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North African Migrants Under Western European Law*

PETER B. MAGGS** AND LUKE T. LEE***

I. INTRODUCTION

Countries receiving migrant workers should provide proper treatment and adequate social welfare services for them and their families, and should ensure their physical safety and security, in conformity with the provisions of the relevant conventions and recommendations of the International Labour Organisation and other international instruments.

Specifically, in the treatment of migrant workers, Governments should work to prevent discrimination in the labour market and in society through lower salaries or other unequal conditions, to preserve their human rights, to combat prejudice against them and to eliminate obstacles to the reunion of their families. Governments should enable permanent immigrants to preserve their cultural heritage *inter alia* through the use of their mother tongue. . . .¹

Thus implored the World Population Plan of Action, adopted August 1974 by the World Population Conference in Bucharest, Rumania. In setting a minimum standard for treatment of migrant workers and their families, the Plan of Action merely implements the United Nations Charter which calls for the promotion and encouragement of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."² Although the Charter itself does not specify all

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1. *World Population Plan of Action* in Report of the United Nations World Population Conference, 1974, U.N. Doc. E/CONF. 60/19, paras. 55-56, at 16-17.

2. U.N. CHARTER art. 55.

the contents of human rights, states have subsequently expressed agreement upon at least some of the contents, principally in the Universal Declaration of Human Rights.³ Except for article 21, which limits the exercise of political rights to nationals, the Declaration does not distinguish those rights pertaining only to citizens from those pertaining to aliens. Indeed, the definition of "human rights" as "rights which attach to all human beings equally, whatever their nationality,"⁴ precludes such a distinction. The Universal Declaration specifically provides:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.⁵

Thus, while no state has the obligation to admit any aliens into its territory,⁶ once they are admitted, they must be accorded the standard of treatment set forth by the Charter and the Declaration, now amplified by the World Population Plan of Action.

Migration laws reflect the use of governmental power to regulate complex political, economic and demographic forces. The effects of migration legislation in turn create new forces that interact to change migration policy and the law that reflects that policy. The present study is an attempt to create a general framework for the analysis of this process of legal evolution and to apply the framework to the migration to Western Europe from the North African countries of Algeria, Morocco and Tunisia. This movement is a major example of a common pattern of migration from a less developed region to a more developed region by workers, who, in some cases, are later joined by their families. The policies of most of the countries to which the migrants have moved also have followed a common pattern—from the development of institutions to encourage regulated immigration during the 1960's to severe restrictions on immigration during the 1970's. This study will first examine the patterns of migration and briefly analyze some of the

3. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948) [hereinafter cited as Universal Declaration], reprinted in HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS, U.N. Doc. A/CONF. 32/4 (1968).

4. Waldock, *Human Rights in Contemporary International Law and the Significance of the European Convention*, in BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW, THE EUROPEAN CONVENTION ON HUMAN RIGHTS 3 INT'L & COMP. L.Q. (Supp. 11, 1965).

5. G.A. Res. 217, U.N. Doc. A/810, art. 2.

6. L. OPPENHEIM, 1 INTERNATIONAL LAW 675-76 (8th ed., H. Lauterpacht ed. 1955); J. BRIERLY, THE LAW OF NATIONS 276 (6th ed., H. Waldock ed. 1963); P. JESSUP, A MODERN LAW OF NATIONS 80 (1952). Cf. Universal Declaration, *supra* note 3, art. 13, which is careful in not obligating a state to admit any aliens into its territory.

reasons behind the changing migration policies of the recipient countries. It will then discuss in detail the legal structures created in several Western European countries to encourage, regulate, and discourage this immigration. Because of the concentration of most North African migrants in France, French law will be emphasized. A concluding section will suggest the possible course of future developments.

II. THE SOCIAL BACKGROUND

A. Patterns of Migration

According to a recent estimate some 867,000 Algerians, 406,000 Moroccans, and 169,000 Tunisians live and work in Western Europe.⁷ These figures represent the cumulation of an extended period of migration, but, in view of some of the restrictive measures recently introduced in Western Europe, the numbers are unlikely to grow and will probably fall gradually when workers who die or return to their homelands are not replaced by new migrants. Statistical records are not available to show the migration of all North African nationalities to every Western European country. The statistics that are available may not be entirely accurate because many immigrants arrive classified as tourists, when in fact they intend to work or to join families, and a number of immigrants cross borders with false documents or avoid immigration control entirely. Furthermore, the data for different countries are not easily compared because of the lack of a uniform method among the various European countries of recording statistics on migration. In spite of these problems, however, this paper will present some statistics because a general knowledge of the numbers involved is essential to an understanding of the policy and legal issues that have arisen.

Algerians are by far the most numerous migrants from North Africa. A recent estimate gives the following figures for the current population of Algerian workers and dependents in certain Western European countries:⁸

Country	Workers	Dependents	Total
France	440,000	410,000	850,000
Belgium	4,000	3,000	7,000
Spain	5,000	—0—	5,000
West Germany	2,000	2,000	4,000
Switzerland	600	700	1,300

France's large Algerian population is explained by the fact that until January 19, 1965, Algeria was ruled by France and migration between the two countries was free. The pattern of migration to France by Algerians

7. *Muslim Migrant Workers in Europe*, [1974] MIGRATION NEWS 36.

8. *Id.* The figures agree closely with those found in COMMISSION OF THE EUROPEAN COMMUNITIES, ACTION PROGRAMME FOR MIGRANT WORKERS AND THEIR FAMILIES 4 (Spokesman's Group Information Memo. P-85, 1974).

looking for work can best be estimated by examining the difference between the numbers of Algerians entering and leaving France each year.⁹

	<i>Arrived</i>	<i>Departed</i>	<i>Balance</i>
1965	228,093	237,374	9,281
1966	265,005	220,437	35,568
1967	210,939	199,653	11,286
1968	230,920	198,165	32,755
1969	257,647	230,319	27,328
1970	352,530	291,418	61,112
1971	409,317	372,476	36,841
1972	409,146	343,810	65,336

The figures showing migration of Algerians to Belgium are not comparable with those for France, since they reflect only the inflow and not the outflow of Algerian workers to Belgium. Official Belgian statistics indicate that work permits have been granted to Algerians as follows:¹⁰

1965	117
1970	158
1971	150
1972	348

Moroccans form the second largest group of migrants to Western Europe from North Africa. Again, France is the primary focus of migration. According to a recent estimate, the following numbers of Moroccans reside in Western Europe:¹¹

<i>Country</i>	<i>Workers</i>	<i>Dependents</i>	<i>Total</i>
France	170,000	100,000	270,000
Spain	55,000	—0—	55,000
Belgium	1,300	—0—	1,300
Netherlands	20,000	1,000	21,000
West Germany	15,000	1,000	16,000
United Kingdom	2,000	—0—	2,000
Denmark	1,300	—0—	1,300
Switzerland	300	300	600

The small number of dependents outside of France is significant because it emphasizes the policy differences between France and other Western European countries.

Unlike Algerians, Moroccans working legally in France must use the services of the National Immigration Office (Office National D'Immigration) either to get jobs or, when they have entered the country as tourists, to have their status regularized. The following table is based upon National Immigration Office Statistics and thus does not include workers

9. The statistics are drawn from various editions of *ANNUAIRE STATISTIQUE DE LA FRANCE*.

10. [1973] *ANNUAIRE STATISTIQUE DE LA BELGIQUE*, tome 93, and earlier volumes.

