing the Work of Foreigners (No.2), B.E. 2561.⁴²⁴

The above-mentioned laws are the concerned laws for the migrant workers, regardless of regular or irregular, and some ministerial regulations have been stated in the case of tackling of the migrant workers coming from the neighbouring countries, Myanmar, Cambodia and Laos. Nevertheless, the other laws except for the above laws are not concerned with them despite the labour laws and regulations in Thailand have been provided, as they are; Act Establishing the Labour Court and Labour Court Procedure B.E.

⁴²² Ruttija Bhula, Migration, and sustainable development in Thailand, 2019.

⁴²³ Sujinda CHEMSRIPONGa, Skilled Labor Mobility in the ASEAN Economic Community (AEC): Experience from Thailand Labor Market, JEPE, 3(4), S. Chemsripong, 2016.

⁴²⁴ Luther Rechtsanwalts-gesellschaft, Memo: Employment Law in Thailand, 2021 and Yongyuth Chalamwong and Raphaella Prugsamat, THE ECONOMIC ROLE OF MIGRATION Labor Migration in Thailand: Recent Trends and Implications for Development, TDRI Quarterly Review, 2009.

2522 (1979), Labour Relations Act B.E. 2518 (1975), Occupational Safety, Health and Environment Act B.E. 2544 (2001), Provident Fund Act B.E. 2530 (1987), Skills Development Promotion Act B.E. 2545 (2002), Social Security Act B.E. 2533 (1990), Thai Civil and Commercial Code B.E. 2535 (1992), Workmen's Compensation Act B.E. 2537 (1994), and Further sector-specific laws contain labour regulations.⁴²⁵ Foreign workers look deprived of the full rights given by all the labour laws in comparison to native Thai workers as all the national labour legislations are totally applied only to the national workers.

The Alien Working Act, B.E. 2551 was promulgated in 2008, by repealing the Alien Working Act, B.E. 2521 and the Alien Working Act, (No.2), B.E. 2544, providing the processes of applying for work permit and about the repatriation fund after the deportation.⁴²⁶ But The Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E. 2560 (2017) repealed the Alien Working Act, B.E. 2551 (2008) and the Royal Ordinance concerning the Bringing of Foreigners for working with employers in the country, B.E., 2559 (2016), and provides for the migrant workers how to get work permit, work permit process and the foreigner Repatriation Fund.⁴²⁷ The Labour Protection Act, B.E. 2551, 2008 substituted the Labour Protection Act 1998, relevant to all workers in Thailand and provides the equality in employment, salary or payment, the termination of work contract, working hours and compensation, leaves and holidays, employment of women, child labour and the youth.⁴²⁸ The Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E. 2560 (2017), repealed the foreigners' Working Act, B.E. 2551 (2008) and the Royal ordinance concerning the Bringing of Foreigners for Working with Employers in the Country, B.E. 2559 (2016), are concerned with the foreigners' working, how to get the work permit and the work permit processes.⁴²⁹ Under the Immigration Act, B.E. 2522 there are two kinds of visa: tourist visa, that is not allowed

⁴²⁵ Luther Rechtsanwalts-gesellschaft, Memo: Employment Law in Thailand, 2021.

⁴²⁶ Alien Working Act, B.E. 2551, 2008, [https://www.mapfoundationcm.org/pdf/eng/eng_alien_employment_Act.pdf\(10/10/2022\)](https://www.mapfoundationcm.org/pdf/eng/eng_alien_employment_Act.pdf(10/10/2022))

⁴²⁷ ROYAL ORDINANCE Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), [https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf\(10/10/2022\)](https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf(10/10/2022))

⁴²⁸ Srawoath Paitoonpong, Managing International Labor Migration in ASEAN: Thailand Immigration, Philippine Journal of Development, 2011.

⁴²⁹ The Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E. 2560 (2017), section 3 and Chapter IV, [https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf\(10/10/2022\)](https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf(10/10/2022))

to work within the country and non-immigrant visa that has 12 sub-types and is permitted to work.⁴³⁰ Those laws mentioned above are the national legislations hanging on the migrant workers' rights, some with the protection of their human rights and some with the restriction for the security of the country. However, some national labour laws are only for the Thai national workers within the country's employments.

Beyond the national policies and laws, the bilateral agreements and Memorandums of Understanding (MOUs) are performed with the neighbouring Greater Mekong Sub region, especially Cambodia (2004), Laos (2003) and Myanmar (2004), and Thailand ratified 14 conventions relevant to the International Labour organization (ILO).⁴³¹ Overall, Thailand transformed from the sending country to the receiving country of the workers abroad during 1990s. The MOUs with the neighbouring countries for getting the regular migrant workers in 2002-2003 that causes less foreign workers implemented in lieu of the complicated and costly process, and to clarify to what extent the coordination of the labour issues in the MOUs agreements in between 2015 and 2016. However, more comprehensive legal framework was initiated for the management of the labour migration in 2016-2018. Finally, in December of 2020, a new amnesty program was provided depending on the Covid-19 pandemic situation.⁴³² Those policies have been endeavoured and tried to be pointed out the solution in the policies besides the national laws of Thailand because the migrant workers' surge in the country gives the Government Authorities stressed and pressured.

The migration causes the GDP of the state promoted since it was started in 1970s, with some of the researchers' recommendation and findings, for instance, Martin, Pholphirul and Rukumnauykit found that the contribution of the migrant workers supports the GDP of Thailand.⁴³³ Generally, the migrant workers from Cambodia, Laos and Myanmar are placed in the employment; they are mostly illegal migrant workers and low skilled workers in comparison to other migrating country, for instance 65% of Philippine workers are skilled or high skilled workers in the sector of education like teachers or lecturers but only 11% in the industry sector in 2010. Generally, 90% of legal migrant

⁴³⁰ Srawooth Paitoonpong, *Managing International Labour Migration in ASEAN: Thailand (Immigration)*, 2011.

⁴³¹ Yongyuth Chalamwong and Raphaella Prugsamat, *THE ECONOMIC ROLE OF MIGRATION Labor Migration in Thailand: Recent Trends and Implications for Development*, TDRI Quarterly Review, 2009.

⁴³² International Labor organization, *Triangle in ASEAN Quarterly Briefly Note*, 2021.

⁴³³ Piriya Pholphirul, *Labour Migration, and the Economic Sustainability in Thailand*, *Journal of Current Southeast Asian Affairs* 3/2012.

workers were professionals, executives, managers and technicians in 2010.⁴³⁴ The low skilled migrant workers have to work long hours, especially, in the sector of manufacturing and agriculture for 9 hours to 12 hours a day, besides the domestic workers work for 9 hours to 14 hours, but their wages are still low and are not in conformity with their hard working in the employment without any recognition from the employers.⁴³⁵ Predominantly there are much more migrant workers from Myanmar than from Cambodia and Laos through the border states, both legal and illegal: therefore, so many irregular migrant workers from Myanmar have been issued as the main problems for the Thai government, although there is a MOU policy between Thailand and Myanmar, which is not effective in the implementation because of Myanmar's political obstacles and domestic wars. Therefore, irregular migrant workers' dispute becomes the most important and controversial issue for the Thai government to be resolved as soon as possible since at Thai labour migration it looks that there are less regular migrant workers than irregular ones.

4.6.1 Role of migrant workers in Thailand's labour market and their social security rights

Labour market regulations have crucial role in setting the rules for the formal migration concerning entering the country and the protection of the rights of the workers can be seen in the labour market. In monitoring the labour market regulations in Thailand, it is important what percentage of the coverage of the rights of the migrant workers might be guessed depending on the social security rights, collective bargaining rights, fundamental human rights, trade union rights, etc. The most interesting thing on Thailand labour migration is whether the irregular migrant workers get the safeguarding and the prevention of their rights' infringement under the labour market regulations, moreover, to what extent the labour market policies are strong for the foreign workers. According to the factors mentioned above there are two types of migrant workers in Thailand: high skilled or skilled migrant workers, and low skilled or unskilled migrant workers mostly from Myanmar, Laos and Cambodia, in fact, the irregular migrant workers play a major role in the Thai economy and in the affair that the Thai government cannot neglect. It will be

⁴³⁴ Srawooth Paitoonpong, *Ibid.*

⁴³⁵ Pracha Vasuprasat, *Agenda for labour migration policy in Thailand: Towards long-term competitiveness*, 2010.

mentioned in the following paragraphs whether the labour market prevents or protects all kinds of migrant workers.

Thai labour market is mainly influenced by the Labour Force Survey (LFS). At first, regarding Thai national workers and Thai labour market it should be mentioned that there are two sectors; formal sector, which includes the government employees, state-enterprise employees, private employee and, informal sector that covers the workers normally in the agriculture and domestic jobs. It is clear that the formal sector workers are protected by the Labour Protection Act and Social Security Act, which were 34% of the labour force in 1991 and 44% in 2002, furthermore, the informal sector workers were 70% of the labour force in 1991 and 60% in 2002, where the lower wage is guaranteed than in formal sector. Wanida Nepenthe shed light in his “Offshoring Prompts High Quality Labour Markets” about Thailand’s labour market with no improvement in the quality, therefore, it is needed to be improved through the offshoring in its service sectors, and in addition he mentioned the rank of Thai labour market from the 43rd in 2008 to 27th in 2012.⁴³⁶ The laws binding for the labour market in Thailand are the Labour Protection Act that is not protecting either the government and state-enterprise employees or the agricultural and domestic workers, the Social Security Act that protected the workers including the agricultural workers from 2002 but in practice 60% were only covered without the coverage of the agricultural and domestic workers and the Workmen’s Compensation Act.⁴³⁷ Thailand is a member of ASEAN countries, joined ASEAN Economic Community (AEC) in 2015, which means that Thailand has to obey the policies of AEC, especially the free movement between the Member States.⁴³⁸

Matthew Kelly, Lynd all Strains, Tare Deplore, Suwannee Kham Nan, Samyang Seubsman and Adrian L. Sleight also argued that the state regulations of labour market and social security are in a weak condition in comparing to other developed countries. In accordance with their findings, 80% of the labour force in the informal employment decreased into 71% in 2000, and 62% in 2007, and Thai traditional workplaces were mainly in the agricultural sector, which were 82% in 1960, 70% in 1980 and 35% in 2008,

⁴³⁶ WANIDA NGIENTHI, OFFSHORING PROMPTS HIGH QUALITY LABOUR MARKETS, Pacific Economic Review, 2013.

⁴³⁷ Worawan Chandoevrit, Labor Market Issues in Thailand, 2004.

⁴³⁸ Sujinda Chemesripong, Skilled Labor Mobility in the ASEAN Economic Community (AEC): Experience from Thailand Labor Market, Journal of Economics and Political Economy Vol-3, 2016.

which could specially be reduced from 1960-2008.⁴³⁹ Under the Thai labour market, there are different regulations and opportunities for foreign-born workers and native-born workers; however, the migrant workers are active in all sectors of the economy in the growing market in accordance with the index that reflects that one of every eight migrant workers works in the sector of manufacturing or industry. Upon the consideration if the migrant workers affect the impact of the native workers' opportunities in the labour market, some authors found that the migrant workers benefited the Thai national workers by monitoring the GDP of the country that has increased due to the migrant workers entrance, therefore, it is a positive effect on the native workers in the labour market but with less impact. The employment of foreign born employees improved quickly in 2000s as their employment-to-population ratio increased from 78% to 90% from 2000-2010, mostly in the manufacturing and the industry, from 15.5% to 36.5% in the plant operator and craft workers and domestic workers in lieu of the improvement of the Thai women's education and not finding the household job anymore. Nevertheless, the divergence between the foreign workers and native workers in the labour market is relying on the qualifications; which means that the migrant workers with less qualification cannot compare to the native worker with more qualified workers in the employment opportunities.⁴⁴⁰ In regard to the factors mentioned above the job opportunities and the law protection for the migrant workers are still weak in Thailand in comparison to that of the national workers due to the differences of the educational qualifications and legal status. It means that the migrant workers in the informal sectors are clearly lack of the protection of the laws in a weak working conditions, abuse and exploitation conditions. However, one thing needs to be mentioned: every class of workers, irrespective of regular or irregular, is likely to participate in the Thai labour market in supplying the demand of the labour shortages of Thai economy.

Thai national workers' attitude on the low skilled employment made the labour shortage in that sector increased though the employers were likely to hire the national workers for their gaps of the employment, thus the foreign workers market became broaden

⁴³⁹ Matthew Kelly, Lyndall Straznins, Tarie Dellora, Suwanee Khamnan, Samang Seubsman and Adrian L. Sleigh, Thailand's Work and Health Transition, *International Labour Review* 149 (No 3), 2010.

⁴⁴⁰ OECD/ILO (2017), *How Immigrants Contribute to Thailand's Economy*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264287747-en> (10/10/2022)

to substitute the migrant workers with the primary education in the vacant positions, especially fishing factory, domestic works, manufacturing and the industry.⁴⁴¹ Sujinda Chemesriping clarified by dividing the migrant workers into two groups in Thailand: professional and skilled worker, which under his findings the professional workers and technicians were 8.9% and 7.6% in 2015 as the highest demand of skilled in the labour market, and low- and semi-skilled workers. Those skilled migrant workers are from Japan, China, Philippines, United States and United Kingdom, etc., but the low skilled workers, as already expressed above, come from Myanmar in the largest number, from Cambodia and Laos. ASEAN countries accept the professional and skilled migrant workers with a low rate depending on four factors of Sujinda Chemesriping; large disparities in wages and employment opportunities, geographic proximity and social, cultural, linguistic environment, disparities in educational development and policy factors in ASEAN countries, even though the big demand of skilled labour is needed within the country. Finally, he concluded that the labour market in Thailand has three characteristics that are the labour movement to high skills, the weakness of labour supply from the national workers and the shortage of workers in the manufacturing sector. Actually, the labour migration flow was the highest flow of unskilled workers from Cambodia, Laos and Myanmar.⁴⁴²

The unregistered migrant workers from Cambodia, Laos and Myanmar get less of the protection of Thailand labour laws and they have to work in 3D jobs with regard to the fact that they are recognized as illegal workers, though the employers preferred to hire those workers from the neighbouring countries to get the cheap labour costs and if they apply the Thai workers with the high cost, on the other hand, the migrant workers get the entry into Thailand to work without any hard process and are induced with the higher wages than in their original country. The government released some restrictive rules to ban the unregistered migrant workers, but it made the migrant workers get weak working condition and exploitation despite the fact that the employers can hire the cheap and flexible workers for their employments, and promote their productivity and economic competitiveness and, the MOU agreements have been made with the sending countries for the regular migrant

⁴⁴¹ Pracha Vasuprasat, *Agenda for labour migration policy in Thailand: Towards long-term competitiveness*, 2010.

⁴⁴² Sujinda Chemesriping, *Ibid.*

workers' entry, which is less effective in lieu of the complicated processes, therefore, the registered migrant workers are employed into the country with regard to the bilateral agreements between the governments but less than the unregistered.⁴⁴³ Therefore, even the registered workers who are coming from the MOU system between the governments but are low skilled workers, seem still feeble of the protection of the law, and those unregistered suffer from the lack of the protection of the Thai labour laws totally, hence, the conclusion for the labour market convincement is that it cannot give the suitable and good prevention of the infringement of the workers' rights with registered low skilled ones but only the professional and skilled migrant workers are sure to get the social protection and the great chances of the labour market in Thailand because of the large demand of the professional and skilled workers within the country.

In 2008 the labour shortage was confronted in all sectors among vocational school-educated workers as Thailand Development Research Institute (TDRI) also reported that the additional demand of 800000 of skilled and management workers and 250000 basic or low skilled workers per year, however, the participation of the high labour force was 70% in the labour market. Pun pond Rukumnuaykit recommended that "the Ministry of Labour should be the main agency to monitor the labour demand in various sectors and skill levels in close coordination with the National Economic and Social Development Board."⁴⁴⁴ The recruitment agencies also play crucial role in the labour market, as Thailand's MOU system with sending countries are still working in recruiting the migrant workers in a valid way, which means that there are 14 recruitment agencies of Cambodia and 9 agencies of Laos to serve the affairs of the workers in accordance with the labour demand of the employment of the sectors in Thailand, but for Cambodian workers two contracts need to be concluded ; one with job agency and one with the employer, but only one contract is necessary for Laotian workers. Migrating to Thailand with the agencies is expensive with the price around \$ 700 including the medical insurance, travel expenses, etc., but it is only 10\$ if entering the cross border, hence, the migrant workers literally make a choice with the unregistered ways to work. The migrant workers do not get any vocational training or pre-

⁴⁴³ Yongyuth Chalamwong and Raphaella Prugsamat, *THE ECONOMIC ROLE OF MIGRATION Labor Migration in Thailand: Recent Trends and Implications for Development*, 2009.

⁴⁴⁴ Pungpond Rukumnuaykit, *A Synthesis Report on Labour Migration Policies, Management, and Immigration Pressure in Thailand*, 2009.

departure training before leaving the origin country even though their expenses are large through the recruitment agencies, and on the employers' side their official documents, for instance passport, have been withheld by the employers, which is a kind of behaviour violating the human rights of the workers in accordance with the International Labour organization Standards (ILO standards), which Thailand has ratified 15 conventions of ILO.⁴⁴⁵ According to ILO publication of 2015, even though the MOUs policies have been developed for the prevention of the irregular migrant workers, a slight improvement can be seen as the instrument for it is The Ministerial Regulation of June 2007. Legal Employment of Migrant in Thailand, which mentions four facts ; the process of employing the inbound migrant workers, the quota to employ the migrant workers, the submission of a petition to import them and how to request for the work permit, though there is no provision concerning with the licensing, grievance and punishment of the recruitment agencies.⁴⁴⁶

Under the MOUs agreements, the migrant workers have to pay taxes if their wages are high and enough, because of that, most of them are choosing the informal recruitment agencies instead of choosing the formal agencies, on the other hand, the migrant workers have the right to seek assistance under the Thai national labour laws in conformity with Article 17 of all three MOUs, but the practical usage cannot be seen owing to the language difficulties without any interpreters.⁴⁴⁷ Among the trajectories the government is using, the Memorandum of Understanding is the incapacitated strategy only with slight progress, with regard to controlling irregular migration that is still higher than regular migration. The two governments have to protect the rights of the workers from both national labour laws and policies because of the problem that the MOUs agreement has not given the protection fully. Although the workers have to spend a lot not only for the recruitment fees but also for the taxes in the destination country and in the origin country. There should be a benefit for the registered migrant workers with the MOUs system, for example, the collective bargaining or the fair implementation of their problems' complaint; however, as soon as a

⁴⁴⁵ Pracha Vasuprasat, Inter-state Cooperation on Labour Migration: Lessons learned from MOUs between Thailand and neighbouring countries, ILO Asian Regional Programme on Governance of Labour Migration Working Paper No.16, 2008.

⁴⁴⁶ International Labor organisation, Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand, 2016.

⁴⁴⁷ International Labor organisation, Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand, 2016.

country received the foreign workers the interpreters need to be assigned in the regions where they work.

In the labour market of Thailand, the professional or skilled workers from the Philippines, UK, China and Japan were in the top level among skilled immigrant workers that can be said as the legal migrant workers as being clear of registered under the permission of the government.⁴⁴⁸ Can it mean that the unskilled migrant workers, from Cambodia, Laos and Myanmar, cannot apply the less population for skilled workers for it? It can be drawn up that only the migrant workers from Myanmar, Cambodia and Laos are unskilled workers for the manufacturing, fishing factory, industry and agricultural workplaces, especially most of them are irregular migrant workers in Thailand.

In December 2019, the pandemic Covid-19 started from China, which affects all the economy and the labour markets all over the world. The beginning of Covid-19 was very low in Thailand, which could run easily without any restrictive regulations on the workers within the country, but from the fourth quarter of 2019 to the first quarter of 2020 Thailand confronted some deduction in his economy, which got decreased 6.7% since 2019, the unemployment rate with 0.8% from 0.7%, more than one million migrant workers were decreased in the manufacturing sector, there was smaller decrease in public administration, construction, real estate and other services, working hours and wages declined by 6% and the transient absent workers from 562,000 to 662,000.⁴⁴⁹ Thailand is a country dependent on the migrant labour to develop their economy and productivity and to be competitive to the global economy, therefore, when the economy is in decline due to the pandemic, the government management for the migrant workers goes only the way in conformity with the global health rules.

4.6.2 The social protection for the migrant workers

There is a Social Security Act provided in 1991, including five types; the Civil Service Medical Benefits Scheme, the Health Branch, the Social Security Fund, the Universal Coverage Scheme and the Compulsory Migrant Health Insurance that all covers 91.7% of the total population in 2011 but does not include the undocumented migrant workers. This act is provided to the civil servants and their dependants, private sector

⁴⁴⁸ Sujinda Chemesripong, Ibid.

⁴⁴⁹ International Labour organization (ILO), COVID-19 employment, and labour market impact in Thailand, 2020.

employees and the informal economy workers in 2012. Before all the ratifications, firstly, the Act covers only the employees who are working in the companies with more than 20 employees, secondly, in 1996 to the employees who are working in the companies with more than 10 employees, thirdly, in 2005 to all the employees in the self-employed and in April 2001, to all Thai citizens.⁴⁵⁰

Thai Constitution provides that “all persons are equal and shall enjoy the protection under the law” and a specific provision for the social protection without any discrimination based on citizens under Section 74. For the migrant workers, the immigration status decides if they can get the access to the social security protection and normally the Social Security Act has not stated exactly about the migrant worker expression but the regular migrant workers are entitled to get the social protection that are the injury or sickness benefits, maternity benefits, invalidity benefits, death benefits including a funeral grant, child benefits, old age benefits and unemployment benefits. The informal migrant workers may get one of these two options that are the inclusive of sickness, disability and death benefits and the old age benefits. In 2015 the government announced to permit the non-Thai nationals, who are going to leave Thailand, the old age compensation in the form of lump sum.⁴⁵¹ In the health care system of Thailand, the government allowed the migrant children the right to access to the health care as the migrant workers and their dependents have been provided by two insurance schemes. These are the Social Security Scheme (SSS) that was initiated in 1990, referring only to the regular migrants, and the Migrant Health Protection Scheme (MHIS) that was introduced in 1999, covering the regular and irregular migrants from Cambodia, Laos and Myanmar, even though they have two challenges of financial and language barriers. Before 2013, MHIS and SSS were targeting only the regular or documented migrant workers, but in 2013 MHIS expanded to all migrant workers, irrespective of regular and irregular, and in 2018, there are 862870 migrant workers, 91% of migrants and 9% of their dependents, who have paid the annual enrolment fee. SSS has been giving the coverage of the health care to the regular migrant workers since 2011 and later it is increased, from 357643 regular migrant workers in 2013 to 1107426 regular

⁴⁵⁰ International Labour organization (ILO), Thailand Labour Market Profile, 2013.

⁴⁵¹ Marius Olivier, Social protection for migrant workers in ASEAN: Developments, challenges, and prospects, 2018.

migrant workers in 2018.⁴⁵² In 2020 Covid-19 period, Thai government repatriated so many migrant workers to their home country, especially from Cambodia, Laos and Myanmar, but under the US. According to a new online source, 500,000 migrant workers will be offered to give the vaccines when they arrive back from their home country and finish their quarantine for two weeks, in which the ILO and EU support are also included.⁴⁵³ In my review of Thailand health care system, Thailand government always cooperates with WHO and ILO organisations and the effort to protect all migrant workers can be seen easily. All migrant workers and their dependents, regular and irregular, get the right to health under Social Security Scheme and Migrant Health Care Scheme. In comparison to EU countries, Thai health care coverage system is late as they have not finished offering vaccines to migrant workers till December 2021, what is more, it can affect their impact of their economy and delay the migrant workers' rights.

