REGINE

Regularisations in Europe

Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU

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Appendix A

Country Studies

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Detailed country studies for France, Greece, Italy, Spain, Switzerland and the United Kingdom have been commissioned from experts. The content of each country study is primarily the responsibility of its principal author(s) and does not necessarily reflect the views of either ICMPD or the European Commission.
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Chapter 1: France

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1.1 Introduction
This report on regularisation practices in France draws on various sources: official reports (government, advisory boards and parliament), statistical sources and research done on regularisation programmes and pro-regularisation movements. Additional primary sources were consulted in particular with regard to legislation and policy developments in recent years (laws and administrative circulars, legislation manuals, Internet publications of migrants’ rights NGOs, and press articles).

The report covers the period since 1996 until present, but considers as well previous experiences of regularisation policies (since 1973) in a comparative perspective. It outlines the development of irregular migration as a policy issue and the general shifts and factors of regularisation policies (including both programmes and legal continuous mechanisms of regularisation), analyses the implementation and characteristics of programmes, and finally gives an evaluation of measures and outcomes based on available statistical data and research.

The terminology used in this report when referring to foreigners without a regular residence status is either ‘irregular migrants’ or Sans Papiers when referring to their role as social movement actors.

1.2 Irregular Migration in France – An overview

1.2.1 Evolution of official perception of irregular immigration
Both the legal and the political meaning of irregular migration have changed considerably with the major changes in the legal system of regulation of entry and residence of foreigners and with the priorities of immigration control advanced since the 1990s, above all in the context of the emerging EU internal migration regime.

Two general changes have marked the process of legal redefinition of irregular migration:

- The new boundaries drawn between EU migrants and non-EU migrants, which focus immigration control on immigrants from countries outside the EU (thus limiting the phenomenon of irregular status to these groups)

- The multiplication and differentiation of immigrant status categories (different types of permanent and short-term residence permits allocating different rights), introducing a more marked segmentation between immigrants regards residence rights, with irregular residents as the most precarious status group.

An irregular residence and situation generally results from entering the country without authorisation or from an authorised entry (as tourist, student, spouse, asylum seeker, seasonal workers etc.), which for diverse reasons becomes irregular (expiration of permit and overstaying, no renewal, loss of permit due to change of conditions, refused asylum, etc.). With the system of residence permits (admission and renewal) becoming more and more differentiated, also possible pathways from a regular to an irregular status have been multiplied. Regularisation as the inverse movement (from irregular to regular) thus also became a more complex procedure that had to take into account very different situations.
The reasons for coming into an irregular situation have significantly changed over time: In the regularisation programme of 1981-1982 (concerning 130,000 immigrants) it became evident that the majority of migrant workers had entered by tourist visas and overstayed, a practice which had for a long time constituted the normal procedure of migrant labour market insertion. The successive restructuring of the regulatory framework for foreigner’s entry and residence towards a system of reinforced visa obligations and pre-entry controls, which coupled residence permits to a preliminary authorised (regular) entry, made the ex-post regularisation within the country the exception.

The political redefinition has been marked by control-oriented strategies of policing irregular migration, promoted by the conservative UMP government since 2002, that shifted the framing of irregular migration towards a security problem (subject to more severe sanctions)\(^1\); despite such a focus, the French policies of controlling immigration have broadened towards more global strategies in relation to the external dimension, especially by coupling immigration (control) with development policies (in major countries of origin), and involving countries of origin and immigrants as actors in these policies (partnership agreements on concerted immigration and irregular migration control; co-development policies supporting migrants development and economic projects in home countries).

In this context, new situations of irregularity and patterns of irregular migration evolved, which we will outline briefly in the following section.

### 1.2.2 Changing patterns of irregular migration

**Asylum migration**

Since the early 1990s, official perception has focussed on asylum seekers as an important migrant group in relation to potential irregular migration (control). During the last decade these asylum seekers mainly came from European countries (like Turkey, Ex-Serbia and Montenegro/Kosovo, Russia/Chechnya), African countries (like DR Congo, Algeria, Mauritania, Mali), Asian countries (Sri Lanka, China) and from Haiti.

High numbers of asylum applications (France is one of the principal EU asylum countries)\(^2\) and the parallel changes in asylum legislation and recognition policies amounted to an increasing number of refused asylum seekers\(^3\); an increasing proportion of these asylum seekers were excluded from the normal asylum procedure and processed in accelerated procedures, which already deprived them of residence status in the procedure and provided for less procedural safeguards (especially those coming from “safe countries of origin”\(^4\) and those in the Dublin procedure\(^5\)).

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\(^1\) According to the actual immigration law in force an infraction of entry and residence law is sanctioned with one year of prison and a fine of 3,750 €, if necessary with an interdiction to re-entry of a maximum duration of three years.

\(^2\) Asylum applications increased from 19,000 in 1996 to approximately 52,000 in 2003, and since then decreased again to 23,800 applications in 2007 (OFPRA 2007).

\(^3\) Refugee recognition rates decreased to 15 percent in 2003 and have since increased to 19.5 percent in 2006. Therefore, between 2001 and 2006, the asylum applications of about 207 500 asylum seekers were definitively refused. However, an increasing proportion of them have applied for re-examination of their situation („réexamen“), due to the original poor examination within the accelerated procedures.

\(^4\) A list of 17 safe countries of origin has been fixed, where generally no risk of persecution exists according to the asylum office OFPRA, thus asylum applications from these countries are processed in an accelerated procedure.

\(^5\) Procedure to determine the responsibility for asylum claims and processing between EU Member States
An important (though not quantifiable) part of the refused asylum seekers remained as “de facto refugees” in the country, often because of prevailing situations of violence or insecurity in their home countries. Though no reliable data are available, it was estimated that only a small proportion of refused asylum seekers actually leave the country after a negative decision (Parliamentary report Des Esgaulx 2005; Othily & Buffet 2006)\(^6\).

As to this situation, the number of annually refused asylum seekers (as one of the most visible and controllable populations skipping into an irregular status) became a major indicator used in governmental evaluations of the flows of foreigners in an irregular situation.

**Family migration**

In a second area, that of family immigration, the problem of irregularity became an important issue during the 1990s (especially with the *Pasqua laws 1993*), since stricter family reunion conditions, and the exclusion of regularisation possibilities within the country for family members having arrived without authorisation (as family members) lead to contradictory legal situations for persons who were in principle guaranteed a right to stay (right to “normal family life”) and thus protected from expulsion, but on the other hand could not legalise their situation.

The restrictions of family reunification thus became an important *driving force and reason* for irregular immigration and the presence of irregular immigrants; this has furthermore resulted in particularly difficult irregular situations (with couples/families in partly regular and irregular situations).

In this context, it became common to include also minors and children (born and raised in France) in the category of irregular migrants and in regularisation programmes (although they were seldom counted in regularisation statistics). The feminisation and “familialisation” of migrants in an irregular situation became apparent during the regularisations in the 1990s.

Whereas in the 1981-1982 regularisation programme the large majority of regularised were young men (only 17% women) without partners or families, the regularisation programme of 1997-1998 and the following permanent regularisations covered an increasing proportion of women, minors and persons living in partnership relations (see section 1.4).

**Labour migration**

The pattern of labour market insertion of migrants without residence permits seems to have remained quite stable over time as to the segments and types of labour they occupy in the informal and regular economy: it mainly concerns employments in the construction sector, the service sector (hotel-restaurant, cleaning) and also the domestic services, textile sector and agricultural sector; and above all is common in small enterprises with a demand for a highly flexible and seasonal labour force, as well as in private households (domestic workers) (see Marie 1984; Brun & Laacher 2001; Heran 2004; CICI 2007; Jounin 2008)\(^7\). Irregular migrants thus have been inserted as a cheap and flexible labour force within the regular economy, and to some extent also in the social security and tax system. The insertion of irregular migrants into regular employment (contract), including social security contributions, by means of falsified documents, constituted a frequent practice of integration in the regular labour market, especially among the sub-Saharan African immigrants.

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\(^6\) There are no data available on the number of refused asylum seekers that leave the country since official statistics do not distinguish in relation to residence status, figures are only available concerning the number of refused asylum seekers leaving the country with voluntary return assistance programmes.

\(^7\) Among all types of infractions concerning illicit employment (not insured, not paying taxes) uncovered by work inspections, those related to the irregular employment of foreigners (without work permit) represented only a small proportion (11.7%) in 2006. The employment of foreigners without work permit concerned principally the construction and public building sector (46% of registered cases) and the hotel and restaurant sector (19% of registered cases).
**Countries of origin**

The more restrictive policies of admission and long-term residence towards third country nationals (with the recent law reforms mainly concentrated on restrictions of family reunification) have multiplied the pathways to irregularity for these immigrants; In France the majority of the new annual immigration and of the present foreign population (despite a stable proportion of about one third EU citizens) comes from countries outside the EU, mainly from Maghreb countries and to a smaller part from sub-Saharan countries (from former French African colonies).

Most former citizens of French colonies in Africa have, after independence, benefited from specific (liberal) regimes of freedom of circulation, settlement and citizenship, which since the 1970s and later with the Schengen agreements became more and more restrained. These traditional countries of origin have now been placed at the centre of strategies for immigration control and the prevention of irregular migration, advanced currently within the framework of new bilateral agreements on “concerted migration”. On the one hand these agreements liberalise access for labour immigration on selective terms (based on quotas for certain professions) and by circulation visa for nationals of these countries, and in exchange facilitate readmission of irregular migrants from these countries and co-operation on immigration control. They furthermore closely couple the management of migration flows with issues of development and co-development aid.

The irregular immigration patterns from these countries (Maghreb, sub-Saharan Africa), are therefore closely interrelated to the cutting off of regular immigration possibilities, and persisting immigration stemming from closely tied migration networks and relations (families, commercial, higher education and qualification). Such a hypothesis is confirmed by recent studies on the newly admitted immigrant population in 2006, including also a high proportion of recently regularised migrants (based on familial ties and long-term presence), mainly from Maghreb and sub-Saharan African countries (Bèque 2007).

France also is a destination and transit country of organised irregular migration (via smuggling networks): The government report (CICI 2007) observed the most important inflows of migrants via irregular smuggling networks from Asia (China), the Middle East (Iraq, Iran), Northern Africa (Maghreb), Eastern Europe (Romania, Bulgaria), Turkey and the Indian subcontinent (India, Sri Lanka, Pakistan) (CICI 2007: 139).

Since several years important irregular transit migration, mainly from regions of war and insecurity (Iraqi, Kurds), trying to gain access to the UK and Scandinavian countries has been observed in France.

The lifting of barriers for new EU citizens (in 2004 and 2007) had indirect regularisation effects on immigrants from these countries, above all on Romanian and Bulgarian citizens, who until 2007 had been targeted as a specific problem group for irregular migration, related to “problems

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8 According to census data (INSEE 2004-2005) in mid-2004 the foreign population was 3,5 million (in metropolitan France), which represented 5,8% of the total population. 1,2 million of the foreign population were citizens from EU 25 countries (34,7%, Europe incl. other non EU countries 39,3%); 1,1 million were citizens from Maghreb countries (31,6%); 420,000 citizens from other African countries (11,9%). All nationals from African countries represented 43,6% of the foreign population. Citizens from Asian countries (incl. Turkey) represented 14% (486,000), nearly half of them citizens from Turkey (229,000). (Regnard/DPM 2006: 150ff)

9 Such agreements have been concluded with Sénégal (23 September 2006), Gabon (5 July 2007), the Democratic Republic of Congo (25 October 2007), and recently with Bénin and Tunisia (see Report CICI 2007; Accord franco-tunisien sur l'immigration, Reuters 29.4.2008).

10 Between 1999 and 2002 they had been placed in the humanitarian reception centre of Sangatte.
of public order” (in particular Roma travellers). Irregular migrants from Romania were in recent years often involved in police apprehensions and effectuated removals.

**The situation in the Overseas Territories (DOM-TOM)**
A very specific problem in the French context has emerged due to the French Overseas Territories and the external borders close to countries of emigration from Africa and above all Latin-America (both for political and poverty reasons, as for example in the case of migrants and asylum seekers from Haiti in recent years).

This has more recently drawn particular attention to the situation of irregular immigration and the issue of immigration control in the French Overseas departments and territories (DOM-TOM), with a focus on the American Caribbean departments (Guyana, Guadeloupe, St. Martin, Martinique), and also on the islands of Mayotte and Réunion (with major immigration coming from the Comorian Islands).

The state secretary of Overseas territories has estimated the size of the irregular migrant population in Guyana at 40,000, in Guadeloupe and St. Martin at 10,000 to 20,000 and in Martinique at about 2,000. On the island of Mayotte 50,000, i.e. the highest number of irregular migrants, was estimated (and on the nearby island of La Réunion another 1,500; CICI 2007: 170). In recent years the readmission and removal procedures from the Overseas territories have increased considerably in numbers: In 2005, 44 % of all removal procedures of foreigners from France were carried out in the DOM and in Mayotte, in 2006 the figure was 50% (the majority thereof in Mayotte and Guyana)\(^{11}\).

1.2.3 **Indicators and estimations of irregular migration**
The very heterogeneous and dynamic character of migration control policies and irregular immigration make it difficult to name figures.

As official figures to a large degree rely on police control- and apprehension statistics, these statistics also indicate effects and evolution of state control practices (reinforced in recent years).

The administration under the lead of the Inter-ministerial committee of Immigration control (CICI, established in 2005), since then a major actor in shaping policies, has developed a set of *indicators* to seize irregular immigration\(^{12}\), both concerning the irregular inflows (measured via border control statistics) and the presence of irregular migrants in the country relating to indicators evaluating the number of persons in irregular status (refused asylum seekers, apprehensions and infractions of entry and residence legislation, persons covered by public

\(^{11}\) In 2005 15,532 removals were been carried out in Overseas territories (half of them in Mayotte), compared to 19,841 in metropolitan France (CICI 2007: 150). In 2006 the removals effectuated in the DOM made up 24,156 (13,258 from Mayotte and 8,145 from Guyana; from Guadeloupe 1,964; St. Martin 289; Martinique 436; Réunion 64), which meant that they exceed those in metropolitan France.

\(^{12}\) The indicators refer to a) migration pressure at external borders is measured by border policing statistics (using three indicators: 1) number of detentions while awaiting entry permit at the border (zone d’attente); 2) refoulements at the border (incl. non-admission and readmission to another state according to bilateral readmission agreements or to Dublin regulation); 3) asylum demands at the border; b) Indicators to measure irregularly staying migrants present in the country, which include: 1) refused asylum seekers per annum; 2) annual exceptional regularisations (migrants having entered irregularly); 3) annual apprehensions of foreigners for infractions of entry and residence legislation; 4) persons in administrative detention for expulsion 5) eviction orders (APRF) not executed; 6) persons benefiting from public medical assistance (Aide médicale d’État).
medical assistance AME\textsuperscript{13}). The indicators also take into account the reduction of irregular situations (via permanent regularisations, enforcement of removal).

These indicators furthermore provide data on the number of annual regularisations on an exceptional basis of migrants having entered the country irregularly: between 2001 and 2006 in total more than 155,000 foreigners (having entered irregularly) were regularised (CICI 2007: 143; see Table 1.4). Regularisations have contributed more to reduction of irregular migration than removals in the same period.

All these indicators have to be evaluated with caution (and cannot be added up to an estimation of stocks of irregular migrants), since they include many double or multiple counts (of persons), and do not record the change of situations (regularisation of status, outward migration to other countries etc.).

A senate report on “clandestine migration” (Othily & Buffet 2006) provided figures of an approximate stock of 200,000 to 400,000 migrants staying without residence permit in the country. The same numbers, however very rough and not reliable estimations of stocks of irregular migrants, were also advanced in the political debate.

1.2.4 Evolution of regularisation programmes (1973-2006)

1.2.4.1 General characteristics

French policies to prevent and limit irregular immigration have drawn upon two complementary strategies: a control-oriented and an inclusive one. The first has gained priority within government policies (of controlling illegal immigration), whereas the second via regularisation has been applied more selectively and on an individual basis.

Large or small-scale punctual, exceptional regularisation programmes were operated regularly after the suspension of immigrant labour recruitment policies and since 1973 included six relevant programmes, the last one in 2006 (in 1973, 1980, 1981-1982; 1991; 1997-1998; 2006). The historically most important operation in terms of numbers of persons regularised was the programme in 1981-1982 (with 130,000 regularisations in total), which targeted migrant workers (regularised on the basis of labour market integration). In the framework of such exceptional programmes approximately 282,300 persons in sum had their status regularised between 1973 and 2006.

In France there were never any general amnesties (although the regularisation rate of 87% in 1981-1982 came closest to an amnesty), all collective regularisations were processed on the basis of more or less specified criteria (eligibility and admission) defined by means of administrative circulars issued by the competent ministers (Labour and social affairs, Interior, Immigration and integration\textsuperscript{14}). Such punctual administrative regularisations were based on a case-by-case examination and decision of competent authorities (prefectures on a regional level), and within their scope for discretionary decision.

Another common feature of regularisation programmes in France has been the regularisation only via short term permits, thus such regularisations were only provisional, further

\textsuperscript{13} Since 1999 the public medical aid AME is attributed nearly exclusively to foreigners in an irregular situation. The number of AME beneficiaries was 191,000 in 2006, but the indicator tends to overestimate the irregular population since the outflows (those leaving the country, those regularised) are not captured accurately with these data.

\textsuperscript{14} Since May 2007 competences shifted from the Ministry of the Interior to the then created Ministry of Immigration, Integration, national Identity and Co-development.
regularisation (renewal of permit) depending then on stable labour market integration, stable family relations or the qualification of human rights situation in the home country (de facto refugees). To drop back into an irregular status after one year was thus possible. The increasingly strict conditions imposed for renewal and the generally precarious and disadvantaged employment position (risk of unemployment, low income) of (regularised) immigrants rendered their residence status precarious, at least within the first years

1.2.4.2 Shifts of aims and groups targeted with regularisation programmes

Over time and along with changing immigration policy contexts the aims and the target groups of such regularisation operations changed considerably.

Two major shifts in this respect can be observed:

1) A move from regularisation policies which aimed primarily at labour market inclusion of immigrant workers towards aims of humanitarian and social integration (of de facto immigrants), which became dominant in the 1990s regularisation programmes;


These shifts corresponded with a trend from broader, large-scale regularisations towards more focused (small-scale) measures. In the long run we can observe a narrowing of target groups, a decrease in the numbers and the regularisation rates and finally a substitution of collective regularisation procedures by individual regularisation procedures (see Table 1.3).

An element that became obvious in all programmes was an existing mismatch between restrictive admission policies and de facto immigration dynamics (redirected to irregular channels); it resulted from both internal and external factors (related to family reunification, a constant demand for a precarious migrant labour force; political and economic factors for emigration in the home countries…), causing growing problems and concerning an increasing immigrant population.

Collective regularisation programmes were designed to compensate or attenuate to some extent the effects of previous law reforms (as was the case in 1997-1998 related to the Pasqua Laws of 1993) and problems emerging due to failing administrative procedures (as was the case with asylum procedures in 1990), which had deprived more migrants of a legal status.

Migrant workers programmes

The programmes initiated at the beginning of the 1980s had migrant workers as their principal target group. Associated with labour market policy aims to combat illegal work and exploitation of migrant workers, the operation was designed (by the socialist government coming to power in 1981) to regularise the largest number possible of irregularly employed immigrants present. This objective has been largely achieved, also by a relaxation of criteria during the regularisation operation, which allowed for the regularisation of a total of 87 percent (130,000) of the applicants. From the 130.000 regularised migrants (mostly young men) 90 percent were workers with a more or less stable employment, most of them having arrived within the last three years before their regularisation (nearly 40 percent were in France for no longer than one year; 70 percent arrived in the country within the last three years; Marie 1984: 26)

15 After five years of legal residence they can apply for a permanent residence permit, conditioned they fulfill requirements

16 Law on employment, enhancing rights of irregularly employed migrants and introducing sanctions of irregular employment (Cealis et.al. 1984:13)
Long-term and refused asylum seekers

Collective regularisations especially aimed to overcome certain gaps or inconsistence within the legal system itself, causing situations whereby persons could neither be expelled, nor regularised: for example the asylum law (until 1998)\(^\text{17}\) did not provide for a (temporary) protection status for those refugees who were not recognised under the protection regime of the Geneva Refugee Convention, but were nevertheless victims of war and (non-state) violence; an increasing part of refugees were neither recognised as Geneva convention refugees and excluded from other possibilities of regularisation, nor could they actually return and be deported to their home countries, therefore constituting a new category of “ni regularisables, ni expulsables”.