11. Based upon sources cited in note 7, *supra*.

who have entered as tourists or crossed the border illegally and who have not regularized their situations:¹²

Year	Workers		Dependents
	Regular	Seasonal	
1966	14,331	949	2,750
1967	13,525	1,220	3,241
1968	13,339	2,079	4,514
1969	19,335	3,720	4,296
1970	24,077	5,385	5,295
1971	20,681	5,702	6,939

Belgian statistics show the following numbers of labor permits issued to Moroccans:¹³

1969	1,091
1970	1,621
1971	1,621
1972	1,787

Immigration and emigration data on Moroccan workers published by the Netherlands allows estimates to be made of net immigration.¹⁴

Year	Immigrants		Emigrants		Net Immigration	
	employed	other	employed	other	employed	other
1967	1,090	33	2,214	22	1,124	11
1968	2,393	82	865	9	1,528	73
1969	2,478	230	386	20	2,092	210
1970	3,541	488	328	34	3,213	454
1971	2,097	900	515	47	1,582	853
1972	630	1,774	551	94	79	1,680

These data show a striking change: the abrupt decline of immigration for employment accompanies by a gradual rise in the number of dependants.

Tunisians are the third largest group of migrants from North Africa. As in the case of Algerians and Moroccans, France is their primary destination. One estimate lists the following numbers of Tunisians in Western European countries:¹⁵

Country	Workers	Dependants	Total
France	120,000	30,000	150,000
Germany	11,000	1,400	12,400
Italy	3,400	3,400	—0—
Belgium	2,000	200	2,200
Switzerland	600	—0—	600
Netherlands	200	—0—	200
Denmark	200	—0—	200

12. Based upon sources cited in note 8, *supra*. These statistics indicate arrivals only. Knowledge of departures would be needed to show actual variations in the number of Moroccans in France.

13. Based on sources cited in note 9, *supra*.

14. [1973] STATISTICAL Y.B. OF THE NETH.

15. Based on sources cited in note 7, *supra*.

Like Moroccans, Tunisians may legally work in France only after having been processed by the National Immigration Office. The following table is based upon statistics of that office.¹⁶

Year	Workers		Dependents
	Regular	Seasonal	
1966	6,631	39	1,737
1967	6,534	62	2,012
1968	6,109	94	2,665
1969	14,924	173	2,943
1970	11,070	252	3,731
1971	9,971	555	3,962
1972	9,890	1,115	4,229

B. *Economics and Politics of Immigration*

The basic approach to immigration in modern Europe has two sides that are reflected in measures to both facilitate and restrict migration. On one hand, the general success of the Common Market has led to the creation of a large zone of free migration; for citizens of member states, any restriction must be justified. On the other hand, migration from outside the Common Market area is increasingly viewed as something that should be allowed only if there is a clear reason for it.¹⁷

The highly developed countries of Western Europe have chosen to allow substantial migration from the less developed countries of North Africa. This has been commonly explained by the unavailability of indigenous workers to perform important jobs in such industries as mining, metallurgy, construction and public service. This explanation, however, oversimplifies the situation, which is more accurately characterized as an unwillingness of indigenous workers to accept these jobs at prevailing wage levels. The failure of the labor market to adjust wages in accordance with the law of supply and demand may be attributed to government intervention in wage negotiations, which has resulted in wage levels lower than those which are necessary to fill all the positions. If wages in these industries were raised to a level at which supply and demand were in equilibrium, the jobs might no longer exist. The public might well prefer to put up with dirty streets rather than to pay the wages necessary to get native citizens to work as street cleaners or to pay the cost of imported fuel rather than to pay an even higher price for local coal mined by workers who are paid wages set by supply and demand. Apparently, as the level of development of a country increases, those industries needing heavy, dirty and dangerous physical labor must either pay

16. Based on sources cited in note 8, *supra*.

17. The principle of favoring Common Market immigrants with limited exceptions for traditional migration patterns is embodied in article 16 of Council of the European Communities Regulation on Freedom of Movement of Workers within the Community, Reg. 1612/68, art. 16, E.E.C. Council, Oct. 15, 1968, 11 E.E.C.J.O. L257 at 2 (1968), 1 CCH COMM. MKT. REP. ¶ 1031 (1971).

extremely high wages or reduce their operations, if they are to utilize domestic labor.

Immigration offers an alternative to the unpopular choices of reduced public services and dependence upon foreign suppliers of fuel and other crucial products. Immigration has its own costs and benefits, however. Western European immigration law can be described as an attempt to use immigration to arrest the trend of ever-rising wages for certain categories of work and, at the same time, to minimize the special costs created by the immigration process. The most obvious cost is that immigration does precisely what it is meant to do—lower wages in certain industries or, in some cases, create unemployment in those industries. This has led to much political pressure to limit immigration, and government authorities have made numerous attempts to tie immigration legislation into various wage and employment standards. Moreover, important groups in the receiving country, employers in the affected industries, and the customers they serve tend to benefit from a lower wage scale, while the immigrants and prospective immigrants themselves benefit from wages and working conditions that are superior to the employment situations in their home countries. This has created a panoply of sometimes strongly conflicting interests.

For a number of years, the European countries sought to avoid many of the costs of immigration by creating a pattern of temporary migration in which migrants' dependents would remain in their homelands and by adjusting the number of immigrants to the economic situation. The system of migration controls that developed during the first half of the twentieth century appeared to be well adapted to this purpose.¹⁸ In fact, however, something quite different happened. Immigrants did not return home but gradually became residents in the host societies. As the older immigrants moved into skilled labor positions, new immigrants were demanded to do jobs that by this time had become stigmatized as employment suitable only for immigrants. Gradually dependents of the migrants arrived, and the social costs of the immigration process rose.¹⁹

The sending countries also experienced consequences quite different from those originally promised. It had been expected that short-term emigration would provide both capital, in the form of remittances by nationals living abroad, and a new skilled labor force in the form of returning migrants. In fact, as emigrants became integrated into the host societies and were joined by their dependents, remittances gradually diminished. The most skilled

18. An excellent description of this system may be found in Reisner, *National Regulation of the Movement of Workers in the European Community*, 13 AM. J. COMP. L. 360-84 (1964).

19. Böhning, *The Economic Effects of the Employment of Foreign Workers: With Special Reference to the Labor Markets of Western Europe's Post Industrial Countries*, in ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *THE EFFECTS OF THE EMPLOYMENT OF FOREIGN WORKERS* 43 (1974); Böhning, *Immigration Policies of Western European Countries*, 8 INT'L MIGRATION REV. 155, 156-57 (1974).

emigrants did not return home but remained in Europe where skilled workmen were far better paid. The overall result has been a serious disillusionment with emigration in Algeria,²⁰ Morocco²¹ and Tunisia.²²

III. THE LEGAL STRUCTURE

Western European countries have attempted in a variety of ways to cope with the mix of economic, social, and political problems brought about by increased immigration. Out of the sometimes conflicting economic needs of the European social order, Western European governments have constructed a framework of laws and regulations designed to implement policy solutions to the economic and political problems and to satisfy emerging notions of minimum social standards. Specific measures to affect migration from North Africa and its consequences fall into several categories: hiring limitations, residence permits, control of entry, social rights, trade unions, and naturalization.

A. Hiring Limitations

1. Employment Quotas

Migration for purposes of employment can be most easily controlled indirectly by putting limits upon the number of aliens that individual employers can hire. This approach greatly limits the number of persons and organizations with whom enforcement authorities must deal and, in effect, it delegates to private industry many of the problems that enforcement of an immigration policy entails. Most European countries with North African immigrants have such legislation; however, its effectiveness varies greatly.