Under the Labour Protection Act, B.E. 2541&2551, migrant workers are entitled to maternity leave, protection from termination due to pregnancy and other protection.⁴⁵⁴ Nevertheless, 50% of Thai national workers have some attitude relating to the discrimination based on nationality, as they always keep in mind that the foreign workers should feel the equal rights like the nationals. However, some women migrant workers with pregnancy had to work while they are pregnant but if they do not work, they are dismissed despite that the laws give the right to get the maternity leave.⁴⁵⁵ The Workmen's Compensation Act, B.E. 2537 also covers the social security rights to the regular migrant workers not including the domestic workers, the temporary disability benefits, the permanent disability benefits, medical benefit and survivor benefit including the funeral grant. The migrant workers working in the sector of sea fishery work and agriculture are covered with the social protection by the Ministerial Regulation concerning Labour Protection in Sea Fishery Work, B.E. 2557 (2014) that provides the responsibility of the employer to support the workers from the sea fishery work sector to the medical suppliers,

⁴⁵² Benjamin Harkins, Thailand Migration Report 2019, United Nations Thematic Working Group on Migration in Thailand, Chapter VI.

⁴⁵³ [Reuters](https://www.usnews.com/news/world/articles/2021-11-10/thailand-offers-covid-19-vaccines-to-migrant-workers), Thailand Offer Covid-19 Vaccine to Migrant Workers, US. News: World Report, 2021. <https://www.usnews.com/news/world/articles/2021-11-10/thailand-offers-covid-19-vaccines-to-migrant-workers> (10/10/2022)

⁴⁵⁴ International Labour organization (ILO), MIGRANT WORKERS' RIGHTS AND WELFARE: COMBATING THE WORST FORMS OF CHILD LABOUR IN SHRIMP AND SEAFOOD PROCESSING AREAS OF THAILAND THA/10/50/USA, 2015/2016.

⁴⁵⁵ International Labour organization (ILO), Public attitudes towards migrant workers in Thailand, 2021.

and the Ministerial Regulation to Protect Agricultural Workers, B.E. 2557 (2014) that gives the right of paid sick leave to the workers in the agricultural sector. The domestic migrant workers have no protection under these laws.⁴⁵⁶ In the evaluation of those laws expressed above, all migrant workers including domestic workers have less rights to get maternity leave under the Labour Protection Act, B.E. 2541 & 2551, the regular migrant workers without domestic workers get the social protection in accordance with the Workmen's Compensation Act, B.E. 2537, and it seems to be the reason for the national workers' attitude and discrimination in spite of Thai government's intention to protect all migrant workers with the cooperation of ILO and WHO.

Thai government promulgated the policy for the social protection that all the children comprising the documented and undocumented migrant children, have the right to education, right to health care and child protection services. In 2005, the Cabinet Resolution on Education for Unregistered Persons announced for the access to education for non-Thai population including the irregular migrants, and in 2018 a Ministerial Proclamation was provided for all the migrant children to enrol without any infringement. Three main educations are given to the migrant children; public schools, non-formal education centre and migrant learning centre, which means that the migrant children have the right to study in the primary and secondary schools, but unfortunately, the migrant parents cannot afford to pay the cost of the school as it is too expensive for them. Moreover, the migrant children also have the right to access to the child protection service under the Child Protection Act, 2003, expressing six government services for child protection that are the following;

1. Sub-district personnel monitor the situation of children
2. The 1300 hotline
3. One stop crisis centres
4. Temporary shelters for children and families
5. Longer-term alternative care for children
6. Various centres provide education and skill development programmes, all are based on the violence, exploitation, abuse or human

⁴⁵⁶ Marius Olivier, Ibid.

trafficking and 1212 cases for migrant children have been saved and protected in 2018.

Furthermore, they are entitled to the access to birth registration.⁴⁵⁷ Thai government policies for protection of migrant children is correspondent to the International Labour Standards and Human Rights, but in order that all the children can go to school and get the education without any barrier within the country, some other social insurance schemes need to be implemented by paying the small amount from the migrant parents monthly. On the one hand, Myanmar has a free education system for all the children up to the level of high school, but in Thailand there are two primary and secondary education accesses given with the responsibilities of the cost for the migrant parents, and on the other hand, Thai children also have to pay the same price.

4.6.3 On the importance of the role of trade union in getting the collective bargaining

Trade union right is also essential for all the workers in the modern world, together with the freedom of association and the collective bargaining. One more crucial question is whether all migrant workers in Thailand are entitled to join trade union for their dispute resolution from the employment. Firstly, the migrant workers seem weak in the right of trade union with regard to the attitude of Thai national workers since migrant workers do not have the right to join trade union as mentioned above. International organisation for Migration (IOM) published about the trade union right for migrant workers in Thailand and states that migrant workers have the right to be a member of trade union despite that the government does not permit this under the laws.⁴⁵⁸ Labour Relation Act (LAR) and the State Enterprise Labour Relation Act (SELRA) are the laws associated with the trade union rights, which permit the workers in the private sector and in state-owned enterprise to formally register with trade union, labour federations and labour congresses, but Section 88 and Section 101 of the Labour Relation Act and Section 41 of the State Enterprise Labour Relation Act (SELRA) are relating to prohibit these rights for non-Thai national workers. The International Labour Rights Forum reported almost four million migrant workers from

⁴⁵⁷ Benjamin Harkins, Ibid.

⁴⁵⁸ International organisation for Migration (IOM), https://thailand.iom.int/sites/thailand/files/document/publications/Tips%20for%20Migrant%20Workers%20on%20the%20Right%20to%20Freedom%20of%20Association%20and%20Collective%20Bargaining%20in%20Thailand_ENG.pdf (10/10/2022)

Cambodia, Laos and Myanmar in Thailand not entitled to be members of trade union and engaging in the collective bargaining processes and actually the workers' rights infringement is happening across the country because the government limits the right to form and join a union to the national workers and migrant workers, but the national Thai workers have the legal right to form a trade union.⁴⁵⁹ However, the migrant workers have formed their own organisation and joined the national trade union by neglecting the discrimination. 75% of the 38 million workers of Thailand are hard to get the freedom of association and the collective bargaining under the labour laws of Thailand as the Labour Relation Act applies the restrictive rules to all the workers in regard to the affairs of the collective bargaining. Most of the workers are scared of forming a union owing to their employers' revenge by dismissal or deportation. Normally, most of the migrant workers have lack of knowledge of the nature of trade union and collective bargaining and in spite of some migrant workers' knowledge, they are afraid of their employer because unlike the Thai workers, the migrant workers can get deportation without finishing the dismissal and neither does the government allow the migrant workers to change employers.⁴⁶⁰ Sardine Caracul Na Atudhya also exposed that the initiative to form trade union for leading the union and the other members have the dangerous situation to confront the local authorities' opposition.⁴⁶¹ Whatever every perspective of labour law for the permission of forming the trade union are looked at for the migrant workers, it is clear that they have no right to form and join a trade union, furthermore, they have less knowledge of trade union and collective bargaining, and they have a big fear of losing their job and being deported by the employers.

Thai government has not ratified ILO convention relating to the right to organise and collective bargaining, such as No. 87 on Freedom of Association and Protection of the Right to Organise and No.98 the right to organise and collective bargaining. The Thai national labour laws do not provide the trade union right to the migrant workers, therefore, they have no right to form a union for the collective bargaining but they can join the

⁴⁵⁹ Sutharee Wannasiri, Freedom of association in Thailand: an assessment of the enabling environment for civil society, 2020.

⁴⁶⁰ Kimberly Rogovin, Time For a Sea Challenge: Why union rights for migrant workers are needed to prevent forced labor in the Thai seafood industry, 2020. https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf (10/10/2022)

⁴⁶¹ Sakdina Chatrakul Na Atudhya, Ibid.

existing trade union hence, with 700000 migrant workers from Cambodia, Laos and Myanmar are not allowed to form trade union.⁴⁶² Until the mid1970s, trade union rights were actively barred and till today there is no exact provision for the rights of trade union of migrant workers.⁴⁶³ Under the MOUs system, Thailand made MOU between trade union in Cambodia and trade union in Thailand for the protection of migrant workers, and Article 6 and 7 of their MOU agreement mention:

Action 6: To set up a migrant workers' consultative body and a special migrant workers' desk, within their respective organisation to provide protection to the case of abuses and violation of labour rights and to reach out and organize migrant workers in both countries;

Action 7: To encourage affiliated union in both countries to build up cooperation in areas of registration of migrant workers as union members and selection of migrant workers' representatives in order to timely respond to the problems facing migrant workers and their communities; to encourage the migrants' communities to affiliate the existing union.⁴⁶⁴

Nevertheless, there is no any agreement of MOU between Myanmar and Thailand, between Laos and Thailand based on trade union rights for the migrant workers, although the Tripartite Action Plan from the Greater Mekong Sub-region within ASEAN is being performed. As Thailand has not ratified the conventions concerning with the freedom of association and the collective bargaining it can be guessed that the government may not wish to give this kind of right to the workers, consequently, both the irregular migration issues and the labour issues might be faced.

The affairs of the labour rights protection are being served by the Labour Congress of Thailand (LCT), Thai Trade Union Council (TTUC), National Congress of Private Industrial Employees (NCPE) and the State Enterprises Workers' Relations Confederation (SERC). However, in practise the full rights to organise and have collective bargaining have not been utilized by even the regular migrant workers in Thailand. Nevertheless,

⁴⁶² International Trade Union Confederation (ITUC), INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THAILAND, 2011.

⁴⁶³ Matthew Kelly, Lyndall Straznins, Tarie Dellora, Suwanee Khamnan, Samang Seubsman and Adrian L. Sleigh.

⁴⁶⁴ MEMORANDUM OF UNDERSTANDING BETWEEN TRADE UNION IN CAMBODIA AND TRADE UNION IN THAILAND ON PROTECTION OF MIGRANT WORKERS' RIGHTS, section 6 and 7.

Sardine Caracul Na Atudhya expressed that there are labour unions present in only 39 out of the 76 provinces of Thailand. Labour unions only in 39 provinces among 76 provinces in Thailand are still alive, and therefore, only a small portion of the actual population of the workers can join and be members.⁴⁶⁵ It depends on the government authorities and the employers' behaviour to form and join the trade union, despite the fact that the migrant workers have already formed trade union and joined the national trade union.

4.6.4 Irregular labour migration issue in Thailand

Within the region of ASEAN, Thailand is one of the destination countries, like Singapore, Malaysia, etc., but the irregular labour migration issue has been the biggest problem for the government for decades to this day, since migrated people are coming from neighbouring countries, Thailand, Cambodia and Laos. As mentioned above, the population of the irregular migrant workers is larger than the population of regular migrant workers. The problem is that the workers enter Thailand across the border, which makes them facilitated, but the formal ways are expensive and complicated recruitment procedures, in addition, the employers prefer to hire the cheap workers to the national workers. In those cases, the irregular migrant workers are not entitled to work equally in the employment in such respect as long working hours, 41% in the agricultural and 64% in the manufacturing sectors worked up to max 12 hours a day in 2006, 45% of domestic workers up to 14 hours a day but their wage was in the low level.⁴⁶⁶ Thai government has been solving the issue with different trajectories; firstly, applying the way of repatriation to their home country and later the registration processes have been created by giving the second chance that is the work permit registration and registration for regularization. The primary regular registration in 1992 was established with two years duration permit and with the payment of 1000-baht bond, 1000 fee and 500 for health.⁴⁶⁷ Pracha Vasuprasat argued that some laws relating to the migrant workers forced them to go to the irregular ways, such as the Labour Protection Act and the Immigration Act, and the other countries that have the good managed immigration laws, give effort to cope with the vulnerability of the migrant workers based on their social, cultural and working environment but Thailand is not

⁴⁶⁵ Sakdina Chatrakul Na Atudhya, Ibid.

⁴⁶⁶ Srawooth Paitoonpong, Ibid.

⁴⁶⁷ Srawooth Paitoonpong, Ibid.

carrying out this way.⁴⁶⁸ The responsibilities of the protection of irregular migrant workers are not only on local authorities but also on the employers, who are easy to accept the irregular workers for their productivity with the reason that they prefer getting the cheap labour to hiring the Thai workers with the high wages. Therefore, if the irregular migrant workers take action, the employers need to be fined or punished under the laws, like the Singapore regulation that punishes the employers accepting the irregular workers.

A quasi-legalization programme has been build up to get the population of the irregular migrant workers decreased by converting from the illegal status to legal statuses. The regularization was initiated in 1991 and the partial regularisation in 2004 and completed in 2009. 1.3 million migrant workers registered in 2009, 1079991 from Myanmar, 124902 from Cambodia and 111039 from Laos and, the population through MOU is 3543 migrant workers from Cambodia and 4027 from Laos. Between 2006 and 2010, the percentage of the registered Cambodians is 57% and 53% from Laos. But Myanmar just started in 2009 about the registration that the migrant workers had to verify and got the temporary work permit for three years, at that time only 41770 migrants could pass the verification. The Ministry of Labour reported the population of the registered migrant workers in 2020 that there are 2,323,124 registered migrant workers in Thailand.⁴⁶⁹ In fact, there are two different departments for the registration, the Ministry of Labour and the Ministry of Interior, but most of the workers carry out with the Ministry of Labour. In those cases of extending their work permit duration, the migrant workers cannot do it without some obstacles; distant places to go and the language problem, hence, most of them transforming into irregular status again.⁴⁷⁰ The migrant workers normally have to work in the manufacturing sector, the agricultural sector, fishing sector and the domestic sector, which are with the circumstances of dirty, dangerous and difficult situation in the several forms of exploitation and abuse by the employers, the local authorities and police, but in the lack of law protection. The situation of unregistered migrant workers is worse than that of the registered migrant workers because they are illegal and recognized under the law.⁴⁷¹ In conformity with the factors expressed, even the registered migrant workers are still in the

⁴⁶⁸ Pracha Vasuprasat, Ibid.

⁴⁶⁹ International Labour organization (ILO), Triangle in ASEAN Quarterly Briefly Note: Thailand July – September 2021.

⁴⁷⁰ Pracha Vasuprasat, Ibid.

⁴⁷¹ Yongyuth Chalamwong and Raphaella Prugsamat, Ibid.

weakness of working conditions and potential challenge to change the irregular status due to the hard processes. The unregistered migrant workers' working conditions are more susceptible to cover the protection of the law in Thailand.

However, there are some protections and entitlement for the irregular migrant workers under the laws in practice, for example, access to health care rights under MHIS, that gives the health care protection to all migrant workers mentioned above, regardless of legal and illegal. There is a case relating to this kind of protection from the law and the court in 2004, which is in the following:

In 2004 Thai Supreme Court Decision No.211/2537, the foreign worker prosecuted his employer through the court about the dismissal from the job without any notification. The Supreme Court decided in favour of the foreign worker even though he is illegal migrant worker without work permit in accordance with Section 31 of the Act on the Establishment and Procedure of the Labour Court of B.E. 2522 (1979) and Section 142(5) of the Civil Procedure Code based on the fact of good moral by affirming the Central Local Court's decision that was in favour of the worker.⁴⁷²

Allain Dumon Fonte criticized the Thai policies towards migrant workers because the protection of migrant workers is vulnerable in the labour laws despite of having the helpful labour laws for the Thai workers, additionally, the four conventions of ILO and Human Rights have not been ratified concerning with the migrant workers' rights, which are the International Convention on the Protection of All Rights of Migrant Workers and Their Families, Article 87 – Freedom of Association and Protection of the Right to Organize (1948 San Francisco), Article 98 – Right to Organize and Collective Bargaining (1949 Geneva) and Article 111 – Discrimination in Employment and Occupation (1958 Geneva).⁴⁷³ The employers do not cooperate with the government policy, depending on the reason that the employers especially receive the irregular migrant workers. Pun pond Rukumnuaykit pointed out that from 2004-2006, the employers' cooperation in the official government policies became too low because the population of the involved employers fell

⁴⁷² HG.org Legal Resources, Labor Protection for Illegal Foreign Workers in Thailand, <https://www.hg.org/legal-articles/labor-protection-for-illegal-foreign-workers-in-thailand-36722> (10/10/2022)

⁴⁷³ Allain Dumon Fonte, DOCUMENTING THE UNDOCUMENTED: A REVIEW ON THAI-PHILIPPINE LABOUR POLICIES AND THE IMPACT TO UNDOCUMENTED FILIPINO MIGRANT WORKERS, 2020. <https://pdfs.semanticscholar.org/0b36/fb0f9a3e50c2b022b5910d4042d81cc992a6.pdf> (10/10/2022)

down from 190,000-240,000 to 50000 during this period by hiring the non-registered migrant workers in their employment.⁴⁷⁴ Therefore, under the authors' criticism the employers play an important role in resolving the reduction of the irregular migrant workers; if they do not care of the skilled workers and legal status of the workers, they will always hire many irregular migrant workers for their economic benefits. The government's implementation on their labour laws for the effective punishment of the employers is lack of doing it although some decisions of the court gave the failure to the employer's side. Whether the irregular migrant workers can enter and work in one employment is only decided by the fact that the employers accept them or not: which means that if the employers accept only the regular migrant workers, no irregular migrant workers dare to work even though they can enter the country through the non-restrictive borders.

To sum up the rights of the irregular migrant workers in Thailand, there are as many irregular migrant workers as regular migrant workers, until today that these irregular migrants' issues are still alive. The government tried to deport them in the past, but from 2001, the registration process for them had been created based on the demand of the workers for the employment within the country, revised several times by giving the chances to them. Whether they can enjoy their rights within the country relies on if they have registered or not: for instance, the registered migrant workers can enjoy the rights to the extent of what the government has given. Furthermore, they can get the access to the health care through the Migrant Health Protection Scheme (MHIS), which provides the health care to all migrant workers and their dependents, and the education system that the children of the unregistered migrant workers even can get. The problem is that the migrant workers have to extend their work permit by registering again going to the distant place, however, they have two main obstacles: language problem and the distance. In the case of Covid-19, so many migrant workers were sent to their home country as the government and the employers did not want the more impact of the pandemic situation, and the government gave the vaccines to the registered migrant workers up to 50000 in 2021 as mentioned above, which means that the unregistered migrant workers had no right to get vaccine.

⁴⁷⁴ Pungpond Rukumnuaykit, A Synthesis Report on Labour Migration Policies, Management and Immigration Pressure in Thailand, 2009.

Even the registered migrant workers get less right in Thailand, and thus the unregistered migrants still cause less potential problems for getting the fundamental human rights.

4.6.5 Summary of the Approach of Thailand Labour Migration

Thailand is going to be a manufacturing country and changing from the export of the workers to the import of the workers from other countries, especially from Cambodia, Laos, Myanmar and Vietnam. The greatest challenge for the migrant workers issues is the large population of the irregular migrant workers within the country, coming from the neighbouring countries. A few decades ago the country was running with the national workers but later in the decades the Thai workers' education became higher and they are not interested in working. Although there are many national labour laws for the workers, most of them are not concerned with the migrant workers, irrespective of legal and illegal. The two kinds of labour migration into Thailand are regular labour migration, of which workers are more likely to get the protection of the law than irregular migrant workers get, and irregular labour migration, of which workers are the most vulnerable group in Thailand. Particularly the migrant workers from Cambodia, Laos and Myanmar are low skilled migrant works, but Thailand prefers to hire the skilled or professional migrant workers, such as teachers, technicians, etc. For the skilled workers, they have better protection of the national labour laws, while the low skilled workers are in a weak condition of getting the protection of the laws in Thailand. Therefore, there is no equal system and protection for all migrant workers under the laws, and the recommendation for it is that all the migrant workers should get equality if they all are legal workers, even for the irregular workers they should get the fundamental rights of the workers under ILO standards though they are unregistered.

Thai government resolved the dispute of the irregular migration in three ways: the first way was implemented before 2000; the second way was to give the opportunities to change their status by registering into the provinces where the registration is being made. Until today, the second trajectory is still alive and is being implemented, and the third way is to make the Memorandum of Understanding (MOU) with the sending countries. However, the workers registered and changed their status but they do not extend their work permit anymore with the seasons because of the distant place and language barriers. Therefore, there are still unregistered migrant workers working in the employments.

About the social security rights, the regular migrant workers have the right to access to the health care under the Social Security Scheme and the Migrant Health Protection Scheme but the irregular migrant workers and their dependents just get the coverage the Migrant Health Protection Scheme. The right to education has been given to all the children of all migrant workers, regardless of regular and irregular, however, the migrant parents do not have the ability to send their children to the school of Thailand because it is too expensive for them.

In the case of trade union rights, the migrant workers have no right to form trade union but they can join the existing trade union and the migrant workers have established their trade union with themselves and also joined the existing national trade union. Even the Thai national workers can only form trade union in 39 provinces from among 79 and their initiatives always face the opposition of the government authorities and the dissatisfied manners of the employers, who usually fire the workers forming trade union. Therefore, the government does not allow freely even the freedom of association, thus the collective bargaining is hard to do.

Labour migration in Thailand really supports the economic growth of the country to be competitive in the world market; therefore, Thai economy depends on the migrant labour for their high productivity and economic growth. The employers have the preference to hire the cheap workers, which means low skilled workers. Irregular migrant workers are hired through the Border States easily by neglecting the national workers to be paid high salary. Hence, the employers do not want to release all their workers, even though they are in irregular status, on the other hand, the migrant workers with low skills have to work in 3D, Dangerous, Damage and Dirty, with a big abuse and exploitation in the workplace. Neither allows the government the migrant workers to change their employer, and it is a kind of human right violation and if they have finished their contract at one employment, they should change another employment and employer. As one of the destination countries within ASEAN, Thailand should obey the ASEAN declaration on the protection of the rights of migrant workers and their families and extend their labour law boundaries for the migrant workers to register easily and to work in the employment without any discrimination. The irregular migrant workers' issue should be solved and controlled under

the new national labour laws or policies and should be given the fundamental human rights in the employment and out of the employment.

