

Living without papers About the lives of people without valid residency permits in Hamburg

Abridged Version plus Recommendations
Diakonisches Werk Hamburg

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The study is available on the following website from which it can also be
downloaded:

<http://www.diakonie-hamburg.de/publikationen/>

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Preface

Dear Reader,

in March 2008, Diakonisches Werk Hamburg in co-operation with Nordelbische Kirche and the trade union ver.di commissioned a study entitled “About the lives of people without valid residency permits in Hamburg”. The text before you is the result of that study. It hopes to contribute to a more dispassionate public debate about paperless migrants and to rid this debate of some of the taboos that surround it. There are thousands of people in the city of Hamburg who do not possess a valid residency permit, so a level-headed debate is urgently needed. These people live in our midst and they work in nearly all sectors of industry, not least in private households.

But theirs is a life in the shadows: Paperless migrants are denied basic rights and minimum social standards or they do not dare to invoke them because they are afraid of being found out. Under such circumstances, accidents at work, infections or giving birth to a child can become life-threatening events. Enrolling children at school or kindergarten and daily school routines constitute a risky obstacle race for paperless migrants. They are easy targets for blackmail, often become the victims of extortionate rents and are exploited at work. All of this in spite of the fact that the rights to education, health care and the entitlement to protection against exploitation apply to all humans without any distinction.

The study commissioned by Diakonisches Werk demonstrates that politics and society can and must act. This is not a task that will overstretch our society’s resources, nor can Hamburg rightly claim to be forced into inaction by federal legislation. The general public debate at federal level and numerous roundtable discussions with experts held in the context of this study go to show that there is a sense of common understanding of and growing consensus about the need for action. It is therefore our hope that the study will bear fruit long term by triggering concrete measures for the benefit and support of paperless migrants in Hamburg.

This study was made possible by the support lent by many an organisation and many individuals whose contributions we would like to acknowledge here. We would like to extend our thanks to all contributors. We can name only a few. First and foremost we would like to thank our scientific collaborators, Dr. Dita Vogel and Emilija Mitrović, the Working Group Kirchliche Weltdienste, Mrs. Miriam Edding and the Do-Foundation which, together with Diakonisches Werk and ver.di, covered the lion’s share of the cost. Manuel Assner and Dr. Norbert Cyrus contributed directly or indirectly to many of the working documents and enriched the study through their scientific expertise. We would also like to thank Dr. Uli Bielefeld and his colleagues on the Advisory Council and Hamburger Institut für Sozialforschung. Not only did they contribute their know-how, but they supported the project with their hands-on practical assistance when it came to organising expert workshops. Furthermore, this study would not have been conceivable had it not been for all the comments, opinions and critical remarks made by experts from the world of academia, from NGO’s as well as from the political and administrative arena whose representatives engaged actively and in a collegiate manner in workshop discussions. But most importantly, we would like to thank those men and women who live in Hamburg without the required legal documents status and who so generously shared the experiences of their everyday lives with us. They are the real experts when it comes to “life in the shadows”.

Sincerely,

Annegrethe Stoltenberg

Pastor for Hamburg (Landespastorin) and
Director of Diakonisches Werk Hamburg

Introduction

Being a Paperless Migrant Does not Mean Being Deprived of one's Rights

It is the hope of leading a better and more dignified life elsewhere that motivates people to leave their home country and become migrants. They often end up in large cities such as Hamburg where migrants find ways to survive and work, even if they do not have the required official documents. The Church, trade unions and diverse associations are faced with the fact that there are people in Germany who, in theory and according to the official policies and rules, should not even be here and who are therefore not legally entitled to e.g. social benefits. These people have needs, problems and rights and they come to our advice centres for support.

A Study that Focuses on the Lives of Irregular Migrants in Hamburg

For some ten years now, there has been a public debate in many large German cities about the need to find a new way of treating irregular migrants. This is why cities such as Munich, Cologne and Frankfurt have commissioned studies which have provided some insight into the specific conditions under which paperless migrants live. The purpose of these studies is to allow for better integration of paperless people in local communities.

In Hamburg the study was commissioned by Diakonisches Werk Hamburg in co-operation with Nordelbische Kirche and the trade union ver.di. The study looks at the legal and social problems that arise from living under illegal circumstances as seen and experienced by migrants. The study aims to describe existing support regimes and to

highlight alternative ways of handling the specific issues that affect people without documents.