In this respect, since the beginning of the 1990s asylum seekers and de facto refugees have become an important group of persons in an irregular situation and hence of regularisation policies. Following a peak of the number of asylum applications at the end of the 1980s and the correspondingly long duration of asylum processing (approximately five years) a reform of the asylum system aimed to accelerate asylum processing; this resulted in a high number of refusals of asylum applications at the beginning of the 1990s. A large part of these refused asylum seekers already had integrated and established family ties in France after long-term asylum procedures, or in other cases could not be returned to their home countries (e.g. because of war or generally insecure conditions; personal risk). This provoked an important protest movement against expulsions and claims for collective regularisation of long-term asylum seekers for integration and humanitarian reasons (Poelemans & De Sèze 2000: 310; GISTI Plein Droit 1991; CNCDH 2006).

The regularisation programme in 1991 addressed the situation of such refused long-term asylum seekers\(^\text{18}\) (more than three years in asylum procedure) and was so far the only collective regularisation focussing on refused asylum seekers (although the regularisation programme of 1997 among many others also included this group). Nevertheless, this regularisation was not operated on merely humanitarian concerns (long-term stay, family ties, non-refoulement because of threat to life), but also on the de facto labour market integration of most of these long-term asylum seekers (at that time asylum seekers have been allowed to work, they were only excluded from labour market access in 1991)\(^\text{19}\). One third of the applicants (15,000 persons) could get their residence status legalised.

This is another example where preceding policy changes on the one hand, and following protest movements (hunger strikes of refused asylum seekers in many French cities) resulted in a collective regularisation measure.

Families as new target group

The Pasqua laws (1993)\(^\text{20}\) had multiplied situations of irregularity mainly concerning family members, which had entered the country outside the regular family reunion procedure, or parents of children born in France.

\(^{17}\) Then a temporary protection for refugees from non-state violence and persecution by non-state actors has been created (asile territoriale), which later has been substituted by the subsidiary protection status introduced with the asylum law reform in 2003.

\(^{18}\) Refused asylum seekers have since been considered as an important component of persons remaining in the country without residence permit (ca. 80% of the annual asylum applications are rejected), see CICI 2007; report of OFPRA 2006.

\(^{19}\) The regularisation was possible under the condition of an entry before 1989, for refused asylum seekers that have been in the asylum procedure for at least three years (or two years when they had family ties), and if they had already been employed for at least two years and could present an employment contract or a promise of employment (see Poelemans & De Sèze 2000:310).

\(^{20}\) One of the major provisions of the Pasqua Law was to make legal entry a precondition for obtaining a residence permit. Furthermore, migrants who had come to France without documents, but whose children had been born in France could no longer claim the constitutional right to family life in order to stay in the
With respect to parents of children born in France, already ministerial circulars (Circular 5 May and 13 June 1995; Circular 9 July 1996) and the Debré Law of 1997 had restored regularisation possibilities on an exceptional basis.

The regularisation programme of 1997-1998 had as a major aim a “clearing up” of these situations of family members (parents, children and spouses) trapped in an irregular situation, despite the fact that they were protected from expulsion by law. The programme mainly focussed on the regularisation of family members (related to rights to family and personal life guaranteed by article 8 ECHR) and long-term present immigrants, whereas immigrant workers and refused asylum seekers without family dependants in France (mostly men) were only marginally targeted (and regularised) by this programme.

The problematic of families in an irregular situation resurged again in 2005 and 2006, pushed as an agenda by solidarity mobilisations of citizens committees in schools by teachers, pupils and parents: it related to the situation of irregular immigrants with children born in France and enrolled in school, and for which an expulsion to an unknown home country was not possible. In this context a further humanitarian regularisation programme addressed the situation of such families in June 2006. The number of overall applications of families (over 30,000 applications) again made aware of the important number of families concerned.

1.2.5 Evolution of continuous regularisation mechanisms

Apart from regular collective regularisation measures, continuous regularisation mechanisms on an individual basis became an increasingly important factor of the French migration system.

The cornerstones of the currently existing mechanisms for exceptional regularisation have been laid following the collective regularisation programme of 1997-1998 with the Chevènement Law (1998)\(^\text{21}\) (and partly already by the Debré Law in 1997\(^\text{22}\)): it re-established legal entitlements\(^\text{23}\) and expanded regularisation possibilities for certain categories of irregularly staying foreigners, as were those who had personal and familial ties and those with a long-term presence (foreigners proving a permanent residence of more than ten years, or fifteen in the case of students). A specific mode of exceptional regularisation on humanitarian grounds was created for other situations not covered by legal entitlements. For regularisations on these terms a new temporary residence permit (Carte vie privée et familiale) valid for one year (with possibility for renewal), which also entitles to work, was introduced (Regnard/DPM 2006; GISTI 2006).

1.2.5.1 Modifications with immigration acts of 2006 and 2007

The legal mechanisms for exceptional regularisation have been twice modified by the immigration Act reforms in 2006 and 2007 (Act on entry and residence of Foreigners and on Asylum, CESEDA):

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\(^{22}\) The Debré law of 1997 introduced for the first time a regularisation on a legal basis (instead of only via circular). Target groups of this regularisation were parents of French children, spouses of French nationals, young adults who entered France before the age of ten, and foreigners present in France in an irregular situation for more than 15 years.

\(^{23}\) There have existed mechanisms allowing for a (continuous, individual) regularisation after more than 15 years of continuous presence, until the Pasqua law (24 August 1993) abrogated this possibility of regularisation after a long-term presence. Foreigners who could prove having had a residence in France for more than 15 years were then entitled to get a permanent residence permit (carte de resident, valid for ten years).
• in 2006 the (Sarkozy II law) the legal entitlement of regularisation after a continuous presence of ten years was abolished; and regularisations in such cases had to undergo a previous consultation by a newly introduced National Commission on the exceptional admission to residence (Commission nationale de l’admission exceptionnelle au séjour).

• In 2007 (Hortefeux law) exceptional regularisation mechanisms were revised in order to provide for regularisations on grounds of employment. The criteria for application have been specified further in an administrative circular by the Minister of Immigration (of 7 January 2008).

The legal provision introduced in 2007 was embedded in government policies of promoting qualified labour immigration and objectives to inverse the existing ratio of annual inflow of labour immigration and family related immigration (by raising economic migration up to 50 percent of annual admissions) (CICI 2007: 8).

The circular limited the scope of such regularisations on terms of employment to third country nationals (excluding Algerians and Tunisians), with professional qualifications and a stable employment contract within certain employment sectors and 30 professions affected by an actual shortage of labour, varying according to regional labour market situation.

Exceptional regularisations are generally subject to an assessment of the personal situation (considering intensity of personal ties, family relations and integration into French society; personal threat and risk in the home country) and a discretionary appreciation of interests by the prefectures.

In cases of exceptional regularisations after long-term presence (ten years) the national advisory commission has to be consulted; in the case of exceptional regularisations on grounds of employment in professions with labour shortage, the regional labour market and employment offices have to approve the regularisations (compliance with criteria) in advance. These regularisations allow for the granting of a temporary residence and work permit (valid one year with option of renewal, the purpose depending on the grounds for regularisation: either permit “private and family life”, or “employee” or “temporary worker”, depending on the type of employment).

24 The UMP majority had challenged the provision as a “reward for unlawful behaviour (clandestinity)” (Mariani report 2006), which would provide an incentive for irregular migrants to remain without permit in the long run.

Circular of 7 January 2008 CIRCULAIRE N° NOR : IMI/N/08/00012/C

26 Family related permits (family members of French citizens, family members of foreigners via family reunion, personal and family ties) constitute the highest proportion of new annual admissions, in 2006 they accounted for 52% (96 385 permits of 183 575 of all permits, see CICI 2007: 75).

27 The conditions required concerned the recognised professional qualifications and/or experience and a stable employment contract (unlimited duration contract CDI or contract of at least one year) in one of the 30 professions defined in the circular.

28 Generally the list determined in the circular included qualified professions in the construction sector, informatics, technical professions or financial controlling. For third country nationals from countries with specific bilateral agreements of concerted migration, the number and type of professions accessible differed (according to the terms of the agreements). In parallel, the labour market access of EU citizens of new EU Member States (still subject to a transition period restricting their labour market access) has been liberalised for a broader range of 150 professions (list also including lower qualified professions) facing actual labour shortage.

29 A renewal of such permits was conditioned to a continuous employment for at least two years in one of the professional sectors with labour shortage.
In the future, the National Commission on the exceptional admission to residence\textsuperscript{30}, nominated in December 2007, shall standardise the decision-making of the prefectures concerned exceptional regularisations: the governmental advisory committee is charged to give recommendations on the criteria of exceptional admission to residence, as well as to submit an annual report evaluating the practical implementation of exceptional regularisations. Since the Commission was only recently set up, no report has been produced until present.

Since 1998 these exceptional regularisation mechanisms within the general legal framework have thus allowed to take humanitarian and human rights related individual cases into continuous consideration (see section 1.4; and Table 1.2).

1.2.5.2 Important policy factors and rationales

The political factors and rationales of collective regularisation measures in France can be characterised by several recurrent features:

- Collective regularisation measures were always closely linked to legislative changes and general shifts in immigration policies (as was the case in 1981, in 1997-1998, indirectly also in 2006); with immigration policy becoming a major electoral campaigning issue, these also corresponded to governmental changes; in that sense they have functioned as transitory measures, sometimes even as a laboratory for future policies, in a sense that they provided policy makers with information on the irregular migrant population and the applicability of designed policies (e.g. relevant criteria for regularisation, return programmes etc.).

- Situations of irregularity due to restrictionist policies and/or legal “gaps” or dysfunctions (long-term processing of asylum, legal limbo situations of neither expellable, nor legalised) became also a major driving force for regularisation actions: those mainly tried to attenuate and adjust “system failures”: this was the case with the situations of irregularity emerging from the conflict between application of human rights norms on the one hand (rights of private and family life, non-refoulement and protection from inhumane treatment), and policies denying such rights in practice (exclusion from residence permit, etc.); in this respect, the compliance with international human rights norms became a major rationale for regularisations.

- Often shifts towards more restrictive policies were compensated and attenuated by punctual, focused regularisation measures: e.g. the recognition of asylum seekers since the beginning of the 1990s, as well as the policies which made family reunion for third country nationals increasingly difficult in the 1990s, a policy further accentuated with recent immigration law reforms in 2006 and 2007.\textsuperscript{31}

\textsuperscript{30} It is composed of two qualified persons (representatives from the higher administration, presidents of the commission), two representatives from NGOs concerned with reception and integration of migrants (Forum Réfugiés, Centre d’Action Sociale protestante CASP), two members of parliament, one mayor, and four representatives of the executive (from Ministry of the Interior and Ministry of Immigration and Integration, Ministry of Foreign Affairs), all of them nominated by the Ministers of Interior and of Immigration. Decree of 12 December 2007 NOR: IOCD0771712A, published in the Official Journal 27 December 2007

\textsuperscript{31} The results of the Migrants Integration Policy Index (MIPEX) study indicates that the conditions for family reunion in France have worsened and place France on the lowest level in the EU 28 (Niessen et.al. 2007: 68-73).
Political contestation as a major factor
A typical feature of these collective regularisation actions is, that they all have been preceded and pushed by political protest mobilisation of migrants in an irregular situation and pro-regularisation pressure groups supporting their claims; in the 1970s pro-regularisation campaigns were supported mainly within the labour movement, then also to an increasing extent by human rights and migrants and refugees rights associations or more recently by citizens’ action committees. They played an important role in pushing governments to attenuate restrictive policies through regularisation programmes and in human rights centred agenda setting (Laubenthal 2007; Siméant 1998; Fassin et.al. 1997; Migrations Société 2006).

Especially the emergence of the Sans Papiers movement since 1996 (with the church occupation of St. Bernard of 300 African Sans Papiers) and the important political solidarity movement it provoked had a major impact on the regularisation policies adopted afterwards by the socialist government in 1997-1998. Since then Sans Papiers collectives organised on local and national level have continued to pressure for collective regularisation.

Again in 2005 and 2006 an important protest and solidarity movement based on citizens’ committees organised in the network Réseau Education Sans Frontières (RESF) developed around single cases of children and youths threatened by expulsion. The campaigning of the RESF has broadened the social basis of regularisation supporters beyond the actors normally concerned by the issue (such as humanitarian and migrants rights NGOs). The diffusion of the issue into the private lives of many citizens made it an issue of broader societal concern. As such it appeared as an agenda in the presidential elections in 2007.

The most recent contestations emerged around the issue of regularisation of Sans Papiers workers with an unprecedented strike movement in April 2008, supported and coordinated by the CGT (Confédération Générale du Travail) trade union. The strike action again drew attention to the issue of irregular migrant workers’ rights and the existing demand from a number of service sectors (the gastronomy sector etc.) for such kind of migrant labour.

The political contestation around the Sans Papiers issue(s) (of workers, families, refused asylum seekers) remains a crucial factor in French regularisation policies (and practice); in that sense, the social and political conflict mediation is another major feature of regularisation policies. Thus social and political contestation was a challenge for governments to adopt measures. Socialist governments were more inclined to respond to challengers and their claims than were conservative governments, though the latter could not overlook public opinion and civil society support for regularisation movements with a humanistic framing. The latter were however inclined to respond to economic interest groups, and to bring regularisation policies in line with its pursued selective labour immigration policies.

32 This was the case in 1973 and 1981 when protest mobilisation and hunger strikes of migrants lead to punctual regularisations, in 1991 (hunger strikes and demonstrations in many French cities) and 1996 (church occupations and hunger strikes of Sans Papiers).
33 The local support committees of RESF organised in schools and around families concerned. See RESF website http://www.educationsansfrontieres.org/
34 The organised strike movement coordinated by the CGT trade union started on 15 April 2008 in which initially 300 Sans Papiers workers participated, simultaneously occupying a dozen workplaces in five districts of Ile-de-France (Le Monde 15.4.2008; Libération 22.2.2008).
1.3 Implementation of regularisation programmes

1.3.1 Regularisation programme 1997-1998

1.3.1.1 Planning and decision making process

Aims of the programme
The implementation of the regularisation programme in 1997-1998 closely followed the electoral success of the socialist government, which announced a reform of the immigration policy and legislation, to be based on an expert report of Patrick Weil. In this context and as a response to the Sans Papiers movement of St. Bernard the socialist government envisaged a collective regularisation measure in order to urgently solve the “intolerable and inextricable” situation of irregular immigrants; it was designed as an urgency measure in anticipation of the later reform of immigration legislation.

The declared aim of the programme was to resolve irregular situations resulting from the contradictions in the immigration law in force, notably the effects of the Pasqua laws of 1993. As the then Minister of Interior Chevènement pointed out, the operation had the objective to end the situations of persons neither eligible to residence permits nor expellable (which concerned several tens of thousands of foreigners, above all parents of children with French nationality or born in France, but also spouses) (Hearing of Minister Chevènement, Senate report 1998).

The reform of immigration legislation adopted later in May 1998 (Chevènement law) also marked the official end of the regularisation programme. From then on, the new legal mechanisms allowed for the permanent and individual procedures of regularisation for the situations addressed by the regularisation programme. That way the reform should in the long run avoid the necessity of future collective regularisation programmes.

Actors involved in planning the programme
The programme was designed by the Ministry of the Interior in co-operation with the ministry of Labour and Social affairs (concerning the accompanying measures). Although migrants’ rights’ NGOs demanded the Prime Minister Jospin to be involved in the concerted definition of regularisation criteria in advance, there has been no consultation of civil society actors. NGOs were only associated in the process of implementation.

Target groups and definition of criteria
The criteria adopted for the regularisation operation (published in the circular of the Minister of the Interior 24 June 1997) to a large degree picked up the recommendations of the National Consultative Commission of Human Rights (of 12 September 1996)\(^35\), which were issued in reaction to the Sans Papiers movement of St. Bernard in 1996. In this respect civil society positions were considered, although the civil society actors (CNCDH, migrant’s rights organisations, Sans Papiers organisations) were not consulted in the definition of regularisation criteria\(^36\).

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\(^{35}\) The commission is composed of representatives from 33 national human rights, humanitarian and antiracism associations, 7 trade union and employer’s federations, and of 45 independent personalities (including religious representatives, university lecturers, etc.) and 7 experts represented in international Human rights organisations.

\(^{36}\) Representatives of Cimade regretted that the government had not involved associations and Sans Papiers collectives in a preliminary consultation on the criteria of the regularisation, which they considered as important in order to pacify the tensions and conflict situation. In that sense, they also proposed instances of mediation at local level to mediate in conflicts between administration, Sans Papiers organisations and NGOs (Interview Giovannoni, Cimade Senate Hearing 1998).
With the circular of 24 June 1997\textsuperscript{37} 11 different categories of eligible\textsuperscript{38} migrants as well as the respective criteria for regularisation (which differed for each of the categories) were established.

The immigrants targeted with this programme were in the first instance family members in irregular situations (in principle entitled to rights to family life, including spouses, children and parents of children with French nationality or born in France), mainly those having entered the country outside the regular channels of family reunification procedures. But also humanitarian situations, such as rejected asylum seekers (which were confronted with serious risks to their life in case of return to their home country and thus were protected from expulsion for human rights reasons, especially Algerians\textsuperscript{39}) or seriously ill persons (for which treatment in the home country was not accessible). However, the regularisation was also eligible for irregular migrants without family responsibilities and ties in France as well as for students, although their regularisation was subjected to more demanding conditions.

According to the categories of migrants eligible to regularisation different criteria for admission were imposed: the required length of residence in the country was longest for single migrants without family dependants (minimum residence of seven years), and reduced for family members (five years of residence in the case of spouses of foreigners in a regular situation; undetermined ‘several years’ for long-term established foreign families).

Instead of length of residence the condition of a minimum period of marriage of one year (and marriage before the date of the circular 24 June 1997) was imposed for spouses of French nationals, spouses of foreign nationals and of refugees.

Integration criteria were important for the regularisation of foreigners without family dependants, but also in the case of long-term established foreign families: they were applied with respect to proof (for the former period of stay) of economic “resources resulting from a regular activity”\textsuperscript{40} and adequate accommodation, and moreover compliance with tax obligations. For long-term established families, the school enrolment of children was also taken into account (see Poelemans & De Sèze 2000: 322).

For all categories a threat to public order (in terms of criminal record, police reports) constituted a reason for exclusion from regularisation (or in the case of ill persons for limiting their residence permit).

\textsuperscript{37} Circular of 24 June 1997 (Circulaire relative au réexamen de la situation de certaines catégories d’étrangers en situation irrégulière, NOR : INTD9700104C)

\textsuperscript{38} 1) spouses of French citizens; 2) spouses of foreigners in regular situation; 3) Spouses of recognised refugees; 4) Long-term established foreign families; 5) Parents of children born in France; 6) Children (over age of 16 or of full age) having entered France outside of family reunion; 7) Minor children having entered France outside of family reunion; 8) rejected asylum seekers /persons not recognised as refugees which could face vital risks in case of return to their country of origin; 9) seriously ill persons; 10) foreigners without family dependants; 11) students (which have been refused a residence permit)

\textsuperscript{39} The circular allowed for a regularisation of “persons not having the status of political refugees who might face serious risks in the event of return to their country of origin, in particular from third parties rather than from the legal government”. It focused especially the case of Algerian refugees (fleeing from civil war and violence of Islamist groups), at that time no subsidiary protection status existed for refugees (fleeing risks other than those recognised by the GFK). The circular distinguished in that case between Algerians and other nationals: applications of Algerians were to be examined by the Department of liberties and legal affairs (Ministry of Interior) before a decision to be taken on their regularisation (see Poelemans & De Sèze 2000: 323).