Conclusion for Chapter III

ASEAN is not a big region, as there are only ten member states in the organisation. The regional integration seems to be undertaken actively since it was established in 1967. But the organisational restriction is not to interfere with the sovereignty of the member states. It causes the undertakings of the organisation to be delayed and less promoted. In the case of labour migration, ASEAN labour migration was started with the establishment of the ASEAN Economic Community (AEC) which intends to create the free flow of goods, services, investment, and capital and to establish a single market and productive base. The member countries cooperate in accordance with the ASEAN Forum on Migrant Labour (AFML) that is a platform to negotiate between workers and employers, and between governments. ASEAN Summit is also the policy-making body, which calls the meeting twice annually and already finished 38th of ASEAN Summit. Under the findings of the literature learning, ASEAN is trying to harmonise the national policies of the member states but has not implemented these yet because of the non-interference of the sovereignties. Although labour migration is permitted with the free movement within the region, what is not the same as the European Union is that workers need a work permit to work according to the study of the national policies of the receiving countries of ASEAN. The regulation for 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 the member states but just a few provisions and performances. Normally going forwarded to mutual agreement or bilateral agreements between the member states for the recruitment systems gets the key movement within the region because there are not many influential legislation and agreements. If we divide the labour market policies in ASEAN, two criteria will appear: high skilled migrant workers and low skilled workers. Generally, the demand for low skilled workers is much more than for high skilled workers. As mentioned above, there is an 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 was in force in 2015,

in seven sectors that are: 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. The ASEAN Forum on Migrant Labour (AFML) implements three themes dealing with exploitation, discrimination and violence, the carrying out of the labour migration governance and combating the trafficking in people. AFML meetings are held twice a year for those three themes with the member states. No, the 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 fragile regulations except in Singapore. In Singapore labour market policies, skilled workers, semi-skilled workers and low skilled workers are included. Singapore demands migrant workers normally in the physical workplaces. Young workers are preferred in the following sectors: case management, counselling, career coaching, social media in relationship management, outreach, family work and school social work. The minimum working age is 15 and the working hours are not more than 8 hours per day and 40 hours per week. The Singapore Employment Law enacts the migrant workers must get the minimum wage under the law but if not, the Ministry of Manpower will act against the employers. Migrant workers are required to get the Working Pass (WP) that the employer must apply for on behalf of their migrant workers. Singapore labour market policies are not weak because Singapore prohibits irregular labour migration seriously and no discrimination in rules can be found in dealing with the different remuneration with national workers. Then in the review of Thailand's labour market policies, it accepts the migrant workers for the formal sectors and for the informal sectors but working in the formal workplace with higher wages than the informal working place. The labour market demands skilled workers preferably, and gives the skilled workers more opportunities with better protection. Therefore, the Thai labour market opens regionally and globally. But the irregular migrant workers are also accepted through the Border States, which are called undocumented migrant workers. Under Thai law, all migrant workers must have a work permit. Although irregular labour migration has been accepted, the resolution of that problem seems to be pointed out properly as bilateral agreements have been used for sending most of the irregular workers to their original countries even though it has a regularisation system for them. Therefore, labour market

policies in Thailand demand all kinds of migrant workers but no protection is given to them for their fundamental labour rights. The Malaysian labour market also accepts migrant workers for the formal sectors and for the informal sectors but only for agriculture, construction, and manufacturing. The Malaysian labour market is full of foreign workers. Hence, Malaysia and Thailand are in the same circumstances regarding irregular migrant workers. Another main receiving country in ASEAN is Brunei, whose labour market policies are that migrant workers are only for the private sectors and national workers for the government departments who are not allowed to work in the private sectors. However, Brunei is especially a sending country in ASEAN and just has a few migrant workers. For those workers, they have some regulations in their labour market that all the private companies must report their gaps in the workplace to the government. A work permit is given only for the short term but not for the long term absolutely under the Immigration policies. Therefore, ASEAN labour market policies provisions are still required to prevent some potential issues, and thus the member states' legislation in the labour market are weak. Mutual agreements target the acceptance of their workers by each other, but not focusing on better legislation for the protection of the regional migrant workers.

Trade union rights in ASEAN start with the ASEAN Trade Unions Council, which carries its work out with the 18 national labour centres, except Brunei, for collective bargaining in conformity with the ILO standards and ASEAN Consensus that provides the right to organise to all migrant workers in the region. To consult the affairs of trade unions with the member states, Task Force on ASEAN Migrant Workers (TF-AMW) calls the meetings or workshops very often. ASEAN Trade Union Council (ATUC) cooperates in the ASEAN Triangle Project for the trade unions rights of migrant workers. Another council for the rights of trade unions is ASEAN Services Employees Trade Unions Council that calls the regular social dialogue for it too, but Brunei, Laos and Myanmar are not on the Council. Once the evaluation of the receiving countries of ASEAN is made, the right to organise and collective bargaining rights are provided, but with some exceptions including the duties of workers in terms of their employment, termination, and dismissals. In the affairs of unfair termination, unfair dismissals and unfair duties, the workers should also get the right to negotiate to get collective agreements. Nevertheless, on the other side, the right to strike has been restricted. Singapore trade unions rights might be monitored as non-

powerful and non-flexible provisions for all the workers. In Thailand, national workers have the right to freedom of association and the right to join a trade union if they are registered organisations, but not comprising of the workers in the agriculture and informal sector while the migrant workers have no right to organise, but the right to join trade unions. In Brunei too, there is no provision for the migrant workers that they have the right to organise and to join the trade unions. In Malaysia, all migrant workers have trade union rights and Malaysian Trade Unions Congress works for the migrant workers whenever they need to negotiate for their rights. Hence, we can say that ASEAN is endeavouring to provide trade union rights for 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 regulations and specific legislation, with the exception of the ASEAN Consensus, which provides the right to organise for migrant workers. ASEAN has a lack of explicit regional provisions or regional conventions for the integration of the protection of the trade unions rights.

The regulations for irregular migrant workers in ASEAN have not been stated specifically. And the ASEAN Consensus does not act towards the prevention of irregular migrant workers and the protection of the fundamental rights of the irregular migrant workers. ASEAN is mainly faced with the obstacles that so many irregular migrant workers have been accepted in the receiving countries. But Singapore has seen that it can control the population of irregular migrant workers which is only 4% of the total migrant worker population in the country. Thailand and Malaysia are in a deep struggle of that situation after accepting a surge of irregular migrant workers, as these two countries' labour markets are flexible for the irregular migrant workers too. The member states are trying to get a resolution with bilateral agreements such as the deportation of workers, and a feeble regularisation system is being performed. As ASEAN has no provisions for irregular migrant workers, the harmonisation of the national policies is not being carried out, and the member states must rely on mutual agreements.

Not enough provisions and regulations within the region are found dealing with migrant workers. ASEAN is going ahead in the organisational project, workshop, or program to implement the protection of the rights of migrant workers. Only one Consensus and ASEAN Charter are not adequate for the cooperation or coordination of the free

movement of workers. 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 bilateral agreements with other member states. Currently, an ASEAN key issue relates to the irregular labour migration within the region and they cannot control it with legislation because bilateral or mutual agreements between governments cannot solve the problems regarding the legal violations of the receiving states. The harmonisation of the national labour laws is needed to get stronger cooperation within the organisation.

Thailand labour migration has been analysed as it is one of the main receiving countries and mostly confronts the irregular migrant worker issue. Social rights, labour market regulations, trade union rights and irregular labour migration in Thailand are divided. Thailand also accepts so many migrant workers from the region mostly and from out of the region. ASEAN migrant workers rely on the Thai labour market, but especially from the neighbouring countries, Myanmar, Cambodia, and Laos. Half of migrant workers are from the ASEAN region, whose low skills are from the neighbouring countries. Two categories of migrant workers exist in Thailand's labour market, which are professional and skilled migrant workers and semi- and low skilled migrant workers. For the labour migration, Thailand's specific laws are only relevant to the migrants while the native workers are protected with other specific laws. After reviewing those specific laws for migrant workers, some deprivation of the full rights for the foreign workers in Thailand are found. Basically, the ASEAN citizens can enter Thailand with the free movement of ASEAN agreements, and thus they are not required to apply for a tourist visa. Thailand already signed bilateral agreements and Memorandums of Understandings (MOU) with the neighbouring Greater Mekong Sub-region beyond the regional agreements, national policies, and laws. Skilled workers are especially favoured, but those workers are being called from out the region. The low skilled workers from Myanmar, Cambodia, Laos, and Vietnam are mostly irregular migrant workers as the Border States are not so restricted.

In the assessment of Thailand's labour market, it is open for regular and for irregular migrant workers. Therefore, two sectors can be differentiated into a formal sector and an informal sector. Recruitment agencies make the labour market active to supply the labour demands. Migrant workers with a primary education level are placed in the fishing

industry, domestic workers, manufacturing and industry. High skilled workers or professional workers are called normally from Japan, China, Philippines, the US, and the UK while low skilled workers are called from Myanmar, Cambodia, Laos, and Vietnam and undocumented migrant workers must work in the 3D jobs. In looking back at the social rights for 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 Thailand's laws, irregular migrant workers are also entitled to some social security rights such as the disability benefit, death benefit or old age benefits under the Social Security Scheme and Migrant Health Protection Scheme. And the children of regular or irregular migrant workers also 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 fundamental rights at least. Moreover, even if the government strictly barred the irregular ways, the fundamental labour rights and basic human rights must be felt according to the International Labour Standards and Human Rights laws. What trade unions rights are prominent is that the migrant labourers 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, migrant workers are allowed to join the trade unions but not for the right to organise. Hence, we can monitor that the trade unions rights are not fulfilled even as the fundamental level. In case of irregular migrant workers, the population of irregular labour migration can be seen as larger than the regular migrant workers. In re-tracing 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 for cheap workforce and not the handling of the rule of law for this case. The government implies the regularisation for the workers has been undertaken 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 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. The example of Singapore is good to utilise that the Singaporean government controls it with the law by acting against employers who accept irregular migrant workers. Thailand's situation also corresponds with the Singapore example as employers in Thailand demand cheap labour for the lower usage of their expense to the workers. Every year Thailand faces the problem of a surge of illegal migrant workers, which is a kind of big stress. Moreover, the processes of going the regular way should be managed into non-complicated proceedings and made them clear to be obeyed.

Chapter IV

5. The comparison of the labour migration rules between European Union and ASEAN, and case studies in each region

According to the World Migration Report 2020, the population of migrant workers is 164 million around the world, which means that the migration affairs get growth and crucial, and if the affairs are neglected without caring of the migrant workers, unexpected disputes will come out. In reality, the issues of migration in the developed countries are faced by the government to be resolved hardly by enacting their immigration laws carefully. However, the problem is that the irregular migration issues cause the governments big tension by migrants' entering from the border states generally, and the opinion of the national workers of the destination countries on migrant workers is a trajectory taking into consideration the political, economic and cultural perspectives, but virtually the national workers and people have no wish to do favour on the migrant workers within their own countries because they have a fear to lose their opportunities and to give their places to the migrants. Nevertheless, the International Human Rights Conventions and the International Labour Organization force all the countries to protect the labour rights under the human rights perspectives globally, and there are some organisations or unions that are formed with some countries for the protection and prevention of the rights of their citizens of the Member States and their aim is to ensure the security of the region including the labour rights and the agreements to cooperate in the matters of free movement of goods, services, person and etc., meaning that the specific regulations and policies for their region have been provided under the agreements of all members, for example, European Union, the Association of Southeast Asian Nations, the Americas, and so on. In the previous chapters, European Union and ASEAN were described with their regional regulations based on the labour migration. The cause of mentioning them is to compare the two regions because it is important how they try to protect and safeguard, and how to solve the labour issues referring to diversity, weakness and the strengths, effectiveness and non-effectiveness, and the infringements of the workers' rights. By comparing these two regions, the weakness of one region can be pointed out and the strengths of the other region can be applied.

The main objective of comparing these two regions is to utilize the applied articles for the future policies to be improved, especially for ASEAN where so many irregular migrant workers exist, and there are so many migration issues in each region, not only for the destination countries but also for the regional integration around the world. The policies and rules of the labour migration in EU and ASEAN have been stipulated in the previous chapters separately as well as the handling of the Member States within the region in EU and the lack of utilizing the regional policies in ASEAN. Moreover, one of the destination countries in EU and one in ASEAN, Germany and Thailand, have been chosen with their national labour regulations and their migration policies on the irregular migration. The reason why Germany is chosen for the focus is that Germany is a country that created and built up the best norms regarding the labour issues among the Member States, while the cause of choosing Thailand is the main dispute of irregular migrant workers in ASEAN and it is important to know how to manage their current migration issue with their policies, and on the other hand, how many percentage of human rights under international labour standards the migrant workers get and lose. This is the main source to find out the problems of labour migrants because the global economy mostly depends on the migrant workers to be competitive and to improve their productivity. The globalization age is especially modernized with the migration in the era of migrating from one country to another country and the developed countries give so many incentives to the migrant labourers with the factors of high salaries, the modernized living standards, job opportunities etc. while the less developed countries cannot give the high standard salaries to the workers, so they have less opportunities to get jobs.

In this chapter the following issues are described: the differences of the protection under regional labour laws, the social rights of each region, trade union rights that are the right to form of association and collective bargaining, how to manage the irregular migration problems under their regional policies, and finally, the recommendations for the delicate region to revise, and add the protection of the rights of migrant workers.

5.1 The diversity of the policies of the labour migration between EU and ASEAN

The European Union has attractive policies to control and manage the migration and labour migration within the region because they have to receive the migration flows more

than other regions, and the European Union is a region that is the most coordinated place with all the Member States with the same policies, the same resolutions and with the cooperation of managing on the migration regulations, but some Member States have still lack of utilising the policies of the European Union. ASEAN is a region that is gathering the Member States' disabilities to apply for the regional policies that will be shown in the following paragraph.

Juliet Pietsch and Marshall Clark prescribed in 2015 that Asia Pacific region's feebleness on the regional instrument was mentioned by giving the comparison with EU and ASEAN based on human rights.⁴⁷⁵ When the comparison between the two specific fields is made, the official instruments for the protection of the migrant workers need to be reviewed, what kind of agreements or protocols have been promulgated within the region. In this case, European Union has many conventions to safeguard the migrant workers entering the region, in accordance with the International Labour Standards and Human Rights standards, and at the same time, the implementation of those instruments is stronger than ASEAN that provides less instruments to protect the migrant workers within the region, such as the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and their Families. Furthermore, their implementation is clearly weak because their regional instruments are not taken into consideration in order to put some rights into their national labour laws while EU Member States apply the human rights relating to their regional conventions into their national labour laws even though some of the Member States do not like to receive the immigrant workers into their home countries.

The legal instruments for the safeguarding of the migrant workers' rights in EU are the Charter of the Fundamental Rights of the European Unions, European Convention on Human Rights, EU Convention on the Legal Status of Migrant Workers and the European Social Charter. In conformity with those instruments, the migrant workers from the Member States are entitled to the right of free movement with uniform passport that all EU citizens should have, without the work permit, common rules and regulations in the national legislations to safeguard the workers and other fundamental rights, but those from outside the EU with their passport, the allowance of working with the work permit, and the

⁴⁷⁵ Juliet Pietsch and Marshall Clark, *Migration and Integration in Europe, Southeast Asia, and Australia*, 2015.

irregular migrant workers are entitled to enjoy 35% of the health care and the regularization system. The ASEAN legal instruments are ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and Their Families and ASEAN Human Right Declaration; under those instruments the migrant workers in ASEAN have the right to free movement without visa, some fundamental rights, work permit to work and practically most of the migrant workers do not get the full rights of the instruments. Furthermore, there is no clear provision for the illegal migrant workers or undocumented migrant workers within the region; we may presume that there is no strong implementation on the consensus of the protection of the rights of migrant workers.

5.2 Labour Market Regulations

In the European labour market regulations, the EU is going forward a single market with the expectation of a united organisation and a real single space with the same rules and policies, and keeping on carrying the discussion about the labour market policies for the job seekers' favours, especially focusing on the social policy on the working conditions. The statutory minimum wage and the collective bargaining systems are being utilized for setting the minimum wage under the Proposed Minimum Wage Directive 2020 that is accepted by 21 members in the process of statutory minimum wage and by 6 members in the process of collective bargaining system. In order to get the greater social cohesion, the Lisbon Strategy 2000 has been stated. The European labour market policy includes labour taxation, unemployment benefits, other welfare-related benefits, active labour market policies (ALMP), job protection (EPL), wage setting, working time, and immigration mobility. Their goal moves forward the flexibility in its labour market. There are six types of active labour market policies that are training, private sector incentive program, direct employment program in the public sector, service and sanction, youth programs and measures of the disabled, and thus active labour market policies are supporting the creation of more jobs for the unemployment that means the young European workers because ALMP goals the youth to start their career with the effective training despite of no experiences and in the promotion of their productivity and the skills of the workers. Unlike ASEAN, for the migrant workers from third countries, the equal rights and wages are not offered but third country nationals are allowed in the European labour market, especially in the engineer positions for the host country's technology improvement.

In the case of labour market regulations in ASEAN, as some authors commended, the skilled workers and the low skilled workers have different rights facilitated in the employment, the skilled workers in the condition of more facilitated rights and flexible rights while the low skilled migrant workers with the limited rights based on the fact that ASEAN just prefers the skilled migrant workers for their business growth. ASEAN Forum on Migrant Labour has the responsibility to implement the labour market policies within the region with three main themes that are to detect the exploitation, discrimination, and violence, to carry out the labour migration governance and to combat the trafficking in person. The trafficking in person cases has been clearly reduced with the cooperation of the ASEAN governments and the real implementation. If the evaluation of the destination countries is made, Singapore labour market targets mainly the skilled migrant workers with better labour rights, but the low skilled workers are targeted with less rights and weak security of the employment. Thai labour market includes the workers both in formal and informal sector, therefore, so many irregular migrant workers are allowed in the formal employments, but the feeble protection of the social rights except the health care and education and the court discretion for all migrant workers, irrespective of regular or irregular, is just and fair that can be seen in the part of the analysis of Thailand labour migration in Chapter III. Malaysian labour market didn't include the migrant workers before 1990s but nowadays the country's economic growth depends on migrant labour and thus low skilled workers and semi-skilled workers are included in the formal sector that is agriculture, manufacturing, and construction with the lower wages, which means that they do not get any equal wages as the nationals. These three countries are the main receiving countries accepting the migrant workers within ASEAN. Overall, the regulations of the labour market in ASEAN are faint and the treatment of irregular migrant workers is inappropriate, except Singapore. Every host country can only accept the work permit, but third country nationals normally have the favourable rights and wages as the regional workers.

In comparing with EU, ASEAN labour market policies need to be developed and implemented practically as the migrant labourers' rights are only given to the skilled workers with the best protection and wages, since the two regions prefer the skilled workers for the economic growth, and except the free movement the work permit is called for every

regional citizen while in EU the regional workers do not need the work permit except the third nationals. EU labour market regulations are systemic and detailed for the protection of the job seekers within the region, but ASEAN just provides the fundamental provisions in the consensus without any harmonization of national labour legislations within the Member States. EU citizen workers have the full labour rights like the national workers in the destination Member State, moreover, the non-EU citizen workers are also entitled to get the fundamental labour rights from the EU regulations while ASEAN does not give the full rights to the regular migrant workers like the national workers, which means that ASEAN is really necessary to improve the labour rights to all the migrant workers because it is in a weak condition.

5.3 Trade Union Rights

EU trade union rights are based on the European Trade Union Confederation (ETUC) with 89 member organisations including 39 European countries, since trade union in EU relies on ETUC consideration and decisions and national trade union federations and European trade union federations are included in ETUC, and they often make social dialogue in the case of worker affairs, the objective of the ETUC is the interest of the workers in Europe and to maintain an important social dimension. Moreover, ETUC plays a vital role in drafting the legislation for the labour rules. The third country national workers get the assistance from the Union Migrant Network the support integration into host communities, to promote equality, fairness, and non-discrimination. On the other hand, the three dilemmas are being considered for the third country national workers into European trade union. The European migrant workers have the full right to be members of trade union and get the negotiation or collective bargaining between the workers' organisation and the employers' organisation. But the third country workers can only get the support from the Union Migrant Network.

In ASEAN, ASEAN Trade Union Council is the crucial movement for the freedom of association with the cooperation of 9 countries except Brunei, 18 national trade unions. It is cooperating with Task Force on ASEAN Migrant Workers (TF-AMW) that also holds meetings or workshops very often within the region with the leaders of the Member States relating to trade union rights. Another organization for trade union rights is ASEAN Services Employees Trade Union Council (ASETUC) with the aim of trade union rights

implementation, which also has regular social dialogue with ASEAN organs and bodies. ASEAN receiving countries are using the bilateral agreement with the sending countries by setting some regulations under their national labour laws for the trade union projects. In practice, the Member States, mainly the host countries, Singapore, Thailand, Malaysia, and Brunei, will be mentioned about how to manage trade union rights in their national policies as follows:

Singapore: Trade Union Act 1985 provides all workers to be members of registered trade union. The rights of lock-out and strikes have been stated in the Trade Dispute Act and Criminal Law Act. But the workers have to give the entrance fee and annual subscription to improve the trade union movement and the welfare of trade union members and their families under Singapore Labour Foundation Act. However, the employers are influencing the trade union.

Thailand: the private workers are entitled to form the association and join the trade union, but the migrant workers can only join the existing trade union without getting the freedom of association, although performing with the bilateral agreement with the sending countries.

Brunei Darussalam: Migrant workers have no right to trade union and the freedom of association, the collective bargaining and right to strike.

Malaysia: All workers in Malaysia have the trade union rights under Trade Union Act 1959 and they have the right to strike, too. Malaysian Trade Union Congress (MTUC), which is cooperating with the foreign countries by bilateral agreements, focuses on the cases when employers withhold the official documents of the migrant workers.

To sum up the practical trade union rights in ASEAN, it can be stated that the main destination countries play the main considerable part and when monitoring the performances of those countries based on trade union rights, good conclusion cannot be drawn up because except Malaysia, the other countries do not care about the trade union rights of the migrant workers much, and thus, the migrant workers cannot fully enjoy their trade union rights.

5.4 The Management of Irregular Labour Migration between EU and ASEAN

European Irregular migrant workers

European Union is a region that faces the irregular migration from all over the world, and which mainly focuses on the EU national workers' rights and privileges, but when the migrant workers from third countries are intervening into EU labour market, EU has to provide the regulations for the migrant workers' rights and restrictions. Therefore, EU has been promulgating several regulations and policies since the last decades. In 2020, 8.6 million non-EU citizens for working takes 57.6% less than EU national workers and 125100 people came from the border crossing as irregular migrant, which is 12% compared to 2019, but between January and July of 2021 the population of irregular border crossings is 85700, hence, 396000 non-EU citizens were deported to their home countries in 2020.⁴⁷⁶ Those statistics shows that there are still irregular migration happening within Europe and thus it is an integral part of the cooperation within the Member States in EU.

The very first EU legislative framework was started with the Treaty of Lisbon that entered into in force in December 2009, and it has three innovations for the protection of fundamental rights regarding to the Charter of Fundamental Rights, the provision of a legal basis and to the extent of the jurisdiction of the Court of Justice of the European Union. Besides the Treaty of Lisbon 2009, and several secondary legislations have been provided in the case of irregular migration, relating to the sanctions for employers, the return of the irregular migrants, some expulsion policies, fight against trafficking in persons and the demand for administration of authorized entry, transit, and residence. ETUC started to remind not to go on the unfair competition regarding the more active social policies, moreover, Platform for International Cooperation on Undocumented Migrants (PICUM), which is an organisation for the event of the respect of the social rights on undocumented migrants within Europe, highlighted four working conditions that are fair wages, compensation for work accidents, access to the labour courts and right to organize.⁴⁷⁷ In addition, Council Directives 2002/90/EC (28 November 2002) is a policy to combat the

⁴⁷⁶ European Commission, Statistics on Migration in Europe, https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#illegalbordercrossings (10/10/2022)

⁴⁷⁷ Massimo Merlino and Joanna Parkin, Irregular Migration in Europe: EU policies and the Fundamental Rights Gap, 2011.

irregular migration by contributing and enforcing to put the sanctions on whoever helps and assists the person entering the country illegally or transit across.⁴⁷⁸

In the case of irregular migrant workers in EU, they are entitled to around 35% of the health services available to nationals, mostly relating to emergency care (Ingleby and Petrova-Benedict, 2016⁴⁷⁹). Healthcare providers in five EU countries are legally required to report undocumented migrants to immigration authorities and confidentiality is only assured in ten countries.⁴⁸⁰ In the UK, this is part of a range of measures where proprietors and banks are also required to carry out immigration checks. Such environments deter migrants from seeking healthcare and result in alternative strategies such as self-medication, contacting doctors in social networks and borrowing health insurance and identity cards.⁴⁸¹ Health care is important to every worker, and it is a fundamental right for both regular and irregular migrant workers. However, they need to get more percentage than 35% of health services.