First Ever Scientifically-Based Estimates

Dr. Dita Vogel and Manuel Assner collected the quantitative data for the data base and they were the first to apply the systematic methodology developed by the Institute for World Economics in Hamburg (HWWI = Hamburgisches WeltWirtschaftsinstitut) for estimating the number of irregular migrants in any large German city.

Social scientist Emilija Mitrović stood for the qualitative part of the study. Between April of 2008 and September of 2009 she conducted twelve interviews with irregular migrants plus sixteen interviews with experts from the areas of health, education and from the labour market. The material she gathered is supplemented by a study carried out by Anna Kühne that looked at the health situation of paperless migrants who use the medical advice services of a centre for refugees and migrants. The results obtained from these studies were discussed during three workshops organised with three different thematic focuses and attended by experts and decision-makers from the respective sectors. In a first political reaction, the Senator for Education in Hamburg, Mrs. Christa Goetsch, sent a letter to Hamburg head teachers in which she acknowledged the right of all children to education and clarified her position on current legislation and administrative orders.

Recommendations to Politicians and Administrative Bodies in Hamburg

This brochure is a short summary of the most important results of the study. It demonstrates that irregular migrants practically live in a legal void although they

de facto are entitled to minimum standards of protection and enforceable basic rights. These are: the right to education and/or schooling, workers' rights and the right to health care. At the end of each chapter Diakonisches Werk comes up with recommendations that are derived from the study. Politicians and administrators need to recognise that there is an acute need for action. An important initial step would be to turn the existing round table groups of experts into permanent institutions operating under the guidance of the respective authority in order that specific proposals for action be formulated.

A Short Excursion into Housing Conditions – Irregular Migrants and their lodgings: Extortionate Rents and Crammed Conditions

We have not dedicated an entire chapter to the issue of housing, but would like to briefly describe how irregular migrants live. Most paperless migrants will find themselves a place to live through unofficial channels, often within their communities and as sub-tenants. Their deprived living conditions typically are characterised by cramped space and the practice of sharing the same

room or flat in a “shift rota”. Extortionate rent levels are common. Being without documents and homeless at the same time presents a special problem: Because of the rules to which centres for the homeless are subject, they are not allowed to accept people without official documents nor are they at all prepared for them. This clearly needs changing in order that such centres can in future also help those of the homeless who do not possess any official documents. The respective guidelines for state funding and allocation rules must be adjusted correspondingly.

“You just get treated as if you had committed some crime!”

Juan from Ecuador, interviewee
in the study “Irregular Migration in Hamburg”

Data and Facts

Being Illegal has many facets

It is a fact that there are people in Hamburg without official documents, i.e. they do not have the right of abode nor even a temporary permit to stay. They are constantly in danger of being deported if their activities or their whereabouts are brought to the notice of the Immigration Authority (Ausländerbehörde).

Different Types of Irregular Migration

There are many different ways in which one can end up being an illegal migrant: Many irregular migrants who live in Hamburg today initially travelled to Spain by sea. Or they came from the Ukraine and then travelled through Poland and eventually arrived in Hamburg. There is any number of combinations of legal and illegal routes via which people arrive in our city and of different ways in which they live and work here. Some migrants come here on an Au-Pair-visa or as tourists and just stay on after their visa has expired. As an ex-tourist, for example, you are not allowed to take up gainful employment here.

Between 6,000 and 22,000 Paperless Migrants

Most of the paperless migrants who live in Hamburg, namely sixty per cent, are in the age group of 25- to 65-year olds, i.e. they would be capable of taking up gainful employment. Thirty per cent of them are youths and another eight per cent, i.e. between 240 and 2,400, are children of school age. There are slightly more men than women without official status.

The study has established that most of the paperless migrants who live in Hamburg come from Latin America and West Africa. This does not come as a surprise to experts in the field. Among irregular migrants living in Hamburg, those from Ghana and Ecuador are predominant. However, it has hitherto been underestimated that among the paperless migrants of Hamburg there also is a relatively high percentage of people from Turkey, Russia, Serbia and Montenegro, i.e. from countries whose legal migrants already form a sizeable community in Hamburg. Another unexpected result of the study is the large number of irregular migrants from Asia, in particular Indians. Experts assume that these people tend to look for support within their own ethnic networks rather than from official sources or advice centres so that they are less visible.