The largest number of North African immigrants are located in France, and French legislation designed to limit the number of foreign employees has been the least effective. The law of August 10, 1932, on the protection of the national labor force provided that the ratio of foreign to domestic workers that could be employed in different types of enterprises serving different areas of the economy would be fixed by governmental decrees. The law was subsequently modified in 1940 to provide that the limitations would be set by Ministry of Labor decisions.²³ The Ministry of Labor has not

20. Belkaid & Remili, *Emigration and Planned Development of the Algerian Economy*, in ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT, INTERNATIONAL MIGRATION IN ITS RELATIONSHIP TO INDUSTRIAL AND AGRICULTURAL ADJUSTMENT POLICIES 143-60 (1974) [hereinafter cited as INTERNATIONAL MIGRATION]; M. TREBOUS, MIGRATION AND DEVELOPMENT: THE CASE OF ALGERIA (1970).

21. Belguendouz, *Some Considerations on Moroccan Emigration: in Relation to Development*, in INTERNATIONAL MIGRATION, *supra* note 20, at 109-29.

22. Belgaid-Hassine & Mirabet, *Socio-Economic Study of the Emigration of Tunisian Workers*, in INTERNATIONAL MIGRATION, *supra* note 20, at 131-41.

23. Loi protégeant la main d'oeuvre national, Aug. 10, 1932, [1932] J.O. 8812; implemented by Decree of Oct. 19, 1932, [1932] J.O. 1130; amended by Law of Aug.

effectively performed the tasks assigned to it under the law, however, and the related legislation designed to ensure employer compliance has been poorly enforced.²⁴

The 1932 law provides two separate schemes: one for public employment or employment on public contracts and one for employment by private enterprises outside public contracts. On public contracts, the proportion of foreigners who may be employed is determined by the authorities in soliciting bids, but only after public employment services have been consulted. Articles 114, 115 and 116 of the Code des Marchés Publics provide for consultation with the departmental prefect unless the prefect has already indicated the general ratios applicable to contracts of that type.²⁵ Article 116 contains an escape clause which allows the ratio of foreigners to be exceeded if necessary work cannot otherwise be performed.²⁶ According to article L.342-2 of the Labor Code, decisions for the Minister of Labor and/or other ministers involved establish the general limitations for private enterprise.²⁷ These decisions fix the ratios by profession, industry and trade or by professional category, for the whole of France or for one region. They may be issued by the Minister on his own accord or upon petition of interested employers or labor organizations. In any event, interested labor and management organizations must be consulted and have up to one month to give their opinion. As in the case of public contract work, an escape provision, article L.342-6, allows exceptions to be made for particular regions, job categories or even individual enterprises on a temporary basis.²⁸

A French critic has pointed out two main shortcomings of the present scheme.²⁹ The first lies in the failure of the Ministry of Labor to provide employers with up-to-date information on the immigration limits, thus rendering it impossible for employers to comply. The second is the failure to implement what would appear on paper to be an effective enforcement scheme. This enforcement scheme is predicated upon the duty of private business enterprises to make a declaration to the public employment service or, if there is none, to the mayor of the commune whenever a foreign worker is employed.³⁰ The penalty for violation of this obligation to register is a fine of from 80 to 160 francs, and an additional fine of from 80 to 160 francs a day may be imposed for each foreign worker employed over the

27, 1940, [1940] J.O. 4827, [1940] D.P. IV. 261. This legislation is now incorporated in the Code du travail. C. TRAV. art. L. 342-1-art. L. 342-7, art. R. 342-1, art. D. 342-1-art. D. 342-1-art. D 342-13 (38e ed. Petits Codes Dalloz 1974).

24. Buy, *Réflexions sur la situation juridique des travailleurs étrangers en France*, [1974] DROIT SOCIAL 277-88 [hereinafter cited as Buy].

25. Decree of July 17, 1964, [1964] D.L. 249, [1964] J.C.P. III. No. 30291, reprinted in C. TRAV. at 1109-10 (38e ed., Petits Codes Dalloz 1974).

26. C. TRAV. at 1110 (38e ed., Petits Codes Dalloz 1974).

27. C. TRAV. art. L. 342-2 (38e ed., Petits Codes Dalloz 1974).

28. *Id.* art. L. 342-6.

29. Buy, *supra* note 24, at 278-84.

30. C. TRAV. art. L. 342-5 (38e ed., Petits Codes Dalloz 1974).

government-imposed quota.³¹ Thus, in theory all foreign workers should be registered, the Government labor inspectors should be able to determine whether any enterprises are exceeding their quotas of foreign workers, and fines should be imposed for exceeding the quotas. In fact, however, the duty to register is widely ignored.³²

Nothing in the French law establishes national quotas; thus nothing in the law puts the immigrant from Algeria, Morocco or Tunisia in a worse position than the immigrant from Spain or Portugal. However, the overall effect of the laws, to the extent they are enforced, is to lower the demand for immigrant labor. In view of the fact that North Africans are the least qualified immigrants in terms of education and job skills, they may suffer the most from any restriction on hiring immigrants, since an employer who has only a limited number of jobs for immigrants can select the more highly qualified applicants for semi-skilled or skilled jobs.

The other major employers of North African labor—Belgium, the Federal Republic of Germany and the Netherlands—do not have a formal employment quota system. Among the minor employers of North African labor, Switzerland has used a relatively rigid hiring quota system. Unlike the French legislation, the Swiss system is the result of intense political pressure to reduce the number of foreign employees, and it has been effectively enforced.³³ It has taken the form of a series of governmental decrees designed to force individual employers gradually to reduce the percentage of foreigners that they employ.

2. Hiring Permits

A second type of hiring limitation system requires the employer to secure a hiring permit for each individual foreign worker he wishes to hire. This system is widely employed in those countries that use North African labor and especially in those that do not employ a formal employment quota system.

In France at present an employer can hire a worker already legally within the country without special permission. Employers must use official channels to recruit workers from abroad or workers who have entered the country as tourists, however. Economic conditions in 1974 forced a freeze to be placed on such hiring, and thereafter no new foreign workers could legally be employed. The procedures described here were in effect immediately before the freeze and will presumably go into effect again if and when the freeze is lifted.

The French Labor Code gives the National Immigration Office a monopoly on recruitment of foreign labor and forbids an employer to recruit workers

31. *Id.* art. R. 364-2.

32. Buy, *supra* note 24, at 382.

33. A. MACHERET, *L'IMMIGRATION ÉTRANGÈRE EN SUISSE À L'HEURE DE L'INTEGRATION EUROPÉENNE* (1969).

abroad himself.³⁴ The governing rules are set out in a Ministry of Labor Circular, the so-called Fontanet circular of February 23, 1972.³⁵ The Fontanet circular provides that no employment permit shall be issued unless the employer has given three weeks advance notice of the job opening to the National Employment Agency, so that an attempt can be made to fill the opening either with someone already legally working in France or with a migrant from a Common Market country. One French critic who considers this procedure insufficient to protect French labor has pointed out that the three-week period is relatively short and that the employer typically can give various excuses for refusing to hire local job applicants whom the employment agency has suggested.³⁶ Moreover, since the job is only required to be listed with the local employment agency where the employer is located, there is little chance of recruiting French labor from another location.³⁷

The channeling of all contracts for foreign labor through government employment offices has been tightened by a law of July 6, 1973, that increases sanctions for illegal recruitment of foreign labor.³⁸ When the French government decided to stop further immigration from North Africa, Spain and Portugal in 1974, it adopted a Ministry of Labor circular on July 5, 1974, that forbids the approval of any labor contract except for workers from the Common Market, seasonal workers, and a few professional categories such as entertainers.³⁹ A related circular of July 19, 1974, provides that no permanent contracts signed by seasonal workers will be approved.⁴⁰