The effect of irregular migrants is likely to depend on the structure of the labour market. In a single labour market, unauthorized immigrants may have a more adverse impact than legal immigrants may on competing workers if they are willing to work for lower wages or in worse conditions. Evidence suggests that unauthorized immigrants typically earn less than the natives or legal immigrants, in Italy, for example, irregular immigrants earn about 8 percentage less than comparable legal immigrants; in Spain, 12 percentage less (Baldacci, Ingles, and Souza, 1999; Connor and Massey, 2010).⁴⁸² Research shows that immigrants working illegally in the shadow economy in Italy reduce employment of legal labour there (Venturing, 1999) and the most traditional legal response of European Member States to undocumented migrant workers is so restrictive in their legislation by preventing and discouraging the employment of undocumented workers.⁴⁸³ If

⁴⁷⁸ Council Directives 2002/90/EC, 28 November 2002, Article (1), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0090_\(10/10/2022\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0090_(10/10/2022))

⁴⁷⁹ Ingleby, Petrova-Benedict, Recommendations on Access to health services for migrants in an irregular situation: an expert consensus, IOM, October 2016.

⁴⁸⁰ Out of scope: irregular migrants and people affected by urban violence, World Disasters Report 2018. [https://documents.pub/document/6-out-of-scope-irregular-migrants-and-people-affected-by-ber-of-responders.html?page=1_\(10/10/2022\)](https://documents.pub/document/6-out-of-scope-irregular-migrants-and-people-affected-by-ber-of-responders.html?page=1_(10/10/2022))

⁴⁸¹ Out of scope: irregular migrants and people affected by urban violence, World Disasters Report 2018, Ibid.

⁴⁸² Orrenius and Madeline Zavodny, Irregular Immigration in the European Union, January 2016. [https://eapmigrationpanel.org/sites/default/files/2016_2_eпа_eng_1.pdf_\(10/10/2022\)](https://eapmigrationpanel.org/sites/default/files/2016_2_eпа_eng_1.pdf_(10/10/2022))

⁴⁸³ Orrenius and Madeline Zavodny, Ibid.

they are allowed to enter the Member State easily without being restricted, in the future the Member States would not control the population of those status workers. In effect, most legislation dealing with undocumented workers provides four specific types of action: (1) the criminalisation of undocumented workers and their employers, (2) the introduction of stringent detection mechanisms through the implementation of stricter border controls and inspection mechanisms, (3) the provision of detention facilities for undocumented workers and (4) the implementation of strict deportation policies.⁴⁸⁴ The undocumented workers' issues are so difficult to solve because of the regularization of their status.

A pull factor approach has been recognized by the EU Member States. It is a kind of concentration to economy and makes the undocumented workers work in the host countries and the employers assume the risk of penalization in favour of the profits. For the pull factor, there are three approaches, non-protection, the protection with consequences approach and full-protection, but EU Member States are using two of these approaches, which are non-protection and the protection with consequences approach. In detail of these two approaches, non-protection means that there is no employment rights for undocumented workers but it allows the undocumented workers to work with invalid and enforceable contract and to enter illegally.⁴⁸⁵ The protection with consequent approach means that it protects undocumented workers with the limited rights such as health and safety and they are entitled to enforce their limited rights before the court. It will make them to reveal the identity.⁴⁸⁶

European Unions have the regularization policy for irregular migration including labour migration. EU has faced the bad situation concerned with the irregular labour migration, so some EU countries have regularized many irregular migrants because of pull factor. During the last ten years, various European countries have regularized the condition of clandestine migrants either without or with invalid permissions to stay.⁴⁸⁷ Although there is a general understanding that these regularizations became a pull factor rather than a deterrent to stay irregularly in EU, these acts represent a huge data collection of irregular

⁴⁸⁴ Orrenius and Madeline Zavodny, *Ibid.*

⁴⁸⁵ Elaine Dewhurst, p 21,22,23.

⁴⁸⁶ Elaine Dewhurst, *Ibid.*

⁴⁸⁷ Erik Longo, *SEEKING A BETTER LIFE: HUMAN WELFARE OF MIGRANTS IN IRREGULAR SITUATIONS IN THE UNITED STATES AND EUROPE*, Researcher in Constitutional Law, University of Macerata, 2013.

migration. The increasing number of regularization has created complex situations among people living irregularly.⁴⁸⁸ There are some regulations or policies within the European Commission dealing with the irregular migration: DG Home Affairs that is the main Commission in case of irregular migration to distinguish in the policies and programmes between the legal and the illegal migration, DG Employment, Social Affairs and Equal Opportunities with no distinction based on the legal status, and DG Health and Consumer Protection (DG SANCO) that is for the access of the health care of all migrants but most of the projects of European Commission for the undocumented migrant workers. Additionally, Health for Undocumented Migrants and Asylum Seekers (HUMA) served for the health care of the undocumented migrants in 19 countries.⁴⁸⁹ Some of the migrant people come from the border crossings to a state irregularly, which causes the EU more concerned in the case of undocumented migrants under the surveillance. Thus European Border Surveillance System (EUROSUR) was organized to prevent the cross-border crime, the irregular migration and to protect the migrants' lives, but in 2018 the European Commission issued a new European Border and Coast Guard Regulations as a cause of an evaluation of EUROSUR, and then the new regulation for it came out in 2021: An Implementing Regulation on the Situational Pictures of EUROSUR.⁴⁹⁰ European Border and Coast Guard Agency (FRONTEX) get a vital trajectory in safeguarding the borders of EU in accordance with the Regulation (EU) 2014/1896 with an entry in force on 13th of November, 2019.⁴⁹¹ As stated above the irregular migrants also have the right to get the fundamental rights and EU is trying to protect their fundamental rights and to decrease the rate of irregular migrant population with the efforts of EU Commission, on the other hand, the illegal border crossing is being controlled in the different policies such as EUROSUR, FRONTEX and the Regulation (EU) 2014/1896.

Therefore, the EU has the regularization programme within the region from the first implementation of Italy and Spain with the first and largest regularization programmes that already regularized 600000 irregular migrants in Italy in 2002 and 500000 in Spain in

⁴⁸⁸ Erik Longo, Ibid.

⁴⁸⁹ Massimo Merlino and Joanna Parkin, Ibid.

⁴⁹⁰ European Commission, Migration and Home Affairs, https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/border-crossing/eurosur_en (10/10/2022)

⁴⁹¹ FRONTEX, <https://frontex.europa.eu/about-frontex/who-we-are/foreword/> and <https://frontex.europa.eu/about-frontex/legal-basis/> (10/10/2022)

2005.⁴⁹² However, Kate Brick mentioned in 2011 that since 1970s France, Belgium, Netherland and the UK have emerged, the regularization system has become famous and it is utilized as a policy way in other Member States. Moreover, she differentiated the regularization system into two divisions: through the program focusing on the labour-focused irregular migrants without including the asylum seekers and humanitarian concerns and through the mechanisms targeting to the consideration of the asylum crisis and humanitarian reasons, and 3.5 million people were regularized in Europe between 1996 and 2008 as the result of the regularization mechanisms and they were mostly from Italy and Spain.⁴⁹³ Markus Gonzalez Beilfuss and Julia Koopmas also categorized the regularization into two types that are the one-off regularization program working for the humanitarian reason and case-by-case regularization program for the people who entered the country before a certain date.⁴⁹⁴ First, the steps of the approach of the European Commission prescribed that the Commission primarily changed from anti-regularization to pro-regularization, and then in 2001 did not accept dealing with the irregular migration, in 2003 accepted as the protection of the irregular migrants and a would-be solution to this problem, and in 2004 as a policy of providing protection of the people in need. Ali Bilgic also distinguished two groups in the regularization system: who do not get the residence permit but in the situation of not affording to return their home country for the humanitarian reasons, and who got a residence permit under the law but become changeable in conformity of immigration law changes.⁴⁹⁵ Overall, the regularization system in Europe is based not only on the political concerns but also on the national economic issues and fills the gaps of the labour demand.

The irregular migrant workers in EU have been protected with some policies to refrain the exploitation and abuse by criminalizing the employers by virtue of the Employment Sanctions Directive, but the Member States provide the criminalization in

⁴⁹² Claire Mc Govern, Regularization programs within the European Union: an effective tool to manage irregular migration? 2014.

⁴⁹³ Kate Brick, Regularization in the European Union: the Contentious Policy tools, 2011.

⁴⁹⁴ Markus González Beilfuss & Julia Koopmans, Legal pathways to regularisation of illegally staying migrants in EU Member States, 2021.

⁴⁹⁵ Ali Bilgic, Framing an EU Level Regularization Mechanism: Mission Impossible?, International Migration Vol. 51 (5) 2013

their national legislations based on their irregular situation in their country.⁴⁹⁶ The Directive is to prohibit the employment of illegally staying third-country nationals, punishing the financial sanctions on the employers if he/she infringes Article (3) and to punish the employers as a criminal offence.⁴⁹⁷ Article (9) (1) (c) of the Directive relates the criminalizing of the exploitative conditions that 20 EU Member States enacted the criminalizing of the exploitation in employment in their national legislations in accordance with the FRA (European Agency of the Fundamental Rights) Report 2015, which reviewed one or more judgment of their domestic case from January 2014 to March 2020 but only two-third of the Member States implemented and punished the employers regarding those cases with their national laws.⁴⁹⁸ Taking action for the prevention of the irregular migrant workers is being served both on the irregular migrants and the employer who accepted them. However, the fundamental rights have been given to all the workers, irrespective of regular or irregular in conformity with the EU regulations for all the migrant workers.

The overall of struggling to figure out of irregular migrant workers' issue is still preventing and implementing the better regulations from time to time by punishing the employers, by providing EU fundamental rights for undocumented migrant workers and by enacting the regularization program. EU Commission has the concept that the irregular migrant workers should not be the vulnerable situation and have the right to be protected under their fundamental human rights.

ASEAN Irregular Migrant Workers

ASEAN regulations are weak in the protection and prevention of the fundamental rights of the irregular migrant workers, furthermore, the diversity of EU policies on the irregular migrants apply fewer provisions in the affair of the illegal labour migration, under the ASEAN norms regarding the non-interference of the internal affairs of another Member State and regarding the respect of the sovereignty, which is a kind of barring to collaborate with each other within the region. ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and Their Families does not mention much about the

⁴⁹⁶ European Agency for Fundamental Rights, Progressing of Migrants in an Irregular Situation from Labour Exploitation: Role of Employer Sanction Directive Report, 2021. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-employers-sanctions-directive-report_en.pdf (10/10/2022)

⁴⁹⁷ Directive 2009/52/EC of the European Parliament and of the Council, 18th June 2009. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0052> (10/10/2022)

⁴⁹⁸ European Agency for Fundamental Rights, Ibid.

undocumented migrant workers, which means that ASEAN has no recognition of the irregular migrant workers, though most of the migrant workers are working in the informal sectors. The movement for the integration of the irregular migrant workers' affair is the Bangkok Declaration on Irregular Migration leading to remind the ASEAN leaders to target on the illegal issue in the fair and humane and Cebu Declaration with three components. There is no specific regulation or protocol for the regularization system as a chance to be legal workers within the region but Article 56 of the ASEAN Consensus refers only to the migrant workers who have changed from the legal status to the illegal status as the undocumented migrant workers. Therefore, national policies get an essential role in the safeguarding of the fundamental rights of undocumented migrant workers within ASEAN, nevertheless, three main destination countries, Singapore, Thailand and Malaysia have so many migrant workers, ASEAN citizen workers and workers from outside ASEAN.

Singapore, Thailand, and Malaysia are the main destinations for accepting the migrant workers from the region, with different regulations and policies for the migration, and thus irregular migrant workers are being figured out in the national policies; Malaysia and Thailand are deporting irregular migrant workers to their original countries and the regularization has been implemented. Singapore controls the irregular workers by punishing the employers who accept them; therefore, there are only 4% of illegal workers. In general, ASEAN countries prefer to do the MOU (Memorandum of Understanding) between the sending and the receiving countries.

Therefore, no effective cooperation for the affairs of irregular migrant workers is performed among the Member States, just with the national control and bilateral agreements. In comparing the EU performances, it is fully clear that ASEAN organization is in a weak condition in the protection and treating the irregular migrant workers humanely as their fundamental human rights as full rights of the national workers cannot be given. The reasons are that EU gives the protection of the fundamental rights of the irregular workers prominently with the basic legal provision up to the inclusion of the European Court of Justice, the regularization programme for them that EU Member States are implementing, and EU provides several regulations for the irregular migrants. The part of the action of the irregular migrant workers and the employers under the laws is efficacious. Overall the European effort to the irregular labour migration is prominent by virtue of the

scrutinizing and detailed performances, and at least the recognition of all the migrant workers including legal and illegal workers while ASEAN Member States mostly do not recognize the illegal workers.

5.5 How to manage and safeguard the migrant workers in the pandemic situation

Covid 19 pandemic circumstances have created some new regulations in some countries regarding the migrant workers based on whether they will be protected fully in accordance with the social security rights. It is a very interesting target point for all the migration learners and researchers. Social security rights are the substantial rights to all the workers grounded by the employments, which has to be given by the employers and the country's regulations. In the case of pandemic situation, the medical rights, the unemployment benefits, death benefits and medical insurance are also taken into consideration for all the migrant workers. Therefore, regional regulations for the pandemic play a key role for considering the living conditions of migrant workers and the medical rights at the workplaces. ASEAN and EU have surely different rules and policies for their regional migrant workers.

First, what are the EU policies for pandemic situation on migrant workers? The automatic extension of resident permit was implemented, which was in force on 31st of December 2020, the healthcare security for all migrant workers and the labour market access for third country nationals in the some sections with a limited number by EU member states.⁴⁹⁹ The regular migrant workers were potential to change into the irregular conditions in line with their expired documentation. Therefore, EU Member States are extending their expired date not to accept this irregular situation. But Sweden has no extension policy for the migrant workers and all normal regulations existed without any change.⁵⁰⁰ In case of unemployment benefits and health care, all member states in EU are giving the unemployment benefits and health insurance to all the migrant workers including

⁴⁹⁹ European Commission, European Migration Network: The Impact Of Covid 19 in the Immigration Area and in EU, April, 2021. <https://www.oecd.org/els/mig/00-eu-emn-covid19-umbrella-inform-en.pdf> (10/10/2022)

⁵⁰⁰

European Commission, European Migration Network: The Impact Of Covid 19 in the Immigration Area and in EU, April, 2021. <https://www.oecd.org/els/mig/00-eu-emn-covid19-umbrella-inform-en.pdf> (10/10/2022)

irregular migrants with different ways that means directly or indirectly.⁵⁰¹ However, Ana Indoitu expressed 78% of the migrants not getting the health care system in the serious conditions of the pandemic.⁵⁰² And European citizen workers have the same right of social protection with the valid documentation but those with lack of documents and those who are working in the informal sectors are vulnerable in the social security in the host countries.⁵⁰³ Overall the European regulations on migrant workers in case of pandemic situation do not seem perfect but protect the migrant workers including the irregular ones. However the Member States' implementation looks weak in the severe circumstances of the Covid 19 epidemic; the regular migrant workers are assured to get the social protection but the irregular workers working in the informal sectors are not sure getting the health care.

How are ASEAN regulations during the pandemic? Primarily the destination countries of ASEAN have to be focused; Thai government released the policy of the extension of authorisation of work within the country, and the efforts of ASEAN for the Covid 19 pandemic are in the following:

- In May 2019, a Special Meeting of ASEAN Labour Ministers on Response to the Impact of Coronavirus Disease 2019 (COVID19) on Labour and Employment issued a Joint Statement, which recognizes vulnerability of migrant workers
- Actions to address special vulnerabilities of migrant workers are likely to be defined in the Plan 2021-2025 of the ACMW, which is a subsidiary body of the ALM
- 13th AFML “Supporting migrant workers during the pandemic for a Cohesive and Responsive ASEAN Community.” Nov 2020
- Humanitarian assistance (ILO and other organizations)⁵⁰⁴

⁵⁰¹ European Commission, European Migration Network: The Impact Of Covid 19 in the Immigration Area and in EU, April, 2021. <https://www.oecd.org/els/mig/00-eu-emn-covid19-umbrella-inform-en.pdf> (10/10/2022)

⁵⁰² Ana Indoitu, Impact of COVID-19 on labour migration from EaP countries to the EU, 2021, <https://eap-csf.eu/wp-content/uploads/Impact-of-COVID-19-on-labour-migration-from-EaP-countries-to-the-EU.pdf> (10/10/2022)

⁵⁰³ World Health Organization, Promoting the health of Migrant Workers in the WHO European Region during COVID-19: interim guidance, 6 November 2020, <https://apps.who.int/iris/bitstream/handle/10665/336549/WHO-EURO-2020-1384-41134-55925-eng.pdf?sequence=1&isAllowed=y> (10/10/2022)

⁵⁰⁴ International Labour Organization, COVID-19: Impact on Migrant Workers in the ASEAN region and Responses, 4 August 2020,

All ASEAN countries, including countries of origin and destination, have provided additional government funding into their health systems through their COVID-19 stimulus packages (ILO 2020).⁵⁰⁵ Thai and Singaporean governments extended the resident permit for working during the pandemic and the ASEAN countries are giving the free testing of Covid 19. In ASEAN countries of destination, migrant workers have been largely excluded from unemployment benefits, income relief and wage subsidies implemented by the governments. One exception has been formal sector migrant workers in Thailand who are eligible for unemployment insurance benefits. Singapore has also been supporting employers in retaining and fulfilling their obligations to their migrant employees.⁵⁰⁶

The comparison between the above- mentioned two regions has already been seen but the pandemic situation made the governments crazy in the management of the policies relating to everybody including the migrant workers. Especially in the very serious circumstances, it is hard to handle all population involving the sick people and potential sick people. In those times, the social protection could not be given even for the citizens of the destination countries, for instance, Italy. In the above-mentioned two regions, ASEAN workers are still more vulnerable than the migrant workers in EU.

5.6. Case Studies of European Union and ASEAN

European Case Studies

C-515/14 (The Commission Vs. The Republic of Cyprus)

This case was focused on the failure of a member state to fulfil obligations, freedom of movement for persons, Art-45 of TFEU and 48 of TFEU- old age benefits, differences of treatment on the grounds of age, a civil servant from a Member State under the age of 45 who leaves that Member State to take up employment in another Member State or within the EU institution. The action is under Art-258 of TFEU and was brought by the European Commission on 14 November 2014. The European Commission requested the Court to

https://aric.adb.org/pdf/rcipod/episode_8/2%20ILO_August%203%20final%20COVID-19%20Pandemic%20-%20SEA%20Impact%20on%20MWS%20&%20Response.pdf (10/10/2022)

⁵⁰⁵ International Labour Organization, Supporting migrant workers during the pandemic for a cohesive and responsive ASEAN Community, Thematic background paper for the 13th ASEAN Forum on Migrant Labor, 2021, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_816971.pdf (10/10/2022)

⁵⁰⁶ International Labour Organization, Supporting migrant workers during the pandemic for a cohesive and responsive ASEAN Community, Thematic background paper for the 13th ASEAN Forum on Migrant Labor, 2021, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_816971.pdf (10/10/2022)

declare that the Republic of Cyprus failed to fulfil its obligations under Art-4(3), Art-45 and Art-48 of TFEU. The Republic of Cyprus did not repeal the retroactive effects from 1st of May 2011, rendering them incompatible with the foreign provisions, which deters workers from leaving their member state of origin to go to another member state for employment. The Cypriot legislation mentions the different treatment between officials of the national administration and officials working in another member state or within the EU institution. Furthermore, the article of the Law on Pensions that is at issue impedes the free movement of workers because it denies the worker the possibility of relying on aggregation of all insurance periods and does not guarantee the migrant worker a unified career for social security purposes. In addition, Law 31(I)/2012 which provides only for the possibility of transfer of pension rights to and from the pension scheme of officials of the European Union does not contain any provision relating to the pension rights of State officials who leave the State service of Cyprus in order to take up duties with the European Union, but ultimately choose not to transfer their pension rights. Therefore, the European Commission took action on the Cyprus infringement of the EU regulations.⁵⁰⁷

Held: Under Article 138(1) of the Rules of Procedure of the Court, the Republic of Cyprus was ordered to pay costs as the Commission applied for the costs against Cyprus. The Court decided on those grounds, the Court (First Chamber) hereby:

“ Declares that by failing to repeal, with retroactive effect from 1 May 2004, the age-related criterion in Article 27 of Law 97 (I)/1997 on Pensions which deters workers from leaving their Member State of origin in order to work in another Member State, or within an EU institution, or other international organisation and which has the effect of creating unequal treatment between migrant workers including those who work within the EU institutions or within another international organisation, on the one hand, and civil servants who have worked in Cyprus, on the other, the Republic of Cyprus has failed to fulfil its obligations under Articles 45 TFEU and 48 TFEU and under Article 4(3) TEU; Orders the Republic of Cyprus to pay the costs.”⁵⁰⁸

Antuzis V. DJ Houghton Catching Services Ltd (2019)

⁵⁰⁷ Official Journal of the European Union (C 65), 23.2.2015, P-19 and 20.

⁵⁰⁸ Official Website of European Union, Judgement of the Court, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0515 \(10/10/2022\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0515%2810%2F10%2F2022%29)

In this case, the migrant workers were from Lithuania, who worked in UK. They had to work to catch chickens at farms throughout the UK, but they claimed that they were exploited because their salary was less than the minimum wage prescribed in the Agricultural Wages Act 1948 and the Agricultural Wages (England and Wales) 2012, were obliged to work without break, had to sleep in a minibus between farms, work many more hours than recorded, and their wages could be reduced for spurious reasons. Therefore, they complained to the High Court for the failure to pay the minimum wage, failure to pay holiday pay, charging unlawful employment fees and the arbitrary withholding of wages, against the company. The High Court held that Ms Judge and Mr. Houghton are personally liable for inducing the company to break the employment contract because both had no good faith about the payments. The UK has not been a member of the European Union since 2020, but this case happened during the time of being a member of the EU. Therefore, it is also relevant to my study.