Figures are decreasing

For the year 2003 the estimated number of paperless migrants in Hamburg was between 19,000 and 65,000. The figure has since gone down significantly which is partly due to the fact that the calculative basis of estimates in the past was inaccurate and has now become obsolete. But also in real terms, figures declined when the residency status of a considerable number of people was legalised through the accession of Eastern European countries to the EU in 2004 and 2007 respectively. There is a general trend in Europe and in Germany whereby the estimated number of irregular migrants is decreasing.

Controversy around the Duty to Report Resolved

The German Residency Act makes it obligatory for authorities to report paperless individuals. This has serious consequences as it requires all public bodies to notify the Immigration Authority (Ausländerbehörde) of anyone who does not have a valid residency permit. The duty to report is seen by some officials as an indispensable tool in the attempt to control migration. What it means in practice is that paperless migrants avoid all contact with public bodies so as to prevent being found out. To have established the fact that the duty to report actually applies neither to schools nor to labour courts, is one of the most important outcomes of the study.

Shortly before the study was completed, new legislation was introduced to clarify another point, namely the protection of the physician-patient privilege. This privilege has now been enshrined in the general administrative provisions which govern the enforcement of the Residency Act so that physicians are bound by it. In emergencies this privilege now also extends to the Social Services offices.

Furthermore, legal protection for those who either in their professional capacity or as voluntary workers give advice or support to paperless migrants has been strengthened: They will now no longer run the risk of being charged with aiding and abetting if they give support to paperless migrants.

Education

Paperless Migrants: Frequently Left in the Cold

In Hamburg each child is entitled to school education. At the same time school attendance is mandatory for all children so that the right to education and the right to attend school also apply to children without legal residency status. However, the rights of these children are controversial within the context of educational and immigration policies. In a letter sent to Hamburg head teachers, Christa Goetsch, Senator for Education, acknowledged the right of all children to education and clarified her position on several fundamental legal concepts.

The Senator underlined her position whereby according to the Residency Act schools in Hamburg are exempt from the

duty to report that otherwise applies to all public bodies. The Hamburg School Act makes the right to attend school and the actual enrolment of a child in a particular school contingent on whether or not they are domiciled in Hamburg whereas their residency status is irrelevant. Thus, school staff are under no obligation to establish the residency status of a child. If school staff, while off-duty, learn of a child that has no official residency status, they are not obliged to notify the Immigration Authorities of this.

Centralised Pupils' Register scares people off

Before the clarification by the Senator, the Centralised Pupils' Register (ZSR) had caused a great deal of insecurity and

concern among staff in advisory bodies and schools as well as among parents without legal residency status and their children. The

Centralised Pupils' Register was introduced in 2006 to safeguard child welfare. Its introduction meant that schools were obliged to pass data on all pupils on to the Education Authority without any exception. Police had access to this Register which caused widespread concern. Although to this day the police have never requested disclosure of any information contained in the Register, there has been an intensive and controversial debate about this issue. As a result, children without official status have stayed away from school for fear of being found out and being deported. In other words, these children have not dared to make use of their right to education and, what is more, they have been in breach of mandatory school attendance.

Interviews found that administrative staff at schools not only felt generally insecure when they had to deal with children without a legal residency status, but often also lacked information. Educators feel that, as a result of the confused legal situation, risks and responsibilities are being foisted upon them which do not belong in schools. In such a legal environment, head teachers and school administration staff react in different ways: Many schools simply refuse to enrol paperless children. A solution can often be found only by involving advisory bodies with very good informal contacts and networks. In those cases where schools take a co-operative approach, it is often the head teacher's office that will take care of paperless children e.g. by instructing form teachers to keep two separate lists of pupils (one official, the other unofficial; Erg.d.Übers.).

Torn between Administrative Constraints and the Mission to Educate

In view of the actual or supposed requirements that they feel they must comply with, administrative staff and teachers in schools are often plagued by a bad conscience when they allow paperless pupils to enrol. They are torn between their mission as educators and the rules they have to respect as civil servants. In her letter to head teachers the Senator therefore explicitly stated that the Centralised Pupils' Register was not the allocation basis for school funding as had wrongly been believed by many administrative staff and teachers. In fact, each individual school applies for public funds on the basis of the number of pupils that have enrolled at that school in the autumn of the respective year. The enrolment figures are not matched or compared with the numbers and enrolments in the Centralised Pupils' Register. Furthermore, the Senator reassured everyone that children who comply with mandatory school attendance are sickness-insured through the Regional Accident Insurance (Landesunfallversicherung), quite independently of whether or not they are registered in the Centralised Pupils' Register.