The law of the Federal Republic of Germany provides that the public labor authorities have a basic monopoly over labor recruitment abroad.⁴¹ As an exception, employers may request and receive special permission to recruit workers abroad, but granting this permission depends upon the domestic economic and employment situation.⁴² The employer must formally offer a job contract to the government labor office which in turn recruits the foreign workers. In November 1973 the Government decided to stop recruiting workers abroad and to stop issuing recruitment permits to private firms, thus effectively stopping the flow of immigrants from outside the Common Market.⁴³

34. C. TRAV. art. L. 341-9(38e ed., Petits Codes Dalloz 1974).

35. Ministry of Labor, Circular No. 1-72, Feb. 23, 1972 [hereinafter cited as Fontanet circular].

36. Buy, *supra* note 24, at 281.

37. *Id.*

38. Law of July 6, 1973, [1973] J.O. 7340, [1973] D.S.L. 276.

39. Arrêt provisoire de l'introduction des travailleurs étrangers. Ministry of Labor, Circular No. 9-74, July 5, 1974.

40. Arrêt provisoire de la "permanisation" des travailleurs étrangers introduits en France sur la base d'un contrat saisonnier. Ministry of Labor, Circular No. 14-74, July 19, 1974.

41. Arbeitserföderungsgesetz, June 25, 1969, [1969] BGB1.I 582.

42. *Id.* § 18, at 586.

43. Decision of Nov. 23, 1973. ORGANIZATION FOR ECONOMIC COOPERATION AND

Under Belgian law, an employer must file a request with the National Employment Office for permission to employ a foreign worker.⁴⁴ He must attach a medical certificate and a labor contract to the request. Approval or denial of this request is within the sole discretion of the national labor office; thus the state has the authority to control the number of foreign workers admitted. Employers who attempt to evade these requirements are subject to severe fines.

3. Work Permits

Another method of control has been a work permit system that is used by the major importers of North African labor—France, the Federal Republic of Germany, Belgium, and the Netherlands. Refusal to issue further work permits was one of the principal methods used during 1973 and 1974 to cut off the flow of immigrants from North Africa.

Article L.341-2 of the French Labor Code requires each person entering France for purposes of employment to have a labor contract approved by the French administrative authorities or a work permit, unless otherwise authorized by treaty, as in the case of a few North African countries.⁴⁵ Moreover, employers are forbidden by article L.341-6 to employ anyone without a work permit.⁴⁶ Articles R.341-1 through R.341-8 of the Labor Code, which specify the details of the work permit system, provide for the issuance of four basic types of work permits by the Minister of Labor: temporary, ordinary with limited validity, ordinary with permanent validity, and permanent for all professions.⁴⁷ Temporary cards, which may be renewed by the National Employment Service, are good only for a limited term and may be restricted to certain departments and job categories. Ordinary working permits with limited validity are valid for three years and may be renewed. They also may be limited by geographic region and occupation. Permanent cards are good throughout France for the job categories mentioned on the card. Finally, an unrestricted permanent work permit may be issued to persons who have resided in France for at least ten years. With the recent cutoff of immigrants and the diminishing rate of return to home countries, an

DEVELOPMENT, CONTINUOUS REPORTING SYSTEM ON MIGRATION, 1974 REPORT 4 (1974) [hereinafter cited as OECD, CONTINUOUS REPORTING SYSTEM].

44. Arrêté royal no. 34 du 20 juillet 1967 relatif à l'occupation de travailleurs de nationalité étrangère, [1967] *Moniteur Belge*, July 29, 1967; 4 *LES CODES BELGES* 211 (32e ed., J. Servais & E. Mechelynck eds. 1969) [hereinafter cited as *LES CODES BELGES*]; Arrêté royal modifiant l'arrêté royal du 6 novembre 1967 relatif aux conditions d'octroi et de retrait des autorisations d'occupation et des permis de travail pour les travailleurs de nationalité étrangère, [1970] *Moniteur Belge*, July 30, 1970, 4 *LES CODES BELGES*, *supra* at 214; E. DE DIESBACH, *L'ÉTRANGER DEVANT LA LOI BELGE* (1972); J. HERREMAN & T. DE GROODT, *LA RÉGLEMENTATION DES ÉTRANGERS* (1968-71, looseleaf).

45. C. TRAV. art. L. 341-2 (38e ed., *Petits Code Dalloz* 1974).

46. *Id.* art. L. 341-6.

47. *Id.* arts. R. 341-1-R. 341-8.

increasing number of North African immigrants will likely qualify for this type of permit.

Despite the apparently rigid requirement of a work permit, in practice large numbers of North African migrants have entered France as tourists and have easily found employers willing to hire them without a work permit. In response to this situation, the French Government has adopted a policy combining amnesty for those already working illegally with stricter controls against illegal immigration in the future. Hundreds of thousands of Algerian, Moroccan and Tunisian workers have been allowed to regularize their status. Indeed, by the late 1960's, the number of such "regularizations" far exceeded the number of persons immigrating for employment through normal channels.⁴⁸ According to official French statistics, the percentage of foreigners who entered legal labor force by the "regularization" route rose from twenty-six percent in 1948 to eighty two percent in 1968.⁴⁹

The regularization procedure was systematized by a July 29, 1968 circular, and provisions were made for refusing regularization of persons whose skills were not in demand or who were residing in areas where French workers could satisfy the demand for labor.⁵⁰ These requirements were probably particularly difficult for North Africans to meet, since their average skill level was less than that of other immigrants.⁵¹ The rules concerning regularization were made stricter by the Fontanet circular of February 23, 1972, which attempted to forbid regularization of unskilled workers.⁵² A September 26, 1973 circular modified the Fontanet circular by limiting regularization to exceptional cases and by requiring a labor contract.⁵³ The rule forbidding regularization, as modified, was later annulled by the Council of State.⁵⁴

Before banning recruitment of foreign labor, the Federal Republic of Germany also employed a work permit system to control immigration for purposes of employment. Section 19 of the Employment Law required all non-German workers not exempted by international agreement to have a

48. Houdaille & Saury, *L'immigration clandestine dans le monde*, 29 POPULATION 725 (1974) [hereinafter cited as Houdaille & Saury].

49. *Id.*

50. Ministry of Labor, Circular No. 127, July 29, 1968.

51. A very high percentage of immigrants without working permits were from non-EEC countries such as Algeria, Morocco and Tunisia. EEC nationals, since they had the legal right to obtain the necessary working papers, had no reason to remain in an irregular situation.