Marie Landtova Vs. Česká správa sociálního zabezpečení (C-399/09)

Before mentioning the case of C-399, it is necessary to state that this case is based on the bilateral agreement between Czech and Slovak Federal Republic of 29 December, 1992, regarding the social security benefits for these two countries' citizens which the two countries created on its territories as the bilateral agreement. In addition, it relates to the EU regulatory of Art-12 EC (now Art-18 TFEU), Art-39, and Art-42 (now Art-48 TFEU). The facts of the case are that Marie Landtova worked in the Slovak Federal Republic from 1964 before the agreement of both countries in 1992. She worked until 31st of August of 1993 and then went and worked from 1st of September 1993 in the territory of the Czech Republic. But in 2002 the Slovak social security institution (CSSA) granted Marie Landtovà a partial invalidity pension covering, in accordance with the bilateral agreement of 29 October 1992, the contribution period between 1964 and 31 August 1993, but concluded that the value of the period of insurance completed by Ms Landtovà up to 31 December 1992 had to be determined under the rules of the Slovak social security scheme since the headquarters of her employer was in the territory of the Slovak Republic. On 14 August 2006 Ms Landtovà challenged the amount of the old age benefit awarded to her by bringing an action before the Městský soud v Praze (Prague City Court), taking the view that the CSSA had failed to consider all the periods of insurance completed by her. On 23

May 2007 the Městský soud v Praze annulled the CSSA's decision in accordance with the Ústavní soud judgment with the fact that CSSA is bound to award the old age pension benefits to the applicant which is equivalent to the higher entitlement. The CSSA brought an appeal on a point of law before the Nejvyšší správní soud. On 16 January 2008 the Nejvyšší správní soud set aside the judgment of the Městský soud v Praze and referred the case back to it for further consideration. The Městský soud v Praze adhered to its position and held the CSSA to adjust and award the applicant with the entitled amount which had been insured in accordance with the Czech Social Security Scheme. Then CSSA appealed again before the Nejvyšší správní soud invoking the arguments set out in the first appeal, the Nejvyšší správní soud decided to refer the matter to the Court for a preliminary ruling. Finally, the Nejvyšší správní soud decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Must point 6 of Annex III(A) to Council Regulation (EC) No 1408/71 ... read in conjunction with Article 7(2)(c) [thereof], according to which the criterion for determining the successor state competent to determine the value of periods of insurance completed by employed persons before 31 December 1992 under the social security scheme of the Czech and Slovak Federal Republic is to remain applicable, be interpreted as precluding the application of a rule of national law which provides that the Czech social security institution is to take into account, with regard to entitlement to a benefit and setting the amount thereof, the entire period of insurance completed in the territory of the Czech and Slovak Federal Republic before 31 December 1992, even though, according to the abovementioned criterion, it is the social security institution of the Slovak Republic which is competent to determine the value of that period of insurance?
2. If the first question is answered in the negative, must Article 12 EC in conjunction with Articles 3(1), 10 and 46 of Regulation (EC) No 1408/71 ... be interpreted as meaning that the period of insurance completed under the social security scheme of the Czech and Slovak Federal Republic before 31 December 1992, which has already been taken into account once to the same extent for benefit purposes under the social security scheme of the Slovak Republic, cannot, pursuant to the abovementioned national rule, be taken into account in its entirety

only in respect of nationals of the Czech Republic resident in the territory of the Czech Republic for the purposes of entitlement to old age benefit and setting the amount thereof?’

Finally, the court found that the preliminary ruling is admissible although the Slovak Republic side could not be admissible. In addition, the court held in the following:

1. The provisions of point 6 of Annex III(A) to Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 and as amended by Regulation (EC) No 629/2006 of the European Parliament and of the Council of 5 April 2006, read in conjunction with Article 7(2)(c) thereof, do not preclude a national rule, such as that at issue in the main proceedings, which provides for payment of a supplement to old age benefit where the amount of that benefit, granted pursuant to Article 20 of the bilateral agreement between the Czech Republic and the Slovak Republic signed on 29 October 1992 as a measure to regulate matters after the dissolution of the Czech and Slovak Federal Republic, is lower than that which would have been received if the retirement pension had been calculated in accordance with the legal rules of the Czech Republic.
2. The combined provisions of Article 3(1) and Article 10 of Regulation No 1408/71, as amended by Regulation No 629/2006, preclude a national rule, such as that at issue in the main proceedings, which allows payment of a supplement to old age benefit solely to Czech nationals residing in the territory of the Czech Republic, but it does not necessarily follow, under European Union law, that an individual who satisfies those two requirements should be deprived of such a payment.⁵⁰⁹

Centre Public d’Aide Sociale de Courcelles v Lebon (1987) ECR 2811 (C-316/85)

Concerns the rights to social security for a family member of migrant workers in Belgium, Lebon was born in France and lived in Belgium with her father who is in receipt of the retirement pension in Belgium. Lebon was unemployed and claimed Belgium social

⁵⁰⁹ MP Cruz Villalon, Court of Justice of European Communities, presented on March 3, 2011, and EUR-LEX, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62009CJ0399> (03/03/2011)

welfare payments under Art-7(2) of Council Regulation No 1612/68, which provides that a worker with the nationality of another member state shall enjoy the same social and tax advantages as national workers. The Court stated two grounds on this case in the following:

- The first ground: Article 7 (2) of Council Regulation No 1216/68 is only for the worker who is working in the country but not for the family members. A descendant of over the age of 21 years old may not be guaranteed by the community law to claim the social benefits. In the circumstances, that benefit **does not constitute for the worker a social advantage** within the meaning of Article 7(2) of Regulation No 1612/68, inasmuch as he is no longer supporting his descendant.
- The second ground: The social tax and advantages laid down in the Art-7(2) of the Council Regulation No 1216/68 is also only for the worker who is working directly in the country and who is searching the access to the employment in accordance with Art-48 of TFEU and Art-2 and 5 of that regulation.

The court held that Lebon was not entitled to social welfare advantages, based on the grounds mentioned above.⁵¹⁰

Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others (Case-341/05)

Through the case of free movement of service, the rights of collective agreement and action could be learnt. Laval Ltd hired workers for establishing the government building in Sweden yet refused to sign the collective agreement with the Swedish Electrician trade unions with the purpose of the guaranteed payment for workers. Then, the unions blockaded the work site. Consequently, Laval started to argue that his rights of free movement of services had been breached. The judgment of the court is that the right to take collective action for the protection of the workers of the host state may constitute the overriding reason of the public interest within the meaning of the case law of the Court providing the fundamental freedoms guaranteed by the Treaty, and in this case, collective action cannot be justified in light of the public interest objective as the collection action seeks to compel Laval to enter into negotiations on pay, but national law is unclear as to what the undertaking's obligations are in relation to collective bargaining over minimum

⁵¹⁰ Will Chen, Centre Public d'Aide Sociale de Courcelles v Lebon (1987) ECR 2811 (C-316/85), <https://lawprof.co/eu-law/free-movement-of-persons-cases/case-316-85-lebon-1987-ecr-2811/> and Oxford Notes, [https://www.oxbridgenotes.co.uk/law_cases/case-316-85-lebon_\(10/10/2022\)](https://www.oxbridgenotes.co.uk/law_cases/case-316-85-lebon_(10/10/2022))

pay. Finally, the Court held that Laval's right to free movement of service under Art 56 TEFU has been breached and the workers' right to collective action did not justify the breach.⁵¹¹

Case Chowdury and others Vs. Greece (Application No. 21884/15)

This case concerns irregular labour migrants in Greece with third country national workers, from Bangladesh. 42 Bangladeshi national workers worked in the strawberry farms in Manolada in Greece, with illegal status by getting a mutual agreement with the employer of the farm, that they had to work from 7 AM to 7 PM, yet they were not paid by the employers and then made strikes several times. Though they were never paid, the employers recruited additional Bangladeshi national workers again. Then an armed guard shot and injured many of the workers. 42 Bangladeshi workers claimed to the Patras Criminal Court for the trafficking in human beings and the court acquitted four defendants of the guards and convicted one of the guards and the employers for harming the bodies and unlawful use of firearms on the workers. The workers argued that they were subjected to forced labour and human trafficking under Art-4(2) of ECHR which provides "no one shall be required to perform forced or compulsory labour". The application was lodged in the European Court of Human Rights on 27th of April in 2015. The judgment of the Court was that the domestic court already interpreted the human trafficking in persons in a very restrictive way, the applicant situation didn't amount to servitude and thus the applicants' situation fell within the court of Art-4(2) of ECHR as it concerned Human trafficking and forced labour. Finally, the Court held that "there had been a violation of Article 4(2) of the Convention on account of the State's failure to fulfil its positive obligations under that provision, namely to prevent the human trafficking situation complained of, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking and that Greece was to pay each of the applicants who had participated in the proceedings before the assize court 16,000 euros (EUR), and each of the

⁵¹¹ European Union Agency for Fundamental Rights, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others* (C-341/05), <https://fra.europa.eu/et/caselaw-reference/cieu-c-34105-judgment>, and Will Chen, <https://lawprof.co/eu-law/free-movement-of-goods-and-services-cases/case-c-341-05-laval-2007-ecr-i-11767/> (10/10/2022)

other applicants EUR 12,000 in respect of all the damage sustained, plus EUR 4,363.64 to the applicants jointly in respect of costs and expenses.”⁵¹²

Case Studies on ASEAN Migrant Labour

Sheikh Abdullan and Md Serajul Vs Public Prosecutor (Case number – MA No-111/2002)

This case happened in Singapore associated with illegal employment. The main issue of this case is whether the immigrant offenders’ evidence and testimony are correct or the appellant’s evidence was reasonable. The owner of the Haji MM Shahul Hameed stall is the immigrant offenders are Sheikh Abdullah from India and Md Serajul from Bangladesh. The employment inspector of the Ministry of Manpower observed both immigrant offenders; Sheikh Abdullah putting some mutton into a plastic basket in front of Johara Mutton Stall and Md Serajul handling mutton in the common working area between the two stalls, without any supervision of both. Md Serajul testified that he got a job in the appellant’s stall through his friend in August, worked for the appellant for 17-18 days before being arrested, and got wages about 100 USD for the work done, although he got information that he will get 30 USD a day working from 7am to 10pm. Sheikh Abdullah testified that he tried to get a job in the appellant’s stall three times, then she asked him to show his work permit and he showed his forged, photocopied work permit with a lie but the appellant didn’t ask any further questions about his immigration status. Then he started working in the stall for the payment of 20 USD per day. They proved that they worked in the appellant’s stall but the appellant denied that testimony and got the decision that she failed in her accusation. He appealed in the higher court on the basis that the trial judge had erred in the finding of the prosecution. He tried to reason that he had no need for any more workers apart from Yusoff, Abdul Kuthoos and his son, and he was used for the immigrant offenders’ extension of staying in Singapore. The final verdict held that the appellant’s appeal was dismissed against conviction and sentence under S-57A of the Immigration Act 1959.⁵¹³

Swee Lay ching Vs Public Prosecutor (Case No – MA 6/2003)

⁵¹² European Court of Human Rights, issued by the Registrar of the Court, 30.03.2017, and [Vladislava Stoyanova](https://www.ejiltalk.org/irregular-migrants-and-the-prohibition-of-slavery-servitude-forced-labour-human-trafficking-under-article-4-of-the-echr/), Blog of European Journal of International Law, 26.04.2017, [https://www.ejiltalk.org/irregular-migrants-and-the-prohibition-of-slavery-servitude-forced-labour-human-trafficking-under-article-4-of-the-echr/ \(10/10/2022\)](https://www.ejiltalk.org/irregular-migrants-and-the-prohibition-of-slavery-servitude-forced-labour-human-trafficking-under-article-4-of-the-echr/)

⁵¹³ Copyright@Government of Singapore, [https://www.elitigation.sg/gd/s/2002_SGHC_251 \(10/10/2022\)](https://www.elitigation.sg/gd/s/2002_SGHC_251)

The case relates to illegal immigrant workers in Singapore under the Singaporean Immigration Act of 1959. The involved witnesses in the case are two arresting officers, one stall owner, two workers, and two customers. The basis of the case is that the two arresting officers, Cpl Tan Kim Chuan (Cpl Tan) and Sgt Brian Ong (Sgt Ong), observed Lee Lim Geok (Lee) working inside of the stall and Hu packing the products and handing them to the customers. Then they asked them to show their valid work documents, but Hu had no valid documents or work permit for working in Singapore while Lee had a valid work permit. The two officers arrested Hu and asked questions about the case. When the incident happened, the owner of the stall, Swee Lay Ching, was not in the stall. In conformity of testimonies of the witnesses, Kat (the customer) testified that he did not know Hu before, except just seeing her eating and drinking in the coffee shop, and he just saw Swee and another elderly man working in the stall but in the examination-in-chief, testified differently that one young Chinese man was seen working in the stall. S/Sgt Law testified that Hu served his orders and gave the food he ordered before but he has never seen Swee speak to Hu before. When Hu's testimony was reviewed, she admitted to the court that she approached Swee for a job in August 2001, then she got a job in Swee's stall and got 40 USD per day by washing the chicken in the morning and serving customers. However, in her cross-examination, she denied what she had testified to before, claiming that she was threatened by a police officer, and she was frightened because of the police. According to Swee's testimony in the case, he denied that Hu was not his worker in his stall and he just saw Hu in February or March in 2002 who sold lottery twice or thrice a week but just once talked to Hu. Nevertheless, the district Judge found that Swee had employed Hu as his stall assistant knowing that Hu was an illegal immigrant in Singapore, with the reasons that the evidence of Cpl Tan, Sgt Low and Sgt Ong was reliable and reasonable, but the evidence of Kat, Swee and Hu was not. Then Swee appealed the decision of the district judge, claiming that the district judge had erred in finding of the evidence of Cpt Tan, Sgt Ong and Sgt Low. But the High Court also recommended the decision of the district judge after hearing the evidence of both sides and dismissed the appeal.⁵¹⁴

14 Myanmar Migrant Workers Vs Thammakaset (2016)

⁵¹⁴ Copy @ Government of Singapore, [https://www.elitigation.sg/gd/s/2003_SGHC_149_\(10/10/2022\)](https://www.elitigation.sg/gd/s/2003_SGHC_149_(10/10/2022))

14 Myanmar Migrant Workers who worked at a chicken farm, filed a complaint with the Department of Labour Protection and Welfare that Thammakaset had violated the rights of the workers by paying less than the minimum wage, and failing to pay the overtime wage and confiscating their Identity documents. The Department of Labour Protection and Welfare ordered them to pay 1.7 million Thai Bahts to 14 Myanmar workers. But Thammakaset also filed a criminal case “Providing False information to an official” and “defamation” that 14 Myanmar workers wrongfully reported to the Labour Department with false statements. Finally, the Supreme Court confirmed the decision of the Labour Court granting 1.7 million bahts to 14 Myanmar workers.⁵¹⁵

Thammakaset Vs Ms. Ka Thway Soe, Mr. Nan Toe and Mr. Nan Win

Thammakaset filed a complaint that Ms. Ka Thway Soe, Mr. Nan Toe and Mr. Nan Win who were former migrant workers in Thailand, gave false information regarding the complaint of violations of their labour rights to the Department of Labour Protection and Welfare. After the preliminary hearing, The Loburi Kwaeng Court dismissed Thammakaset’s complaint and held that the workers’ information to the Department of the Labor Protection and Welfare was correct.⁵¹⁶

Migrant workers Vs U.S Tired Maker Goodyear

65 migrant workers from India, Nepal and Myanmar, working for the U.S. Tire Maker Goodyear in Malaysia, sued the Goodyear company for wrongful salary deduction, asking them to work excessive overtime and lack of full access to their passports. They testified about their complaints against the Goodyear company that they just got the basic salary, although they worked overtime, while the local workers got a greater remuneration. The Court held in favour of the foreign workers that they are entitled to the same benefits as their local counterparts and ordered Goodyear Company to be fined by paying their back wages and by complying with the collective agreements.⁵¹⁷

Fice Fransina Nenobais Vs Lee Hee Chooi (Civil Appeal No: BA-16-34-08-2018)

⁵¹⁵ The Observatory For the Protection of Human Rights Defenders, Fact Sheet: Thammakaset Vs Human Right Defenders and Workers in Thailand, May 2019, page 4-6. <https://www.fidh.org/IMG/pdf/obsthailande2019web.pdf> (10/10/2022)

⁵¹⁶ Business and Human Right Resource Center, 2019, <https://www.business-humanrights.org/en/latest-news/mr-nan-win/> (10/10/2022)

⁵¹⁷ ALJAZEERA, Breaking News, May 2021, <https://www.aljazeera.com/economy/2021/5/31/in-malaysia-tire-maker-goodyear-accused-of-unpaid-wages-threats#:~:text=The%20court%20ruled%20in%20favour%20of%20the%20foreign,of%20the%20judgement%20published%20on%20the%20court%E2%80%99s%20website> (10/10/2022)

This case relates to the question whether undocumented migrant workers can claim their wage in the sum of RM 30,265.32 in the case of lack of getting paid in Malaysia. The appellant's name is Fice Fransina Nenobias but she known as Nona. The Nona case was famous in Malaysia. She was employed and not paid her wages for almost five years. The grounds of the case are that Nona filed a complaint with the Port Klang Labour Office and to the Labour Court for not getting her wages from 2012-2017 working in the respondent's house. Nevertheless, her case was dismissed because she was an undocumented migrant worker in Malaysia. Then she appealed to the Shah Alam High Court with the support of Teniganita against the Labour Court's dismissal. The High Court held that the Labour Court must hear undocumented worker cases to claims for the non-payment of wages in the sum of RM 30,265.32, in accordance with the finding that there is nothing in the Employment Act 1955 and in the Employment (Restriction) Act 1968, which prevents a worker from approaching the Labour Court to seek redress.⁵¹⁸

5.6 Summary of the comparison between EU and ASEAN

EU organisation and ASEAN organisation have accepted the migrant workers involving regular and irregular status, in the shortage of the workers for the improvement of the economies within the region and for humanitarian reasons. However, EU protects the migrant workers, regardless of regular or irregular, with the big effort by virtue of the provisions of the regulations and policies: it is clear that EU has been trying hard to prevent the unexpected results affecting the Member States while ASEAN has not even recognized the irregular migrant workers, although they play an essential role for the productivities of the destination countries such as Singapore, Thailand and Malaysia. In the comparison of the two regions, ASEAN has less effective protection, for instance, there are so many cases relating to the human trafficking in person and labour exploitations. While EU limits the rights of the migrant workers from outside EU countries, ASEAN Member States give the priority to all EU nationals and others except the limitation of free movement of entry into ASEAN that means visa requirements. In ASEAN migrant workers are facing the infringement of their rights at the workplace and out of the workplace due to the weak protection till today, and the destination states cannot control the irregular migrant workers

⁵¹⁸ Industrial Law Report(3 ILR), 2020, [https://www.scribd.com/document/600465310/NONA-HC-1\(10/10/2022\)](https://www.scribd.com/document/600465310/NONA-HC-1(10/10/2022))

with the exception of Singapore. EU has the exact regularisation system for all the irregular migrant workers once ASEAN has not the regularization system but it depends on the Member States' labour provision in their country.

Therefore, ASEAN needs more provisions for the fundamental human rights for all migrant workers within the regions, such as trade union rights, collective bargaining rights, etc. ASEAN Consensus is necessary to protect all fundamental human rights and all the workers.

Conclusion for Chapter IV

This Chapter is the focus of my entire dissertation, which will clarify how to manage labour migration in the EU and in the ASEAN in accordance with international labour standards and Human Rights laws. In the diversity of the policies of the labour migration between the two regions, the EU has attractive policies of labour migration with the strong coordination of the member states, with the uniform passport and with the common rules and regulations in national legislation to safeguard national workers. The main legal instruments for migrant workers in the EU are the Charter of the Fundamental Rights of the European Union, the European Convention on Human Rights, the EU Convention on the Legal Status of Migrant Workers, and the European Social Charter. The regional workers do not need a work permit but just the uniform passport. The migrant workers out of EU are necessary to have a work permit. In ASEAN, ASEAN Consensus on the Protection of the Rights of Migrant Workers and their Families, and ASEAN Human Rights Declaration are relevant to the migrant workers in ASEAN but not more provisions for the migrant workers. All migrant workers, including regional workers, need a work permit in the ASEAN member states.

The differences in labour market regulations between the EU and ASEAN are that the two regions target a single labour market, but the EU expects a united organisation and a real single space with the same rules and policies and implemented to be what it expected. Although ASEAN wants a single labour market, the common rules and regulations have not been created within the regional agreements. The EU labour market has always focused on the social policies for all workers, but ASEAN just on giving skilled migrant workers better rights and discriminating toward low skilled workers with lower rights. The EU

minimum wage is set with two options that are under the Proposed Minimum Wage practised by 21 member states and through the collective bargaining performed by 6 member states. The ASEAN labour market has not found that there is a specific minimum wage setting for migrant workers. The EU labour market includes the labour statistics, unemployment benefits, welfare related benefits, Active Labour Market Policies, job creation, wage setting, working time and immigration mobility while the ASEAN Labour market includes the rights of low skilled workers and high skilled workers, the policies of AFML. The ASEAN labour market can be viewed as a flexible labour market, but the EU labour market is trying to be a flexible market. While ASEAN labour market regulations are not specific provisions, EU Active Labour Market Policies have six types: training, private sector incentive program, direct employment program, service and sanction, youth programs and measures for the disabled. If the ASEAN labour market is required to be seen, the receiving countries' labour market has to be analysed; Singapore's labour market just accepts regular workers and formal sector employment, Thailand's labour market runs both with regular workers and with irregular workers and Malaysia's labour market accepts both regular and irregular migrant workers. In the comparison of the labour market regulations of the two regions, apparently ASEAN labour markets do not depend on legislation, but only with the social dialogue of AFML. It seems too flexible for the irregular labour migration and needs to be developed and implemented practically. In the contrast of EU and ASEAN labour markets, the EU has created job opportunities for young people who will have finished their degree with training and for unemployed people who do not currently have jobs. Therefore, the EU labour market is really supportive to all migrant workers within the region.

Trade union rights of the two regions for migrant workers are that European Trade Union Council is the key trade unions council in the EU, while the ASEAN Trade Unions Council is established with 9 member states. The EU has split two sections for the rights of trade unions that are that ETUC is only for European workers, and the Union Migrant Network is for migrant workers from third countries. European workers have full rights to be members of trade unions like national workers but third country national workers can only get the assistance of the Union Migrant Network. In ASEAN, the Task Force on ASEAN Migrant Workers and ASEAN Services Employees Trade Union Council serve the

affairs of the trade unions rights by calling the meetings and social dialogue. ASEAN member states must use bilateral agreements with the sending countries for the rights of trade unions in the receiving countries. The differences between the two regions' trade unions are that ASEAN practically relies on bilateral agreements, while the EU uses systematic ways and regional legislation.

How to solve the irregular labour migration in these two regions is more interesting because it is the key problem in ASEAN which they cannot solve properly, because ASEAN has no conventions and commitment to protect irregular migrant workers and even in the ASEAN Consensus no protection and prevention can be found. As usual, bilateral agreements between the member states are relied upon, although the Bangkok Declaration on Irregular Migration and the Cebu Declaration exist. The EU started to perform the affairs of the irregular labour migration with the Treaty of Lisbon 2009 to protect the fundamental rights, to provide a legal basis, to get the extent of the jurisdiction of the EU Court of Justice. Through it, several secondary legislations are undertaken relating to the sanctions of employers, the return of irregular migrants, some expulsion policies, and fighting against trafficking in persons. The irregular migrant workers in the EU do not seem to lose their basic rights because the fundamental rights are given to all workers and 35% of the health services are given to irregular migrant workers. The EU figured out three solutions for the irregular migration that are by punishing the employers who accept irregular migrant workers, by providing for fundamental rights and by regularising their status. Some irregular migrant workers came from the Border States, and thus the EU Commission issued new European Border and Coast Guard Regulations to safeguard its borders and European Border Surveillance System to prevent cross-border crime. It is apparently visible that the big differences of appreciation of the rights of all workers between EU and ASEAN; EU is making a big effort to protect the fundamental rights of irregular migrant workers and for the prevention of the potential issue not to face in the future while ASEAN cannot be found basically that it appreciates the rights of all workers, and ASEAN neglects the fundamental rights of the irregular migrant workers.

6. Conclusion

Labour Migration is divided into two types, regular labour migration of that 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 migrant workers into two categories 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 from this thesis. 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.