Whether or not the statement by the Senator will have the effect of ensuring that children who do not have a legal residency status can make use of their right to schooling, will depend on the extent to which the Senator's clarifications reach schools. If schools put the new approach into practice this should soon be reflected by higher enrolment figures.

Kindergarten and Crèche – No Pre-School Education for Paperless People

Paperless parents face even bigger problems when trying to find a kindergarten or crèche place for their children as it is virtually impossible for them to obtain the necessary vouchers from the authorities. Unlike schools, kindergartens and crèches cannot receive state funding unless they produce these vouchers. If a Kindergarten accepts a child without legal status it suffers heavily in financial terms and only a very few do this out of a sense of solidarity. Children without legal status who do not attend either kindergarten or school stand a poor chance of learning the German language. Also, their social and cognitive competencies will not develop as strongly as those of their “legal” peers. In other words, these children are deprived of the opportunity to establish the basis for a successful educational career later in life.

Psycho-social Repercussions for Children and Parents

Children without legal residency status suffer both psychologically and socially and so do their parents. These children grow up in a situation which isolates them and leads to social exclusion. They often do not attend school because they fear that, if they do, their paperless parents might be found out. They do not learn the German language which is a pre-requisite for communicating successfully with their environment. During school hours paperless children do not dare frequent playgrounds or so-called play-houses where pedagogues look after them because this would make plain that they are not in compliance with mandatory school

attendance. In other words, these children are forced to stay at home and find themselves something to do while their parents are away at work.

Those paperless children who do attend school are often described as introvert and uncommunicative. Paperless children are acutely aware of their status as outsiders, take great pains not to stick out and are permanently on the alert.

Among paperless parents the fear of being found out is the biggest concern, but at the same time they would feel bad about not sending their children to school. Mostly, what motivates these parents to send their children to school is the wish to give them access to a better life, both in material and in social terms. As a result, parents and children are under severe pressure and often suffer from psychological and even psycho-somatic complaints. Many parents do not manage to conceal their anxieties and their lack of a positive outlook on life from their children.

Recommendations for a School for All – from Commitment to Implementation

The Centralised Pupils’ Register was established as an early warning system for potential cases of child abuse. The scheme does not provide for direct access to these data by police and such access should be avoided. The information flow concerning data on children of school age should be one-way only, namely from Registration

Office to the schools (not vice versa). The Youth Office should only be informed if children fail to turn up at school.

- Legislation in Hamburg should be modified to underline the fact that the duty to register with the authorities is secondary in importance vis-à-vis the right to education. This would free

schools of the obligation to notify the Registration Office of any cases where children are not officially registered.

- The aforementioned official letter from the Senator clearly acknowledges the right to schooling for all children and this entitlement now needs to be implemented at school level. This means that official forms and information brochures on registration procedures need to be adapted. Alternatives must be offered and clearly communicated where people's domicile need not be disclosed. Also, we need to address the question of whether staff at schools should generally enter pupils without legal residency status in the Centralised Pupils' Register.
- It is very important to explain to advice centres and their staff the fact that paperless parents can enrol their children at a school without having to fear being found out. This information should be available for parents in several

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- languages. Paperless children must be given access to kindergartens and crèches. Such access has hitherto been blocked by the requirement to produce proof of entry in the Official Register. Attempts should be made to allow for alternative ways of proving that someone is domiciled in Hamburg. The same should apply to written employment contracts and people's income tax bill. One possibility would be for the authorities to accept

proof of participation in a German language course as a pre-requisite for handing out kindergarten vouchers.

- Additionally, parents should be given the possibility of having their children officially registered at birth without having to fear sanctions. These children should be issued with a birth certificate so that later they can be registered at educational institutions.

“We tried to find a school in the neighbourhood, but when school staff realised that the children did not have any official documents, we were told that they could not enrol. In the end we were lucky to find a pre-school class for them through our networks.”

Staff member at an advice centre who took part in the study “Irregular Migration in Hamburg”

Health Issues

Death in the gutter

Paperless migrants are theoretically guaranteed access to the state health care system through the German Act on Provisions for Asylum Seekers (Asylbewerberleistungsgesetz). However, it is the exception rather than the rule that entitlement to such provisions can be invoked without giving up one's anonymity which is why paperless people have so far in practice been poorly catered for by the health care system.