52. Fontanet circular, *supra* note 35.

53. Ministry of Labor, Circular No. 18-73, Sept. 26, 1973.

54. Circular of the Ministry of the Interior, recalling that the annulled provisions concerning the prohibition on regularization of the situation of unskilled workers had been abrogated by Circular No. 18-73, Sept. 26, 1973, which provided for regularization only in exceptional situations. Ministry of the Interior, Circular No. 75-29, Jan. 17, 1975.

work permit and prohibited employers from employing foreign workers who did not have the required permit.⁵⁵

Detailed regulations governing the issuance of work permits were set forth in the Work Permit Decree.⁵⁶ This decree provided that in general the issuance of work permits must depend upon the state and development of the labor market. Labor permits might, but need not, be limited as to occupation and duration. Exceptions were made for a number of privileged categories—in particular, for those immigrants who had resided in Germany as foreign workers for five years and for wives and minor children who had lived with a foreign worker in Germany for five years. The maximum duration of an ordinary permit was for two years; the exceptional permits lasted for five years. Permits could be cancelled only for conviction of a crime or other serious grounds, not because of changed economic conditions. Finally, through agreements with Tunisia and Morocco the West German Government has committed itself to issue work permits for specified numbers of Tunisians and Moroccans.⁵⁷

The Netherlands law of 1964 on Work of Foreigners provides for a work permit system, under which work permits are issued upon the request of either employers or employees.⁵⁸ New legislation is now under discussion to substantially tighten the restrictions on immigration.⁵⁹

In general, the major problem with control of immigration through work permits is the administration of an effective system of sanctions. When an employer hires an employee without a proper work permit, he benefits not only from cheap labor but also by possibly withholding social security payments or other benefits. The employee benefits by getting a job that, despite its shortcomings, pays much more than he could have received in his home country. Only the native worker who is deprived of the job may suffer, but he is the least likely to be in a position to know enough facts to make an effective complaint. As for the immigrant without a work permit, there are few effective legal sanctions against him. He is not likely to be punished except by deportation, and the receiving state typically does not have the funds to maintain an immigrant in prison for any length of time before deportation. Thus the immigrant from a country near Europe, such as one of the North African countries, risks only the rather trivial cost of the

55. *Arbeitsförderungsgesetz*, June 25, 1969, [1969] BGBI.I § 19, at 586.

56. *Verordnung über die Arbeiterlaubnis für nichtdeutsche Arbeitnehmer (Arbeiterlaubnisverordnung)*, March 2, 1971, [1971] BGBI.I 152.

57. *Agreement on Employment of Tunisian Workers in the Federal Republic of Germany*, Feb. 10, 1966, [1966] *Bundesanzeiger*, No. 57, at 2 (March 23, 1966); *Agreement on Extension of the Agreement of October 7/18, 1965 on the Employment of Tunisian Workers in the Federal Republic of Germany*. [1972] BGBI. II 87; *Agreement of May 21, 1963, on the Temporary Employment of Moroccan Workers in the Federal Republic of Germany, as amended July 2, 1971*, [1971] BGBI. II 1366.

58. Act of Feb. 20, 1964, [1964] *Staatsblad*, No. 72.

59. OECD, *CONTINUOUS REPORTING SYSTEM*, *supra* note 43, at 5.

cheapest passage from his country to the European continent. Furthermore, if he is willing to risk the same consequences, there is nothing to prevent him from trying again. Thus, for sanctions to be effective, they may have to be directed against those who illegally employ immigrants. Serious political problems arise in the enforcement of such sanctions, however. Unlike sanctions against the immigrants themselves, which are enforced against persons without significant political rights or influence, sanctions against the employers are generally sanctions against established business organizations with strong political influence. Such sanctions may in practice also be difficult to enforce.

B. Residence Permits

Western European countries usually have some system of residence permits and/or residence registration for immigrants that serves as an additional means of controlling immigration. First, unwanted foreign workers can be eliminated by refusal to issue permits for continuation of residence. Second, a system of residence permits and registration provides the police with a means of finding workers whom the authorities wish to deport. Finally, since all foreign residents are generally required to have residence permits—with the exception of privileged groups such as diplomats and nationals of Common Market member states—the permits serve as another method of controlling the initial immigration of foreign workers and their dependents.

Residence permits in France are governed by a regulation of November 2, 1945,⁶⁰ and by an implementing decree of June 2, 1946.⁶¹ The regulation provides for three types of residence permits: temporary, ordinary and privileged. Temporary permits are issued for one year or less, generally for seven or eight months in the case of seasonal workers. Ordinary residence permits are issued for three years and are renewable. They are only issued to persons who have established three years residence and who have entered France under the age of thirty-five, or who fall into various exceptional categories.

The Fontanet circular linked the duration of residence permits to that of work permits so that the two permits would expire at the same time.⁶² This had the unfortunate result of threatening immediate deportation of those workers who were temporarily unemployed when their residence permits expired. Without a job, these immigrants had no labor contracts on which to

60. Ordonnance du 2 novembre 1945 relative aux conditions d'entrée et de séjour en France des étrangers et portant création de l'office national d'immigration, [1945] J.O. 7351, [1945] J.C.P. III. No. 10065; amended July 3, 1965. Law of July 3, 1965, [1965] J.O. 5654, [1965] J.C.P. III. No. 31174.

61. Decree of June 5, 1946, [1946] J.O. 5018, [1946] D.L. 255; amended by Decree of June 7, 1949, [1949] J.O. 5560, [1949] D.L. 272.

62. Fontanet circular, *supra* note 35.

base a request for an extension of their work permits, and thus their residence permits.⁶³ This harsh situation was remedied by another circular of July 11, 1973.⁶⁴ French immigration authorities stopped issuing permits for immigration and residence of dependents at about the time that worker immigration was stopped.⁶⁵

The German Foreigners Law of April 28, 1965, provides for a system of residence permits to be issued by the Ministry of the Interior.⁶⁶ The Ministry is granted broad discretion to determine the terms and provisions of such permits and to allow exemptions from the requirements of a permit.

In Switzerland the residence permit system is the prime method for controlling immigration. There are four basic types of permits available to foreign workers: "established," "annual," "seasonal" and "frontier." The Law of March 26, 1931, on the Residence and Establishment of Foreigners has given the Police for Foreigners extremely broad discretionary powers to issue the various categories of residence permits.⁶⁷ A 1965 law provides that no residence permit allowing employment may be issued to one who has entered Switzerland as a tourist.⁶⁸ In 1973, political discontent with the large number of resident foreigners led to the enactment of legislation limiting the number of annual and seasonal residence permits issued.⁶⁹ The result has been a drop in the number of these permits. Temporarily, however, the number of established and frontier permits has risen, suggesting that a number of those who had formerly held annual or seasonal permits may have succeeded in transferring themselves to the other categories.⁷⁰

Belgian law provides for two types of resident permits: temporary and permanent.⁷¹ A provisional residence permit may be obtained before entry and may then be converted into a regular residence permit after the foreigner has entered the country. The law discourages attempts to enter the country as a tourist and then to convert one's status to resident.

63. Buy, *supra* note 24, at 279.

64. Ministry of Labor, Circular No. 13-73, July 11, 1973.

65. Circular 11-74, July 9, 1974.

66. Ausländergesetz, April 28, 1965, [1965] BGBI.I 353; Verordnung zur Durchführung des Ausländergesetzes, March 12, 1969, [1969] BGBI.I 206.

67. Loi fédérale sur le séjour et l'établissement des étrangers, March 26, 1931, 1 R.S. 113 (1931), Recueil systematique du droit federal § 142.20; Règlement d'exécution de la loi fédérale sur le séjour et l'établissement des étrangers, March 1, 1949, Recueil systematique du droit federal § 142.201; Arrêté du Conseil fédéral concernant la compétence des autorités de police des étrangers, March 13, 1964, Recueil systematique du droit federal § 142.202.

68. Arrêté du Conseil fédéral concernant l'assurance d'autorisation de séjour pour prise d'emploi, Jan. 19, 1965, Recueil systematique du droit federal § 142.261.

69. Arrêté du Conseil fédéral limitant le nombre des étrangers qui exercent une activité lucrative, July 6, 1973, Recueil systematique du droit federal § 823.21.