I have mentioned the definitions relating to the labour migration in Chapter I of my dissertation, that is, labour migration, migration, migrant worker, and collective bargaining, freedom of association, trade union, labour market, and employer according to some dictionaries and the theories of some authors. Moreover, regional integration, trade union right, the nature of labour market, freedom of association have been disserted. The family members of the migrant workers are also entitled to get the fundamental rights in the destination country in conformity with the International Labour Standards. The whole chapter is in accordance with the international labour organizations and 9 core conventions of Human Rights including International Convention on the Protection of the Rights of All Migrant Workers and Their Family Members. To be reliable on the international labour standards and human rights standards, there are three trajectories that are the rules that all sending and receiving countries have to ratify, International Labour Conventions and Human Rights Conventions, to go forward the international consultation and cooperation, and to implement all the regional consensus; which results the workers to be facilitated in

working humanely at the workplace state. Through those efforts, the national migration policies would be improved to be protectable intending to all migrant workers besides the national workers. Among the basic rights, trade union right plays an essential role as the importance of preventing the violations of the rights of the migrant workers is to join trade unions. If the trade union rights get entitled, the collective bargaining rights will be enjoyed automatically depending on the different regulations of each union. The World Federation of Trade Unions (WFTU) and the International Trade Union Confederation (ITUC) take the responsibilities to prevent the infringement of the trade union rights for all the workers around the world in the operation of international and regional level. In case of collective bargaining process, there are five steps doing the collective bargaining which are prepare, discuss, propose, bargain and settlement, otherwise in case of categories of collective bargaining, there are four kinds of collective bargaining, which are distributive bargaining, integrative bargaining, attitudinal restructuring bargaining and intra-organizational bargaining. The most important thing in the bargaining system is to be transparent and fair and just applied for all the migrant workers in the employment. Before being a member of trade union freedom of association is the primary thing to be built up with the migrant workers from the same employment.

Chapter II is about the discourse of the Labour Migration in EU and Germany involving the situation of labour migration within EU, the nature of EU labour market and its regulation, the role of trade union regarding the migrant workers in EU, different practices of collective bargaining systems in EU and German labour migration policy. European Union started the free movement after World War II, and thus all EU citizens are entitled to enter and work in another member country with their common ID card. Therefore, two types of migrant workers need to be applied in EU, which are EU national workers and non-EU national workers but the rights for EU citizens are the same as for the nationals of the receiving country, and the rights for non-EU citizens are different than the nationals, otherwise they do not have fewer opportunities than EU citizens. Though each Member State has its own different regulations and legislations and the Europeanization or harmonization of those laws are supportive and cooperative for the regional integration, and hence, the labour laws are harmonized for the big collaboration and not for getting the big issue concerning the migrant labour in the region. Due to the broad region, irregular

migrant workers are still being accepted from the third country and from each Member State. EU always tries to make a great effort to solve the migration issues from the perspectives of the destination states, employers and the migrant workers, which means that the protocols and conventions have been created properly and fairly. The regularization system for the irregular or undocumented migrant workers has been provided generally, but whether the system is stronger or not it depends on the national labour laws of the EU Member States. European Convention on Social Security states the social security rights that are sickness and maternity benefits, invalidity benefits, old age benefits, survivors' benefits, benefits in respect of occupational injuries and diseases, death grants, unemployment benefits, and family benefits. If labour market of EU is applied, active labour market policies (ALMP) play the main role to provide employment opportunities for unemployed workers, the training system and the vital innovation of the supply and demand of workforce. The main intention of ALMP is to help the unemployed youth to start their career with the vocational training. European organization leading to a single market and social policy is attempting to have better labour market regulations since the last decades. The minimum wage is regulated under the statutory minimum wage in 21 Member States and through collective bargaining that is served in six Member States. EU labour market collects not only European workers but also the workers from outside the EU, but the migrant workers from third countries have fewer opportunities than EU national workers, mostly in the agricultural and construction sectors.

To sum up, 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 are 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 third dilemma, the migrant workers should get the right to participate in the trade unions and get

the common interest in conformity with their skills and not get the same rights like the nationals out of the employment.

Under the general review, a variety of regulations for labour migration in the EU has been stated by looking toward the benefits of the member states, especially to reduce the poverty level. In terms of Social Security Rights, the current social security regulations are Regulation No-883/2004, Regulation No-987/2009, 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 right of equal treatment without any discrimination shall be carried out by the member states in the provisions of their national legislation. It is compulsory for all the member states of the EU to treat equally all the nationals together with their national people. For third country nationals, Regulation 1213/2010 gives social security rights for all migrant workers from third countries by extending Regulation No-883/2004 and Regulation No-987/2009. Regulation 1231/2010 relates to third country nationals who are already legally staying in one of the European Member States, but not for the third country nationals who are trying to enter, to stay or to reside in the EU. In addition, Article 13 of Regulation 1231/2010 states that legal third country nationals shall not affect the rights of invalidity benefits and old age or survivor's pension benefits from Regulation 883/2004, and in case of unemployment benefits, the third country nationals should be the ones who have 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 view of the social rights of the EU, a perfect regulation for all European citizens is being given an effort depending on the various kinds of situations, such as the replacement of 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 are 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 Regulation No.1231/2010, which gives the social rights except invalidity benefits and old age pension benefits. Among those substantial rights, the EU's provision to unemployment benefits for third country 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 to unemployment benefits.

The labour market policies of the EU are the labour taxation, unemployment benefits, other benefits related benefits, active labour market policies, job protection, wage settings, working time and immigration mobility. The Single Labour Market is targeted by the EU instead of a 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 EU citizens. The EU has split into two parts that are through the statutory minimum wage that 21 member states apply, and through the collective bargaining that 6 member states are doing. Prominently, the EU considers even all the potential workers such as final year students and unemployed people. That factor is clear that EU's desire to be free of poverty in all member states is going 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 issue or strikes in case the workers get some bad effects with not-enough salary.

. In the two kinds of bargaining processes, decentralization is used by most of the EU states but a few states use centralization. Some unionists prefer the national legislation relating to trade unions instead of European legislation. However, the EU has the harmonisation of national labour laws, and thus workers get the European protection through national legislation. The harmonisation of the legislation in the EU seems effective and supportive in the implementing of the European conventions and regulations in the national laws of the member states. The cause of stronger integration in the European Union is the reason for the better harmonisation fairly and equitably without affecting national sovereignty. For third country nationals, the three dilemmas are still being defended among the experts: The recruitment system is a good platform between the employers and the workers but the trade unions should not participate in the recruitment case as it might face bias in favour of the employers and they might lose their fundamental

rights. For the second of the dilemmas about the trade unions rights, migrant workers should get the protection and the effort to prevent the infringement of their rights by being members of trade unions. It is not easy to claim their rights without being a member of a trade union when they face problems about their labour rights. It means for getting and the protection of their fundamental rights. Even though they cannot be a member because of the strict rules of the host countries, the participation of the migrant workers in the union should not be forgotten. For the third of the three dilemmas, if there is the rigid rule for giving the same rights to all migrant workers as the national workers', they do not need to get special rules such as job opportunities, but the basic or fundamental rights should not be diminished and should be treated together with the nationals in the trade unions.

German Policies on Migration: In the employment law of Germany, it provides types of employment contracts that are permanent and fixed, remedies of employees, working time and equal opportunities. The policies of Germany on migrant workers are that the Green Card was released for the recruitment of IT specialists between 2000 and 2004 and the EU Blue Card for non-immigrants in 2012, which is for two or four years but after three years will get permanent settlement status. Yet there was the Recruitment Ban that blocked guest workers who are not members of the EEC and which preferred permanent workers. In view of the Skilled Immigration Act, it stipulates that the term "skilled workers" means someone with at least two years training, and they can apply for a work visa and get it four weeks after the date of application. The duration of the work visa is four years, or depending on the employment contract, and then the skilled workers can apply for the permanent resident permit after four years of residency but with 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 permanent residence to migrant workers if they get a 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 workers, and all skilled professionals do not need to show their certificates but five years' experience. Entering Germany by labour migration is not flexible and not rigid. Germany implemented the active labour market policies with the Hartz Forms that were created by the commission for Modern Labour Services. Four performances of the 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 a new personnel service agency, the support of vocational training and deregulation of the temporary work sector, Hartz II for the commencement of Mini-Job and Midi-Jobs which have no social insurance, Hartz III for the restructuring of the 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 other family members. Hartz I, II and III each has its own successes for the reduction of unemployment, but Hartz IV is in a state of trouble which cannot go up like the first three Hartz. Hartz I could reduce unemployment by the support of vocational training and by the deregulating of the temporary work sector. Hartz II innovates the jobs opportunities of Mini-jobs and Midi-jobs for most women, such as housewives, 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 benefits for occupational diseases. Hartz III made the conditions for unemployment insurance benefits stricter. Hartz IV tried to reduce the unemployment population by forcing workers to work any job such as low paid jobs or any physical job that they would not like to do. Each of the Hartz reforms has its different changes and regulations, and 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 unemployed population, which was higher than other member states. In addition, many positive reviews and comments have been given 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 unemployment reduction because it made the status of skilled workers lower by forcing them to work in any level of job that may be inconsistent to their qualifications and by paying 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 third country national workers can be viewed as the restricted regulations since 1990s, though, they have more chances currently if they have the high skill level recognised by the Skilled Immigration Act in contrast to the past and the present, as they had to work in dangerous

workplaces 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 migrant workers in Germany are sickness benefits, maternity benefits, death grants, accidents at work and occupational disease, pensions, and unemployment benefits. They are also taken into consideration under the two kinds of social systems that are through the contributions and through the tax. Their labour market status and job type are very important to get social rights, which means that they have to work in the formal sector and should hold a valid work visa. The satisfactory factor is the pension allowance for migrant workers that they are allowed to pay the contributions for five years at least. Moreover, the unemployment benefits are also covered for migrant workers by the contributions of 165 Euro from their remuneration. For 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 hold a valid resident permit and can work in harmony with the labour policies of Germany.

Trade unions rights for migrant workers in Germany seem fragile, although the German Constitution does not prevent trade unions rights for migrant workers or guarantee the rights of trade unions for all workers in Germany in case of monitoring the facts which I found. The biggest trade unions organization, DGB, accepts the migrant workers' representatives joining their union not to lose their social rights and fundamental rights in the workplace.

Normally, Germany confronts irregular labour migration through the Border States of the EU, but previously they could stay for an unlimited time in Germany. Nevertheless, non-EU citizens need a resident permit. The agenda for irregular labour migration implements the European Directives: the first draft to detain irregular migrants up to 18 months and the second draft to sanction employers who accept irregular migrant workers. Germany fosters fundamental human rights for all irregular migrant workers and performed the regularization system up to 10% of the irregular population within the EU region. By

my evaluation, the German appreciates and considers the fundamental human rights of all irregular migrant workers and has not neglected those because they are not legal. It is a real satisfactory factor from the humanitarian angle while the stricter rules for labour migration are being promulgated.

Chapter III states the analysis on the policies of ASEAN labour migration that involves the integration on the policies of ASEAN migration, evaluation on the performances of the labour market policies in ASEAN, the essential rights to freedom of association as a part of the trade union proceedings, the challenges of struggling against the irregular migrants and finding its resolution, and labour migration in Thailand. ASEAN consensus on the Protection and Promotion of Rights of Migrant Workers and Their Families does not seem perfect as there are not enough fundamental rights for all the migrant workers in accordance with the ILO standards and Human Rights standard, otherwise all the migrant workers should have the full fundamental rights. Furthermore, there is no protection and provision for the undocumented migrant workers within the region. The key factor is that the Member States cannot interfere into the political affairs and sovereignty of another Member State. ASEAN destination states rely on the migrant workers for their economic growth and high productivity, and thus it is literally crucial to prefer the great protection of the rights of migrant workers within ASEAN region and a broad regional regularisation system needs to be built. In the case of illegal migrant workers the bilateral and multilateral agreements are normally used instead of preventing and providing the specific legislation in the national laws. ASEAN citizens cannot get the same rights as the nationals in the destination countries that are Thailand, Singapore and Malaysia, except the free movement without visa, giving the preference to the skilled migrant workers than the low skilled workers regarding the labour rights. ASEAN labour market is not only for the regional states but also for non-regional states with their favour depending on the skills of the workers. Trade union rights are still in a weak condition in the Member States even for the regular migrant workers. In case of labour migration, ASEAN labour migration started with the establishment of ASEAN Economic Community (AEC) that intended to create the free flow of goods, services, investment, and capital and to establish a single market and productive base. The member countries cooperate in accordance with the ASEAN Forum on Migrant Labour (AFML), which is a platform to

negotiate between workers and employers, and between the various governments. ASEAN Submit is also the policy-making body that calls meetings twice annually and already finished the 38th ASEAN Submit. Under the findings of the literature, ASEAN is trying to harmonise the national policies of the member states but has not been implemented yet because of the non-interference of the sovereignties. Although labour migration is permitted with the free movement within the region, what is not the same with the European Union is that the workers need a work permit to work according to the study of the national policies of the receiving countries of ASEAN. The regulation for irregular labour migration has not been found as prevention and control.

The labour market policies in ASEAN are not many provisions for all the member states, but just a few provisions and performances. Normally going forwarded 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 not much influenced legislation and agreements. There is an ASEAN Mutual Agreement Recognition (MRAs) which has three characteristics of low skilled workers as international labour migration, the government-to-government agreements and the private recruitment agencies' companies, which was in force in 2015, in seven sectors that are medical doctors, dentists, nurses, architects, engineers, accountants, surveyors and tourism professionals. It shows that bilateral agreements between the member states are more favourable than regional agreements. The ASEAN Forum on Migrant Labour (AFML) implements three themes dealing with exploitation, discrimination and violence, carrying out the labour migration governance and combating the trafficking in persons. No, the restrictions for 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 to be fragile regulations except in Singapore. Therefore, ASEAN labour market policy 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 their workers for each other but not focusing on better legislation for the protection of regional migrant workers.

In the monitoring of ASEAN trade unions rights mentioned in Chapter III, we can say that ASEAN is endeavouring to secure trade unions rights for 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 regulations and exact legislations with the exception of ASEAN Consensus that provides the right to organise for migrant workers. ASEAN has a lack of explicit regional provisions or regional conventions for the integration of the protection of trade unions rights.

The regulations for irregular migrant workers in ASEAN have not been stated specifically. In addition, the ASEAN Consensus does not enact the prevention irregular migrant workers and the protection of the fundamental rights of irregular migrant workers. ASEAN mainly faces 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 bilateral agreements such as the deportation of workers, and a feeble regularisation system is being performed. As ASEAN has no provisions for irregular migrant workers, the harmonisation of the national policies is not being carried out and the member states must rely on the mutual agreements.

Not enough provisions and regulations within the region are found for dealing with migrant workers. ASEAN is going ahead in the organisational project, workshop, or program to implement the protection of the rights of migrant workers. Only one Consensus and ASEAN Charter are not adequate for the cooperation or coordination of the free movement of workers. 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 bilateral agreements with another member states. Currently, the ASEAN key issue relates to the irregular labour migration within the region and they cannot control it with legislation because the bilateral or mutual agreements between the governments cannot solve the problems regarding the legal violations of the receiving states. The harmonisation of the national labour laws is needed to get the stronger cooperation of the organisation.

Thailand labour migration has been analysed because it is one of the main receiving countries and mostly confronting the irregular migrant worker issue. Social rights, labour market regulations, trade unions rights and irregular labour migration in Thailand are divided. Thailand also accepts so many migrant workers from the region mostly and from out of the region. ASEAN migrant workers rely on Thailand's labour market, but especially

from the neighbouring countries, Myanmar, Cambodia and Laos. In the assessment of Thailand's labour market, it opens for regular and for irregular migrant workers. Therefore, two sectors can be differentiated into a formal sector and informal sector. The recruitment agencies make the labour market active to supply the labour demands. Migrant workers with a primary education level are placed in the fishing factories, domestic workers, manufacturing and industry. High skilled workers or professional workers are called normally from Japan, China, Philippines, the USA and the UK while 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 over the social rights for migrant workers, the regular migrant workers get 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 Thailand's laws, 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. And the children of regular or irregular migrant workers also 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 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 must be felt according to the International Labour Standards and Human Rights laws. What trade unions rights are prominent is that the migrant workers 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 agreements with Thailand yet. In practise, migrant workers are allowed to join trade unions but not the right to organise. Hence, we can monitor that the trade unions rights are not fulfilled even at the fundamental level. In case of irregular migrant workers, the population of irregular labour migration can be seen as larger than regular migrant workers. The government implies the regularisation for the workers has been undertaken 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 according to the situation. The example of Singapore is good to utilise that the Singaporean government controls it with the law by taking action against the employers who accept irregular migrant workers. Thailand's situation also corresponds with the example of Singapore as the employers in Thailand demand cheap labour for the lower usage of their expense to the workers. Every year Thailand faces the problem of a surge of illegal migrant workers, which is a kind of big stress. And the processes of going the regular way should be managed into non-complicated proceedings and make them clear to be obeyed.

In Chapter III Thai labour migration has been focused on relating to a role of migrant workers in the labour market, trade unions and their social security rights. Every migrant worker can participate and find jobs in the Thai labour market respectively that includes formal employment and informal employment, that cannot be denied. The workers working in the informal sectors suffer from abusive and exploitation situations. Thai government cannot control the informal sectors with the laws and policies. Regarding that the informal sector is stable it will take a long time when the irregular labour migration can be managed. Therefore, Thailand is always going forward to the bilateral agreements, moreover, the regularization system has been given with limited days but some workers are sent to their home country with the agreements of their government. One of the reasons of not supervising the illegal ways is the easy entry through the Border States, especially in the case of Myanmar migrant workers. In case of social security rights, the injury or sickness benefits, maternity benefits, invalidity benefits, death benefits including a funeral grant, child benefits, old age benefits and unemployment benefits can be enjoyed although there is no exact provision for them. The informal migrant workers might enjoy the inclusive of sickness, disability and death benefits, and the old age benefits under some regulations stating for national workers. The migrant workers have the right to form a union and to join trade union membership though the government has not provided explicitly.

Chapter IV is the comparison between the European Union and the Association of Southeast Asian Nations. While EU limits the rights of the migrant workers from outside the EU countries, ASEAN Member States give the priority to all EU nationals and others except the limitation of free movement of entry into ASEAN that means visa requirements.

In ASEAN, migrant workers are facing the infringement of their rights in and out of the workplace due to the weak protection until today, and the destination states cannot control the irregular migrant workers with the exception of Singapore. EU has the exact regularisation system for all the irregular migrant workers once ASEAN has not the regularisation system but depending on the Member States' labour provision in their country. Relating to the Pandemic situation, both EU region and ASEAN region are extending the workers' job visa or work permit for the migrant workers. Except for the hardest situation of Covid 19, the social protection is being given to the migrant workers, but EU countries ensure the social protection to the migrant workers including irregular migrants while ASEAN destination countries have no social protection for the irregular migrant workers. In the comparison of the labour market regulations of the two regions, apparently ASEAN labour market do not depend on legislation, but only with the social dialogue of AFML. It seems too flexible for the irregular labour migration and needs to be developed and implemented practically. In the contrast of EU and ASEAN labour market, the EU has created job opportunities for young people who will have finished their degree with training, and for unemployed people who do not currently have jobs. Therefore, the EU labour market is supportive to all the migrant workers within the region. The differences between the two regions' trade unions are that ASEAN practically relies on bilateral agreements, while the EU is going with the systematic ways and the regional legislations. It is apparently visible that the big differences of appreciation of the rights of all workers between the EU and ASEAN; the EU is making a big effort for protection of fundamental rights of irregular migrant workers and for the prevention of the potential issue not to face in the future while ASEAN cannot be found basically that it appreciates the rights of all workers, and ASEAN neglects the fundamental rights of the irregular migrant workers.

6.1 Research results and answers to the research questions

“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 regulates 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 practices, and furthermore the regularisation programme is widely created; Member States obey and do so in practice. 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 that 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 that all Member States are implementing and practicing 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 protects 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 cooperating with ETUC (European Trade Union Confederation) that 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 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, 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 that 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 faced through the Border States in Thailand and Malaysia. Hence, we can conclude that the weak cooperation is going ahead in ASEAN because the social rights, trade union rights and collective bargaining cannot be enjoyed fully by the ASEAN citizen workers despite of being regular workers. Lack of strong and supportive legislations in the region causes the regional workers to be in illegal status. While discrimination is barely seen in EU, ASEAN Member States are practicing discrimination even against the regional migrant workers.

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

Forwarding to the research questions and answers:

“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.

“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 face much discrimination until today.

Bibliography

Books

1. Alan Desmond, Shining new light on the UN MIGRANT WORKERS CONVENTION, 2017.
2. Erik Longo, SEEKING A BETTER LIFE: HUMAN WELFARE OF MIGRANTS IN IRREGULAR SITUATIONS IN THE UNITED STATES AND EUROPE, Researcher in Constitutional Law, University of Macerata, 2013.
3. European Trade Union Confederation, 1984, published by the Trade Union Division of the Directorate-General for Information, European Communities (DG X Information) - 200 rue de la Loi. 1049 Brussels- Belgium.
4. Handbook on Establishing Effective Labor Migration Policies in Countries of Origin and Destination, VIII. Measure to Prevent or Reduce Irregular Labor Migration, 2015.
5. Ines Wagner, Trade Unions and Migrant Workers: New Contexts and Challenges in Europe, 2017.
6. Teun Jaspers, Frans Pennings and Saskia Peters, European Labour Law (Intersentia), 2019.
7. The Global Economic Crisis and Migrant Workers: Impact and Response, International Migration Program, 2009.
8. The Oxford Handbook of Comparative Regionalism, Edited by TANJA A. BORZEL and THOMAS RISSE, Oxford University Press, 2016, https://books.google.hu/books?id=frhICwAAQBAJ&lpg=PA457&ots=YY6H_a7u8P&dq=migrant%20workers%20and%20regional%20integration&lr&pg=PA457#v=onepage&q=migrant%20workers%20and%20regional%20integration&f=true (Last access:10/10/2022)

Journal articles

1. Ailenei Dorel and Bunea Daniela, 'Labor Market Flexibility In Terms Of Internal Migration' (2010) 1(1) Annals of Faculty of Economics, University of Oradea, Faculty of Economics Ana Indoitu, Impact of COVID-19 on labour migration from EaP countries to the EU, 2021, <https://eap-csf.eu/wp-content/uploads/Impact-of->

COVID-19-on-labour-migration-from-EaP-countries-to-the-EU.pdf (Last access:10/10/2022)

2. Alan Bogg, Cathryn Costello and A.C.L. Davies, Research Handbook on EU Labour Law, 2016
3. Albert Karle, Regularization of Irregular Migrants and Social Policies: Comparative Perspectives, Journal of Immigrant & Refugee Studies, 2018. <https://doi.org/10.1080/15562948.2018.1522561>(Last access:10/10/2022)
4. Alex Nowrasteh, Singapore's Immigration System: Past, Present, and Future, 2018.
5. Allain Dumon Fonte, DOCUMENTING THE UNDOCUMENTED: A REVIEW ON THAI-PHILIPPINE LABOUR POLICIES AND THE IMPACT TO UNDOCUMENTED FILIPINO MIGRANT WORKERS, 2020,
6. ALJAZEERA, Breaking News, May 2021, <https://www.aljazeera.com/economy/2021/5/31/in-malaysia-tire-maker-goodyear-accused-of-unpaid-wages-threats#:~:text=The%20court%20ruled%20in%20favour%20of%20the%20foreign,of%20the%20judgement%20published%20on%20the%20court%E2%80%99s%20website.> (Last access:10/10/2022)
7. Amarjit Kaur, Labour migration trends and policy challenges in Southeast Asia, 2010ISSN: 1449-4035 (Print) 1839-3373 (Online) Journal homepage: <https://www.tandfonline.com/loi/rpas20>(Last access:10/10/2022)
8. Anastasia Gorodzeisky and Andrew Richards, Trade Unions and migrant workers in Western Europe, European Journal of Industrial Relations, 2013, <http://ejd.sagepub.com/content/19/3/239> . (Last access:10/10/2022)
9. Andrea Campania and Pierre Tilly (Eds), National Trade Unions and the ETUC: A history of unity and diversity, European Trade Union Institute, Brussels, 2017.
10. Andrei Jean, Cvijanovic Drago and Zubović Jovan, 'The role of labour markets and human capital in the unstable environment' (2011) https://www.researchgate.net/publication/228279666_The_Role_of_Labour_Markets_and_Human_Capital_in_the_Unstable_Environment (Last access:10/10/2022)

11. Angela Refill, 'Labour Market Themes, Issues and Controversies' https://www.academia.edu/3639736/Labour_Market_Flexibility (Last access:10/10/2022)
12. Aniceto Orbeta, Jr. and Kathrina Gonzales, *Managing International Labour Migration in ASEAN: Themes from a Six-Country Study*, 2013.
13. Anna Bánociová and Slavomíra Martinková, 'Active Labor Market Policies of Selected European Countries and Their Competitiveness' (2017) 9(3) *Journal of Competitiveness* 6. <https://www.cjournal.cz/files/254.pdf> . (Last access:10/10/2022)
14. Annette Mummert, 'Employment and Labor Market Policies in Times of Economic Crisis' (2014)
15. ASEAN Trade Union Council, *Realizing the Rights of Migrant Workers to Join Trade Union*, https://r.search.yahoo.com/_ylt=AwrIdF7T0B1iUWIANxgM34IQ;_ylu=Y29sbwNpcklEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1646149971/RO=10/RU=http%3a%2f%2faseantuc.org%2fwp-content%2fuploads%2f2014%2f12%2frealizing-rights-of-migrant-workers-to-join-trade-unions-online.pdf/RK=2/RS=G6lgiGY0L7fIXqZ.NHL91R_ddkE-(Last access:10/10/2022)
16. aul Eamets and Tiiu Paas, 'Labor Market Flexibility and Flexicurity' (2006) 3. <https://www.researchgate.net/publication/236283207>(Last access:10/10/2022)
17. Aziza Passim and Rag ayah Haji Mat Zen, *Policy on Irregular Migrants in Malaysia: An Analysis of its Implementation and Effectiveness*, DISCUSSION PAPER SERIES NO. 2011-34, 2011. <https://dirp4.pids.gov.ph/ris/dps/pidsdps1134.pdf> (Last access:10/10/2022)
18. Barbara Laubenthal and Patricia Pielage, *European Task Force on Irregular Migrations: Country Report (Germany)*, 2011.
19. Benjamin Harkins, *Thailand Migration Report 2019*, United Nations Thematic Working Group on Migration in Thailand, Chapter VI.
20. Bernhard Ebbinghaus and Jelle Visor, *Trade Unions in Western Europe since 1945*, January 2001.