\textsuperscript{40} Income from an activity carried out in a declared company and lawful activity.
1.3.1.2 Implementation

**Practical organisation of procedure**

The organisation of the regularisation procedure built on former experiences, but in some respect applied new arrangements, especially concerning the accompanying measures and the return programme.

The regularisation took place on a *decentralised administrative level* – in the competence of the prefectures of the regional departments (of residence of applicants). As the measure was initiated by administrative circular (which is not legally binding) the prefectures were at liberty to use their discretion in its application. It was generally operated via an *application procedure* (based on a written application form and documents of proof required from migrants) at the prefectures, which in practice was organised differently in the various departments – e.g. concerning the documents that had to be procured for justification of residence, work etc.

A personal interview with each applicant was obligatory, in case he/she did not follow the invitation the application was considered as withdrawn. (In some departments non-response to interviews attained up to 15%). The applicants could be assisted by a person of his/her choice or otherwise by an interpreter.

The administrative decision procedures also guaranteed *procedural rights* to applicants: the right to a motivated (written) refusal decision, the right to appeal against the refusal of regularisation (within a period of two months from notification of the refusal decision) \(^41\). However, the non-legal character of the circulars also limits the possibilities of appeal, since a decision cannot be appealed as not conforming to the criteria (that have no legally binding force). The circular did not specify a moratorium of expulsion during the regularisation procedure. However, the prefectures were advised to suspend the enforcement of removal measures.

**Monitoring of the implementation process**

An innovation with respect to former regularisation procedures was the organisation of internal monitoring of the procedure. The government nominated a representative from the higher administration (section president of the administrative High Court *Conseil d’Etat*), Mr. Galabert, to monitor the implementation; he was charged to regularly inform and consult the government in the event of problems or difficulties arising during the process. The monitoring should serve also as a means to harmonise application practices all over the territory. He could also be addressed directly by concerned migrants.

**Involvement of NGOs**

Migrant’s counselling NGOs (such as Cimade, GISTI, LDH, MRAP….) have been implicated in the procedure above all in the information of concerned migrants about the criteria and procedure, since the government did not organise an information campaign on its own. NGOs were involved by ministries (information meetings about criteria and application of the circular) as an information interface between authorities and the concerned population. Some NGOs also were in dialogue with the local prefectures, which informed the associations on the implementation of the circular.

For example Cimade organised collective information meetings (in Paris six per week with 50 to 100 participants) and issued information leaflets to inform about the regularisation procedure and criteria. GISTI also issued information brochures. Later the legal assistance by NGOs also used their legal assistance to lodge appeals (recours gracieux) against refusal decisions. To a

\(^41\) Three forms of appeal are possible: an application for review of the decision at the prefectures (= recours gracieux); an appeal to the higher administrative authority the Minister of the Interior (= recours hierarchique); and the contentious appeal at an administrative High Court (= recours contentieux).
certain degree migrant counselling associations were also involved in the monitoring process, by informing the officially nominated observer on problems occurring during the process.

**Timeframe**

The general application period was limited from the date of the circular, 24 June, until 1 November 1997 (approximately four months), but for certain categories of migrants – like spouses of recognised refugees, (not recognised) refugees invoking serious risks in the event of return to their country of origin, ill persons, students and children from a previous marriage who entered outside family reunification - an exceptional and extended application period until the entry into force of the new legislation (Chevènement law, May 1998) applied.

A high number of applications (143,948) was registered until the first deadline (in November 1997). The applications were concentrated in some departments and prefectures (with a generally high immigrant population), as Paris and Île-de-France, in the North (Nord, Haute-Normandie), the departments of Rhône and Rhône-Alpes and in the South (Bouches du Rhône) (Ministry of the Interior 1999:78).

As of the extended application period for certain migrant groups and time-intensive examination procedures (interviews, proof etc.) the processing of all applications extended into the whole year of 1998 (end of April 1998 75% and as of 31 December 1998 about 98% of the applications had been processed).

**Resources and costs**

The implementation process was organised with additional staff recruited for the operation.

In certain departments with considerable numbers of applications the resources were not sufficient. Additional temporary personnel was recruited in 33 prefectures, they were only employed in the reception and constitution of applications, but not in the procedure of assessment of applications. They received initial training of one week up to 10 days (worked on basis of short term contracts of 3 months, most time students or academics) (Masson & Balarello 1998: 50). Additional personnel were provided by the state authority OMI to compensate staff shortages.

The budget expenses of the Ministry of the Interior for the regularisation operation have been calculated roughly with 6,097 Mio. € (40 Mio. Francs), a calculation which did not cover the overall costs.

On the other hand (regularised) migrants finally also contributed to the bureaucratic costs with the obligatory fees of regularisation. Given the fees fixed in the circular the total migrants contributions could be estimated with 17,4 Mio. € (own estimate, based on the number of 87,000 foreigners regularised multiplied with an approximate fee of 200 € per person).

**Difficulties in the implementation process**

Major difficulties in the implementation process resulted from a heterogeneous application of the circular (procedural practices and interpretation of unspecified requirements e.g. resources)

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42 It included supplementary hours for staff, remunerations for additional staff recruited and material costs, not included were calculations of costs for the working time of the personnel of the regular services of foreigners (Masson & Balarello 1998: 48).

43 In order to finance the bureaucratic costs of regularisation foreigners regularised had to pay fees (essentially to cover costs of the medical examinations and contribute to administrative costs of issuing permits). Generally, 1300 francs or 198,2 €, in addition stamp duties for residence permits (220 francs or 33,5€) (exceptional reduction of fees were provided for destitute persons); fixed sums for families (266,8€) (see Poelemans /De Séze 2000: 328-329)

44 The documents of proof required varied according to prefectures: most prefectures adopted lists of documents necessary for justification of length of presence in France, matrimonial status, employment
at the regional and local level. The complexity of the circular (different criteria according to
different categories) and the lacking transparency of certain criteria added to such problems.

Some criteria were further specified or modified (via administrative circulars and internal
directives) during the procedure: For example in the case of spouses of French nationals
supplementary directives (6 August, 30 September, 20 November 1997) made the requirements
concerned the length of matrimonial ties more flexible and in practice eased the conditions. This
resulted in a variable practice of prefectures in assessing the duration of marriage (see

Major difficulties occurred with regard to the means of proof required: For applicants it posed
considerable obstacles to prove certain conditions, such as the residence period and former
employment (especially certificates proving employment were difficult to obtain), but also the
presentation of medical certificates (ill persons) encountered certain difficulties. The prefectures
frequently doubted the authenticity of presented documents of justification (especially pay
rolls, medical attestations, Masson & Balarello 1998: 35). The verification of proof documents
thus slowed down the processing.

*Accompanying measures of the programme*

The government (in the competence of Labour and Solidarity ministry) also set up
accompanying measures (follow-up measures), on the one hand to assist the social integration
of the regularised population, on the other hand to promote assisted return for those refused
regularisation. Both accompanying measures were de facto only implemented after a certain
delay and during the regularisation operation: the social accompanying measures in October
1997, the voluntary return assistance programme in January 1998.

1) Social accompanying measures

The government attached an important role to the implementation of social accompanying
measures in view of the integration process of the regularised persons. A special procedure was
set up in order to survey the needs and to facilitate the access to social services and support
for the regularised migrant population. The results of the surveys were sent to the local social
services and administrations (Directions départementales des affaires sanitaires et sociales
DDASS) in the department of residence of the beneficiaries, to take action as appropriate. The
social services had to inform and report regularly (every month) to the Labour ministry (DPM)
about the progress of accompanying measures and problems encountered. A further objective
was to inform regularised immigrants about their social rights and access to social benefits.

The regularised migrants also had to contribute to the financing of these measures (by fees for
the permits and obligatory medial examination at the state office OMI). Concerning the impact

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45 One year of marriage counted from the date of decision (instead of date of circular), but also possible in
cases where close to one year
46 In case of doubt (marital community, family situation) the authorities could initiate police
investigations (criminal record) or consult the public social aid services.
47 Fixed in the circular of 24 June 1997, modalities defined in circular n° 686 of 21 October 1997 by the
Minister of Labour and Solidarity, DPM
48 It included interviews among the regularised migrants (questionnaire designed for the operation)
carried out at the occasion of the medical examination at the state office OMI (taking place after
regularisation) to survey their social situation and their needs for social assistance (concerning housing,
social security, family benefits, health care, employment, qualification training, French courses,
alphabetisation, adaptation to local life, school enrolment of children).
on the social welfare budget (family related allowances; health insurance) the Minister of Labour expected no major costs.

The survey concerning needs for social support among regularised migrants found that about half of the regularised migrants (included in the survey, of which two third were not employed at the moment of regularisation) wanted some kind of support by public social services, and most of these demands for support concerned housing, professional qualification and employment, to a minor degree also French language courses and social security (Neyrand 2000: 5-7).

2) Return assistance programme

The second accompanying measure implemented in January 1998 was a modified return assistance programme (circular of 19 January 1998), which increased the sum of financial return assistance paid to migrants obliged to leave after a refusal of regularisation.

As the responsible minister of Labour, Martine Aubry, outlined in the senate hearing, the government gave priority to a voluntary return over a forced removal, in order to guarantee a human rights conform and socially, economically correct return process.

Migrants who were generally obliged to leave the country within one month after the notification of their refusal could within the same period (one month) apply for the return assistance (on which they were informed in the notification of the refusal decision). In that sense, the enforcement of removal (by eviction orders) was suspended until end of April 1998, in order to give to non-regularised migrants the possibility to apply for return assistance.

In practice the programme was not in very frequent demand during the operation (that is in the short delay of one month after the refusal), which can be explained by the fact that many migrants’ first choice was to appeal against the refusal decision first (appeal possible within a delay of two months), before they would definitively envisage a return and apply for return assistance. As migrant NGOs remarked, the overlap of delays for application (before a possible appeal procedure) in many cases rendered the application for voluntary return assistance impossible.

49 Concerned the impact on social security budget a provisional estimation provided by the public Family allowance fund/insurance (CAF) estimated the expenditure for regularised families at 190 Mio. Francs (28,9 Mio. €) over the year (including also housing aid and 3,8 Mio.€ RMI social allowances), which represented 0,08% of the overall expenditures of the CAF. Concerning the health insurance expenses the minister of Labour did not expect any additional costs, but rather a benefit, resulting from the fact that the regularised migrants will contribute to the health security system. The costs for general health expenditure were estimated with 300 Mio. Francs (45,7 Mio. €), an amount equivalent to the annual expenditure for general medical assistance for irregular migrants.

50 Already with the regularisation programme for refused asylum seekers in 1991 a similar return assistance programme has been implemented. The return aid provided of an administrative and financial aid of 4,500 francs (686€), plus 900 francs (137€) per child, paid in two instalments at departure and in the home country.

The preparation for return of migrants was complemented by further measures of social and psychological accompanying measures, which have been assured by the state office OMI and non-state associations or organisations on the basis of public-private agreements (about 75 such agreements signed in May 1998, Hearing Minister Aubry, Senate Report 1998).

51 A decision of refusal was coupled by a request to leave the country (Invitation de quitter la France IQF) within one month from the date of notification of decision, which in case of subsequently could be enforced by an eviction order (Arreté de reconduite à la frontière – APRF). An appeal against the refusal decision did not have suspensive effect on the enforcement of removal. But internal administrative directives advised prefects to postpone eviction orders (APRF) in case of appeal procedures underway (Poelemans/De Sèze 2000:332). According to internal directives, in practice APRF have been issued from 24 April 1998 onwards. Persons whose regularisation was dismissed and who had lodged an appeal between 24 September 1997 and 24 April 1998 could stay in France during the appeal procedure.
During the whole year of 1998, in sum 887 migrants left the country with return assistance (Regnard/DPM 2006: 145).

1.3.1.3 Evaluation of the implementation process

**Political evaluation**

An evaluation of the regularisation procedure was at first undertaken on the political level by a parliamentary (Senate) enquiry commission upon the initiative of the political opposition (Masson & Balarello 1998). The evaluation took place during the implementation process and was terminated before the regularisation operation had ended and final results were available.

The commission was generally very critical of the regularisation measure as such, as it qualified a massive regularisation programme as the wrong policy instrument of migration management.

The report pointed to several shortcomings and dysfunctions of the implementation procedure: it criticised the long duration and the time delay of the procedure (caused by appeal procedures and administrative difficulties to process the high number of applications); it criticised that the return programme and the social accompanying measures were applied too late and inefficiently, which had contributed to unequal access of migrants to such assistance programmes. In the centre of its critique was the lack of effective removal of migrants who were not regularised, which would imply the toleration of a sizeable number of irregular migrants. Thus it concluded that the programme would incite irregular migrants to stay (in expectation of a future regularisation) and attract new candidates to immigrate.

**Evaluation by NGOs and the Human Rights Committee**

Migrants rights NGOs evaluated the regularisation procedure as insufficient with regard to the regularisation of the irregular migrants with no family dependants (single migrant workers). They criticised that the programme had failed to regularise an important number of persons without family ties, despite their long-term presence and integration, and in particular former asylum seekers (Senate Hearing Cimade, Masson & Balarello 1998, report part 2: 168).

With a view to the high refusal rate among single, irregular migrant workers (who were only to a minor degree regularised within the programme) and the collective protest action (including hunger strikes) of concerned *Sans Papiers* it provoked, the *National Consultative Committee on Human Rights* (CNCDH) in July 1998 addressed recommendations to the government: It proposed the re-examination of these refused applications for two reasons, in his opinion the regularisation criteria and practice had unjustly disadvantaged certain categories of migrants (single migrant workers), and secondly it observed an unequal treatment of applications (of persons in identical situations) in different prefectures, considered as not conform with the equality principle (CNCDH, avis July 1998).

With regard to the significant number of rejected applicants to the regularisation measure, the committee argued that it would neither be practicable, nor desirable to expel several thousands of persons, and moreover held it not acceptable to confine them for an indefinite time in a situation of clandestinity and despair.

1.3.2 Regularisation programme for families and children 2006

1.3.2.1 Planning and decision making

**Aims of the programme**

The regularisation programme for families launched by the then Minister of the Interior Nicolas Sarkozy in June 2006 was pushed on the political agenda already in 2005 by the citizens.

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52 Avis concernant les conditions de réexamen des dossiers des « Sans Papiers » déboutés, 3 juillet 1998
committees of RESF. The citizens’ solidarity movement, organised in the network Réseau Éducation Sans Frontières (RESF), gained strength in autumn 2005 with the support and mobilisation around some individual cases of children threatened by expulsion, strongly covered in the media (CIMADE 2007: 3). Then the Minister of the Interior suspended (via a circular published in October 2005) further expulsions of children attending school and their families in an irregular situation until the end of the school year (June 2006). The mobilisations of citizens’ committees for a right to stay for concerned children, youths and their families intensified during the school year and as the end of the expulsion moratorium approached. It coincided with a parallel broader opposition movement against the government immigration policies (immigration law reform 2006).54

The objective of the regularisation measure was to find a humanitarian solution (re-examination of situation) for those families with children in an irregular situation whose removal procedure had been suspended (until the end of the school year 2006).

However, in conformity with its firm position on irregular migration and towards collective regularisation, the government was particularly anxious to avoid a broader regularisation measure and to limit the measure to a narrow target group of families with strong ties and integration in France.55

**Target group and definition of criteria**

Only shortly after the public announcement of a possible regularisation for families (6 June 2006) the Minister of the Interior issued a circular that determined six criteria (circular of 13 of June 2006)56 and the modalities of the regularisation procedure.

No external actors have been involved in the definition of criteria for the regularisation process.

The circular defined families with minor children enrolled in school and living in France since birth or childhood (before the age of thirteen) as eligible for regularisation; furthermore it imposed the condition of at least two years presence of one parent in France, and school (or kindergarten) inscription of at least one child since September 2005 (or before).

Besides the formal criteria (of eligibility), the authorities’ evaluation of the children and parents’ integration should be based on the exclusiveness of ties the children have in France (absence of ties with the country of which they had citizenship); the parent’s effective contribution to child support and education; the “real will of integration of these families” to be evaluated on the basis of French language competence, education of the children, the school performance of children and finally the absence of threats to public order (Circular 13 June 2006).

Especially the integration related criteria were vague (“real will of integration”, “absence of ties of child in home country”) and strongly dependent on subjective interpretations on the part of

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53 A petition of RESF was launched in February, support via “republican sponsorship” of children and families by citizens and politicians, and protest mobilisations and demonstrations for regularisation and against expulsion of children and families.

54 The parallel immigration law reform (CESEDA, law Sarkozy II, July 2006) also had fuelled protests among a broad alliance of civil society actors (united in the protest alliance UCIJ) supported by the left wing political opposition parties against the immigration policy reform. The law reform at the same time intended to further restrict the possibilities of family reunion for third country nationals.

55 As the Minister of the Interior stated it was necessary to “avoid the impression that everyone who comes to France and whose children are enrolled in school, will be regularised later on” (Sarkozy, Libération 6.6.2006); Prime Minister Dominique de Villepin underlined that the operation should combine “humanity and strictness” (humanité et fermeté), and at the same time exclude “a massive regularisation”; otherwise the operation would risk to give a “wrong signal” (Villepin, Libération 29.6.2006).

56 Circular N°NOR/INT/K/06/00058/C;
administrative authorities, and in practice allowed for a highly flexible scope of decision for the authorities.

The circular explicitly excluded asylum seekers in the Dublin procedure from application.

1.3.2.2 Implementation

**Practical organisation of procedure**

The regularisation procedure has been organised in the usual manner via administrative circular giving the guidelines (though not legally binding for authorities), based on a written application and an individual examination of the situation (proofs, assessment of integration) within the competence of the regional prefectures. This time a personal interview was not obligatory, though in practice prefectures relatively often applied it.

An “external national mediator”, the lawyer Arno Klarsfeld was nominated by the Minister of the Interior with a mission of arbitration and mediation in difficult and litigious cases between applicants and the administration (he could also be addressed directly by families concerned in order to intervene with the administration in favour of humanitarian cases); he defined his role as to monitor that children which had their main or exclusive attachment in France were protected from expulsion (Libération, 29.6.2006; Le Monde, 23.8.2006).

The regularisation programme was accompanied by two measures: on the one hand the end of the moratorium of expulsions for families (established by the circular of 31 October 2005), on the other hand a specific return assistance arrangement for families in an irregular situation. The regularisation programme guaranteed neither any residence status nor protection from expulsion during the procedure, thus making applicants vulnerable to expulsion.

As in earlier regularisations the operation was coupled with a return assistance programme; but in contrast to previous regularisation operations (in 1997-1998), the return assistance was designed as an alternative to the regularisation process, not as an ex-post measure to assist return in the case of refusal. This meant that applicants were informed systematically on the return assistance options before their application and were obliged to renounce to return aid before applying for regularisation.

In order to encourage migrant families to return voluntarily, the amount of financial assistance was doubled (for applications during the period of the regularisation programme⁵⁷). There are no data available on the number of migrant families that accepted the voluntary return assistance proposed in the framework of the programme.⁵⁸

**Timeframe**

A short timeframe of two months for filing the applications (from 13 June until 13 August 2006) and for the processing (decision-making) of the operation (until September) has been set, the latter justified with the necessity to clarify the status of families and children before the beginning of the new school year.

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⁵⁷ The voluntary return assistance normally includes an amount of 3,500 € per couple and additional 1000€ per minor child (until the third child, for each further child 500€). During the period of the programme it was doubled and made up 11.000 € for a family with two children.

⁵⁸ In 2006 1,991 persons returned with the financial and administrative assistance of voluntary return programme (ARV Aide au retour volontaire), thereof 1 434 heads of family or single persons and + 557 spouses and children. The principal nationalities of migrants returning with the programme were Chinese, Algerian, Moldavians, Bosnians, Serbs, Russians and Malians. Including also those returned with the humanitarian return programme in sum 2,539 persons benefited from return assistance (ARV and humanitarian return programme) in 2006 (CICI 2007: 123-127)
An unexpectedly high number of migrant families applied\(^{59}\); the important media coverage and the strong and effective support mobilisations of RESF fuelled expectations of a generous regularisation action among migrant families concerned.