70. OECD, CONTINUOUS REPORTING SYSTEM, *supra* note 43, at 43.

71. Arrêté royal du 21 decembre 1965 relatif aux conditions d'entrée, de séjour et d'établissement des étrangers en Belgique, [1965] Moniteur belge, Dec. 31, 1965, 2 LES CODES BELGES, *supra* note 44, at 710.

Foreigners wishing to convert their status are typically required to leave the country and to reenter.

The 1965 Netherlands law on foreigners provides for a residence permit that can either be temporary or indeterminate.⁷²

C. Control of Entry

1. Border Controls

The most obvious means of limiting immigration might appear to be the establishment of a rigid visa system whereby the consulates of the host country restrict the issuance of visas. While rigorous visa controls combined with strict border checking procedures could effectively limit the number of persons coming into a country for the purpose of obtaining employment, such a policy has two major disadvantages. The first is the expense of maintaining qualified border guards to prevent immigrants from landing in small boats in quiet coves or from climbing over mountain passes through uninhabited areas into the country.⁷³ The second disadvantage is the difficulty of distinguishing bona fide tourists from migrants seeking employment. The risk of losing the tourist trade in the event of errors tends to discourage Western European countries with major tourism industries from employing this method. Thus entry control plays a relatively minor role in the overall European migration control system. The large number of border points and the large number of foreigners with legitimate reasons for temporary visits have led to the establishment of a general rule through law and treaty allowing citizens from most European and North African countries to enter a country and remain for up to three months on the basis of their passports or sometimes on the basis of national identity documents or expired passports.⁷⁴

As mentioned above, many aliens have abused this freedom by entering a country as tourists and then converting their status to workers. The increasingly strict legislation aimed particularly at employers is likely to diminish sharply the incidence of such practices in the future, and additional steps may well be taken. Recently France has begun to stamp in the passports of entering foreigners a statement that the bearers are not eligible for employment. It seems likely that the authorities may also install a

72. Aliens Act, Jan. 13, 1965, [1965] Staatsblad 40; see Sik, *The Netherlands Law on Aliens*, 1 NETH. Y.B. INT'L L. 247 (1970).

73. Houdaille & Saury, *supra* note 48, at 725.

74. Article 9 of the Agreement between France and Algeria Concerning Travel, Employment and Residence in France of Persons under Algerian Jurisdiction and their Families states:

Les ressortissants algériens venant en France pour d'autres raisons que celles d'y exercer une activité professionnelle salariée sont admis, sans formalité, à résider sur le territoire français pour en séjour ne dépassant pas trois mois, sur simple présentation d'un passeport.

Dec. 27, 1968, [1969] J.O. 2901, art. 9.

computerized control system like that used by United States customs to provide a check against unauthorized entrants.⁷⁵

2. Medical Screening

Since many immigrants come from countries with lower public health standards, medical examinations as a prerequisite to immigration may prevent the entry of persons with communicable diseases. The medical examination requirement has been incorporated in a number of instances by agreements between the host and the sending countries that provide for the procedures of medical examination in the sending country before emigration.⁷⁶ Screening out persons with chronic illnesses has an added benefit of tending to reduce the burden on publicly financed health facilities. The requirement of a medical examination was for some time almost a dead letter in France, because immigrants who entered as tourists and were subsequently regularized avoided any pre-entry medical examination.

3. Dependents

A third, less direct, method of controlling the entry of migrant workers is through limiting the immigration of their dependents. This may be done directly by simply forbidding the immigration of dependents, as provided in a July 9, 1974, circular of the French immigration authorities that prohibits immigration of dependents who are not nationals of EEC member states.⁷⁷ It may also be accomplished indirectly by restricting access of immigrants to inexpensive public housing and thus depriving them of a realistic opportunity to bring their dependents into the country. Since in many cases the principal reason for emigrating to Western Europe lies in the prospects for the migrant to improve the economic and social situation of his family, such measures directed at restricting the family's ability to join the breadwinner can serve as effective restraints on immigration. At the same time, these methods raise serious questions of equality in the enjoyment of economic and social rights.

75. The Council of Europe is giving consideration to work being done by the International Civil Aviation Organization on the development of an internationally compatible electronic passport card. Letter to Peter Maggs from H. Golsong, Director of Legal Affairs, Council of Europe Secretariat General, June 25, 1975.

76. Article 4 of an agreement between France and Algeria states:

La délivrance du certificat de résidence est toutefois subordonnée à la production d'une attestation de logement délivrée par les autorités françaises et d'un certificat médical établi soit par la mission médicale française auprès de l'office national algérien de la main-d'oeuvre, soit, en France, par des médecins agréés par l'office national d'immigration. Les critères de santé publique sont ceux qui figurent en annexe au présent accord.

Agreement Concerning Travel, Employment and Residence in France of Persons under Algerian Jurisdiction and Their Families, Dec. 27, 1968, [1969] J.O. 2901, art. 4; see also Agreement on the Temporary Employment of Moroccan Workers in the Federal Republic of Germany, amended July 2, 1971, [1971] BGBI.II 1366, art. 10.

77. Circular No. 11-74, July 9, 1974.

D. Social Rights

The burden that immigrants place on the social service infrastructure poses a major problem for the receiving state. Migrant workers are subject to the same social and economic needs and desires as the indigenous labor force and are thus in a position to enjoy some of the same rights. Moreover, given the extensive schemes of social legislation in Western European countries, the presence of alien workers and their wives and dependents involves many obvious costs. In many countries, mothers may be entitled to a substantial family allowance. Even if there are no children, a non-working mother still uses public health and recreation facilities. If there are children, there may be a burden not only on public health services, but also on the school system. The children of immigrants present particular costs for schooling because of their lack of knowledge of the local language which necessitates either special compensatory classes or the creation of a separate school system using their native language.

Solutions to these problems are not easily found. The immigrants may be denied various social benefits available to citizens, such as public schools in their own language and access to public housing, but such discrimination not only conflicts with modern democratic ideals but also has its own costs in the forms of illiteracy, poverty, and social and political unrest. It will be useful to examine the status of the North African immigrant in France in two important areas of social concern.

1. Housing

The question of housing for immigrants and their families is a crucial one in most Western European countries, particularly for North African immigrants who have tended to be crowded together in the worst slums of major European cities.⁷⁸ In this regard, it may be recalled that the World Plan of Action adopted by the World Conference of the International Women's Year in Mexico City in July 1975 specifically urged that:

Special effort should be made to provide for the needs of migrant women . . . from abroad, and for women workers and their families who live in urban slums and squatter settlements. . . .⁷⁹

France has taken a number of measures to deal with this situation. The freeze on further immigration, coupled with repatriation of some foreign workers and their families to Algeria, Morocco and Tunisia may have eased the housing situation somewhat. At least token efforts have been taken to construct public housing for the immigrants. Moreover, legislation concerning low-rent public housing has been modified to guarantee foreigners equal

78. See S. CASTLES & G. KOSACK, IMMIGRANT WORKERS AND CLASS STRUCTURE IN WESTERN EUROPE 240-317 [hereinafter cited as CASTLES & KOSACK], O. Rabut, *Les étrangers en France*, 28 POPULATION 620, 634-37 (1973).

