Undocumented migrants
and their Constitutional
and Human Rights/Case
Finland

PhD (Sc.Soc) Marja Katisko
Diaconia University of Applied Sciences
11.12.2020
“The Protection of Fundamental Rights in the European Union – A transnational portrait” during our Human Rights Week” – CASE FINLAND

• “The main goals are to grant Human rights to all EU citizens and to promote them worldwide. However, violations of those rights still occur and are often justified with questionable policies (e.g. in the fields of asylum, security, economy and trade, etc.)”….Our aim is to bring different perspectives from different regions together and have short inputs on the situation in these regions…..The input presentations could for instance be about the history of Fundamental Rights, current developments, violations, or about initiatives to take action against such violations.”

Agenda:

1. Turning point in Europe and Finland with asylum seekers: 2015
2. Reasons to became undocumented in Finland
3. Why irregular migration is a question of Human Rights
4. Constitutional Rights in Finnish context
5. Living without rights in welfare state
TURNING POINT IN EUROPE 2015
Year 2015 was a turning point in migration to Europe when Europe received 1,322,800 asylum seekers. 2014 the number was 627,000.

During the 2015 refugee crisis Finland received 32,476 asylum seekers.

Inequalities, climate change, armed conflicts and natural disasters increase the global migration and the destinations of migration tend to be from global south towards north, even though south to south migration is also highly common (Crawley 2018). Most of the asylum seekers in 2015 were coming from Syria, Iraq and Afghanistan.

Only a small part of the asylum seekers from 2015 has a refugee status or a residence permit in Europe today, and some of them are still waiting for the decision; the rest are in a situation where they can either return to their country of origin, resettle in another country or stay in the country undocumented. For some, staying in Europe as undocumented was the best option of many bad options and they chose to stay as undocumented. (Eurostat 2016; Ministry of the Interior Finland n.d.)
In Finland: an undocumented migrant is a person coming from outside of EU, Eta-countries or Switzerland, and who has no legal papers in the country of residence. (Ministry of the Interior Finland)

Reasons:

Person might come to Finland with the tourist visa and stays in the country after it has expired

Person might come with adequate documents like a visa in another Schengen country or even a valid residence permit but decides to stay in the country after the permit has expired.

- The Dublin regulation is an EU law that determines which EU state is responsible for the examination of an asylum application; asylum can be applied for in only one country either in an EU State, Norway, Iceland, Switzerland or Liechtenstein. According to the regulation, the responsibility of the application will be addressed on the country in which 1) the applicant has family members, 2) the applicant has had residence permit or visa, 3) the applicant has first arrived in, or 4) the applicant has previously applied for asylum.

- The aim of the regulation is to make sure that each asylum application gets a fair examination, and it operates on the assumption that every country provides similar levels of protection, as the asylum laws and practices are united. (UNHCR n.d.; European Commission. Migration and Home Affairs. Country responsible for asylum application (Dublin).)

To become undocumented through asylum pathway: negative (final) decision, person can voluntarily leave Finland and return to the country of origin, or person can stay in Finland as undocumented.
Reasons to become an undocumented in Finnish context

• The humanitarian residence permits enabled asylum seekers international protection due to humanitarian reasons. Humanitarian reasons were for example armed conflict, environmental catastrophe or poor human rights situation in the country of origin. Persons coming to seek asylum but were not entitled for asylum by the UN refugee protocol or by EU directives were given protection based on these humanitarian reasons, because it was not human to return them to their country of origin.

• The humanitarian residence permit category was used in Finland for more than 25 years and officially it was initiated in 2009 when Finland still wanted to stand out as a country giving more than the minimum level of protection - however in 2016 humanitarian residence permit was ended in Finland and those who were having a residence permit based on that became mostly undocumented.
Why irregular migration is a question of Human Rights
Why irregular migration is a question of human rights?

- Human rights are the rights human beings have by virtue of being human.

- Human rights are universal, and they belong to everyone regardless of the person's ethnicity, gender, sexuality, religion, age or any other type of labelling.

- Human rights are not granted to us by states or anyone else, and they cannot be removed or denied. They belong to everyone without any duties and human rights are something that a person cannot lose, and no one can take them away.

- Discrimination is linked to marginalization of specific groups and can be described to be at the root of fundamental structural inequalities in a society. The recognition, enjoyment and exercise of human rights and fundamental freedoms is restricted when discrimination takes place. (O’Byrne 2013, 26-28; Freeman 2017, 120-122.)
EU: Fundamental Rights

• The European Union Agency for Fundamental Rights highlights seven human rights issues that concern especially irregular migrants: 1) health care, 2) rights to education, 3) labour market, 4) housing, 5) family reunification, 6) security measures, and 7) the situation of those irregular migrants who cannot be returned to their country of origin.

• The European Union states do not have homogenous policies on irregular migration, which makes the situation of irregular migrants different depending on the country they are residing in. In many countries the policies and the services provided are limited in order to make the country less attractive for migrants. (European Union Agency for Fundamental Rights, 2011.)
Irregular migration in Finnish context
Section 19 - The right to social security

- Those who cannot obtain the means necessary for a life of dignity have the right to receive **indispensable subsistence and care**. Everyone shall be guaranteed by an Act the **right to basic subsistence** in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

-> The **public authorities shall guarantee for everyone**, as provided in more detail by an Act, **adequate social, health and medical services and promote the health of the population**.

Section 22 - Protection of basic rights and liberties

- The public authorities **shall guarantee the observance** of basic rights and liberties and human rights.
Reality in Finland

- Municipalities in Finland base their services on the Constitution of Finland (731/1999) which states that the public authorities have a duty to provide adequate social, medical and health services to everyone regardless of their documentation status.
- The Aliens Act (301/2004) defines asylum seekers and refugees, but it does not define those immigrants who do not have adequate documentation, so legally the undocumented have no official place in the society.
- It is not defined in the legislation what kind of services the municipalities are required to offer for undocumented migrants.
- In Finland different cities and municipalities offer different kind of services for the undocumented, and the humane treatment and human rights of the undocumented are met in different ways in the municipalities in Finland.
- Especially the situation of families and children in irregular migration makes them vulnerable for human rights violations.
Everyday life as an undocumented migrant in welfare state: what motivates and gives strength & how I see me as a part of society
Trust for change. Future views and hopes.
Children are the reason....

.....the parents kept working to legalize their status in Finland.

“What gives us motivation? Can I say love? When you see your kids, they give you strength to work as much as I can give them life and hope in the future” (Father)

Grievances of the system

“"I am like a prison. I can’t study, I can’t get a job. Everywhere they require a residence permit. The employer tells you to go to Migri and Migri they say you need to find a job. Bureaucracy is, making life as an undocumented complicated....” (Father 3)

*Migri = Finnish Immigration Service*

What kind of support?

• What kind of support undocumented migrants in Helsinki metropolitan area need?
• What kind of physical and psychological challenges undocumented people have to face in their daily life and what kind of support they need and how they see their future in Finland?
• How/in what way is the undocumented migration changing the societies in Europe. Hidden structures? Hidden power structures?

Thank you for your time!

Dr. Marja Katisko, marja.katisko@diak.fi