There is, at any rate, only a minimum of health care available for people without legal residency status because the German Act on Provisions for Asylum Seekers explicitly limits services to the acutely ill, to people in need of pain relief and assistance for pregnant women. To benefit from these services people need to be registered with their local Social Services Office which will reimburse the cost. Social Services, however, are under a duty to report people without legal residency status to the Immigration Authority. This means that a paperless person receiving in-patient care runs the risk of being detained and deported.

Physician-patient Privilege

Legislation on services to be provided in cases of acute illness and in emergencies has now been made much clearer: The General Implementation Rules applicable to the Residency Act establish that the physician-patient privilege always overrules the duty to report as enshrined in the Residency Act, quite independently of whether the doctor concerned has his private practice or is a public employee. Until recently, there was a great deal of

uncertainty surrounding this issue as well as a lack of information among physicians.

In addition, a so-called extended physician-patient privilege has been introduced whereby Social Services are to cover the cost of hospital treatment in cases of acute illness and in emergencies without asking the hospital for data on patient identity or passing these data on to the Immigration Office. This was previously not regulated unequivocally. The question remains open even now, however, who, on a case-by-case basis, will be responsible for diagnosing acute illnesses and emergencies.

Furthermore, it remains to be seen whether the Implementation Rules really will be applied in the day-to-day admission routines of hospitals.

Health Care in the Event of Accidents at the Workplace

Emergency care is guaranteed also for paperless people and legislation leaves no room for uncertainty when it comes to accidents suffered at work. It is the employers' accident insurance that covers all such accidents irrespective of the residency status of employees. Unfortunately, however, paperless employees will often refuse to be treated for fear of being found out. Employers, too, are often reluctant to call an ambulance because they are afraid of being reported to the authorities for contracting illegal labour.

Fearful Patients are Reluctant to See a Physician

Paperless people will only go to see a physician if they can no longer avoid it. Although their general state of health is often

poorer than that of the majority of the population they will often go untreated for longer periods, their illnesses will drag out and become chronic. Even in cases of acute need, e.g. in an accident or a heart attack, paperless people will not turn to public institutions for help. Such behaviour can pose risks for other people in their vicinity if e.g. there is talk of an infectious disease.

For paperless women particularly, this can lead to life-threatening situations during pregnancy and while giving birth. Paperless pregnant women have to rely on an informal network to support them both in material terms and psychologically if they want to make sure they give birth under conditions that fulfil at least the most basic requirements. As a result, many paperless pregnant women feel they must get an abortion when such a network is not available.

When giving birth in a hospital, women have to disclose their identity. During maternal leave (Mutterschutz), i.e. during the six weeks up to delivery and for eight weeks after delivery, pregnant women can apply for temporary protection against deportation. However, this means that both mother and infant must disappear into illegality after this period to avoid deportation. That is why many paperless pregnant women deliver their babies in private homes where little assistance is available should there be complications. Children born in this way do not get a birth certificate.

Recovering the Cost of Hospital Treatment

As regards access to health care, the difficulty for hospitals to recover the cost of treatment is the biggest stumbling block. With the exception of cases of acute emergencies, physicians and hospital staff are obliged to establish the identity of

patients if they want to make sure they get paid for their services. Severe economic pressures mean that public health institutions are in a dilemma: Physicians are obliged by their Hippocratic oath to treat patients independently of their residency status. The reality is that hospitals will normally recover the cost of treatment from Social Services for emergency services provided. If patients present with non-emergency conditions hospitals will in some cases refuse to treat them outright. In those cases where paperless people are able to pay for medical treatment out of their own pockets there is normally no problem. But costs tend to be very high and patients will in most cases have to rely on help from friends and acquaintances. For example, surgery and removal of the appendix plus hospital stay will cost around 1500 Euros.

Minimum Health Care provided by Volunteers

Health care for paperless patients is mostly provided by volunteers and physicians who agree to work without being paid. In Hamburg and other large cities, for example, NGOs, advice centers and networks have developed to come up with interim solutions so that at least some paperless people are guaranteed a minimum level of basic care. In 1994, Hamburg was the first German city where an Advice Center for refugees and migrants was established. It is called Medibüro and acts as an intermediary so that paperless people are put into contact with a network of physicians who treat them free-of-charge as long as there are no laboratory or medication costs involved.