79. U.N. Doc. A/5725, para. 156 (1975).

access and to reserve 6.75 percent of such housing for persons living in unhealthy conditions.⁸⁰ A French commentator indicates, however, that the purposes of this legislation have been frustrated by local politics and prejudices.⁸¹ The most typical way in which local authorities have limited the number of immigrants in public housing is by giving first preference to long-term residents.⁸² During the early 1970s, before the cutoff of foreign immigration, employers were required to give evidence that housing was available before an immigrant could have his labor contract approved. While this requirement was annulled by the Council of State in 1975 because it was issued without proper governmental authorization,⁸³ the French Government has indicated its intention to reenact the rule.⁸⁴

The Federal Republic of Germany has also required employers to provide housing.⁸⁵

2. Social Security

Immigrants pay social security taxes and generally receive various social security benefits. Such benefits, however, are usually not available to non-resident family members. Thus, for instance, French social security operates on a territorial basis, so that if the worker's wife and family reside abroad—as is typically the case for North African immigrants but less often so for immigrants from other European countries—the employee who returns may lose his old-age pension rights and may forfeit disability payments.

This situation has been partially rectified by conventions concerning social security rights, including the convention of January 19, 1965, with Algeria,⁸⁶ the convention of July 9, 1965, with Morocco,⁸⁷ and the convention of December 17, 1965, with Tunisia.⁸⁸ The most important provisions of these conventions have concerned family allowances. Unlike those provisions concerning job-connected injuries and illnesses which only affect a minority of workers, or the provisions on old-age pensions, whose effect is far in the future for most workers, the family allowance provisions have been of immediate importance to many of the workers who have left young children at home. These provisions were a compromise. Limitations were placed on

80. *Buy, supra* note 24, at 283-84.

81. *Id.* at 284.

82. Fontanet circular, *supra* note 35.

83. Decision of the Council of State annulling the requirements of Circular No. 1-72 of Feb. 23, 1972, concerning housing, Jan. 13, 1975, [1975] *Rec. Cons. d'Et.* 16, [1975] *Bull. trav.*, No. 1.

84. Ministry of Labor, Circular No. 75-29, Jan. 17, 1975.

85. CASTLES & KOSACK, *supra* note 78, at 214, 251-55, 266-67.

86. General Convention between France and Algeria on Social Security, Jan. 19, 1965, [1965] *J.O.* 4001.

87. General Convention on Social Security between France and Morocco, July 9, 1965, [1967] *J.O.* 4508.

88. General Convention on Social Security between France and Tunisia, Dec. 17, 1965, [1966] *J.O.* 8312.

the amount of the allowance, the number of children covered and the time of payment as compared to what a French worker would receive for his own children. Provision was made for tying the size of a family allowance to that paid in Algeria, Morocco and Tunisia. Limitations on the number of children covered were included in the treaty with Morocco to provide payments for no more than four children. Such limitations were left for further negotiation by the treaty with Tunisia and were not mentioned in the treaty with Algeria. All three treaties provided time limits for family allowances for unaccompanying children. These limits were to be calculated from the time the worker entered the country or the treaty entered into force, whichever was later, and were to extend for five years in the cases of Morocco and Algeria and six years in the case of Tunisia. For job-connected injuries and illnesses, provisions were made to allow the transferability of rights so that a worker who moved back to North Africa after being injured on the job in France could continue to receive payments. For old age pensions, the treaties provided for cumulation of time on the job in France as well as in the other country.

IV. TRADE UNIONS

Article 23(4) of the Universal Declaration of Human Rights provides: "Everyone has the right to form and to join trade unions for the protection of his interests."⁸⁹ In general, the right to join a trade union and participate in its activities is open to migrant workers in Western Europe. Thus, in France immigrants may join trade unions. They may be elected to lower offices at the enterprise level, such as membership in the enterprise committee⁹⁰ and personnel delegations,⁹¹ provided they can read and write French and have worked at the enterprise for at least a year. They may not be elected to the higher position of "syndical" delegates unless they are French nationals or unless a treaty so provides.⁹² A French writer has pointed out that the ban on foreigners holding higher union posts makes it impossible to organize unions in some enterprises where there is a 100 percent immigrant labor force.⁹³ This is because such enterprises have working forces in which no one is legally qualified to hold the necessary union office.

In the Federal Republic of Germany, there are no legal restrictions on foreign trade union membership; however, union office-holding by foreigners is limited. Nevertheless, many foreign workers are active trade unionists.⁹⁴

89. G.A. Res. 217, U.N. Doc. A/810, art. 23(4).

90. C. TRAV. art. L. 433-4 (38e ed., Petits Codes Dalloz 1974).

91. *Id.* art. L. 420-9.

92. *Id.* art. L. 412-12.

93. Buy, *supra* note 24, at 282-83.

94. CASTLES & KOSACK, *supra* note 78, at 130-31.

V. NATURALIZATION

Since most of the North African migrants are located in France, it may be useful to examine briefly the French naturalization law. French citizenship may be acquired through naturalization⁹⁵ by one who has resided in France for five or more years.⁹⁶ The residence requirement may be reduced to two years if the alien has successfully completed two years of higher studies or has rendered or can render important services to France.⁹⁷ The following categories of persons can be naturalized without a residence requirement: a minor whose parent has acquired French citizenship; the spouse or the child, who has attained majority, of a person who has acquired French citizenship; the father or mother of three minor children; a foreigner who has served in the French armed forces or who, in time of war, has volunteered to serve in the French or allied armed forces; the national or former national of territories or states over which France has exercised sovereign, protectorate or mandatory power; and the foreigner who has rendered exceptional service to France or whose naturalization is of exceptional interest to France after due notification by the Council of State acting on the recommendation of the competent Minister.⁹⁸ Naturalization without a residence requirement is also accorded to persons belonging to the French culture and linguistic group.⁹⁹ No one can be naturalized unless he is of good morals and conduct.¹⁰⁰ Nor can he be naturalized if he cannot be assimilated into the French community, as evidenced by inability to master sufficient knowledge of the French language.¹⁰¹

Algeria's independence in 1962 raised the question of the status of Algerians, many of whom had migrated to France. The order of July 21, 1962,¹⁰² made a distinction between people with French civil status who kept French citizenship and the Muslims of Algeria who could, if they moved their domicile to France, sign a declaration having retroactive effect in which they opted for French citizenship. The law of December 20, 1966, ended the possibility of option, however.¹⁰³

Under the French Nationality Code of January 9, 1973, the distinction between the two groups of people in Algeria is maintained. Their legal status is clarified in articles 154 and 155. Article 154 provides that people

95. French Nationality Code, completed and modified by Law of Jan. 9, 1973, [1973] J.O. 467, art. 59, [1973] D.S.L. 85, 87 [hereinafter cited as French Nationality Code].

96. French Nationality Code, *supra* note 95, art. 62.

97. *Id.* art. 63.

98. *Id.* art. 64.

99. *Id.* art. 64-1.

100. *Id.* art. 68.

101. *Id.* art. 69.

102. *Le Droit Applicable aux R ressortissants des Anciennes Colonies*, in NOTES ET ÉTUDES DOCUMENTAIRES: LA REFORME DU DROIT DE LA NATIONALITÉ, No. 4115, at 33 (1974).

103. Law of Dec. 20, 1966, [1966] J.O. 11171, [1967] D.S.L. 14.

with French civil status who are domiciled in Algeria on the date when the results of the plebiscite on self-determination are officially announced keep their French citizenship regardless of what their situation may be with regard to the Algerian nationality.¹⁰⁴ Under article 155, with a few exceptions, the option of declaring for French citizenship is denied to Algerian Muslims who move their domicile to France.¹⁰⁵

The naturalization law of the Federal Republic of Germany may be summarized as follows.¹⁰⁶ The legal competence to grant citizenship of the Federal Republic of Germany lies with the state governments, which normally take into account the following factors:

- (1) The public interest.
- (2) Same citizenship within one family.
- (3) Integration into German culture.
- (4) Command of the German language (in writing and speaking).
- (5) At least ten years of legal residence in Germany.
- (6) Record of good conduct.
- (7) Good health.
- (8) Ability to support oneself financially.
- (9) Absence of dual citizenship.