21. Bispinck, Reinhardt; Schulte, Thorsten, Wages, collective bargaining and economic development in Germany: Towards a more expansive and solidarity development? WSI-Diskussionspapier, No. 191, 2014.
22. Burkett, Carola; Niebuhr, Annekatrin; Wapler, Rüdiger, Regional disparities in employment of high-skilled foreigners: Determinants and options for migration policy in Germany, HWWI Research Paper, No. 3-7, 2007.
23. Business and Human Right Resource Center, 2019, <https://www.business-humanrights.org/en/latest-news/mr-nan-win/>(Last access:10/10/2022)
24. Cathy J. Mats-Townsend Health Insurance Option in Germany, 2020.
25. Charanpal S. Bal and Kelly Gerard, ASEAN's governance of migrant worker rights, 2017.
26. Choo Chin Low, IRREGULAR MIGRATION AND IMMIGRANT LEGALISATION IN MALAYSIA, 8th International Conference on Multidisciplinary Research, 2019.
27. Christophe Degryse and Pierre Tilly, 1973-2013 40 years of history of the European Trade Union Confederation, European Trade Union Institution, 2013.
28. Colin Crouch, 'European Employment and Labor Market Policy' (BBVA Open Mind, 2016) <https://www.bbvaopenmind.com/en/articles/european-employment-and-labour-market-policy/>
29. Copy@ Government of Singapore, https://www.elitigation.sg/gd/s/2003_SGHC_149(Last access:10/10/2022)
30. David Collier, the Comparative Method, January 1992. https://www.researchgate.net/publication/234113288_The_Comparative_Method (01/1993)
31. Dagmar Schick, 'Comparing Labor Laws in the EU Internal Market – A Social Actor Perspective' (2017) 33(1) International Journal for Comparative Labor Law and Industrial Relations
32. Deloitte, Working & Living in Germany: Moving together and making together, 2021.

33. Dionysius Narjoko and Chandra Tri Putra, Industrialization, globalization, and labour market regime in Indonesia, *Journal of the Asia Pacific Economy* Vol-3, 2015.
34. Eliza Marks and Anna Olsen, The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labor and Human Trafficking in the Greater Mekong Saberion, Thomsan Reuter Foundation News, 2016, <http://news.trust.org/item/20160115141746-mr2gt/> (Last access:10/10/2022)
35. Epstein, Gil S., Labour Market Interactions between Legal and Illegal Immigrants, IZA Discussion paper series, 2003.
36. Erik Longo, SEEKING A BETTER LIFE: HUMAN WELFARE OF MIGRANTS IN IRREGULAR SITUATIONS IN THE UNITED STATES AND EUROPE, Researcher in Constitutional Law, University of Macerata, 2013.
37. European Community Programme for Employment and Social Solidarity PROGRESS, Illegal Works of Migrants on European Union, 2013.
38. European Communities, Social Security for Migrant Workers in Germany, 1967.
39. EXPATICA, The German State Pensions: Guide to the German Pension System, <https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem> (Last access:10/10/2022)
40. Fitch Solution, Indonesia Labour Market Risk Report, 2021.
41. Friedrich Klau and Axel Mittelstade, 'Labor Market Flexibility' (2014) www.oecd.org/economy/growth/35558438.pdf accessed 20 December 2020. (Last access:10/10/2022)
42. Gábor Mélypataki, 'Effects of Migration on Employment Policy and the Coordination of Social Security Systems' in Tímea Barzó et al. (eds), *Modern Researches* (Miskolci Egyetem 2020).
43. George Myron Agiomirgianakis, International Macroeconomic Interdependence and International Migration of Labor, Article in *International Journal of Finance & Economics*, 4/1996
44. Gianna C. Giannelli, Ursula Jaenichen and Thomas Rothe, Doing Well in Reforming the Labor Market? Recent Trends in Job Stability and Wages in Germany, 8/2013.

45. GIUSEPPE CARABETTA, INTERNATIONAL LABOUR LAW STANDARDS CONCERNING COLLECTIVE BARGAINING IN PUBLIC ESSENTIAL SERVICES, 2014.
46. Gordon Betcherman, 'Labor Market Regulations: What do we know about their Impacts in Developing Countries?' (2015) the World Bank Research Observer 125. <https://openknowledge.worldbank.org/handle/10986/24811> (Last access:10/10/2022)
47. Hairuni Haji Mohamed Ali Maricar, MIGRATION, DEVELOPMENT AND SEGMENTATION OF WORKERS IN BRUNEI DARUSSALAM, 2017.
48. Harsh Sood, Introduction to the Collective Bargaining, [https://www.academia.edu/29441597/Introduction to Collective Bargaining](https://www.academia.edu/29441597/Introduction_to_Collective_Bargaining) (Last access:10/10/2022)
49. Heiner Dribbusch and Peter Birke, Trade Unions in Germany Challenges in a Time of Transition, 2019.
50. Helen Nesadurai, (2008) The Association of Southeast Asian Nations (ASEAN), New Political Economy.
51. Hugo Brady, EU Migration Policy: An A-Z, 2008.
52. Ignatius Bintang Filial Dei Susilo and Dian Pujiatma Vera Subchanifa, ASEAN LABOR MARKET INTEGRATION AND ITS SOCIAL EFFECTS FOR UNSKILLED LABOR MIGRATION, 2016.
53. Ingleby, Petrova-Benedict, Recommendations on Access to health services for migrants in an irregular situation: an expert consensus, IOM, October 2016.
54. International Labor Office, Collective Bargaining in the Public Service in the European Union, Working Paper No.309, 2015. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_429795.pdf(Last access:10/10/2022)
55. International Labour Organization, COVID-19: Impact on Migrant Workers in the ASEAN region and Responses, 4 August 2020, https://aric.adb.org/pdf/rcipod/episode_8/2%20ILO_August%203%20final%20COVID-19%20Pandemic%20-

access:10/10/2022)

56. International Labor Office, Geneva, In search of Decent Work – Migrant workers' rights:, 2008,
https://www.un.am/up/library/Search%20of%20Decent%20Work_eng.pdf . (Last access:10/10/2022)
57. International Labour organization, Good Practices on the Role of Trade Union in Protecting and promoting the rights of Migrant Workers in ASIA, 2015-2016.
58. International Labour organization (ILO), MIGRANT WORKERS' RIGHTS AND WELFARE: COMBATING THE WORST FORMS OF CHILD LABOUR IN SHRIMP AND SEAFOOD PROCESSING AREAS OF THAILAND THA/10/50/USA, 2015/2016.
59. International Trade Union Confederation (ITUC), INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THAILAND, 2011.
60. Iván Martín and Alessandra Venturini, 'A Comprehensive Labor Market Approach to EU Labor Migration Policy' (2015) 3.
<https://op.europa.eu/en/publication-detail/-/publication/824e91bc-d642-4626-9267-676945e15053/language-en>(Last access:10/10/2022)
61. Jacky Barry, Margaret Brenner, Peter Donaghy, Vidia Ganase and Joan Hewitt, English for European trade unionists: Level Four European Works Councils, 2006.
62. Jacob Mathieson, Why the labour movement must become as global as globalization? published in Danish on the 1. May 2019.
63. Jan Czarzasty, Collective bargaining in Europe: towards an endgame. Volume II, Brussels, ETUI, 2019
64. Janine Leschke, Labour Market Development, Non-standard Employment and Low Wages in Germany, ISSN: 2339-5793, 2014.
65. Jan Schneider, Toward An EU Toolbox for Migrant Workers: Labor Mobility and Regularization in Germany, Italy and Spain, 2020
66. Jean-Michel Lafleur and Daniela Vintila, Migration and Social Protection in Europe and Beyond (Vol I): Comparing Access to Welfare Entitlements, IMISCOE Research Series, 2020

67. Jean-Michel Servais, *International Labor Law*, fourth Edition, 2014.
68. Jean-Philippe Vincent, *Tresor Economic* No.110, March 2013.
69. Jens Lind, *Denmark: the sacred cow of collective bargaining is still alive*, *Collective bargaining in Europe: towards an endgame. Volume II*, Brussels, ETUI, 2019.
70. Jesús Cruces and Francisco Trillo, *INCLUSIVE GROWTH THROUGH COLLECTIVE BARGAINING IN SPAIN*, 2018.
71. Jochen Kluge, 'The Effectiveness of European Active Labour Market Policy' (2006) IZA Discussion Paper No. 2018. <http://ftp.iza.org/dp2018.pdf>(Last access:10/10/2022)
72. John Walsh, *Labour Market Issues for the ASEAN Region*, the 4th International Postgraduate Research Colloquium IPRC Proceedings, 2017
73. JOMARI H. MARITORIA, *Collective Bargaining*, https://www.academia.edu/40922184/Collective_bargaining(Last access:10/10/2022)
74. Jørgen Carling, *International labour migration: Consequences for countries of origin*, Occasional Paper #21, Human Geography, 1996.
75. Junkie Ye, *Labour Recruitment Practices and its class implications: A Comparative Analysis of Constructing Singapore's Segmented Labour Market*, 2013
76. Justus Mugambi Gitari, *The Effects of Labor Migration on the Country of Immigration, the Country of migration, and the World as a Whole*, 1/2014.
77. Kate Brick, *Regularizations in the European Union: the Contentious Policy Tool*, 2011. <https://www.migrationpolicy.org/sites/default/files/publications/EURegularization-Insight.pdf>(Last access:10/10/2022)
78. Katikar Tipayalai, *Impact of international labour migration on regional economic growth in Thailand*, Tipayalai Economic Structures, 2020
79. Katrina Oesingmann, *CESifo DICE Report 2016*, *Journal for Institutional Comparison*, 2016. <https://www.cesifo.org/DocDL/dice-report-2016-2-june.pdf>(Last access:10/10/2022)
80. Kimberly Regain, *Time for a Sea Challenge: Why union rights for migrant workers are needed to prevent forced labour in the Thai seafood industry*, 2020.

81. Kolawole Temitope Emmanuel, Freedom of Association: State Practices and the Impact of International Conventions, 2016/2017.
82. Laura Allison-Reumann, Integrating ASEAN in Labour Migration Policy: From Disjointed to Complementary Actor, 2017.
83. Lena Jacoba and Jochen Klave, Before and After Hartz Reform: The Performance of Active Labor Market Policies in Germany, Discussion Paper No. 2100, 2006.
84. Lisa Carstensen, Challenging the Trade Union Agenda: Migrants' Interest Representation and German Trade Unions in Hamburg in the 1970s and 1980s, 2021.
85. Luther Rechtsanwaltsgesellschaft, Memo: Employment Law in Thailand, 2021, page 4 and Yongyuth Chalamwong and Raphaella Prugsamat, THE ECONOMIC ROLE OF MIGRATION Labour Migration in Thailand: Recent Trends and Implications for Development, TDRI Quarterly Review, 2009.
86. Lutfi Abdul Razak, Brunei Darussalam's Labour Market: Issues and Challenges, CSPS Strategy and Policy Journal, Volume 3,2011.
87. Madeleine Gumption and Will Somerville, 'Immigration and Labor Market: Theory, evidence and policy' (2009) Migration Policy institute. <https://www.migrationpolicy.org/sites/default/files/publications/Immigration-and-the-Labour-Market.pdf> (Last access:10/10/2022)
88. Marco Caliendo and Ricarda Schmid, 'Youth Unemployment and Active Labor Market Policies in Europe' (2016) 5(1) IZA Journal of Labor Policy 6. (DOI 10.1186/s40173-016-0057-x) (Last access:10/10/2022)
89. Marius Olivier* and Avinash Govindjee, LABOUR RIGHTS AND SOCIAL PROTECTION OF MIGRANT WORKERS: IN SEARCH OF A CO-ORDINATED LEGAL RESPONSE, Paper presented at the Inaugural conference of the Labor Law Research Network (LLRN), Barcelona, Spain, 13-15 June 2013.
90. Mark Bergfeld, International Unions Rights, Vol 28, No 1, 2021, https://www.ictur.org/pdf/IUR281_BERGFELD.pdf (Last access:10/10/2022)
91. Martin See liger and Ines Wagner, How Trade Union Organizations at the European Level Form Political Positions on the Freedom of Services, Miff Discussion Paper 16/16, 2016.

92. Martin See liger and Ines Wagner, Workers United? How Trade Union Organizations at the European Level Form Political Positions on the Freedom of Services, 2016.
93. Martin Kahanec and Klaus F. Zimmermann, Migration in an Enlarged EU: a challenging solution? European Economy Paper 363, 2009.
94. Marwa Sahnoun and Chokri Abdennadher, 'the assessment of active labour market policies: evidence from OECD countries' (2018) 35(2) Economic Political (DOI 10.1007/s40888-018-0102-x). (Last access:10/10/2022)
95. Matthew Kelly, Lynd all Strains, Tare Deplore, Suwannee Kham nan, Samyang Seubsman and Adrian L. Sleight, Thailand's Work and Health Transition, International Labour Review 149 (No 3), 2010.
96. MELISA R. SERRANO, Trade Union in Transformation Institutionalizing Labour's Voice in ASEAN: The ASETUC Initiative, 2017.
97. Mite Adhisti, Free Movement of Skilled Labour within the Asean Economic Community, Economics Development Analysis Journal EDAJ 6 (2), 2017.
98. MP Cruz Villalon, Court of Justice of European Communities, presented on March 3, 2011 Niklas Engbom, Enrica Detragiache, and Faezeh Raei, The German Labor Market Reforms and Post-Unemployment Earnings, IMF Working Paper/15/162, 2015
99. Niles-Erik Bergin, Collective Bargaining in Europe- Europeanization or Decentralization?, 2004
100. Nóra Jakab, 'Social Dimension of the EU – The Pillar's Impact on European Labor Law' (2019) 26(2) LESIJ – Lex ET Scientia International Journal.
101. Nurulsyahirah Taha, How portable is social security for migrant workers? A review of the literature, 2015. <https://doi.org/10.1111/issr.12061> (Last access:10/10/2022)
102. ODED GALOR, Time Preference and International Labor Migration, JOURNAL OF ECONOMIC THEORY 38, 1-20 (1986), Received July 30, 1984
103. Official Journal of the European Union (C 65), 23.2.2015, P-19 and 20.
104. Orrenius and Madeline Zavodny, Irregular Immigration in the European Union, January 2016.

- https://eapmigrationpanel.org/sites/default/files/2016_2_epa_eng_1.pdf (Last access:10/10/2022)
105. Paşca Cornelia Serena, 'Labor Market – Concepts, Functions, Features, Patterns' (2016) 34(4) Management Strategies Journal
106. Paul Jonker-Hoff r n, Collective bargaining in Europe: towards an endgame Volume I, 2019.
107. Peter Auer, 'Security in labour markets: Combining flexibility with security for decent work' (2007) https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/---analysis/documents/publication/wcms_113923.pdf (Last access:10/10/2022)
108. Phillip John Relacion, Qualitative Research Methods DEFINITION OF QUALITATIVE RESEARCH,https://www.academia.edu/37017373/Qualitative_Research_Methods_DEFINITION_OF_QUALITATIVE_RESEARCH (Last access:10/10/2022)
109. Piriya Pholphirul, Labour Migration, and the Economic Sustainability in Thailand, Journal of Current Southeast Asian Affairs 3/2012.
110. Pong-Sul Ahn, Migrant Workers and Human Rights, Out-Migration form South Asia, 2004
111. Pracha Vasuprasat, Agenda for labour migration policy in Thailand: Towards long-term competitiveness, 2010.
112. Protection of the rights of irregular migrants, International Legal Framework for the protection of Migrant Workers <https://www.osce.org/secretariat> (Last access:10/10/2022)
113. Pun pond Rukumnuaykit, A Synthesis Report on Labour Migration Policies, Management, and Immigration Pressure in Thailand, 2009.
114. Reuters, Thailand Offer Covid-19 Vaccine to Migrant Workers, US. News: World Report, 2021. <https://www.usnews.com/news/world/articles/2021-11-10/thailand-offers-covid-19-vaccines-to-migrant-workers> (Last access:10/10/2022)
115. Richard K. Common,(2007) The Association of the Southeast Asian Nations (ASEAN, <https://www.researchgate.net/publication/301635706> (Last access:10/10/2022)

116. Robert Anderton et al., 'The Impact of Covid 19 Pandemic on the Euro Area Labor Market' (2020) 8 ECB Economic Bulletin https://www.ecb.europa.eu/pub/economic-bulletin/articles/2021/html/ecb.ebart202008_02~bc749d90e7.en.html (Last access:10/10/2022)
117. Rosabel B Guerrero, Regional integration: the ASEAN vision in 2020. <https://www.bis.org/ifc/pub/ifcb32c.pdf> (Last access:10/10/2022)
118. Roxana Proca, The Europeanization of intra-EU labour migration policy (2011-2014) - the poverty variable, 2014.
119. Ruttiya Bhula, Migration, and sustainable development in Thailand, 2019.
120. Saara Koikkalainen, Borderless Europe: Seven Decades of Free Movement, 3rd June, 2021, <https://www.migrationpolicy.org/article/borderless-europe-free-movement> (Last access:10/10/2022)
121. SAKDINA CHATRAKUL NA AYUDHYA, The Thai Labour Movement: Strength through Unity Challenges and Recommendations, 2010.
122. Salivate Mat Baser, IRREGULAR MIGRATIONS IN SOUTHEAST ASIA: CHALLENGES FOR PROTECTION AND MIGRATION POLICY, 2020
123. Salvo Leonardi (Fondazione Di Vittorio), INCLUSIVE GROWTH THROUGH COLLECTIVE BARGAINING IN ITALY, 2018, [https://www.fondazionedivittorio.it/sites/default/files/content-attachment/Leonardi%20-%202018%20-\(Last access:10/10/2022\)%20Inclusive%20growth%20through%20collective%20bargaini ng%20in%20.pdf](https://www.fondazionedivittorio.it/sites/default/files/content-attachment/Leonardi%20-%202018%20-(Last%20access:10/10/2022)%20Inclusive%20growth%20through%20collective%20bargaining%20in%20.pdf)
124. Sapna P. Sadarangani, Poh Lian Lim and Shawn Vasoo, Infectious diseases and migrant worker health in Singapore: a receiving country's perspective, 2017.
125. Sarah Heeler & Adam Heal, Moving Freely? Labour Mobility in ASEAN, ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE, 2014.
126. Sergio Carrera and Marco Formisano, An EU Approach to Labor Migration: What is the Added Value and the Way ahead?, CEPS Working Document, No-232, 2005 .

127. Shandre Mugan Thangavelu, *Economic Growth, and Foreign Workers in ASEAN and Singapore*, 2011.
128. Shandre Mugan Thangavelu, *Labour Market Integration with the World: Case of Singapore*, *Journal of Economic Integration* Vol.32 No.3, 2017.
129. Sonja Nita, Antoine Pécoud, Philippe De Lombaerde, Kate Neyts and Joshua Gartland UNESCO, *Migration, Free Movement and Regional Integration*, UNESCO – UNU-CRIS Institute on Comparative Regional Integration Studies, 2017.
130. Stefania Marino, Rinus Penninx and Judith Roosblad, *Trade Unions and Migrant Workers (New Contexts and Challenges in Europe)*, 2017, ILERA Publication Series, ILO.
131. Stefania Marino, Rinus Penninx and Judith Roosblad, *Trade Unions, Immigration and Immigrants in Europe revisited: Unions' attitudes and actions under new conditions*, European Work and Employment Research Center, University of Manchester, UK, 2015.
132. Stella Zambaloukou, *Collective Bargaining and Social Pacts: Greece in Comparative Perspective*, *European Journal of Industrial Relations*, 2006.
133. Stephen Castles, *Labor migration and the trade unions in Western Europe*, Center for Multicultural Occasional Paper, 1990.
134. Sude Ünal, *Labor Migration to Germany and its Effects on German Politics of Cultural Diversity*, 2019.
135. Sujinda CHEMSRIPONGa, *Skilled Labour Mobility in the ASEAN Economic Community (AEC): Experience from Thailand Labour Market*, JEPE, 3(4), S. Chemsripong, 2016
136. Sunday Samson Badalona and Aioli I shola, *PERCEPTION OF COLLECTIVE BARGAINING AND SATISFACTION WITH COLLECTIVE BARGAINING ON EMPLOYEES' JOB PERFORMANCE*, *Corporate Ownership & Control* / Volume 14, Issue 2, Winter 2017.
137. Sutharee Wannasiri, *Freedom of association in Thailand: an assessment of the enabling environment for civil society*, 2020.