The sizeable number of applicants (in total 33,538 applications) made visible the dimension of the problem. The applications were once again mainly concentrated in the bigger cities and agglomerations (Paris and Île-de-France, Lyon, Marseille).

**Resources and difficulties**

Due to the ad hoc character of the regularisation measure and the expected small-scale operation, no specific organisational resources were prepared.

In the first weeks of application for regularisation major difficulties resulted from staff shortages (also due to summer holidays) and an unexpectedly high number of applications: this was especially the case in some prefectures where most applications were filed. In some prefectures this resulted in an improvised management of the operation in the first three weeks, until additional temporary staff was hired. The consequence were long waiting lines before the prefectures, insufficient reception facilities to carry out personal interviews, personnel not sufficiently qualified (foreigners law administration) in several localities. Especially in the big cities (Paris region, Marseille, Lyon), confronted with an important influx of applications, the prefectures faced problems to process applications within the given short time limit of the operation.

Besides organisational difficulties also significant disparities in the application and interpretation of the criteria were observed depending on the prefectures: this concerned primarily a variable application of criteria for eligibility, the requirements of documents of proof, different practices concerned interviews\(^{60}\), etc.

Some prefectures excluded applicants on the basis of nationality: in the department Hauts-de-Seine applications of Romanians were refused with the argument of Romania’s upcoming EU accession; in Paris nationals from “safe countries of origin”\(^{61}\) have been excluded (Cimade 2007: 22).

The Minister of the Interior intervened in the middle of the process to harmonise the practice (giving internal directives to the prefectures on the common application of criteria)\(^{62}\).

Although the number of applications far exceeded the initial expectations, and attracted a far greater public than the families already known to the authorities, the timeframe of the operation has not been extended. The operation was officially closed in September and the final results announced (with only 6,924 regularisations of the overall 33,500 applications), despite the fact that a certain (unknown) number of the applications were still in the course of examination and no decisions taken. The communication of the final results certainly played a role with view to the political message of the programme (limiting the extent of the regularisations to humanitarian cases, at the same time demonstrating firmness against irregular immigration).

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59 The prefectures initially spoke of 800 families (about 1200 adults) concerned by the measure (Cimade 2007: 3). On the 8 of June Minister Sarkozy estimated the number of persons concerned by the regularisation with approximately 2,000 persons, which would represent about 25 percent of the cases known to the administration, means 8,000 persons in total (Vanneroy 2007).

60 e.g. some prefectures realised in-depth interviews, others with assistance of social workers, others only formal interviews to verify documents, the possibility to be accompanied by a representative of associations or a sponsor during the interview has not been allowed in all prefectures (Cimade 2007: 14)

61 This was the case with a circular from 30 June that specified that foreigners from safe countries of origin were excluded.

62 For example, it was clarified that all criteria had to be fulfilled (cumulative).
Involvement of civil society and migrant advocacy associations

Migrant’s advocacy and legal counselling organisations (in particular Cimade) and the citizens committees RESF have obviously played an important role in the implementation of the programme: They supported the families with preparation of applications, also via the organisation of collective applications.\(^63\) (Cimade 2007:10).

Furthermore, they had an initiative role in monitoring the regularisation process (Cimade and activists published a monitoring report afterwards), and organised a help service for concerned families during the regularisation procedure.\(^64\)

The Cimade and RESF addressed the independent anti-discrimination institution HALDE (Haute Autorité de Lutte contre les Discriminations et pour l’Égalité) in mid-July to demand its intervention concerned the procedure.\(^65\) The HALDE on 4 of September addressed a letter to the Minister of the Interior as a reminder of the principle of equal treatment concerning the regularisation of migrants in similar situations.

In view of the high refusal rates for regularisation, migrants advocacy NGOs and RESF continued their support of immigrant families, by assisting legal appeal procedures\(^66\) and by political mobilisations (via petitions), notably against the expulsion of families.

1.3.2.3 Evaluation of implementation process

The regularisation measure was contested on a political level: the NGO Cimade and RESF launched a petition demanding a parliamentary enquiry to clarify the conditions of application of the circular\(^67\). The three parliamentary opposition parties (Socialists, Greens, Communists) supported a resolution to establish a parliamentary commission on the regularisation operation, which was not successful.

The Cimade initiated a “citizen’s enquiry” report, based on observations and monitoring of NGO staff, activists of support networks and concerned migrants during the operation, to evaluate the implementation process (Cimade 2007). It is until present the only evaluation report of the programme.

The Cimade report was extremely critical of the procedure; it observed above all shortcomings and dysfunctions in relation to a heterogeneous application of criteria and unequal treatment of applications depending on prefectures and date of application (due to a more restrictive practice in the second half of the operation after the readjustment of internal directives to prefectures by the Minister).

\(^{63}\) Three collective actions were organised by RESF in Paris (the 5 July, when they were received by Yannick Blanc, Director of the general police at the prefecture of Paris, on the 26 July and the 4 August. In Paris 1360 single applications in Paris have been lodged by way of such collectively organised actions (Cimade 2007: 10).

\(^{64}\) As part of its campaign « Assez d'humiliation ! » the Cimade established a national advice service (help telephone line) during the summer for the families, youth of full age but still attending school and persons threatened by expulsion. The Cimade supported the locally established monitoring networks of the RESF, and covered all departments. More than 1000 demands for information, counselling and emergency cases were received, and in many cases local RESF mobilisations to protect migrants from expulsion and media alerts were started via the network. Only a few expulsions of families or youth of full age were realised during summer. (Cimade, Actions de la Cimade, dossier de presse au 19 septembre 2006)


\(^{66}\) As NGOs reported a majority of gracious appeals against refusal of regularisation (to the prefectures and Minister of the Interior) had remained without response, and thus were refused (Cimade 2007: 5).

\(^{67}\) The petition launched in September 2006 has been signed by 16,000 citizens, associations, collectives and trade unions within several months, see www.placeauxdroits.net
1.4 Qualitative and quantitative outcomes

The assessment of quantitative and qualitative outcomes of programmes is difficult to compare over time since programme target groups (criteria) changed, statistical data and evaluations of outcomes were often not comprehensive and fragmentary (also related to a sometimes selective information policy of governments on regularisations); also impact studies have varied in scope, representativeness and focus.

Official statistical data on regularisation in general do not cover an evaluation of the whole process (including outcomes of appeal procedures or data on withdrawn applications). The outcomes of large scale programmes of 1981-1982 and of 1997-1998 have been explored by follow-up studies, most commissioned by the Ministry of Labour (DPM) (1981-1982 programme: Cealis et.al. 1983; Marie 1984; 1997-1998 programme: Thierry 2000; Neyrand & Letot 2000; Simonin & Brun & Laacher & Gomel 2001). In general, studies on the long-term effects of regularisation programmes are missing (e.g. concerning the employment integration, the stability of the regular residence/renewal of permits, etc.). Neither are data available on previous legal status (reasons for irregular status).

For the small-scale programme in 2006 only provisional, fragmentary statistical data and no evaluation of final results of the programme are available so far. Thus a detailed analysis of outcomes (in relation to number and characteristics of regularised population etc.) is not possible.

Statistical data on the permanent exceptional regularisations (apart from programmes) have been published by the annual reports on immigration policy and reports on the immigrant population (CICI 2007; Regnard/DPM 2006).

A recent survey among the newly admitted immigrant population (in 2006) also covered the regularised population (making up 36% of the sample). It provides results on the socio-demographic characteristics, national origin, employment and housing situation of the regularised population (Bèque 2007).

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68 On the outcome of appeal procedures no data have been published. According to NGOs supporting the appeals of refused applicants, appeal procedures to a large extent remained without response or confirmed negative, only a small proportion was regularised (see GISTI, http://www.gisti.org/doc/bilans/1998/3-3.html)

69 The statistical evaluation of the characteristics of applicants and regularised population was done by the national demographic institute INED. It provided a correction of the statistical data on applications (correction of double counts of applications) to 135,000 applications (instead of the official number of 150,000) and calculated the number with 87,000 regularised persons (including also minors).

70 Survey conducted among a sample of 29,074 regularised immigrants (carried out at the medical examination at the office of OMI, between November 1997 and June 1998); Chinese migrants were underrepresented in the sample, some regional departments were overrepresented – such as the Paris region, Bouches du Rhone and Nord - compared to the overall regularised migrant population; other socio-demographic characteristics were roughly the same as of the total regularised population. The study focussed on an evaluation of the social situation and of needs for integration assistance of the regularised population.

71 The sociological study on the impact of regularisations on the social and employment situation and careers of regularised migrants was carried out in a period of one to two years after the end of the regularisation programme (from November 1999 until August 2000). It was based on 100 in-depth interviews with migrants regularised and personnel of institutions and associations involved (justice, police, labour inspection, social security services, local administration, trade unions, migrants assistance associations), and a questionnaire survey among a sample of 207 migrants regularised (in the regions of Île-de-France and Provence-Alpes-Côtes d’Azur PACA). The sample matched the overall regularised population with view to the main nationalities represented (a majority from African countries: over one third from Maghreb; one third from sub-Saharan Africa; with 57% men were overrepresented in the survey sample compared to overall regularised migrants).
Based on these heterogeneous sources we will give an overview on the
• general quantitative indicators of regularisations
• social characteristics of the regularised population
• and as far as possible also impacts.

1.4.1 Outcomes of regularisation programmes

1.4.1.1 Outcomes of programme of 1997-1998

Regularisations according to main categories
As statistical data of the Ministry of the Interior\textsuperscript{72} indicate, 72 percent concerned regularisations based on family ties, 20.7 percent concerned long-term established foreigners without family dependants, only small proportions concerned foreigners with an illness (4 percent), humanitarian cases (of persons whose life was at risk in the case of return to their home country, 2 percent) and students (1.6 percent).

Regularisation rates
According to diverse statistical sources the average final regularisation rates were calculated between 58 and 64 percent (INED, Thierry 2000). Provisional statistical evaluations (Masson & Balarello 1998: 38\textsuperscript{73}; Ministry of the Interior 1999) indicated that regularisation rates varied significantly on the regional level (departments), which reflected not only a different structure of the resident irregular migrant population, but also heterogeneous administrative regularisation practices.

The regularisation chances (rates) of women were higher than those of men (77 percent vs. 52 percent), and married migrants with family ties were far more likely to be regularised than unmarried individuals (without families), which generally corresponded to the focus criteria and target group of the regularisation programme (Thierry 2000: 207).

Socio-demographic characteristics
Nearly half of the regularised population were women (49 percent; women constituted about 40 percent of the applicants, see Thierry 2000: 202).

A majority of the regularised population was aged between 25 and 40 (only 19.2 percent were under the age of 26).

Concerned their matrimonial and family situation, the majority (of 57 percent) lived or had lived in couple (married, living in couple, divorced), most of them had children in France (but most of these children were not concerned by this re-examination); it was rare that the partners (spouses) were also concerned by a irregular situation and re-examination (in one third of cases). A relatively high proportion (17 percent) of the spouses had French citizenship (Neyrand 2000:3).

\textsuperscript{72} On the basis of 143,948 applications (registered until the official deadline of 8 November 1997) of which 98,4 percent had been processed at 31 December 1998 (including the appeals dealt with at ministerial level). The number of residence permits issued was 79,549 (that was 56 percent of applications). (Ministry of the Interior 1999)

\textsuperscript{73} A disparity in regularisation practices (rates) has been observed: whereas certain departments had regularisation rates above the national average (58%) which was the case in Paris with a rate of 80.6% (Paris had the highest absolute number of applications and also regularisations), in Yvelines (85,4%), in Bouches-du-Rhône (61,6%) and Alpes-Maritimes (63,6%). On the contrary, rates of regularisation below the national average were registered in Seine-Saint-Denis (42,5%), Val d'Oise (45,7%), in Hauts-de-Seine (47,6%) and in Val-de-Marne (48,3%). (Masson & Balarello 1998: 38)
Nationalities
The nationalities most represented among the regularised migrants were citizens from Maghreb countries with nearly one third, citizens from diverse sub-Saharan African countries – above all Malians and Congolese - with approximately a quarter, and citizens from China with (11 percent) and Turkey (4 percent) (Thierry 2000; Ministry of the Interior 1999). The Chinese immigrant population were “newcomers” of regularisations compared to former programmes, and they were mainly concentrated in the Paris region (where the majority of the Chinese immigrant community lives).

Duration of stay
The average duration of stay of the regularised was six years (before regularisation): the period of stay was longer for migrants from Mali, Senegal and Cape Verde (more than seven years), and shorter for Turkish, Chinese and Algerian migrants (about five years) (Thierry 2000: 207).

The survey among the regularised population (Neyrand & Letot 2000) also highlights the relatively long duration of stay of migrants before regularisation: More than half of the regularised population (52.4%) surveyed had stayed in France for a period from 6 to 10 years, and further 18.6% since more than 10 years, only 29% had stayed less than 6 years in France.

Employment situation
The follow up study on the regularised immigrant population (Neyrand & Letot 2000) provided further information with regard to the employment situation of regularised immigrants: of the survey sample only one third (31%) was in employment at the time of regularisation (and half of the not employed respondents were searching an employment).

Impact on employment careers of regularised migrants
The study of Simonin et.al. (2001) showed that in a period of two to three years after the regularisation the employment situation and distribution of employment sectors (except from services in private households) of the employed migrants remained stable. 54% of those employed only had one employment after their regularisation. One third of the employed have stayed with the same employer as before their regularisation. They worked in a limited range of employment sectors (construction, domestic services, restaurant, clothing, agriculture, and services for enterprises; Brun & Laacher 2001: 103). The survey found an improvement of employment conditions for the majority of regularised (of five from six cases): above all concerning a reduction of working hours, the regularity of payment, and an increase in wage levels. These improvements have been more important for those who changed their employer after regularisation (4/5 voluntarily changed employer, motivated primarily by wish to have a registered employment). More than half of the employed had an unlimited employment contract (CDI).

Impact on residence security of regularised migrants
The same study found that all of the interviewed had their permit renewed; in practice the rate of renewal in the Paris region had been nearly 100% (according to administrative sources). The process of renewal (of another temporary permit) has been quasi-automatic (Brun & Laacher 2001: 5-6).

Assessment of effectiveness in reducing stock of irregular immigrants
Considered the relatively high refusal rate of regularisation and an estimated final number of 48,000 migrants that were not regularised (Thierry 2000: 2001) the operation has only partly been effective in reducing the stock of irregular migrants present.

74 Two thirds of the sample already worked before their regularisation and still worked at the moment of the survey (only 10% of those working before their regularisation were seeking a job at time of the survey); 15% were seeking for a job, only 6% were out of the labour market (inactive) at the time of the survey.
A large proportion of the irregular migrants applying were unmarried men (42,283, see Thierry 2000: 2002), thus not “fitting” in the preferred categories targeted by the programme, nor able to fulfil the high requirements. Despite the long-term presence of many of them (63% of these male single applicants had entered the country before 1991, which was more than 6 years before the regularisation measure) the operation largely ignored this group.

Not all of the refused irregular migrants actually left the country (also removal was only partially executed, due to practical obstacles and judicial safeguards and reviews of decisions); in general between 20 and 25 percent of issued removal orders are enforced per year (Regnard/DPM 2005: 147); however, the regularisation options of the new legal framework offered possibilities for their regularisation (long-term presence, humanitarian grounds), which allows to assume that a part of those refused within the programme have been regularised subsequently.

1.4.1.2 Outcomes of programme in 2006

The official final result published by the Minister of the Interior, Sarkozy, in September 2006 at the end of the operation was 6,924 regularisations (of 33,538 applications). This meant a very low regularisation rate of 20% (of applications). In Paris where more than one fourth (27.6%) of all applications had been filed (9248 applications), the rate of regularisation was even lower at 17.4% (1606 adults finally admitted).

However, these “final” results are incomplete, since an unknown number of applications were not yet examined and decided or lodged an appeal (and thus counted) during the time frame of the programme, and continued to be processed within the normal, individual regularisation procedure.

Furthermore, the number of children regularised (which are not counted separately since they do not hold a residence permit) is not included in these figures only referring to adults (parents). Until now, no detailed and corrected results of the operation have been published, thus the definitive number of regularised and refused families is unknown.

The number of families whose regularisation was definitively refused (according to the official final figures 26,614 refused applications) and who left the country either voluntarily or by enforcement of return, as well as the number of those who remained in the country because of a later regularisation and a correction of the refusal decisions (regularisation after appeal procedure, revocation of removal orders by judicial authorities) is unknown.

Assessment of effectiveness in reducing stock of irregular immigrants

Regarding the very low regularisation rate of 20%, the programme was not effective in terms of reducing the stock of families with children in an irregular situation. A considerable proportion of those not regularised still may be in a legal limbo situation after the programme, in view of the situation that enforced removals in many cases were difficult to proceed, namely due to civil society protest and support, but also because of judicial safeguards protecting them from expulsion.\(^\text{76}\)

\(^{75}\) In 1999 the Minister of the Interior Chevènement made an effort to enforce the removal of migrants not regularised in the operation of 1997-1998. By pointing to the fact, that only half of non regularised migrants had been subject to a removal measure (ARPF), the Minister respectively called on the prefectures to accelerate their removal. (Circulaire 11.10.1999, NOR : INT/D/99/00207/C)

\(^{76}\) It can be observed in general (related to all migrants, not only those refused in the collective regularisation operation) that in 2006 three fourth of removal orders (in the majority APRF, only low number of expulsion orders) could not be enforced; the non-execution of removal procedures is to a large extent consequence of the judicial control system of expulsion (appeal procedures at administrative
1.4.2 Outcomes of regularisations via permanent regularisation mechanisms

Since having been introduced in 1998, legal provisions for exceptional regularisation (on humanitarian grounds or after long-term presence of ten years; granting a temporary residence and working permit of one year, permit “vie privé et familiale”) have been applied more frequently: especially the regularisations based on grounds of personal and family ties have increased from 2002 onwards. In 2006 the significant increase of up to 22,200 regularisations on grounds of personal and family ties is due to the regularisation effects of the programme for families and children in the same year (which were regularised under this residence title).

The regularisations after a continuous presence of ten years have in the same period (2000 – 2006) ranged at an average level of 3,000 per year. Such exceptional regularisations have gained importance in relation to the overall annual admissions of third country nationals in recent years: in 2006 they made up approximately 13 percent of the annual new admissions, an increase which was mainly due to the exceptional regularisation measure of families in 2006 (see CICI report 2007: 78).

The beneficiaries of regularisations based on personal and family ties were mainly refused asylum seekers; nationals from the African continent constitute the majority, within recent years the proportion of nationals from China and Turkey increasing constantly (Régnard/DPM 2006: 112-113; Bèque 2007, see Table 1.5)

1.5 Evaluation

I.5.1 Regularisation programmes versus continuous mechanisms

Collective (national) regularisation programmes have become a rare instrument within the general regularisation and immigration policies.

As outlined above, the legal regularisation mechanisms to deal with individual case-by-case regularisations gained importance over collective programmes. This has contributed to a certain attenuation of (political and social) problem pressure at a national level, and a decentralisation of regularisation practices, which have been shifted in the realm of the prefectures (level of departments). This has certainly contributed to a heterogeneous, more arbitrary practice of regularisation varying at local level. On the other hand this also allowed for a more responsive and flexible approach towards locally specific (humanitarian) problem situations and demands for regularisation.

1.5.1.1 Government and political party positions

The position of the UMP government (in power since 2002) on regularisation policies can be characterised by a strict refusal of large-scale (“mass”) collective regularisation programmes on the one hand, and a pragmatic, flexible approach concerned exceptional individual regularisations (via continuous mechanisms).

Arguments brought forward against collective large-scale regularisation programmes have mainly concentrated on the pull-effect of regularisation programmes on irregular immigrants (moving from other EU countries or from the major countries of origin) as well as on organised criminal smuggling networks.

In response to the strike movement of Sans Papiers workers, the government again reiterated its objection to a collective generous regularisation measure (“no massive regularisation”), this...
time pointing to the sufficient labour force (of unemployed immigrant workers) in the country and the ambition to prefer employment insertion of the unemployed regular immigrant population 77.