Like in other cities, *Maltese Migrant Health Care (Maltaser Migranten Medizin)* in 2008 opened a low-threshold contact point for general medical services in Hamburg. Also, at the Central Advice Bureau of the regional health authority people are offered free-of-

charge tests and advice on sexually transmitted diseases, independently of their residency status and without having to disclose their identity. Preventive tests and measures are included whereas treatment may not be.

Dependent on Donations

However, the services and institutions described above are often only used as a last resort. Many paperless people are not even aware of their existence and the resources available there are insufficient. Demand is such that these initiatives, which have to rely on their own organisational resources and depend on donations for their continued existence, are stretched to their limits. Last year alone, for example, 600 patients, mostly women, came to the Medibüro and were referred to a network of up to 100 general practitioners and specialist physicians. The most frequent conditions included dental problems, gynecological complaints, ophthalmopathic and orthopaedic conditions as well as unspecific symptoms that needed to be analysed. Some patients required medical care during pregnancy.

Recommendations: Guaranteed Anonymity in Health Care

Diakonisches Werk Hamburg strives to extricate paperless people with their health care needs and concerns from the unofficialdom that characterises much of the volunteer sector and integrate them in the official health care system. To protect the security of those concerned their anonymity needs to be guaranteed which is why Diakonisches Werk suggests the following measures which should ideally supplement each other:

- It is important to guarantee reliable, free-of-charge and anonymous treatment by a family physician. The health authority

in Frankfurt, for instance, funds a so-called international consultation service where people can get anonymous and free-of-charge advice, medical examinations, vaccinations, electrocardiograms, medication etc. The situation in Hamburg could be improved significantly if something similar were to be established here. This could build on the family physician health care concept developed by the health authority of the Altona district. However, this measure would have to be combined with the introduction of a *depersonalised health insurance voucher (claims form)*.

- The concept of a *depersonalised health insurance voucher (claims form)* makes it possible for medical costs to be processed without disclosing the identity of the patient. In this model, a generally recognised institution gives advice to patients, assesses their needs and checks whether certain conditions are met before issuing the insurance voucher. This would make out- and in-patient care for paperless people accessible as the cost would be settled by Social Services. This concept should be tried out in Hamburg.
- Through informing physicians and hospital administrations, it must be ensured that the entitlement to medical care enshrined in the German Act on Provisions for Asylum Seekers can in fact be exercised by paperless people without jeopardising their stay in our country. In this context, it is vital that the new Implementation Order which extends the physician-patient privilege to cover emergency care, too, be applied.
- Finally, there should be an extended protection for pregnant women and young mothers such as is the case in Berlin: They should be safe from being

deported during the three months up to and after childbirth. This is important, among other things, in order to make

sure that a birth certificate is issued for the newborn child.

Work

Slave away and shut up

Paperless people need gainful employment to survive because this secures not only their own livelihood, but also that of family members in their countries of origin. In order to live stable lives, people need long-term and non-precarious employment to allow them to rent accommodation, look after their children and consult a physician when necessary.

Because paperless people are without legal residency status, they have to rely on work in the underground economy. We can safely assume that there are paperless workers in almost all sectors of industry. Data collected by financial enforcement agencies and the police suggest that it is the construction industry, cleaning and janitors' services and the catering industry which employ most illegal workers, a piece of statistics that is confirmed by the Union Contact Point for the Paperless *MigrAr* operated by ver.di. The majority of those interviewed were employed by private households and worked as cleaning and/or household helpers, childminders, gardeners or in interior decorating jobs. These are not scrutinised by Customs and the Police as they have no mandate to investigate private households.

Precarious employment terms

Working conditions and payment terms for paperless people who work as household and cleaning helpers vary greatly. Most jobs in private households are offered and taken up through informal contacts and private employers are often keen to have a trusting relationship with their cleaning and/or household helpers. These jobs are therefore relatively well paid, the hourly rate lying between eight and ten Euros. As long as there are no encroachments by employers, paperless people working in such environments typically are quite happy with their work. They are often expected to work very flexible hours for a fixed monthly wage, though, which means that work conditions may border on exploitation. The study cites the case of a household helper from the Phillipines who earned 280 Euros in a six-day week. Similar exploitative employment terms have been reported by paperless people working in the construction industry.

Among those interviewed it was a skilled worker in the construction industry who received the highest pay per hour, namely 12 Euros. In catering, by contrast, the hourly pay was four Euros, the lowest of all sectors.