138. Sripapha Petcharamesree, ASEAN and its approach to forced migration issues, *The International Journal of Human Rights*, 2015. <https://doi.org/10.1080/13642987.2015.1079021> (Last access:10/10/2022)
139. Syrian de Silva, COLLECTIVE BARGAINING NEGOTIATIONS, 1996.
140. Task Force for ASEAN Migrant Workers ASEAN Civil Society organisations (CSOs)-Trade Union Consultation on Protection and Promotion of the Rights of Migrant Workers 12 May 2007.
141. Thomas Beissiger, Nathalie Chusseau and Joel Hellies, Offshoring and Labor Market Reforms in Germany: Assessment and Policy Implication, *Economic Modelling Journal* 53, 2016
142. Tito Boeri, Giuseppe Nicoletti and Stefano Scarpetta, ‘Regulation and Labor Market Performance’ (1999) IGIER Working Paper No. 158 <https://ssrn.com/abstract=201748> (Last access:10/10/2022)
143. The International Convention on Migrant Workers and its Committee (Fact Sheet No. 24 (Rev.1)), UNITED NATIONS, New York and Geneva, 2005.
144. Torben Krings (Johannes Kepler University Linz), Unorganisable? Migrant workers and trade union membership, Conference Paper, September 2014.
145. The Role of the Trade Union Movement in Migration and Development: A Contribution from the Building and Wood Workers International (BWI), International Dialogue on Migration (IDM) Intersessional Workshop on “Making Global Labor Mobility a Catalyst for Development” ,Geneva, Switzerland.
146. They Duong Nguyen, ASEAN’s Efforts, and Limitations on Protecting Migrant Workers’ Rights: In Search of Solutions through the Lens of Regulatory Regionalism, 2020.
147. Victor Rodriguez Michaca, Elsa Maile Gutierrez Landa, José Manuel Préstamo Lépez and José Luis García Rodríguez, Labor, Migration and International Political Economy, May 5, 2016
148. WANIDA NGIENTHI, OFFSHORING PROMPTS HIGH QUALITY LABOUR MARKETS, *Pacific Economic Review*, 2013.
149. Willibrord De Graaf and Andréana Khristova, ‘Active labour market policies and social rights: wither subsidised employment?’ (2005) *International*

Conference: Employees' Resources and Social Rights.

https://www.boeckler.de/pdf/wsi_resore_de_graaf.pdf

150. Worawan Chandoevmit, Labour Market Issues in Thailand, 2004.
151. Yongyuth Chalamwong and Raphaella Prugsamat, THE ECONOMIC ROLE OF MIGRATION Labour Migration in Thailand: Recent Trends and Implications for Development, TDRI Quarterly Review, 2009.
152. Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, Global Justice and International Labor Rights, Edited by Cambridge University Press, 2011

Online sources

1. Addleshaw Goddard (AG), Antuzis V. DJ Houghton Catching Services Ltd, , <https://www.addleshawgoddard.com/en/insights/insights-briefings/2019/employment/employment-up-to-date-may-2019/antuzis-ors-v-dj-houghton-ltd/> (Last access:10/10/2022)
2. Mariana Bălan, Migration and Globalization: Challenges and Perspectives, 2017. <https://www.globalization101.org/uploads/File/Migration/migration.pdfAsia-EU> (Last access:10/10/2022)
3. Alien Working Act, B.E. 2551, 2008, https://www.mapfoundationcm.org/pdf/eng/eng_alien_employment_Act.pdf (Last access:10/10/2022)
4. Amar Ali, The New Skilled Immigration Law in Germany, 11/2020, <https://immigrationlawyers-london.com/blog/the-new-skilled-immigration-law-in-germany.php> (Last access:10/10/2022)
5. Annual Survey of Violation of Trade Union, (Last access:10/10/2022) <https://unhcrsurveys.wordpress.com/category/brunei-darussalam/>
6. Dialogue on Labour Migraton, IOM UN Migration, established 2008, <https://www.iom.int/asia-eu-dialogue-labour-migration> (Last access:10/10/2022)

7. ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and their Families, The ASEAN Secretariat Jakarta. <https://asean.org/storage/2019/01/3.-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf> (Last access:10/10/2022)
8. ASEAN Declaration on Strengthening Social Protection and Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection, 2018, <https://asean.org/storage/2019/01/26.-November-2018-ASEAN-Declaration-on-Strengthening-Social-Protection-1st-Print.pdf> (Last access:10/10/2022)
9. ASEAN Plan of Action for Cooperation on Immigration Matters, Association of Southeast Asian Nations, <https://asean.org/wp-content/uploads/2021/01/ASEAN-Plan-of-Action-for-Cooperation-on-Immigration-Matters-ADOPTED-by-4th-DGICM-2000-1.pdf> (Last access:10/10/2022)
10. ASEAN Trade Union Council, <http://aseantuc.org/> (Last access:10/10/2022)
11. Ashley William Gois,(2015) Labour Migration in the ASEAN Region, Heinrich Boll Stiftung, The Green Political Foundation, <https://www.boell.de/en/2015/11/23/labour-migration-asean-region> (Last access:10/10/2022)
12. Association of Southeast Asian Nations, <https://asean.org/> (Last access:10/10/2022)
13. Britannica, 1952-2002, <https://www.britannica.com/topic/European-Coal-and-Steel-Community> (Last access:10/10/2022)
14. BWI Strategy Plan, 2018-2021, https://odoo.bwint.org/web/content/cms.media/832/datas/EN_strategicplan_final.pdf#:~:text=BWI%20Strategic%20Plan%20is%20both%20a%20summary%20of,movement%20in%20building-construction%2C%20building%20materials%2C%20and%20timber-based%20industries (Last access:10/10/2022)

15. Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/trade-union> (Last access:10/10/2022)
16. Canadian Association for Refugee and Forced Migration Studies (CARFMS) , CARFM ORTT, February 2014, <http://rfmsot.apps01.yorku.ca/glossary-of-terms/irregular-migrant/> (Last access:10/10/2022)
17. Center for Public Impact A BCG Foundation, The Hartz Employment Reforms in Germany, 2nd September, 2019. <https://www.centreforpublicimpact.org/case-study/hartz-employment-reforms-germany> (Last access:10/10/2022)
18. Charter of the Fundamental Rights of the European Union, 2000 C/364/01, Official Journal of the European Communities, https://www.europarl.europa.eu/charter/pdf/text_en.pdfC143- (Last access:10/10/2022)
19. Collins English Dictionary, <https://www.collinsdictionary.com/dictionary/english/trade-union> (Last access:10/10/2022)
20. Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, 1950, <https://www.unhcr.org/4d93501a9.pdf> (Last access:10/10/2022)
21. Corrigendum to Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0883R%2801%29> (Last access:10/10/2022)
22. Co97 Migration for Employment Convention (Revised) , 1949 (No – 97), 22nd Jan 1952, Article-6 (1), <https://www.ilo.org/dyn/normlex/en> (Last access:10/10/2022)
23. Data Base on Irregular Migration, CLANDESTINO, 2007-2009, <http://irregular-migration.net/index.php?id=186> (Last access:10/10/2022)
24. DGB Member Unions, <https://en.dgb.de/member-unions> (Last access:10/10/2022)

25. DOMid, Essay: Migration History in Germany, 05/2017, <https://www.domid.org/angebot/aufsaeetze/essay-migrationsgeschichte-in-deutschland> (Last access: 10/10/2022)
26. Dr. Shalini, Inductive and Deductive Reasoning, <https://magadhuniversity.ac.in/download/econtent/pdf/%27Inductive%20and%20deductive%20reasning%27%20pdf.pdf#:~:text=Deductive%20Reasoning%20means%20a%20form%20of%20logic%20in,applied%20and%20the%20result%20obtained%20is%20inevitably%20true> (Last access: 10/10/2022)
27. Employment Policy Convention (1964) https://www.ilo.org/dyn/normlex/en/f?P=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C122 (Last access: 10/10/2022)
28. ETUC Constitutional, https://www.etuc.org/sites/default/files/publication/files/ces-congrece_2015-statuts-uk_ld_def_1.pdf (Last access: 10/10/2022)
29. ETUI Collective Bargaining Newsletter, <https://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Collective-Bargaining2> (Last access: 10/10/2022)
30. ETUI, National Industrial Relations, 2016, <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Cyprus/Collective-Bargaining> (Last access: 10/10/2022)
31. Eurofound, Collective Bargaining, <https://www.eurofound.europa.eu/topic/collective-bargaining> (Last access: 10/10/2022)
32. Eurofound, Croatia: Latest Development Q4 2019, 3rd of March in 2020, <https://www.eurofound.europa.eu/publications/article/2020/croatia-latest-developments-in-working-life-q4-2019> (Last access: 10/10/2022)
33. European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf (Last access: 10/10/2022)
34. European Conventions on Legal status of Migrant Workers (No 093), https://www.coe.int/t/dg3/migration/archives/documentation/legal_texts/093_Co

- [nvention Legal Status Migrant Workers explanatory report en.pdf](#) (Last access:10/10/2022)
35. European Convention on Social Security, European Treaty Series No.72, Paris, 14.XII.1972. <http://www.worldlii.org/int/other/COETS/1972/7.html> (Last access:10/10/2022)
36. European Convention on the Legal Status of Migrant Workers, ETS93–Legal Status of Migrant Workers, (Last access:10/10/2022)
37. European Council of European Union, <https://www.consilium.europa.eu/en/maastricht-treaty/> (Last access:10/10/2022)
38. European Commission European Semester Thematic Factsheet: Active Labor Market Policies (2017) https://ec.europa.eu/info/sites/default/files/european-semester_thematic-factsheet_active-labour-market-policies_en_0.pdf (Last access:10/10/2022)
39. European Commission, European Migration Network: The Impact Of Covid 19 in the Immigration Area and in EU, April, 2021., <https://www.oecd.org/els/mig/00-eu-emn-covid19-umbrella-inform-en.pdf> (Last access:10/10/2022)
40. European Convention on Human Rights (ECHR), adopted in 1950, <https://www.echr.coe.int/Pages/home.aspx?p=basictexts> (Last access:10/10/2022)
41. European Court of Human Rights, issued by the Registrar of the Court, 30.03.2017, and [Vladislava Stoyanova](#), Blog of European Journal of International Law, <https://www.ejiltalk.org/irregular-migrants-and-the-prohibition-of-slavery-servitude-forced-labour-human-trafficking-under-article-4-of-the-echr/> (Last access:10/10/2022)
42. European Parliament, <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome> (Last access:10/10/2022)
43. European Social Charter, 1996, <https://rm.coe.int/168007cf93> (Last access:10/10/2022)
44. European Trade Union Confederation (ETUC), 2nd November 2017, <https://www.womenlobby.org/article296> (Last access:10/10/2022)

45. European Trade Union Institute, Hesamag Magazine, Migrant Workers in Fortress Europe, Special edition with ETUC insert, 12/2019 file:///C:/Users/DELL/Downloads/HesaMag_20_Migrants_EN_Special_edition_ETUC_EN.pdf (Last access:10/10/2022)
46. European Union Agency for Fundamental Rights, Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others (C-341/05), decision date 18.12.2007, <https://fra.europa.eu/et/caselaw-reference/cjeu-c-34105-judgment> , and Will Chen, <https://lawprof.co/eu-law/free-movement-of-goods-and-services-cases/case-c-341-05-laval-2007-ecr-i-11767/> (Last access:10/10/2022)
47. EUR-LEX, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62009CJ0399>(Last access:10/10/2022)
48. European Union, https://european-union.europa.eu/principles-countries-history/country-profiles_en (Last access:10/10/2022)
49. Fagartikkel, NHO <https://www.nho.no/en/english/articles/collective-bargaining/> (Last access:10/10/2022)
50. German Christian Trade Union Confederationv (CGB), <https://www.cesi.org/member-union/cgb/> (Last access:10/10/2022)
51. German Civil Service Federation (DBB), <https://www.cesi.org/member-union/dbb/> (Last access:10/10/2022)
52. German Trade Union Confederation (DGB), <https://en.dgb.de/> (Last access:10/10/2022)
53. Guillaume Rocheteau and Murat Tasci, ‘The Minimum Wage and the Labor Market’ (2007) <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/economic-commentary-archives/2007-economic-commentaries/ec-20070501-the-minimum-wage-and-the-labor-market.aspx> (Last access:10/10/2022)
54. HG.org Legal Resources, Labour Protection for Illegal Foreign Workers in Thailand, 1995-2022, <https://www.hg.org/legal-articles/labor-protection-for-illegal-foreign-workers-in-thailand-36722> (Last access:10/10/2022)
55. Human Rights in ASEAN, 2021, <https://humanrightsinasean.info/mechanism/asean-committee-on-migrant->

- workers/#:~:text=Bangkok%20Declaration%20on%20Irregular%20Migration%20%281999%29%3A%20ASEAN%20Member,and%20taking%20steps%20to%20prevent%20trafficking%20in%20persons(Last%20access:10/10/2022)
56. Industrial Law Report(3 ILR), 2020, <https://www.scribd.com/document/600465310/NONA-HC-1> (Last access:10/10/2022)
 57. Industrial Relations Act 1960, The Statute of Republic of Singapore, 2020 revised edition, <file:///C:/Users/DELL/Downloads/Industrial%20Relations%20Act%201960.pdf> (03/15/2022) (Last access:10/10/2022)
 58. Innovation Reports, Hartz Reform IV did not reduce the Unemployment rate, 2013, <https://www.innovations-report.com/social-sciences/hartz-iv-reform-reduce-unemployment-germany-222355/> (Last access:10/10/2022)
 59. Institute for Human Rights and Business, Migrant Workers and Trade Unions, 21 February 2019, <https://www.ihrb.org/focus-areas/migrant-workers/briefing-migrant-workers-and-trade-unions>(Last access:10/10/2022)
 60. 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> . (Last access:10/10/2022)
 61. International Covenant on the Civil and Political Rights, United Nations, 1967, https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf (Last access:10/10/2022)
 62. International Labour organization (ILO), COVID-19 employment, and labour market impact in Thailand, 2020
 63. International Labour Organization (ILO), <https://www.ilo.org/global/lang-en/index.htm> (Last access:10/10/2022)
 64. International Labour organization, Migration in ASEAN in figures: The International Labour Migration Statistics (ILMS) Database in ASEAN, 2015, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_420203.pdf (Last access:10/10/2022)

65. International Labour organization, Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand, 2016.
66. International Labour Organization, Revision and Enhancement of the Labour Market Data Sources: Towards Setting Up the Labour Market Information System in Brunei Darussalam, 2016, page 1. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_372779.pdf (Last access:10/10/2022)
67. International Labour Organization, Supporting migrant workers during the pandemic for a cohesive and responsive ASEAN Community, Thematic background paper for the 13th ASEAN Forum on Migrant Labor, 2021, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_816971.pdf (Last access:10/10/2022)
68. International Labour organization (ILO), Thailand Labour Market Profile, 2013.
69. International Labour organization, TRIANGLE in ASEAN Quarterly Briefing Note, 2021. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_735108.pdf (Last access:10/10/2022)
70. International Labour organization Youth Employment Policy Summary: Singapore, 2016. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_534104.pdf (Last access:10/10/2022)
71. International organization for Migration (IOM), https://thailand.iom.int/sites/thailand/files/document/publications/Tips%20for%20Migrant%20Workers%20on%20the%20Right%20to%20Freedom%20of%20Association%20and%20Collective%20Bargaining%20in%20Thailand_ENG.pdf (Last access:10/10/2022)
72. IOM UN Migration, Key Migration terms, copyright @ 2022, <https://www.iom.int/key-migration-terms>. (Last access:10/10/2022)
73. Irregular migrant workers in the EU and US, Migration Data Portal, <https://migrationdataportal.org/blog/irregular-migrant-workers-eu-and-us> (Last access:10/10/2022)

74. Judge Kevin Duffy, *Collective Agreements*, 2006, page 2. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_159946.pdf (Last access:10/10/2022)
75. Longman Dictionary of Contemporary English, <https://www.ldoceonline.com/dictionary/trade-union> (Last access:10/10/2022)
76. LUXICO Dictionary powered by Oxford, <https://www.lexico.com/definition/migration>. (Last access:10/10/2022)
77. Maastricht Treaty, 7th February, 1992, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT> (Last access:10/10/2022)
78. Marius Olivier, Prof., *Social protection for migrant workers in ASEAN: Developments, challenges, and prospects*, ILO, 2018. <https://www.social-protection.org/gimi/RessourcePDF.action?id=55654> (Last access:10/10/2022)
79. Minimum Wage Fixing Convention (1970) Art. 4. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C13 (Last access:10/10/2022)
80. Ministry of Manpower, <https://www.mom.gov.sg/employment-practices/trade-unions/about-trade-unions> (Last access:10/10/2022)
81. Mohamed Marouani, Bjorn Nilsson and Mathis Wagner, *Foreign Workers in Malaysia: Labour Market and Firm Level Analysis*, 2015.
82. Nathalie Elgrably, *The Minimum Wage and Labor Market Flexibility* (2006) Montreal Economic Institute, 2. https://www.iedm.org/files/dec06_en.pdf (Last access:10/10/2022)
83. OECD/ILO (2017), *How Immigrants Contribute to Thailand's Economy*, OECD Publishing, Paris. Page 18-34. <http://dx.doi.org/10.1787/9789264287747-en> (Last access:10/10/2022)
84. Official Website of European Union, *Judgement of the Court*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0515> (Last access:10/10/2022)
85. Oxford Dictionary, <https://www.ourmigrationstory.org.uk/about/what-is-migration.html> (Last access:10/10/2022)

86. Orrenius and Madeline Zavodny, Irregular Immigration in the European Union, January 2016. https://eapmigrationpanel.org/sites/default/files/2016_2_eпа_eng_1.pdf (Last access:10/10/2022)
87. Out of scope: irregular migrants and people affected by urban violence, World Disasters Report 2018. <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/10/C-06-WDR-2018-6-scope.pdf> (Last access:10/10/2022)
88. Oxford Notes, updated at 12.02.2020, https://www.oxbridgenotes.co.uk/law_cases/case-316-85-lebon
89. PENINSULA, <https://www.peninsulagrouplimited.com/ie/guides/collective-bargaining/> (Last access:10/10/2022)
90. Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?Uri=CELEX:52020PC0682&from=EN> (Last access:10/10/2022)
91. ROYAL ORDINANCE Concerning the Management of Employment of Foreign Workers, <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf> (Last access:10/10/2022)
92. Sabine Kinkartz, Germany's New Labor Migration Law Explained,2020 <https://www.dw.com/en/germanys-new-labor-immigration-law-explained/a-52575915> (Last access:10/10/2022)
93. Sandrine Cazes-Chaigne, 'Employment For Social Justice and a Fair Globalization, Overview of ILO programmes: Labor market analysis' https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_140946.pdf (Last access:10/10/2022)
94. Schengen Agreement, <https://www.schengenvisainfo.com/schengen-agreement/> (Last access:10/10/2022)

95. Sergio Torrejón et al., 'The Impact of Covid Confinement Measures on EU Labor Market' (2020) European Commission Science for Policy Briefs https://ec.europa.eu/jrc/sites/jrcsh/files/jrc.120585_policy.brief_impact.of_.covid-19.on_.eu-labour.market.pdf (Last access:10/10/2022)
96. Shaftbury Asteria, Labour Market Strategic: Twelfth Malaysia Plan (2021-2015), 2019. https://www.ilmia.gov.my/images/newsandevents/PersidanganSumberMannusia2019/PEMBENTANG_2.pdf (Last access:10/10/2022)
97. Single European Act, 11th December, 1986, <http://www.europarl.europa.eu/about-parliament/files/in-the-past/ep-and-treaties/single-european-act/en-resolution-on-the-single-european-act-19861211.pdf> (Last access:10/10/2022)
98. Smriti Chand, Trade Union: Its meaning and definition, <http://www.yourarticlelibrary.com/trade-unions/trade-union-its-meaning-and-definition-trade-union/26118> (Last access:10/10/2022)
99. Srawooth Paitoonpong, Managing International Labour Migration in ASEAN: Thailand Immigration, Philippine Journal of Development, 2011.
100. Sujinda CHEMSRIPONGa, Skilled Labour Mobility in the ASEAN Economic Community (AEC): Experience from Thailand Labour Market, Journal of Economics and Political Economy Vol-3, 2016.
101. Surbhi S, Differences between Centralization and Decentralization, 2017. <https://keydifferences.com/difference-between-centralization-and-decentralization.html> (Last access:10/10/2022)
102. The ASEAN Post, January 2021, <https://theaseanpost.com/article/aseans-migrant-worker-clusters> (Last access:10/10/2022)
103. The Constitution of the Kingdom of Thailand, , [https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+\(B.E.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+(B.E.+2560+(2017)).pdf) (Last access:10/10/2022)
104. The Economic Times ,Glossary, Economic, 03/2022, <https://economictimes.indiatimes.com/definition/Trade-Union>

105. The Future of Work and Migration,(2019) Thematic background paper for the 12th ASEAN Forum on Migrant Labour (AFML), International Labour organization. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/--sro-bangkok/documents/publication/wcms_733923.pdf (Last access:10/10/2022)
106. The Observatory For the Protection of Human Rights Defenders, Fact Sheet: Thammakaset Vs Human Right Defenders and Workers in Thailand, May 2019, <https://www.fidh.org/IMG/pdf/obsthailande2019web.pdf> (Last access:10/10/2022)
107. The World Migration Report 2020, IOM UN Migration, www.iom.int/wmr (Last access:10/10/2022)
108. Treaty Establishing European Union, 03/1957, Document 12002E039, http://data.europa.eu/eli/treaty/tec_2002/art_39/oj (Last access:10/10/2022)
109. Tünde Handó (Judge), XIVth Meeting of European Labor Court Judges, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_159944.pdf (Last access:10/10/2022)
110. United Nations, <https://www.un.org/en/sections/issues-depth/migration/index.html> (Last access:10/10/2022)
111. United Nations Human Rights Office of the High Commission, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> (Last access:10/10/2022)
112. Universal Declaration of Human Rights, 1948, December 10, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last access:10/10/2022)
113. Updated Impact Assessment For EU-social Security Coordination, 2021, <https://www.gov.uk/government/publications/immigration-bill-2020-overarching-documents/updated-impact-assessment-for-eu-social-security-co-ordination-february-2021-accessible-version#contents> (Last access:10/10/2022)
114. USLEGAL, <https://definitions.uslegal.com/labor-migration/>.(Last access:10/10/2022)

115. Will Kenton, 'Labor Market' (Investopedia, 31 August 2020) <https://www.investopedia.com/terms/l/labor-market.asp> accessed 20 December 2020. (Last access:10/10/2022)
116. Will Chen, Centre Public d'Aide Sociale de Courcelles v Lebon (1987) ECR 2811 (C-316/85), <https://lawprof.co/eu-law/free-movement-of-persons-cases/case-316-85-lebon-1987-ecr-2811/> (Last access:10/10/2022)
117. Willy Buschak, The European Trade Union Confederation and the European industry federations, 2003, <http://library.fes.de/library/netzquelle/english/eugew/history/pdf/buschak.pdf> (Last access:10/10/2022)
118. World Economic Forum, 2020, <https://www.weforum.org/agenda/2020/01/iom-global-migration-report-international-migrants-2020/> (Last access:10/10/2022)
119. World Disasters Report 2018, <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/10/C-06-WDR-2018-6-scope.pdf> (Last access:10/10/2022)
120. World Health Organization, Promoting the health of Migrant Workers in the WHO European Region during COVID-19: interim guidance, 6 November 2020, <https://apps.who.int/iris/bitstream/handle/10665/336549/WHO-EURO-2020-1384-41134-55925-eng.pdf?sequence=1&isAllowed=y> (Last access:10/10/2022)
121. Worldometer, 2022, <https://www.worldometers.info/world-population/south-eastern-asia-population/> (Last access:10/10/2022)
122. Your Dictionary, <https://www.yourdictionary.com/migration.> (Last access:10/10/2022)