Moreover, the government emphasized the priority of integration of regular resident immigrants over the regularisation of irregular immigrants. Generally the position defended was that regularisation should not be a right (acquired through de facto immigration), but an exceptional means to solve humanitarian situations. Collective regularisation programmes became a controversial issue for political conflict and electoral competition: the conservative government opposed “mass” regularisation policies as a symbol of socialist immigration policies.

The political party spectrum is divided on the issue: in the electoral campaign of the presidential and legislative elections in 2007 the policy positions ranged from strict objection of collective regularisation measures (UMP candidate Sarkozy), a moderate position in favour of (integration) criteria based regularisation (Socialist party and the liberal Modem candidates), to positions favouring a global regularisation measure (left wing opposition of Communists, Greens, LCR). However, a broad political consensus on the necessity of humanitarian criteria based regularisation exists.

As to the need for regularisation measures, the situation of refused (long-term present) asylum-seekers and long-term present immigrant workers the need for regularisation measures is possibly most pressing, since these groups have been most excluded from collective regularisations within the last decade. The recurrent campaigns for a regularisation of these groups point to an existing problem.

1.5.1.2 Positions of civil society stakeholders
Diverse civil society actors (Sans Papiers self-organisations, migrants’ rights associations, human rights organisations, humanitarian church organisations, trade unions, or citizens committees) have continued campaigning for both, broader collective regularisation programmes and more focussed criteria-based regularisations (as recently the strikes for a regularisation of irregular migrant workers working in certain employment sectors with labour shortage).

However, there is no common position on the scope and form of regularisation measures: Sans Papiers collectives and some NGOs or trade unions claim for a global regularisation of all Sans Papiers present (general amnesty), others for a criteria-based regularisation.

The various civil society organisations together with Sans Papiers organisations have advocated for a human and social rights centred regularisation policy, and also demanded a review of procedures in order to guarantee a fair procedure according to rule of law principles.

In such a perspective, several migrant and refugee rights NGOs and trade unions 78 addressed the government recently claiming for a regularisation of Sans Papiers immigrant workers, thereby

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78 Cimade, France Terre d’Asile (FTDA), Ligue des Droits de l’Homme (LDH), GISTI, Uni(e)s contre l’immigration Jetable, CGT – Confédération Générale du Travail, CFDT – Confédération Française Democratique du Travail
demanding to engage a broader consultation process involving civil society actors on the respective regularisation criteria⁷⁹.

A review and harmonisation of regularisation criteria is currently under way within the framework of the governmental advisory commission on exceptional regularisation, but the representation of non-governmental, civil society actors in this board is very limited (two NGO representatives of 11 members) and does not include social partners.

The Consultative committee on Human Rights CNCDH, representing a broad spectrum of civil society organisations, and the CFDA (Coordination of asylum rights associations) have focussed their attention on refused asylum seekers: arguing in favour of inclusive regularisation measures for this group, in particular as a necessary corrective of observed shortcomings of the asylum procedure (CNCDH 2006: 250⁸⁰; CFDA 2004⁸¹).

The defence of irregular migrant workers’ rights recently gained importance pushed forward by trade unions such as CGT and migrants’ rights associations⁸². They criticised the recently adopted mechanisms of regularisation for workers in a limited area of professions as too restrictive and discriminating against TCN (compared to new EU citizens), while also placing migrants in a dependant position vis-à-vis their employers, and therefore demanded for a global regularisation of irregular immigrant workers.

The CGT supported (and co-ordinated) a collective strike movement of several hundred of Sans Papiers workers in order to achieve their regularisation (nearly 1000 applications for regularisation have been filed at the regional prefectures with support of the CGT). The strike action was triggered against the background that many of these irregular migrant workers had been licensed by their employers, as a consequence of tightened controls imposed on employers.

The employer’s federation MEDEF (Mouvement des Entreprises de France) has no general position on regularisation policies. The Confederation of small and medium enterprises (CGPME Confédération Générale des Petits et Moyennes Entreprises) supports the government approach of limited case-by-case regularisation of migrant workers (in response to labour demands of certain professional sectors)⁸³.

The employer’s federation MEDEF (Mouvement des Entreprises de France) has no general position on regularisation policies. The Confederation of small and medium enterprises (CGPME Confédération Générale des Petits et Moyennes Entreprises) supports the government approach of limited case-by-case regularisation of migrant workers (in response to labour demands of certain professional sectors)⁸³.

Some of the sectoral employer organisations, namely of those employment sectors most in demand of and employing immigrant labour force (such as the hotel and restaurant sector), demanded a collective regularisation of irregular migrant workers for several reasons: These employers have been mostly affected by more severe control policies⁸⁴ and also troubled by the


⁸⁰ In his recommendation on the conditions of exercising the right to asylum in France the Human Rights Commission demanded a benign treatment of regularisation applications of refused asylum seekers (taking into account the general criteria existing risks in case of return and of integration); and it reiterated its demand that a separate permit of residence should be created for refused asylum seekers, which are neither expellable (personal risk, situation of general violence in home country), nor can be regularised according to the legal conditions;


⁸² Several trade unions and migrants’ rights organisations (united in the alliance “Unies contre l’immigration jetable” UCIJ) started an information campaign among Sans Papiers on their rights as workers and on the new mechanism of regularisation (based on employment).

⁸³ Libération 29.10.2007

⁸⁴ Since 1 July 2007 (circular April 2007) employers were obliged to verify the residence documents of foreigners before their employment (at the prefectures), which lead many employers to generally control the documents of their staff, and to dismiss irregular workers with falsified documents. In Paris the
recent strike actions; some employers willing to retain and regularise their irregular migrant employees, which they had employed ignoring their irregular situation (falsified residence and work permits) also advocated in favour of regularisation.

In this context, the two most important employer’s federations in the hotel and restaurant sector, the UMIH (Union des Métiers et des Industries de l'Hôtellerie) and the Synhorcat (Syndicat National des Hôteliers Restaurateurs Cafetiers Traiteurs) adopted a favourable position concerned an urgent regularisation measure of irregular immigrant workers in their sectors, in case of employers in compliance with labour and social legislation\(^85\).

The UMIH president went further in suggesting the regularisation of at least 100,000 irregular workers (in all professional sectors), thereof about 50,000 in the café-restaurant sector (arguing “if they were not regularised, they had to be licensed” and this “would destroy a part of the tourism sector in Paris”)\(^86\).

In contrast, the employer’s federation of Construction maintained a regularisation of Sans Papiers workers was not necessary, and argued that the labour demand could be sufficiently satisfied with unemployed workers (Libération 18.4.2008).

1.5.2 Evaluation of strengths and weaknesses

With regard to the two most recent programmes described in this report and the legal regularisation mechanisms we can summarise some of their strengths and weaknesses:

**Participation and consultation of major stakeholders** in the definition of the criteria for regularisation

- There has been no systematic consultation of civil society actors such as migrants’ rights organisations, labour and employer interest organisations, integration institutions, etc. in the design of the programmes and the elaboration of adapted and applicable criteria. The marginal involvement and consultation of stakeholders has fuelled contestations over legitimacy of regularisation measures from the side of civil society actors.

**Information and transparency**

- Regularisation procedures have suffered from a deficit of transparency and information of the immigrant population: No governmental information campaigns on the regularisation programmes were undertaken; this task was largely left to migrants’ rights associations, which have only limited capacities of outreach.

- The lack of transparency of criteria and of regularisation practice was also related to the fact that many internal administrative directives were not published (and subject to changes during the procedure), thus not accessible for the concerned applicants. This contributed to a lack of trust in the regularisation process.

\(^85\) That means under the condition that employers immigrants had declared and insured their irregular workers (at the social security insurance, paid employers contributions) while ignoring their irregular status, and moreover employed them before the entry into force of new control obligations for employers (since July 2007).


**Procedural constraints**

- With the increasingly **selective criteria** applied in programmes (reproducing the diversification of immigrant status categories in the legal immigration system) procedures of regularisation became more complex to manage, resulting in longer processing (including appeal) and difficulties of a homogenous application of criteria.

- Especially **criteria concerning humanitarian grounds and integration**, requiring an individual and in-depth assessment of the situation of the applicants, have proven to be problematic under the circumstances how **collective** regularisation programmes were carried out: time and resource constraints, administrative personnel not sufficiently qualified to assess such cases; the time limits and stress situation for migrants not allowing for an adequate assessment of such criteria, are some aspects regards a deficient assessment of such criteria. This problem was evident in the regularisation procedure for families in 2006, as the given implementation conditions were not appropriate to examine the often complicated individual situations of families concerned (e.g. means to appreciate language knowledge and integration).

- A recurrent problem of regularisation procedures in France was the **unequal treatment of applications and unequal chances of regularisation**. This major shortfall resulted from the specific administrative procedure of regularisation (via administrative circular; no legal binding force; minor procedural safeguards), which gives the local prefectures a great discretionary power in the regularisation procedure.

**General design of programmes**

- As a strength may be highlighted the development of a more comprehensive design of programmes adapted to new target groups (both regularised and refused), taking into account social integration and humanitarian concerns (e.g. social assistance, return assistance), as was the case with the programme of 1997-1998.

- A weakness in respect to integration aims and the prevention of a reversion to irregular status is related to the policy choice of generally treating regularised migrants (irrespective of their career) the same way as newcomers concerning short term residence permits and renewal conditions; to the extent that measures (individual and collective) already pose increasingly strict integration requirements as conditions for regularisation (long-term presence, school enrolment, clean criminal record, resources and stable employment), the perpetuation of an insecure residence status ignores and hampers the integration process of regularised migrants.

**Evidence of side effects (irregular migration incited by programmes)**

- In contrast to a widely spread political argument that immigration programmes (that of 1997-1998) had stimulated further irregular immigration, there is no empirical evidence for such a conclusion.

- As to the direct attraction of irregular immigrants to the country there is no empirical data that would ground such a hypothesis (applicants who had entered only recently were of little importance in the programme of 1997-1998\(^{87}\)); in general, the programme design excluded those with a short residence period and those who were not present in France (personal interviews) from regularisation.

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\(^{87}\) As Thierry (2000) shows in his analysis, only a small proportion of applicants had entered the country rather shortly before or during the programme (between 1996-1998), meaning 14.8% of male and 18.5% of female applicants.
The unwanted side-effects of programmes consisted mainly in the fact that a part of the refused irregular migrant population further remained in the country; but there is no evidence on their fate, nor are figures available about their moving on to other EU countries.

This means that programmes have not created new irregular migration, but rather resulted in the continuous presence of an already present irregular migrant population.

1.6 Conclusions
Apart from the particular problems arising in their concrete procedural implementation, the analysis of the regularisation processes in the last decades raises the general question as to the appropriateness of collective regularisation measures as a means of immigration policy. It is clear that different policy aims require different instruments. One therefore has to ask which are the aims that can best be tackled by collective regularisation, and which could more efficiently, and less costly (in economic, social and humanitarian terms) be addressed by individual measures.

Labour market oriented aims are certainly best treated by general amnesties, and in fact past collective regularisation measures with a labour market goal (such as the programme of 1981-1982) amounted in effect to an amnesty (with recognition rates approaching 87%). The recently introduced individual “case-by-case” procedures are much less adapted to labour market management goals; moreover, criteria of selective regularisation mechanisms (based on qualification) do not match the reality on the labour market, since a large part of the irregular migrant workers is employed in sectors other than those covered by actual regularisation provisions (even qualified TCN workers are often employed in the unqualified sector).

By contrast, regularisation on humanitarian grounds, requiring high qualitative standards of individual evaluation (appreciation of personal situation, interviews, legal remedies etc.) are best addressed in individual exceptional regularisation procedures, and usually suffer from the time and personal constraints characteristic for (not well prepared) collective programmes (as can be seen from the shortcomings of the recent programme for families of 2006).

With view to the current debate that opposes large scale collective programmes and individual exceptional regularisation measures, by emphasizing the negative side effects of the first, and the positive ones of the latter, it should be stressed that the two extreme poles of regularisation policies – general amnesties and individual exceptional regularisation mechanisms – are not opposite but complementary policy measures. Whether these measures should be oriented more towards the “amnesty” or towards the “exceptional mechanism” pole, should depend on the concrete problematic and policy aim in question, and not on a priori ideological grounds.
1.7 References


Official reports


Laws and circulars

http://www.legifrance.gouv.fr/

Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA), version consolidée au 8 mars 2008,
http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20080321

NGO documents and Internet sources


RESF - Réseau éducation sans Frontières, website http://www.educationsansfrontieres.org/
1.8 Annex

Table 1.1 Indicators (evaluation of irregular residence)

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ind.1 annually refused asylum seekers</td>
<td>14200</td>
<td>18400</td>
<td>22400</td>
<td>24500</td>
<td>29600</td>
<td>38800</td>
<td>60000</td>
<td>27700</td>
</tr>
<tr>
<td>Ind.2 annual regularisations of foreigners having entered irregularly</td>
<td>16538</td>
<td>20837</td>
<td>25989</td>
<td>28390</td>
<td>31650</td>
<td>31741</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ind.3 Annual apprehensions of foreigners in irregular situation</td>
<td>27293</td>
<td>43508</td>
<td>37586</td>
<td>49470</td>
<td>45500</td>
<td>44545</td>
<td>63681</td>
<td>67130</td>
</tr>
<tr>
<td>Ind.3 Foreigners accused of infractions of entry and residence legislation</td>
<td>51359</td>
<td>47246</td>
<td>57608</td>
<td>59023</td>
<td>64218</td>
<td>82814</td>
<td>90362</td>
<td></td>
</tr>
<tr>
<td>Ind.4 Arrest in administrative detention</td>
<td></td>
<td>28155</td>
<td>30043</td>
<td>29257</td>
<td>32817</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ind.5 not executed removal orders (APRF)</td>
<td>28711</td>
<td>30022</td>
<td>31140</td>
<td>34874</td>
<td>39665</td>
<td>51501</td>
<td>46698</td>
<td>47993</td>
</tr>
<tr>
<td>Ind.6 persons covered by public medical assistance</td>
<td></td>
<td>145000</td>
<td>170000</td>
<td>146297</td>
<td>178689</td>
<td>191067</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes: Ind. 1: The number of refused asylum seekers has been calculated on the basis of the number of refused asylum applications in the 2. instance (decision on appeal) multiplied with a coefficient of 1.132 (permitting to take into account the additional proportion of asylum seekers refused in the first instance without appealing)  
Source: CICI 2007:142-148
Table 1.2 Overview of continuous legal mechanisms for exceptional regularisation

<table>
<thead>
<tr>
<th>Legal basis (circular)</th>
<th>Eligible categories</th>
<th>Conditions for regularisation</th>
<th>Exceptional admission to residence 1) on humanitarian grounds 2) on grounds of employment (since 2007)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article L.313-11 CESEDA (since 1998) (Circular of 30 October 2004)</td>
<td>2°, 6°, 8° - Children of full age (living in France with one parent since the age of 13, or having been in charge of social services as minors since age of 16); - parents of a minor French child contributing to child care; - foreigners born abroad with continuous residence of more than 8 years, after the age of 10 and enrolled in French school for at least 5 years; 7° - other foreigners with personal and family ties (not falling under the above defined categories of family members with a legal entitlement on family reunion) 9° and 11° - foreigners entitled to occupational injuries benefit, foreigners with serious illness (who cannot benefit of effective treatment in their home country)</td>
<td>Legal entitlement according to the defined criteria (length of presence, family relations, etc.) 7° based on appreciation of interests assessing • the intensity, duration and stability of family and personal ties; • conditions of living and integration into French society; integration is evaluated in taking into account knowledge of republican values • nature of ties with family remaining in country of origin</td>
<td>Discretionary decision 1) humanitarian considerations or other exceptional reasons (risks in home country; continuous long-term residence of 10 years) Discretionary decision 2) Cumulative criteria: • exercising a profession part of a list of overall 30 professions (varying regionally), mainly including qualified professions (sector of construction, informatics, technical professions, financial controlling…); (TCN from countries with specific bilateral migration agreements may have access to additional professions); • Recognition of diploma or professional experience for one of the defined professions; • strong commitment from side of employer: stable work contract (unlimited contract CDI; exceptionally short term contract CDD of minimum one year);</td>
</tr>
<tr>
<td>Section 7 Article L.313-14 CESEDA (Circular of 24 June 1998 - vital risks for refugees) (Circular of 7 January 2008 – employment)</td>
<td>Third country nationals</td>
<td>Third country nationals qualified and employed in certain professions (demanded on the labour market) Excluded from application: Algerians and Tunisians</td>
<td></td>
</tr>
</tbody>
</table>

Eligible categories:

- 2°, 6°, 8° - Children of full age (living in France with one parent since the age of 13, or having been in charge of social services as minors since age of 16);
- 7° - other foreigners with personal and family ties (not falling under the above defined categories of family members with a legal entitlement on family reunion)
- 9° and 11° - foreigners entitled to occupational injuries benefit, foreigners with serious illness (who cannot benefit of effective treatment in their home country)
• preliminary evaluation and approval of employment by the regional labour and employment administration (DDTEFP)

Refusal criteria
living in polygamy; threat to public order (in general: criminal record);

Residence permit granted
Temporary residence permit (one year), purpose “private and family life” (“Carte vie privée et familiale”), entitles to work;
Temporary residence and work permit (one year), purpose “employee” (salié) or “temporary worker”

Number of regularisations (2000 – 2006)
80,401 (personal and family ties)
21,078 (after 10 years of residence)
no figure available

Sources: CESEDA; GISTI 2006 84-88; Circular of 30 October 2004 related to conditions of instruction of applications for admission to residence of foreigners in irregular situation; Circular of 7 January 2008

Table 1.3 Quantitative and qualitative indicators of regularisation measures

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of applicants</td>
<td></td>
<td>150,000</td>
<td>50,000</td>
<td>135,000 (1)</td>
<td>33,538 (applications not persons)</td>
</tr>
<tr>
<td>Number of regularised</td>
<td></td>
<td>130,000</td>
<td>15,000</td>
<td>87,000</td>
<td>6,924</td>
</tr>
<tr>
<td>Regularisation rate</td>
<td></td>
<td>86,7%</td>
<td>30%</td>
<td>64%</td>
<td>20,6%</td>
</tr>
<tr>
<td>Main target groups/categories</td>
<td>Foreign workers having entered France before 1.1.1981; later included several further categories (as political refugees, trainees, apprentices; seasonal and temporary workers; foreigners laid-off by their employers for having demanded regularisation)</td>
<td>Refused long-term asylum seekers having entered France before 1.1.1989</td>
<td>Family members and long-term established families; foreigners without family dependants; refused asylum seekers/ de facto refugees ill persons students (condition of certain minimum residence time of 7 or 5 years or duration of marriage)</td>
<td>Families with one or more children enrolled in school (at least one parent minimum residence of two years in France)</td>
<td></td>
</tr>
<tr>
<td>Residence permit granted</td>
<td>temporary residence and work permit (one year), renewable</td>
<td>temporary residence and work permit (one year), renewable</td>
<td>temporary residence and work permit (one year), renewable</td>
<td>temporary residence and work permit (permit “private and family life”, one year), renewable</td>
<td></td>
</tr>
</tbody>
</table>

(1) source: Thierry 2000
Table 1.4 Number of regularisations of Third Country Nationals (other than EU 27, EEA, Switzerland) on the basis of exceptional permanent regularisation mechanisms (2000-2006)

<table>
<thead>
<tr>
<th>Annual regularisations</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal and family ties</td>
<td>6999</td>
<td>5922</td>
<td>6864</td>
<td>10931</td>
<td>13295</td>
<td>14195</td>
<td>22195</td>
</tr>
<tr>
<td>in % of total</td>
<td>4.7%</td>
<td>3.6%</td>
<td>3.8%</td>
<td>5.7%</td>
<td>6.9%</td>
<td>7.6%</td>
<td>12.1%</td>
</tr>
<tr>
<td>Admissions after 10 years of residence</td>
<td>3166</td>
<td>2806</td>
<td>2871</td>
<td>3815</td>
<td>3073</td>
<td>2674</td>
<td>2673</td>
</tr>
<tr>
<td>in % of total</td>
<td>2.1%</td>
<td>1.7%</td>
<td>1.6%</td>
<td>2.0%</td>
<td>1.6%</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Total of admissions (1)</td>
<td>149982</td>
<td>164466</td>
<td>181078</td>
<td>190825</td>
<td>191850</td>
<td>187134</td>
<td>183575</td>
</tr>
</tbody>
</table>

(1) Includes all types of issued residence permits per year (economic reasons, family reasons, recognised refugees, etc.)