In Hamburg there are at least 100 Thai women who work in the sex industry. They typically offer their services at prices below the market average. Some of them offer unsafe sex and are HIV-positive. In most industries paperless people have only themselves to rely on when it comes to sickness and accidents at work. Most interviewees said that as illegal workers they did not expect to be covered by the statutory employers' insurance and automatically assumed they themselves would have to cover the cost of treatment after an accident at work. The anxiety to be found out is often at the root of such attitudes.

Invoking Workers' Rights

Not to be in possession of a work permit is the one factor that determines the employment status of paperless people. Paperless people are considered illegal workers, but that does not mean they are dispossessed of all rights in their capacity as workers. Minimum employment standards apply regardless of the residency status and workers should not be led to believe that they cannot invoke their rights. Paperless people, too, have a right to adequate pay, minimum holidays, sick pay and an insurance that covers accidents at work. Such rights result from the factual existence of an employment agreement – whatever its kind. Legal rights in connection with their employment are also actionable by paperless people.

However, it is often much more difficult for paperless people to invoke their rights. If they do not have a valid residency permit they tend to depend on their employers for help and are thus easy targets for blackmail. They often perceive themselves as being devoid of any rights.

Anonymous Court Proceedings

While it is quite possible for paperless people who are aware of their rights to invoke these, it is legal for judges of labour courts to pass information on to the Immigration Authority when they learn of the fact that an employee is paperless. This can result in immediate deportation. Legal experts have pointed out that as a rule it is not strictly necessary in labour court proceedings to reveal the identity of the plaintiff. In other words, where the labour court is not given information about the identity of the plaintiff during proceedings such information would not have to be reported. It would be quite possible to preserve anonymity during court proceedings.

If a paperless person cannot afford the litigation costs resulting from a labour court case, he or she can anonymously apply for legal aid also from abroad and/or through the mediation of an outsider. An alternative would be for paperless people to join a trade union and make use of the legal protection and assistance offered by it. It is quite sufficient to use the union's address to bring a lawsuit.

Unaware of their rights

The problem affecting irregular migrants is not so much a lack of legal protection standards that apply to them, but the lack of information about these standards. Paperless workers tend to know very little about the legal entitlement to fair pay, minimum holidays, sick pay and to an insurance that covers accidents at work. Paperless workers are often acutely aware of the fact that they are being treated unfairly, particularly when the employer fails

to pay out the agreed wage. But they believe they do not have the same rights as their regular colleagues and therefore accept such unfair treatment. This is particularly true of the wage differential between themselves and their colleagues. Often paperless workers do not even know what the collectively agreed wage is. They simply assume that they are getting less than their colleagues who have a legal residency status. Because they do not wish to stand out as “clandestine workers”, paperless workers communicate little with their colleagues. The records kept by *MigrAr*, the Union Contact Point for the Paperless, tells a compelling story about the lack of information and advice available to irregular migrants who are gainfully employed: Since opening its doors on May 1, 2008, and as a result of actively publicising its existence through the Migrant Network Hamburg, more than 60 people have used the services of *MigrAr*.

Trade unions are beginning to open up vis-à-vis irregular migrants. Securing and invoking

basic employees’ rights irrespective of the residency status of workers has only recently been incorporated into formal decisions and proposals by the unions. This has been at the heart of a controversy within unions because so-called “illegal workers” were for a long time perceived as competitors rather than as colleagues.

Recommendations: Invoking Workers’ Rights

The key to improving the legal protection of paperless people is better information and a heightened awareness of workers’ rights. This means that the Public Legal Advice and Out-of-Court Settlement Bureau (ÖRA) must launch information and education campaigns and needs to be equipped with additional funds for this task. But the Police, Customs, trade unions and other civil institutions, too, should assume responsibility when it comes to informing paperless people about their rights.

Public and civil bodies and advice centers need to be strengthened generally.

“If you get ill today you needn’t bother to come back tomorrow.”

Andrea from Columbia, interviewee in the study “Irregular Migration in Hamburg”

In a work accident a drill perforated Zoran’s right hand, but the employer refused him medical assistance because he was afraid the authorities would discover that he was contracting illegal labour. On his own initiative, Zoran got hold of a medical cream and a gauze bandage and asked a neighbour to help him put it on. One of his fingers has remained stiff since the accident.

Summary of the interview with Zoran from Serbia in the study “Irregular Migration in Hamburg”.