The President of the Republic of Italy may confer Italian citizenship upon the following categories of persons:¹⁰⁷

- (1) A foreigner who for three years has been employed by the Italian Government, at home or abroad;
- (2) A foreigner who has resided for five years in Italy;
- (3) A foreigner who has resided for two years in Italy, rendering outstanding services to the country, or who is married to an Italian;
- (4) A foreigner who has resided for six months in Italy, and who is legally entitled to become a citizen except for the fact that he has neglected to request citizenship.

In particular cases and under special circumstances the Government may confer citizenship upon persons who do not fall into the above categories.

104. French Nationality Code, *supra* note 95, art. 154.

105. *Id.* art. 155.

106. Grundgesetz für die Bundesrepublik Deutschland, May 23, 1949, [1949] BGB1.I at 1; Gesetz zur Regelung von Fragen der Staatsangehörigkeit, Feb. 22, 1955, [1955] BGB1.I at 65; Zweites Gesetz zur Regelung von Fragen der Staatsangehörigkeit, May 17, 1956, [1956] BGB1.I at 431; Drittes Gesetz zur Regelung von Fragen der Staatsangehörigkeit, Aug. 19, 1975, [1975] BGB1.I at 1251; Gesetz zur Änderung des Reichs- und Staatsangehörigkeitsgesetzes (RuStAAndG 1974), Dec. 20, 1974, [1974] BGB1.I at 3714. The authors are indebted to Dr. Otto G. Burchard, Consul General of the German Consulate in Boston, for supplying them with the above texts as well as a summary in his letter of October 29, 1975.

107. Law of June 13, 1912, no. 555, CODICE DELLE LEGGI AMMINISTRATIVE 2226 (D. Giuffrè ed. 1963); *see* ISTITUTO ITALIANO DI CULTURA, HOW TO ACQUIRE ITALIAN CITIZENSHIP (Occasional papers no. 16, 1968).

The decree conferring citizenship is effective only after the prospective citizen has sworn to be loyal to the Republic of Italy and its President and to observe the law. A person of foreign nationality born in Italy whose parents have resided there for ten years at the time of his birth may become a citizen:

- (1) If he does service in the armed forces or holds a government job;
- (2) If at twenty-one years of age he is a resident of Italy and, before his twenty-second birthday, he declares his intention of becoming a citizen;
- (3) If he has been a resident of Italy for ten years and has not, upon attaining the age of twenty-one, declared that he intends to keep his foreign citizenship.

A foreigner who wishes to obtain Italian citizenship must make application to the Ministry of the Interior and present papers that substantiate the fact that he falls into one of the categories enumerated above and also present the following documents, duly notarized: (1) birth certificate; (2) marriage certificate; (3) a statement of "clean record" from the police department of the foreign locality from which he comes.

The foregoing demonstrates that North African migrants have not been singled out for discrimination as far as the naturalization laws are concerned. On the contrary, the French laws even accord favorable treatment to former French protectorates or colonies. In practice, however, because of their cultural and economic situations and the possible prejudices of administrative officials, North African migrants have had to overcome more barriers to be naturalized. For example, all countries, either by law or by administrative regulation, require immigrants to meet certain minimum "quality" standards. Such a requirement clearly places the North African immigrants at a disadvantage, since their housing, income and education are likely to be inadequate. The current economic recession experienced in Western Europe has not helped matters. Immigration officials can easily accomplish the objective of discouraging naturalization by being inflexible and discourteous and by shuttling applicants from pillar to post.

It may be appropriate to close this section on naturalization by reproducing two specific recommendations adopted by the United Nations Symposium on Population and Human Rights, held in Amsterdam in January 1974. The symposium recommended:

[1] The easing of restrictions on the acquisition of nationality of the country of immigration. It was recognized that acquisition of citizenship was in several respects a prerequisite for the full exercise by migrant workers of their human rights in the receiving countries. National legislation seems to be excessively restrictive as far as the conditions for obtaining nationality are concerned, particularly for foreign workers and their children who have been resident for a long period in the country of immigration. It was said that while all facilities for a rapid assimilation of the migrant should be

provided, the migrant should also be offered ample opportunities to maintain and develop his own cultural identity.

[2] The grant, subject to reasonable conditions, of citizenship to the migrant's children who are born in the receiving country and who opt for such citizenship on the attainment of majority.¹⁰⁸

VI. CONCLUSIONS

The era of substantial North African emigration to work in Europe appears to have come to a close. Much can be learned from a retrospective analysis of the role that law has played in this major movement of population, however. Much remains to be done to adjust the legal status of those emigrants who will remain in Europe.

Perhaps the most important lesson that can be drawn from this episode is that an immigration policy aimed at recruiting only unskilled male workers for short-term employment for which domestic workers are qualified is doomed to fail. The changes in Western European laws reflect adaptation of those laws to social realities, few of which had been foreseen at the beginning of the "open door" policy. The basic economic reality as pointed out by Böhning¹⁰⁹ in his excellent analysis is that immigration gradually becomes a self-perpetuating process. Employers exert great pressure to keep the workers they have trained, and workers exert pressure: first, to stay longer to attain more fully their financial goals; second, to bring in their families and become permanent residents; and, finally, as permanent residents or naturalized citizens, to gain full legal rights.

An examination of the Western European experience with immigrants from Northern Africa can answer many questions about the types of legislation needed to implement effectively various policies concerning foreign labor. Such an experience cannot, however, serve to answer the question of what should be the appropriate policy toward migrant labor—a question which is, to a large extent, one of moral and ethical judgment. A regime of total non-discrimination against immigrants, including the granting of full social and economic rights, would certainly be in accord with Western European democratic traditions. However, the adoption of such a regime would signal the end of large-scale immigration from North Africa to Western Europe, since the majority of the population of the present target countries would clearly be unwilling to tolerate a large number of immigrants under conditions of full equality, and the granting of full equality would remove many of the economic benefits of immigration to the host countries. The inability to resolve this basic conflict has perhaps led to the only alternative possibility, namely, to stop the flow of migrant laborers from North Africa. The method of dealing with those migrants and their families already

108. U.N. Report of the Symposium on Population and Human Rights, Amsterdam, 21-29 January 1974, U.N. Doc. E/CN.9/IISS/CRP.4, paras. 115(e), (f) (1974).

109. See sources in note 19, *supra*.

in Western Europe remains a dilemma for the host countries. For social, cultural and human rights issues are involved in addition to the economic problems.

In sum, the present trends in Western Europe appear to be toward the integration of immigrants into host societies¹¹⁰ while limiting new immigrant workers to those from the European Community. While the former trend is to be welcomed for furthering human rights goals, the latter raises the disturbing question of discrimination based on race, color and religion. How the two can be reconciled in terms of human rights remains to be seen.

110. An extreme example is the recent decision by the Swedish Parliament to grant foreigners the right to vote in Swedish elections. Effective 1976, any migrant who has been legally registered in Sweden for three years may take part in elections of municipal committees, county councils, church boards and clergymen. Foreigners also have the right to be elected to these positions. The significance of this new election law may be seen to the fact that in 1974, out of eight million inhabitants of Sweden, 397,000 were aliens. Of that number, 259,000 would now be eligible to vote under the new ruling—amounting to more than 10% of the voters in seven districts. See *Boston Sunday Globe*, March 14, 1976, (Parade Magazine), at 17.

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