Source: CICI report 2007: 75-78;

Table 1.5 Socio-demographic characteristics of newly admitted (regularised) immigrants in 2006 (in %)

<table>
<thead>
<tr>
<th>Type of residence permits obtained in 2006, in % (N=6,280)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td>New migrants</td>
</tr>
<tr>
<td>Sex</td>
</tr>
<tr>
<td>Men</td>
</tr>
<tr>
<td>Women</td>
</tr>
<tr>
<td>Age</td>
</tr>
<tr>
<td>18-24</td>
</tr>
<tr>
<td>25-29</td>
</tr>
<tr>
<td>30-34</td>
</tr>
<tr>
<td>35-44</td>
</tr>
<tr>
<td>&gt; 45</td>
</tr>
<tr>
<td>Country of birth</td>
</tr>
<tr>
<td>Algeria</td>
</tr>
<tr>
<td>Morocco</td>
</tr>
<tr>
<td>Tunisia</td>
</tr>
<tr>
<td>sub-Saharan Africa</td>
</tr>
<tr>
<td>Other African countries</td>
</tr>
<tr>
<td>Turkey</td>
</tr>
<tr>
<td>South-East Asia and East Asia</td>
</tr>
<tr>
<td>South Asia</td>
</tr>
<tr>
<td>CIS</td>
</tr>
<tr>
<td>Europe (outside EEA and CIS)</td>
</tr>
<tr>
<td>Central and South America</td>
</tr>
<tr>
<td>France + EU + others</td>
</tr>
<tr>
<td>Year of arrival in France</td>
</tr>
<tr>
<td>1960-1998</td>
</tr>
<tr>
<td>1999-2001</td>
</tr>
<tr>
<td>2002-2003</td>
</tr>
<tr>
<td>2004-2005</td>
</tr>
<tr>
<td>2006</td>
</tr>
</tbody>
</table>

Chapter 2: Greece

Martin Baldwin-Edwards

2.1 Introduction

For much of the twentieth century, with the exception of the Exchange of Populations with Turkey in 1922, Greece was a country of emigration. Mass emigration of Greeks in the 1950s and 1960s had left certain sectors of the Greek labour market short of workers, and Africans were employed as private servants, hotel workers and dockyard labourers alongside Turks in industry (Nikolinakos 1973). By the end of 1972, according to the Labour Secretary of the military government, the number of foreign workers in Greece amounted to 15,000-20,000, mostly Africans (Fakiolas & King 1996: 176). In the 1970s, the first non-European refugees started to arrive – some 3,000 from Lebanon, in 1976 – to be followed later by small numbers of Vietnamese boatpeople, and in the 1980s by asylum-seekers and refugees from across the Middle East (Papantoniou et al. 1996: 41). After 1985, large numbers of Poles and other East Europeans arrived. Greece at that time refused to allow recognised refugees and asylum-seekers the right to work, and they were temporarily housed in refugee camps and rented hotel rooms awaiting relocation to another country; however, the international climate for refugee relocation worsened, and the typical length of stay of the refugees increased from six to nine months to as much as five years (Papantoniou et al. 1996: 42). Most of the asylum-seekers and refugees worked in the large Greek informal economy, and played an important role in attracting yet more immigrants from Eastern Europe and the Middle East.

By 1986, the number of legal immigrants was estimated as 92,440, and by 1990 as 173,436 (Fakiolas & King 1996: 176); however, detailed residence permit data suggest a rather lower figure for 1990, of around 60,000. To these official data should be added the illegal and semi-legal residents – estimated at 100,000 for 1990 (Baldwin-Edwards 2004a). Thus, the immigrant population by 1991 was of the order of two to three per cent of total population, although probably constituted a higher proportion of the labour force.

It was not until 1991 that the Greek state or Greek society showed any real interest in immigration policy, with the challenge to Greek border integrity by Albanians who were leaving the collapsed socialist regime of Enver Hoxha. A few tens of thousands crossed the mountainous border with Greece, and provoked a near-hysterical reaction in the mass media, with the rapid construction of a ‘dangerous Albanian’ stereotype (Karydis 1992). Hastily, a new immigration law was approved, to replace the outdated 1929 law. The new law made no practical provision for legal immigration, but instituted several new mechanisms of expulsion and deportation as well as implementing major parts of the Schengen Agreement (Baldwin-Edwards & Fakiolas 1998). Over the period 1991-2001, the Greek police expelled without legal process typically 150,000—250,000 persons per year, of which 75—80 per cent were Albanian (Baldwin-Edwards 2004b: 4).

Since the 1970s, small numbers of ethnic Greeks had been arriving from the Soviet Union; however, according to survey data, large inflows began in 1989 and peaked in 1993. Various laws were enacted to facilitate the arrival in Greece of ‘repatriates’ from the USSR, along with easy naturalisation: yet no reliable records of their arrival in Greece or of their receipt of Greek citizenship have apparently been kept. Ethnic Greeks from Albania, on the other hand, were not accorded any real privileges over the 1990s, were not described as ‘repatriates’ and effectively

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88 I acknowledge with gratitude the detailed comments made on a previous version of this paper by Kat Christofer (journalist) and Miltos Pavlou (HLHR-KEMO Director).
89E.g. ‘false tourists’ who entered Greece legally, but worked illegally, and either left and returned every three months or paid a small penalty at the border for ‘overstaying’, when they eventually did leave.
were indistinguishable from illegal migrants (Baldwin-Edwards 2004a: 3). Since 1998, a ‘Special Identity Card for Homogeneis’ has been issued to Albanian nationals claiming Greek ethnicity: the number of such permits awarded was concealed on the grounds of ‘national security’ by the Ministry of Public Order until summer 2006, when the Minister confirmed to a Parliamentary Committee that the previously-leaked figure of 200,00090 was correct (Athens News, 4 August 2006).

2.1.1 The emergence of regularisation as a policy
In the early 1990s, despite the very large number (hundreds of thousands annually) of Albanians involved in illegal migration and subsequent (illegal) expulsions by the Greek state, along with the rapidly-growing xenophobia sponsored by the mass media, there was no attempt by the Greek state to improve on either its management of immigration or the collection of statistical data. This was primarily, it seems, because both state and society believed that the immigration of Albanians (and others) was a temporary phenomenon, and of little real interest to the country. The official position until the mid-1990s was “that Greece is not a country of immigration” (Glytsos 1995: 168). After several years of highly restrictive policy and typically circa 30,000 valid work permits and 80,000—90,000 residence permits, by 1994 government estimates of the stock of illegal migrants had reached 500,000—600,000 (Baldwin-Edwards & Fakiolas 1998: 188—191).

After protracted consideration in drafting two Presidential Decrees (P.D.s) on the legalisation of illegal immigrants, which had been criticised for lack of dialogue with immigrant associations in Greece, the process took a turn for the worse when the July 1997 cabinet meeting to approve the decrees decided at the very last minute to exclude nationals of Albania and other countries bordering Greece. This decision was subsequently rescinded by the Prime Minister, Costas Simitis, after uproar from the General Confederation of Greek Workers [Greece’s largest trade union] and other influential pressure groups. The regularisation was not the result of popular movement or of planned policy, but represented an emergency measure or admission of policy failure. The policy of mass expulsions which had started with the repressive 1991 law had failed to prevent large-scale immigration; after a long period of political lethargy, a regularisation process proceeded in 1997 (Skordas 2000: 348-9).

2.2 Greece’s first regularisation programme of 1997
This first regularisation was based on Law 2434/1996 on policy for employment, whereby Art. 16 authorised the establishing of a committee to draft two presidential decree laws on regularisation of illegal immigrants. The first decree law was aimed at registering the immigrants, with a ‘Provisional Residence Card’ (White Card); the second set out the conditions for issuing a ‘Temporary Residence Card’ (Green Card). Presidential Decree 358/1997 laid down the conditions for the White Card, but had no long-term objectives: it was simply a temporary registration of immigrants for the purposes of proceeding to the Green Card application (laid down in P.D. 359/1997). The legal viewpoint is that this was not two separate legalisations, but two steps of the same process. The reality is that these two steps seemed to operate independently of each other.

According to P.D. 358/1997, applicants must have failed to fulfil the conditions for entry, residence and employment and must have been on Greek territory on 28 Nov. 1997. A Labour Ministry circular of Jan. 1998 specified, contradicting the P.D., that illegality of either residence or work was sufficient. Law 2676/1999 subsequently replaced the former provisions of the P.D. and specified that both illegal residence and employment were required; this was countermanded, in turn, by Law 2713/1999 which determined that the procedures applied to

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those aliens who did not fulfil the conditions for any of the categories of entry, residence or employment (Skordas 2000: 353).

Thus, beneficiaries were irregular aliens resident on 28 Nov. 1997 who worked, or wished to work, for any employer or as self-employed. It excluded aliens legally resident, Albanian nationals with a Special Homogeneis Card, EU/EFTA nationals and their families, and foreign seamen. The administration of both procedures was handed to OAED, the parastate employment organisation under the umbrella of the Labour Ministry, which had a network of local offices that could accept applications.

2.2.1 The White Card

The application for a White Card had four substantive conditions:

(1) the applicant must not be suffering from a disease which endangers public health

(2) the applicant must not have been convicted by a judgement not subject to appeal for a crime or misdemeanour for a term of imprisonment of at least 3 months (excepting cases of illegal entry and employment in Greece)

(3) the applicant must not have been entered on the register of undesirable aliens

(4) the granting of the card must not be contrary to public interest or order.

Documents required were:

- Declaration of personal status
- Passport, ID card, etc
- Insurance booklet or certificate of application for such
- Employment contract

Non-submission of the above documents did not lead, however, to inadmissibility of the application (Skordas 2000: 357). In particular, an employment contract or employment history were not essential.

Also required (and mandatory) were:

- Certificate of health from a Greek state hospital
- Certificate of criminal record (Ministry of Justice)
- Certificate of non-entry on register of undesirable aliens (Ministry of Public Order) ⁹¹
- Proof of length of stay in Greece (either by visa stamp or registration with a state organisation, for phone, electricity etc)

All had to be submitted by 1 June, 1998. In reality, owing to massive delays of the Greek bureaucracy, this date was extended several times, with the final date of 30 April 1999. In theory, the White Card was supposed to be merely a temporary record of the lodging of an application for legalisation: in practice, there were serious problems with the provision of official documents by the Greek bureaucracy. Thus, two certificates were established by circular: “White Card Certificate A” was issued when an application was lodged without all the supporting documentation. This proved also to be a bureaucratic problem, since the Ministry of Justice refused initially to issue a criminal record document to other than holders of Certificate A: thus, in one stroke, another ministry created yet another stage in the process that was not

⁹¹ This was later deemed a non-impediment when the entry was for reasons of illegal entry, residence or employment; in the interim, applications were put on hold.
required by the law. This problem was resolved, but there were massive delays with the health certificate (with remarkable queues at public hospitals, which had been unprepared for the task), with the criminal record certificate (Ministry of Justice) and with the certificate of non-registration as an undesirable alien (Ministry of Public Order). ‘White Card Certificate B’ was issued to applicants who had submitted all documents. In theory, this certificate should not have been needed: the relevant circular stipulated that the White Card had to be delivered within five working days. In practice, regions with large numbers of immigrants were unable to even approach this timing, and the Certificate was essential.

The authorities chose to treat Certificates A and B as being synonymous with a White Card: thus, all three documents conferred on their holder, spouse and minor children the right not to be expelled over its duration (originally, expiring 31 Dec. 1998; later extended to 30 April 1999) and for the cardholder only, the right to work with equal treatment with Greek nationals in employment and social security terms. The White Card did not, according to the original law, confer the right to leave and return to Greece: this was subsequently provided by P.D. 241/1998 which allowed a total of 2 months absence over the duration of the card. Holding the card also meant that the children of immigrants could attend school – they had previously been forbidden under the draconian provisions of the 1991 immigration law. The card also protected immigrants from possible expulsion when dealing with various state authorities, such as schools and hospitals. Access to unemployment benefits was initially prohibited, but ultimately granted by a Labour Ministry circular of October 1998.

2.2.2 Implementation and outcomes of the White Card procedure
Initially, applications were slow in coming. In particular, the lack of information in any language other than Greek was a serious problem, along with a strike by the administrative body (OAED) in February 1998. By March, only 150,000 had applied (Athens News, 8/3/98). There were serious delays with the Justice Ministry, with a 7-month waiting period for the criminal record certificate, and also with hospitals, which excluded standard blood tests in order to cope with the workload of screening migrants for infectious diseases (Athens News, 15/3/97).

In the seven months after the end of the registration period, OAED concluded four analyses of the data, with progressively larger samples of 10,000, 26,396, 40,820 and 50,961 applications (Baldwin-Edwards & Fakiolas 1998). The total number of applicants was around 373,00. It was left to another agency – the National Labour Institute – to conduct a thorough analysis of the data, eventually published in March 2000. Table 2.1, below, shows applications by nationality and gender.

These were the first data on the characteristics of the irregular immigrant population of Greece, and showed the primacy of Albanian nationals along with nationals of Bulgaria and Romania. Most of the applicants were of younger working age (88% were aged 15—44), with an educational profile similar to the Greek population. The majority were married (51% of males and 60% of females) and of these, 45% had two or more dependants. Thus, including the dependants registered with the applications, the total number of persons regularised in this procedure came to 462,067 (Emmanouilidi 2003: 31). More than a third of the applicants did not state their profession; of those who did, the majority (56%) were unskilled manual workers. The regional distribution was concentrated in the Greater Athens area (44%), and also in Thessaloniki and Central Macedonia (Kanellopoulos et al. 2006: 28—9).

The total number of applicants was, therefore, 371,641 with 65% of Albanian nationality. The total number of persons covered by the White Card was 462,067 (including spouses and minors); the estimated number of irregular residents who did not apply is 150,000 (Bagavos & Papadopoulou 2002: 96). This would imply a total of irregular residents prior to the legalisation in excess of 600,000 persons (including children).
Table 2.1 Applications for a White Card (1998 legalisation) by nationality and gender

<table>
<thead>
<tr>
<th></th>
<th>M+F</th>
<th>M</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALBANIA</td>
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<td>46,299</td>
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<tr>
<td>BULGARIA</td>
<td>25,168</td>
<td>10,494</td>
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<td>ROMANIA</td>
<td>16,954</td>
<td>11,444</td>
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<td>PAKISTAN</td>
<td>10,933</td>
<td>10,432</td>
<td>501</td>
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<tr>
<td>UKRAINE</td>
<td>9,821</td>
<td>1,882</td>
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<td>POLAND</td>
<td>8,631</td>
<td>4,764</td>
<td>3,867</td>
</tr>
<tr>
<td>GEORGIA</td>
<td>7,548</td>
<td>2,741</td>
<td>4,807</td>
</tr>
<tr>
<td>INDIA</td>
<td>6,405</td>
<td>6,068</td>
<td>337</td>
</tr>
<tr>
<td>EGYPT</td>
<td>6,231</td>
<td>5,040</td>
<td>1,191</td>
</tr>
<tr>
<td>PHILIPPINES</td>
<td>5,383</td>
<td>904</td>
<td>4,479</td>
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<td>REP of MOLDOVA</td>
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<td>1,138</td>
<td>3,258</td>
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<td>SYRIA</td>
<td>3,434</td>
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<td>186</td>
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<tr>
<td>RUSSIA</td>
<td>3,139</td>
<td>757</td>
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<td>BANGLADESH</td>
<td>3,024</td>
<td>2,890</td>
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<td>IRAQ</td>
<td>2,833</td>
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<td>468</td>
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<tr>
<td>ARMENIA</td>
<td>2,734</td>
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<td>1,180</td>
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<td>YUGOSLAVIA</td>
<td>2,335</td>
<td>1,282</td>
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<td>NIGERIA</td>
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<td>ETHIOPIA</td>
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<td>SRI LANKA</td>
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<td>FYR of MACEDONIA</td>
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<td>76</td>
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<tr>
<td>MOROCCO</td>
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<td>145</td>
</tr>
<tr>
<td>GHANA</td>
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<td>CHINA</td>
<td>326</td>
<td>218</td>
<td>108</td>
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<tr>
<td>KAZAKHSTAN</td>
<td>297</td>
<td>66</td>
<td>231</td>
</tr>
<tr>
<td>LEBANON</td>
<td>246</td>
<td>192</td>
<td>54</td>
</tr>
<tr>
<td>ALGERIA</td>
<td>230</td>
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<td>20</td>
</tr>
<tr>
<td>SUDAN</td>
<td>210</td>
<td>182</td>
<td>28</td>
</tr>
<tr>
<td>TANZANIA</td>
<td>207</td>
<td>176</td>
<td>31</td>
</tr>
<tr>
<td>Others</td>
<td>4,901</td>
<td>762</td>
<td>4,139</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>371,641</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SOURCE: Cavounidi & Hatjaki (2000)

2.2.3 The Green Card

The two basic requirements for applying for the Green Card were possession of a White Card (or satisfaction of its criteria) and a minimum income, measured as forty social insurance stamps for 40 days’ work dated from 1 January 1998. Originally, the deadline was set at 30 July 1998 and later extended to 31 October. Subsequently, Law 2676/1999 made a distinction between the time during which the income should have been earned and the (revised) deadline for submitting the documents: the former was set at 31 December 1998 (28 February for domestic workers) and the latter at 30 April 1999 (Skordas 2000: 365).

It was initially decided that the Green Card would have only one certificate, since all the documents had to be submitted at the same time – unlike the case with White Card applications. In practice, the delays with the Ministry of Justice were so serious that Green Cards were eventually issued without the certificate of criminal record having been issued. Two Green Card certificates were provided: Certificate A recorded that the application had been made in good time, and missing documents were the fault of the state, while Certificate B recorded that all documents had been provided. Thus, the two Green Card certificates served identical functions to the White Card ones.
Green Cards were issued with a temporal limitation, ranging normally from 1—3 years.\textsuperscript{92} Exceptionally, 5-year cards could be given to immigrants who, in addition to the normal criteria, could demonstrate that they had been living in Greece for five years or more and had sufficient financial resources for housing and living costs (Skordas 2000: 368). The cards could be extended for two years one or more times after initial grant. The award of Green Cards was made by regional committees at the level of prefecture, presided over by a judge of a court of first instance. According to one legal specialist, the legislation conferred on the applicant the \textit{automatic right} to a Green Card if all conditions had been met, whilst allowing the regional committee to determine the temporal validity of the card. In practice, when committees decided that it was contrary to the interests of the national or local economy, they rejected applications. A further breach of law is noted, in that it was originally laid down by circular that unanimous voting was required within each committee, whereas majority voting is a legal norm for the administration. Of course, this regulation made decision-making slow and difficult (Skordas 2000: 373—5).

Finally, renewal of the Green Card was a matter of some importance, not least since the majority of Green Cards were issued for a duration of one year (later changed to two years for dependent employees and one year for agricultural workers and others). Whereas the law required the administration to grant initial Green Cards automatically upon satisfaction of the criteria, complete discretion was granted to the administration for renewals which could be refused for any reason. Amongst other impediments, the number of social insurance stamps required for renewals was increased to 200 days. Thus, although the temporal validity of renewed Green Cards was set at two years, the ease with which this could be achieved was in great doubt. This is attributed to the clear objective of refusing to all immigrants the right of permanent residence in Greece (Skordas 2000: 375).

2.2.4 Implementation and outcome of the Green Card procedure

In practice, the number of documents actually required for the Green Card was many more than originally stated. Many of these documents had actually been supplied for the White Card, and had to be re-acquired and resubmitted. They included:\textsuperscript{93}

- (a) A statement of facts of one’s residence, certified by the police and with a photocopy of a rental contract
- (b) A photocopy and translation of one’s passport, certified by the police
- (c) A statement of facts from the tax office that the applicant did not owe taxes
- (d) An employment contract; for self-employed persons, registration for VAT and taxes and open status as self-employed
- (e) Proof of social insurance – a booklet, printout of stamps paid, and a statement from the insurance agency that the holder was a current member
- (f) A certificate of health, although not necessarily from a state hospital.

The deadline for submission of applications was moved forward three times – from July 1998, to Oct. 1998, to Dec. 1998 and finally to April 1999. These extensions were necessitated entirely through the inability of the Greek state to produce appropriate documentation as it had obligated itself to do. There were also massive delays with the local committees for evaluating applications, which moved very slowly and frequently interviewed applicants in person.

As with the White Card, OAED did not compile adequate statistical data on the progress of the procedure, and confined itself to issuing occasional numbers of “total cards issued to date”.

\textsuperscript{92} The majority of cards were issued with a validity of one year. There is no indication that anyone was ever given a card for three or five years.

\textsuperscript{93} I am indebted to Kat Christofer for these empirical details.
There has never been any information provided concerning the duration of the cards issued, and no published information on the characteristics of the immigrants. Given the dearth of information, it has proven necessary to construct artificially a timeseries of how the process seems to have proceeded. Chart 1, below, is such a reconstruction made using the following data as basic building blocks. These data are:

- An empirical estimation of 25% 2-year and 75% 1-year permits
- A press release figure of 54% total renewal rate

As can be seen from Chart 1, the rate of progress in awarding predominantly 1-year cards is far from impressive. One year after the original deadline of July 1998, the total stock of valid cards was less than 50,000 persons; two years after, it was under 100,000. It was not until March 2001 (2 years 8 months later) that the figure reached its maximum of 150,000 cards. This is in the context of 373,000 persons who had applied for a White Card; we should also not forget the 47% of applicants for renewal who were refused, and therefore lapsed into illegality.

Although no data were ever published for Green Card awards, crude application data appear to have been compiled by OAED. These are reproduced in Table 2, below. Apart from some minor exchange of order of nationalities (e.g., Pakistanis replace Romanians, in third place; Egyptians replace Georgians in seventh place) and a slightly reduced proportion of Albanians (down from 65%), the application characteristics of nationalities are very similar to those for the White Card. No data on employment characteristics – ostensibly, the reason for setting up

94 They appear uniquely in Emmanouilidi (2003: 31)
regional committees for evaluation of the applications – have ever been provided and it is
doubtful that they even exist.

Data on Green Cards provided for the REGINE project by the Interior Ministry differ from
those of Table 2.2. The total number of applications is given as 228,200 and total number of
cards issued as 219,000; there are no details or breakdown available for these figures.

Table 2.2 Applications for a Green Card (1998 legalisation) by nationality

<table>
<thead>
<tr>
<th>Nationality</th>
<th>M+F</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALBANIA</td>
<td>131,590</td>
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<tr>
<td>BULGARIA</td>
<td>16,412</td>
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<td>PAKISTAN</td>
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<td>ROMANIA</td>
<td>8,238</td>
<td>3.9</td>
</tr>
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<td>UKRAINE</td>
<td>5,896</td>
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<td>POLAND</td>
<td>5,279</td>
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<td>EGYPT</td>
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<td>INDIA</td>
<td>4,385</td>
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<td>GEORGIA</td>
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<tr>
<td>PHILIPPINES</td>
<td>??</td>
<td>&lt;1</td>
</tr>
<tr>
<td>REF of MOLDOVA</td>
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<td>1.3</td>
</tr>
<tr>
<td>SYRIA</td>
<td>2,788</td>
<td>1.3</td>
</tr>
<tr>
<td>BANGLADESH</td>
<td>2,469</td>
<td>1.2</td>
</tr>
<tr>
<td>Others</td>
<td>18,753</td>
<td>8.8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>212,860</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

SOURCE: Emmanoulidi (2003: 31)

2.2.5 Evaluation of the 1998 regularisation process (White and Green Cards)

Adequacy of policy planning

In principle, the idea of registering an illegal population by providing temporary protection from
expulsion is a good one. However, the failure to build upon the short-term success of the White
Card procedure is evident. An expectation existed in the mind of the Labour Ministry policy-
makers that most holders of White Cards would proceed to the Green Card: that only 213,000
did so (57%) represents a real policy failure.

The actual policy objectives seem to have been confused from the very outset. This is evident
from the contradictory positions concerning the criteria for eligibility of applicants: in the P.D.
three conditions were stipulated (illegal entry, residence and employment), to be contradicted by
ministry circular requiring only illegal residence or work, which itself was contradicted by a
1999 law, which was again contradicted by another 1999 law. Such policy equivocation is
guaranteed to create confusion and bureaucratic problems. Its origin seems to lie in the Greek
habit of preparing legal texts in a hasty manner, and relying upon ministerial circulars to
smoothe over the many problems.

Bureaucratic adequacy

The lack of communication with other ministries, notably of Justice, Public Order and Health,
created massive delays in both processes. Ultimately, the certificates required were largely
irrelevant in the granting of cards, so these requirements can be seen as an unnecessary obstacle
presented to applicants. The creation of multiple certificates of application for both cards
reflects the complexity which had been created by the state’s requirements not only of
immigrants but also of itself.

The administration by OAED was far from satisfactory in purely practical terms, and certainly
unacceptable in terms of the monitoring of policy outcomes (see below). In particular, the lack
of information and application forms in any language other than Greek required newspapers,
NGOs and others to fill the gaps left by the state and assist immigrants in the process. The legal profession also benefited massively from the approach taken by the policy-makers, along with some involvement of organised crime in various aspects of the process.

The completely unnecessary role invented for local commissions to evaluate Green Card applications is perhaps the most outstanding policy failure. Not only was much of their activity apparently unlawful, but the idea of case-by-case examination of applications in a mass regularisation is completely misplaced. Its origin is clearly political, in appeasing local political interests that were anti-immigrant and advocated protection of local labour markets. Indeed, it was precisely those same political interests that had nearly scuppered the regularisation programme by excluding Albanians from its coverage. Thus, the slow progress made in handing out Green Cards is to a large extent attributable to this localised structure of Commissions.

Evaluation of policy outcomes
No mechanisms were established to evaluate policy outcomes. The statistical data presented by OAED were badly delayed and of very low quality: even the final data are small samples of the total datasets for White and Green Card applications. With Green Cards, no information has ever been provided concerning duration of cards, employment characteristics, regional location, etc. Given that these issues were supposedly paramount concerns in the framing of the legislation, the absence of indicators is remarkable.

For the Green Card, contribution to a social insurance system was a requirement. It would therefore seem obvious that records are needed of the contribution of foreign workers to each social insurance scheme. The main social insurance agency for employees (IKA) did not even record nationality of its members until 2002, and certainly provided no data of relevance to this regularisation. The other agencies produced data on immigrant social insurance even more recently, and have yet to publish their data. Therefore, the impact of the regularisation on social insurance is unknown. A similar remark can be made about the taxation system, since the Greek state seems not to be interested in recording the nationality of its tax-payers.

Impact on the irregular immigrant population
The White Card registration can be considered a success of sorts, in that it did succeed in identifying the characteristics of much of the irregular population. The Green Card, on the other hand, can only be described as a multiple policy failure. The philosophy of control and limitation of immigrants’ rights led policy-makers to replicate the Ministry of Public Order’s practice (which continued alongside the White and Green Cards) of giving out 1-year residence permits – even to immigrants with 20 years residence. The lack of an entitlement for renewal of Green Cards – denying immigrants clear information on how to remain legal – had its inevitable result of mass reversion to illegal status. Even before that, the number of valid Green Cards did not exceed 130,000 until 2001 – and that with an estimated irregular population of 500-600,000. The prospects of secure residence status were nil, leaving both legal and illegal immigrant populations in a condition of ‘institutionalised precariousness’ and, by all accounts, a determination to minimise their contact with the Greek state.

2.3 The 2001 Immigration Law 2910/2001
By the late 1990s, it was increasingly being recognised by the state that Greece needed an actual immigration policy, rather than the exclusionary provisions of the 1991 Law. After a long drafting process, a bill which supposedly remedied those defects was presented to Parliament. In fact, the draft law provided no realistic mode of legal entry to Greece, and replicated – albeit in

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95 See Skordas (2000) for a detailed legal analysis of the conduct of these regularisations.
96 Clearly, the programme did not cover all irregular migrants in Greece, so there is some question of just how representative of that population sub-group the White Card data actually are.
slightly different ways – most of the defects of the 1991 Law.\textsuperscript{97} Furthermore, it had in its original draft no provisions for legalisation: apparently, the Greek state believed that the 1998 Green Card process was a great success and required no repetition or amendment. Immediately the draft law was made public, there was a political outcry about no provision for legalisation, and the Minister was forced to make a last-minute amendment to create another ‘Green Card’. This time, the Card was (like the White Card) valid for only 6 months, and had to be replaced with both a work permit and a residence permit under the new rules of the 2001 Law. Even this draft law was heavily criticised by human rights groups and academics,\textsuperscript{98} although several improvements were made during its progress through committees. In particular, immigrants were no longer tied to a specific employer – as had been the case with the 1991 Law. However, the final version had no measures to deal with the extensive trafficking and forced prostitution of women and children which had escalated out of control during the 1990s; it had no realistic mechanism for labour recruitment; and did little other than transfer the competence for 1-year residence permits to local authorities, whilst continuing to require separate work permits of immigrants.

\subsection*{2.3.1 The 2001 regularisation procedure}

The 2001 Law transferred competence for immigration policy away from the Ministry of Public Order (MPO) and to the Interior Ministry and the municipalities and region of Greece (although leaving the MPO with exclusive competence for asylum and illegal migration issues). The role for OAED that the Labour Ministry had carved out was implicitly revoked, and necessitated revocation of the two 1997 Presidential Decrees. Thus, OAED had to clear all pending Green Card applications. Those that had been repealed because their holders had been absent from Greece for more than two months were reissued; and those that were processed during a transitional period subsequent to the passing of the 2001 Law, were made equivalent to a work permit plus residence permit. Green Cards due for renewal before 31 Dec. 2001 were automatically extended for 6 months, and those due for renewal before 2 June 2001 were extended to the end of that month (Emmanouilidi 2003: 51).\textsuperscript{99}

The main regularisation programme (Art. 66(1)) consisted of four categories of application:

a. holders of expired White Cards, Green Cards or residence permits who had not submitted applications for renewal, or had a Green Card renewal application dismissed, and could prove that they had resided in Greece since its expiry;

b. all applicants for a Green Card who had appealed, provided that they withdraw their appeal to OAED;

c. all applicants for a 6-month Green Card on humanitarian grounds who had already applied to the Special Committee set up under P.D.;

d. anyone who had resided, legally or illegally, for one year immediately prior to the entry into force of the 2001 law.

For category (a), applicants had two months (June—July 2001) to submit the expired card, passport and any evidence of continuous stay in the previous year in Greece (either visa stamps or utility bills);\textsuperscript{100} for category (d), a passport and evidence of continuous stay in the previous year; for category (b), they had two months to withdraw their appeal to OAED and apply through OAED for the new 6-month card; and for category (c), the provision was withdrawn but

\begin{footnotes}
\item[97] see Baldwin-Edwards (2001); various Ombudsman’s reports
\item[98] E.g. Skordas (2002); Sitaropoulos (2001)
\item[99] In practice, the lack of adequate communication between state bureaucracies meant that few offices knew of the extension and the burden of proof of the law was placed on individual immigrants.
\item[100] This is a statement of the 2001 Law. The practice was initially that rental contracts were demanded by the authorities as the only acceptable proof of residence; this was later modified to a ‘solemn statement’ [\textit{dilosi}] notarised by the police, who often wanted to see utilities bills as proof.
\end{footnotes}
applicants should submit their application within two months to OAED which would forward it to the immigration service.

All applicants had to provide social insurance stamps amounting to 250 days work, which they could purchase at the usual employer’s rates. After being granted such a card, an immigrant worker had then to apply for a work permit. For this, the following documentation was typically required (there were varying requirements, according to employment type):

(i) the 6-month residence permit (card)
(ii) a certificate of criminal record (from the Ministry of Justice)
(iii) a certificate of health (from a state hospital)
(iv) evidence of social insurance coverage and discharged debts for medical or other reasons
(v) employment contract

A subsidiary regularisation procedure was provided in Article 67 of the Law. Under this provision, residence permit or Green Card holders who had resided for two years or more could apply for family reunification for his/her currently residing spouse and unmarried minor children. The provision for currently residing family members represented an effective legalisation of these, since the normal provisions of the new Law (Arts. 28—32) assumed their presence outside of Greece.

2.3.2 Implementation and outcomes of the 2001 regularisation

Applicants were required to apply first of all for a work permit at municipal offices, and with a receipt for this then apply for a residence permit. The local government offices had been totally unprepared for such an event, and the situation was even more chaotic than had been the earlier regularisations. Furthermore, the requirement of a formal employment contract was inconsistent with the large informal economy, and immigrants’ employment within it: many employers simply refused to provide contracts and gave their employees the choice of being dismissed or continuing with illegal employment.

The only available official data consisted of an announcement by the Ministry of the Interior stating that 351,110 migrants had applied for residence and work permits, of whom half were located in the Athens Metropolitan Area. The Interior Minister, Kostas Skandalidis, announced in February 2003 that by June some 450,000 new residence permits would have been issued along with another 200,000 by the end of the year. However, the Ministry continued to be unable to provide data, as their information collection database was still under construction. Various press reports claimed that only 35,000 residence permits had been issued for all of Greece, and in Attica only 37,000 out of 180,000 immigrants had actually applied to renew their permits with the deadline expiring on June 30, 2003. As of November 2003, the extended deadline for all permit applications had expired and the expulsion of ‘illegal immigrants’ resumed, although less visibly than in the early 1990s. For those who had already received permits, the validity of the supposedly 6-month permits was extended four times – from the original expiry date of February 2002, to May 2002, Dec. 2002, July 2003, and finally July 2004.

101 For housekeepers and others with multiple employers, letters “promising work for a certain period” were demanded: these were almost impossible to get Greek employers to provide.
102 Athens News, 6 June 2003
103 Ta Nea, 12 June 2003; Athens News, 20 June 2003
104 Chaos surrounded these frequent extensions, with poor state inter-agency communication leaving immigrants effectively in limbo or even reverting to irregular status.
The Ministry of Labour, and the various prefectures responsible for work permits, were also unable to provide data. Press reports stated that only 30% of potential applicants had applied to renew their work permits: the actual numbers of applications and the numbers of permits given were not available. Throughout 2003, and continuing into 2004, the prefectures were demanding, variously, 150, 180 or 300 days of social insurance for renewal of work permits. (300 days represents full-time employment with statutory holidays and a 6-day week.) The requirement, originating from Ministry of Labour circulars, had no basis in law and was condemned by the Ombudsman and by the Ministry of the Interior.

No data were ever provided on the results of the regularisation procedures, other than a total figure of 367,504 applicants and 341,278 grants of permits (an acceptance rate of 92.9%). For category (b) applicants, a figure of 3,100 has been stated;\textsuperscript{105} for Article 67 beneficiaries of family members’ regularisation, the Ministry’s database in September 2004 provided a figure of 20,344 beneficiaries of which 70% were Albanian nationals and 61% of the total were male.\textsuperscript{106}

### 2.3.3 Evaluation of the 2001 regularisation process

#### Adequacy of policy planning

The lack of planning of any sort is clear from the context of how this regularisation programme emerged – as a political response to public pressure. The regularisation provisions of the draft law were prepared within five working days. In fact, the main policy intent of the new Law was simply to substitute the Ministry of Interior for the Ministry of Public Order in the provision of residence permits: no thought was given to the existence of Green Cards, the role of the Labour Ministry, the absurdity of two entirely separate systems of Green Cards and residence/work permits. Nor was any thought given to why separate work and residence permit schemes were necessary or desirable: the Law simply continued the status quo with small modifications.

Of the actual regularisation articles (66—67), there does seem to be a clear recognition of problems with renewal of permits, and in particular with the renewal procedures of the Green Card. There is also the very positive recognition of the need for family member regularisation, and relatively flexible procedure for such. On the debit side, there is the insistence that immigrants had to pay social insurance contributions of 250 days (this is the employer’s responsibility, in the case of employees), the continued requirement for immigrants themselves to get certificates from the Justice Ministry, and the requirement of a formal employment contract. Since immigrants are known to work predominantly in the Greek informal economy, without accompanying strong measures to deal with employers, this represented merely yet another bureaucratic hurdle. Finally, we can note that the additional burden of requiring immigrants to take a separate work permit was unnecessarily burdensome for both the state and applicants.

#### Bureaucratic adequacy

All the evidence available points to massive bureaucratic failure in this programme. The number of applicants was large (larger than for Green Cards) and the administration needed to deliver this service was simply not available. This applies to staffing levels, training of personnel, computerised services, even to equipment and infrastructure of new buildings allocated for the purpose. Effectively, there was a chaotic overburdening of the state offices over a period of three years or so – leading to repeated automatic extensions of permit validities. Thus, 6-month permits ultimately were valid for three years.

The strain on state hospitals for the provision of medical certificates was such that most simply refused to give appointments to migrants in less than a few months – despite the urgency of acquiring such certificates. It might also be recalled that as medical certificates had already been

\textsuperscript{105} Emmanouilidi (2003: 51)
\textsuperscript{106} own calculations from statistical datasets compiled in the course of preparing a report for the Interior Ministry (Baldwin-Edwards, 2004)
Evaluation of policy outcomes
There has been no evaluation of policy outcomes. No usable data pertaining to the programme have ever been provided by the Ministry of the Interior, or by the Labour Ministry. In particular, the question of which categories (and which nationalities) had significant application numbers is a matter of great importance. The number of applicants with expired Green Cards is of relevance, indicating lapse back into illegality; the number of applicants with merely White Cards is also of interest. Furthermore, the number of recent illegal migrants (category d) is of great importance for immigration policy management: none of this information is available. The lack of data reflects the lack of organization and long-term planning, and reproduces or aggravates the systemic problems of migration management.

In terms of impact on social security and taxes, the only information available is from the employees social insurance scheme – IKA. Data for 2003 show a total of 346,000 non-Greek workers (including EU/EFTA nationals), representing a small increase in 2003 over 2002. Regrettably, no data exist for 2001 so the impact on the insurance scheme is unknown. The other social insurance schemes (OGA and TEBE), along with the tax system, can provide no data at all on immigrant participation for the relevant years.

Impact on the irregular immigrant population
The effect on immigrants themselves was not very positive, in the sense that the programme consisted of excessive bureaucratic requirements allied with financial obligations to the Greek state (for example, the residence permit application fee was 150 Euros per year of validity; the social insurance costs were around 1,500 Euros). A parliamentary amendment of 2003 “allowed” immigrants to pay the social insurance debts of their employers, in order to renew permits: this transfer of legal obligation from (Greek) employers to (foreign) workers affected only third country nationals and represented direct discrimination. Other bureaucratic obligations (with financial implications) consisted of the need for translation of passports for nationals of those countries who had not signed the Hague Convention – with costly and inefficient verification made by the Greek Foreign Ministry (Fakiolas 2003: 1294). If the result of these efforts were to be secure legal status, doubtless most immigrants would suffer quietly. In fact, institutionalised precariousness continued, with the majority of immigrants in Greece left in limbo – between applications, without social insurance, with expired permits, or permit application receipts (which merely protect against deportation). Certainly, the 2001 regularisation achieved little in managing Greece’s irregular immigrant population.

2.4 The 2005 Immigration Law 3386/2005
This immigration law had its origins in a change of government, which in its early days promised great reforms and repudiations of the various reputed ills of the previous PASOK administrations. One of the significant innovations of this law was to abolish the dual system of residence and work permits, substituting it with one procedure and a residence permit which embodied a specific authorisation for employment.107

From the viewpoint of managing irregular TCN residents, two articles stand out: Article 44, for the issue of residence permits on humanitarian grounds; and Article 91 – an article purporting to deal with “transitional provisions”, but also including two major regularisation programmes.

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107 This came about after years of campaigning by the Ombudsman, HLHR (in its National Migration Dialogues; see http://www.hlhr.gr) and the Mediterranean Migration Observatory (e.g. Baldwin-Edwards, 2001; press reports in Avgi, 11/3/2001, p. 7; Kathimerini (English), 23/2/2001, p. 2; Eleftherotypia, 17/2/2003, p. 48).
The transitional provisions proper include continuation of the operation of Law 2910/2001 for renewal of residence permits expiring after 1 Jan. 2006; automatic extension of residence permits which had already been extended (by Law 3242/2004) to 30 June 2004, along with permits that had expired before that date, to 31 December 2005; and a pot-pourri of various provisions relating to ethnic Greeks, Greeks living abroad, diplomatic delegations etc.

The two paragraphs dealing with regularisation (all of these provisions within Article 91) are located in paragraphs 10 and 11. Para. 10 deals with expired permits, and para. 11 with irregular residents who have never applied for a permit.

Regularisation of expired permit-holders (Para. 10, Art. 91)
Holders of expired permits, along with those whose permits had been automatically extended to 31 Dec. 2005, were required to apply at their local prefecture for a work permit before 31 Oct. 2005. They were also required to produce 150 social insurance stamps for each of the periods 1 July 2004—30 June 2005 and 1 July 2003—30 June 2004. If their employer had not paid those, they were “allowed” to purchase them with a document provided by their prefecture stating that they were renewing work permits.108 Within one month of being granted a work permit, the migrant had then to make an application for a residence permit. The permit would be awarded for the same duration as the work permit, and applicants had to pay a so-called “deposit” of €147 for each year of validity of the residence permit – thus continuing the rates set by the 2001 Law.109

Regularisation of irregular residents who had never held a permit110 (Para. 11, Art. 91)
Irregularly residing third country nationals who were not considered to be “dangerous for public order and security” could apply to their local municipality for a 1-year combined residence and work permit covering the applicant and his/her family.111 The applicant had to have been resident in Greece on or before 31 Dec. 2004, and able to prove this with any of the following:

- Visa stamp in a passport
- Application for a residence permit
- Provision of a VAT number112
- Certificate of a social security institution113
- Rejection of an application for asylum (date of rejection before 31/12/04)

The applicant was also required to provide all of the following:

i. Statement of occupation, reason for residence in Greece, family members residing, declaration of not having committed any crime

108 As happened with both applications and renewals under the 2001 Law, this represented a discriminatory transfer of legal and fiscal responsibility away from the employer and onto immigrant workers. The cost of 300 insurance stamps was around €2,000.
109 These rates have been continued until now; the application fee (non-refundable) for the new EU long-term permit has been set at €900.
110 As was later clarified by Circular 30/2005, those TCNs whose applications for renewal of a permit had been rejected, or those whose permits had been revoked, were required to apply as if they had never held a permit. Ironically, since it required only 150 insurance stamps, this legalisation route was cheaper.
111 No deadline for the receipt of applications is specified in the Law, but is understood to have been 30 Dec. 2005.
112 TCNs are not normally allowed to apply for VAT registration or a tax ID without holding a permit.
113 Without being registered for tax, TCNS are not allowed to register for social insurance with IKA (private sector employees). Therefore, a VAT number or social insurance registration implies that the migrant had a residence permit at one point (in contrast to the stated objective of this legalisation provision).
ii. Passport, travel document, or asylum rejection
iii. Confirmation of payment of the “deposit” for an application
iv. Health certificate from a public hospital
v. Certificate of payment of social security contributions for 150 days work
vi. Proof of submission of application for membership of a social insurance scheme
vii. Certificate of family status, concerning minor children

Registration in the list of undesirable persons held by the Ministry of Public Order was irrelevant if recorded for reasons of illegal entry, exit, employment or residence; the submission of a criminal record certificate (from the Ministry of Justice) was required only for subsequent renewal of the permit.

2.4.1 Implementation and outcomes of the two regularisation programmes

The problems associated with all three previous programmes manifested themselves in the two concurrent programmes. Thus, as the first deadline of 31 October loomed, very few migrants with expired (or about-to-expire) permits had applied: staff at the social insurance organisations had not been properly informed and were refusing permission to purchase insurance stamps. This problem was not resolved until late September, forcing the ministry to extend the deadline to 30 December (as for para. 11 applications).114 The para. 11 process was not faring any better, with public hospitals unable to give outpatient appointments until well into 2006115 and applications could not be submitted without the health certificate. In addition, the para. 11 applicants had to buy social insurance stamps, like those applying under para. 10.

In late October, the Ministry was still revising and refining the rules (Circular 30) to the anger of the immigrant community, and on December 10th a protest rally was held. The migrant communities, along with trade unions and political activist groups, demanded a reduction in the number of social insurance stamps required, an extension of the deadline, and a more flexible interpretation of the conditions laid down in the Law.116 The joint deadline was extended to 28 Feb. 2006, and to some extent some of the conditions (but not the number of stamps) were relaxed. By January, the Deputy Ombudsman had written to the Minister of the Interior to suggest that the low turnout for both programmes necessitated a change in policy; specifically, he suggested that the limited number of documents proving residence in Greece prior to 31/12/04 should be enlarged; that those with expired permits should be allowed to apply under para. 11 (thus paying less social insurance); that certain categories of migrants be exempted from fees and social insurance payments – notably, teenagers reaching majority and needing their own permit, spouses of EU nationals, and spouses of long-term immigrants; and that Albanians of Greek descent be exempted from insurance and application fees (even though they should be eligible for a Special Homogeneis Card or Greek citizenship).117

Ultimately, the joint deadline was extended yet again – to 30 April 2006.118 Thus, for the para. 10 procedure it had been postponed three times, and twice for para. 11 applications. The General Secretary of the Ministry expressed complete satisfaction with the estimated number of 100,000 applicants, and openly criticised the regularisation procedure in Spain as a model,

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114 Athens News, 4/11/2005: “All undocumented migrants now have until year’s end to legalise their status”
115 Athens News, 21/10/2005: “Health papers too hard to get”
stating that such an approach would be “…creating more problems. We would see an increase in unemployment.”

Despite the existence of an electronic database for registering residence permit awards, the Ministry was (and remains) unable to provide basic statistical data on the number of applications under the para. 10 procedure. Such awards were apparently not recorded as regularisation and are estimated at 90,000. Applications made on the basis of para. 11 were recorded as 96,400 with the final number of permits awarded as 95,800 – a rate of 99.4%. Table 3, overleaf, gives a detailed breakdown of permits awarded on the basis of para. 11. The predominant nationality of immigrants in Greece – Albanians – is present in a much lower proportion than all previous regularisations and also in permit data: typically at around 60—70%, for this programme they were only 37%, with roughly twice as many male as female applications. The overall ranking of nationalities is roughly as observed in previous data, with the exception of an increased (but still small) presence of Chinese and Nigerians. Bangladeshis and Indians are under-represented, in this regularisation.

Some 13,000 permits went to children under 16 – presumably, as family members – with high proportions of female children in the cases of Bangladesh, Syria, Egypt, Pakistan and Iraq, and high proportions of male children in the cases of the Philippines. However, these high proportions merely reflect the absence in Greece of a female parent (in the first case) and of a male parent for Philippino children. For some nationalities (Bulgarian, Romanian, Chinese, Russian, Albanian), there are rather high proportions (18—27%) of persons with “unknown” ages: the reason for this is not known but raises questions of accuracy of data.

2.4.2 Evaluation of the 2005 regularisation programmes

Adequacy of policy planning

The two programmes were better-planned than previous legalisations in Greece, with a clearer strategy of streamlining the residence and work permit application procedure. The para. 10 programme replicated provisions of the 2001 Law – in particular, requiring immigrants to renew work permits and pay for any missing social insurance contributions. In the case of employees, the direct discrimination against TCNs resulting from this obligation appears not to have troubled policy-makers; nor was there any serious attempt to regulate the illegal activities of Greek employers, who were (and remain) in continuous and obvious breach of both labour and immigration laws.

In the case of para. 11 procedures, many of the mistakes made in 1998 and 2001 were repeated – in particular, a failure to appreciate the incapacity of the public health system to cope with examining tens of thousands of additional patients in a very short period of time. The timeframe set was completely unrealistic, and this should have been clear from previous programmes. The strict requirements for proof of residence (i.e. only state documents were accepted) were presumably a precaution against fraud: given the massive corruption evident in the public sector, it has to be questioned whether this is a reasonable and proportionate safeguard.

As with para. 10 applicants, the emphasis placed on social insurance contributions as a mechanism for managing informal employment was at best naïve, at worst a cynical money-making exercise. With both programmes, the state replicated what had become a characteristic of migration management in Greece – namely, extreme requirements for legal employment in the first instance, followed by costly regularisation with a very short-term card or permit, followed yet again by onerous demands for permit renewal. The obvious result of such policy is to impel all immigrant workers into intermittent irregular status, since legal routes are over-

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119 *Athens News*, 10/2/2006: “We cannot legalise them all” [interview with Interior Ministry General Secretary Athanassios Vezyrigiannis]
priced. There is no reliable information or research on immigrant earnings,\textsuperscript{120} therefore no logical basis on which the state could assess immigrant capacity to pay social insurance (regardless of the discriminatory aspect of such policy). Equally, the applications fees (or “deposits”) for residence permits cannot be justified at €147 per year, making them amongst the highest in Europe.

**Bureaucratic adequacy**

Although the number of applicants was much lower than in the three previous regularisations, the bureaucracy was still unable to cope well with the processes. This is partly because of the involvement of social insurance agencies, partly because of the continued reliance on over a thousand municipal authorities to accept and process applications, with very little training in many cases. We might also note the highly adverse effect of unclear specification in much of the Law, leaving the details to be clarified by circulars written well after the start of the regularisation programmes. Within a tight timeframe, this is clearly an inadequate approach to management. Thus, the repeated extensions of the programme deadlines indicate serious problems of bureaucracy – even if these were not located within the Ministry itself.

**Evaluation of policy outcomes**

As with previous programmes, there was no evaluation of policy outcomes. Indeed, there is no possibility of drawing even rough conclusions, since the numbers and characteristics of applicants under para. 10 were not recorded for statistical purposes. Presumably, there was no perceived need to evaluate policy, because senior Ministry officials were very clearly satisfied with their own policy. In the case of para. 11 applications, there are data giving some indications of migrant characteristics: however, in this case, the quality of data is insufficient for policy evaluation. For example, rejected asylum-seekers, “abrogated” case asylum applicants, and persons who retracted their asylum applications were all allowed to apply (if they could satisfy the residence date requirement): this variable of former status is not recorded in the dataset. It would also be valuable to know how many former permit holders applied under para. 11: this information is not available. Nor is there any information available on the small proportion of persons whose applications were rejected.

Although there is now the possibility of examining the records of the major social security funds, neither the Ministry of Labour nor the Interior Ministry has attempted to carry out impact analyses of the programmes. Access to microdata by independent researchers is prohibited, therefore only the State can undertake such analyses. Since a fundamental sticking point (in both fiscal and bureaucratic terms) in the award and retention of residence permits is the payment of social insurance, it might seem rather strange that there is no research on the matter.

\textsuperscript{120} There is some limited research on the household incomes of certain immigrant groups – mainly Albanians.
<table>
<thead>
<tr>
<th>Nationality</th>
<th>Male 0-15</th>
<th>Male 16-25</th>
<th>Male 26-45</th>
<th>Male 46-65</th>
<th>Male 66+</th>
<th>Total M</th>
<th>Female 0-15</th>
<th>Female 16-25</th>
<th>Female 26-45</th>
<th>Female 46-65</th>
<th>Female 66+</th>
<th>Total F</th>
<th>Total M/F</th>
<th>K Total</th>
<th>Country Total</th>
<th>% of Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>4,100</td>
<td>4,532</td>
<td>6,709</td>
<td>8,141</td>
<td>1,386</td>
<td>22,838</td>
<td>3,670</td>
<td>5,831</td>
<td>3,239</td>
<td>2,679</td>
<td>44</td>
<td>17,951</td>
<td>1.9</td>
<td>12,252</td>
<td>35,090</td>
<td>36.6%</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>377</td>
<td>757</td>
<td>940</td>
<td>301</td>
<td>3</td>
<td>3,055</td>
<td>349</td>
<td>644</td>
<td>1,871</td>
<td>1,492</td>
<td>16</td>
<td>1,500</td>
<td>0.5</td>
<td>5,872</td>
<td>8,927</td>
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<tr>
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<td>1,138</td>
<td>158</td>
<td>636</td>
<td>3,373</td>
<td>441</td>
<td>892</td>
<td>1,523</td>
<td>222</td>
<td>3</td>
<td>801</td>
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<td>3,882</td>
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<td>1</td>
<td>6,509</td>
<td>404</td>
<td>234</td>
<td>3,198</td>
<td>885</td>
<td>16</td>
<td>340</td>
<td>0.3</td>
<td>47</td>
<td>8,556</td>
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</tr>
<tr>
<td>Georgia</td>
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<td>442</td>
<td>950</td>
<td>250</td>
<td>3</td>
<td>1,960</td>
<td>97</td>
<td>382</td>
<td>1,683</td>
<td>885</td>
<td>16</td>
<td>320</td>
<td>0.6</td>
<td>3,398</td>
<td>5,358</td>
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<tr>
<td>Egypt</td>
<td>156</td>
<td>961</td>
<td>3,121</td>
<td>155</td>
<td>3</td>
<td>4,694</td>
<td>135</td>
<td>64</td>
<td>99</td>
<td>14</td>
<td>1</td>
<td>14</td>
<td>11.4%</td>
<td>317</td>
<td>5,011</td>
<td>5.2%</td>
</tr>
<tr>
<td>Ukraine</td>
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<td>203</td>
<td>347</td>
<td>121</td>
<td>96</td>
<td>946</td>
<td>71</td>
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<td>2,731</td>
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<td>3.8%</td>
</tr>
<tr>
<td>China</td>
<td>63</td>
<td>407</td>
<td>1,102</td>
<td>87</td>
<td>3</td>
<td>2,040</td>
<td>61</td>
<td>313</td>
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<td>624</td>
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<td>522</td>
<td>89</td>
<td>313</td>
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<td>0.2</td>
<td>2,600</td>
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<tr>
<td>Syria</td>
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<td>346</td>
<td>982</td>
<td>21</td>
<td>64</td>
<td>1,606</td>
<td>147</td>
<td>88</td>
<td>106</td>
<td>69</td>
<td>1</td>
<td>1</td>
<td>0.5</td>
<td>375</td>
<td>1,981</td>
<td>2.1%</td>
</tr>
<tr>
<td>Republic of Moldova</td>
<td>176</td>
<td>322</td>
<td>271</td>
<td>44</td>
<td>54</td>
<td>862</td>
<td>197</td>
<td>361</td>
<td>377</td>
<td>107</td>
<td>2</td>
<td>112</td>
<td>0.8</td>
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<td>1,918</td>
<td>2.0%</td>
</tr>
<tr>
<td>Morocco</td>
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<td>142</td>
<td>885</td>
<td>17</td>
<td></td>
<td>1,205</td>
<td>79</td>
<td>181</td>
<td>395</td>
<td>5</td>
<td>15</td>
<td></td>
<td>0.0</td>
<td>675</td>
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<tr>
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<td>35</td>
<td>358</td>
<td>999</td>
<td>36</td>
<td>1</td>
<td>1,626</td>
<td>21</td>
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<td>34</td>
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<td>0.1</td>
<td>81</td>
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<tr>
<td>Bangladesh</td>
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<td>299</td>
<td>1,126</td>
<td>11</td>
<td>1</td>
<td>1,524</td>
<td>45</td>
<td>78</td>
<td>282</td>
<td>42</td>
<td>12</td>
<td>387</td>
<td>1.1%</td>
<td>51</td>
<td>1,575</td>
<td>1.6%</td>
</tr>
<tr>
<td>Indonesia</td>
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<td>807</td>
<td>28</td>
<td>3</td>
<td>1,221</td>
<td>82</td>
<td>37</td>
<td>87</td>
<td>9</td>
<td>0</td>
<td>215</td>
<td>5.7%</td>
<td>215</td>
<td>1,436</td>
<td>1.5%</td>
</tr>
<tr>
<td>Philippines</td>
<td>124</td>
<td>489</td>
<td>2,235</td>
<td>26</td>
<td>9</td>
<td>3,354</td>
<td>315</td>
<td>386</td>
<td>1,282</td>
<td>432</td>
<td>12</td>
<td>327</td>
<td>1.2%</td>
<td>2,718</td>
<td>6,072</td>
<td>6.3%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>6,554</td>
<td>14,965</td>
<td>25,121</td>
<td>2,938</td>
<td>73</td>
<td>57,766</td>
<td>5,978</td>
<td>6,662</td>
<td>13,731</td>
<td>5,466</td>
<td>127</td>
<td>6,084</td>
<td>1.5%</td>
<td>38,048</td>
<td>95,814</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source: Ministry of the Interior
Impact on the irregular immigrant population

It is not possible to evaluate the impact of these two programmes without better quality data. The addition of 96,000 residence permits (presumably, but not necessarily, mostly first-time applicants) may reflect the extent of irregular immigration since the previous regularisation cut-off date. Or it may not. The provision of an estimated 90,000 permits to those with expired permits may have been sufficient to cover the number of such persons: evidence from immigrant organisations suggests the contrary, but this is not supported by hard data. Throughout 2004—5, the total number of valid permits rose consistently from 451,000 in January 2004 up to 566,000 in July 2005; by January 2006, it had reached 587,000.\footnote{Personal communication of the Ministry summary dataset, calculated at 6-monthly intervals, provided to the author in the course of another research project} It seems probable that this number of valid permits, plus the additional ones processed in the programmes, covers the vast majority of the population requiring TCN permits. However, the situation is further complicated by the revocation of ethnic Greek permits (Special Homogeneis Cards) from an unspecified number of Albanian nationals, out of a total of more than 200,000 with such cards. Again, the lack of data and information makes analysis impossible: informed speculation is all that is available.

2.5 The 2007 Special Regulation of Migration Policy Issues, Law 3536/2007

With the ending of the 2005 regularisation programmes, the Government was under increasing pressure to open another programme to address the allegedly large number of TCN residents\footnote{They were estimated at several hundreds of thousands, by GSEE (Greece’s largest trade union)} who remained outside of legality. The decision to re-open a modified regularisation programme (repeating the para. 11 procedure) was announced by the Minister in October 2006\footnote{\textit{Athens News}, 13/10/2006: “One more amnesty”} and promulgated as law in February 2007.

Article 18 of Law 3536/2007 contains several modifications of relevance: para. 1 extends the possibility to apply for an ‘indefinite residence permit’\footnote{As distinct from the EU long-term residence permit} (normally given after 10 years of legal residence) to family members over the age of 21, provided that they also satisfy the conditions. Para. 3 rescinds the requirement of a criminal record certificate for renewal of residence permits. Para. 4 repeats the general conditions of the para. 11 regularisation procedure of 2005, with some additional documentary proof of residence. These are:

- Registration of the applicant, or of the applicant’s child who is still at school, in a state primary or secondary school; registration must have been before 31 Dec. 2004.
- A birth registration made prior to 31 Dec. 2004, provided that one spouse was legally resident.
- Rejection of a renewal or application for a residence permit (provided that the rejection was not on the grounds of public order) if the application was filed before 31 Dec. 2004.
- Rejection of an application for a Special Homogeneis Card (for ethnic Greek Albanians), if the application was filed before 31 Dec. 2004, or an unrenewed Special Homogeneis Card that had expired before 31 Dec. 2004.

The applications had to be submitted by 30 Sept. 2007, along with payment of 150 days of social insurance and the application fee. Para. 5 permits migrants to buy social insurance for the purpose of renewing their residence permits, requiring them to submit a certificate of such by 30 Sept. 2007. Para. 6 states that residence permits that had expired after 1 Jan. 2006 and
application for whose renewal had been rejected as out of time, would be re-examined subject to a fine of €50 per month of delay.

2.5.1 Implementation and outcomes of the 2007 regularisation

Although the Law was passed in February 2007, throughout February, March, April and May the social insurance agencies refused to allow immigrants to purchase social insurance stamps on the grounds that they had not been informed of the Law.125 This occurred despite the fact that such social insurance purchases were demanded for both first-time applications and renewals. By June, the Minister was stating an intent to regularise some 70,000 persons by year’s end: it is unclear where this figure came from, but it could not have been from actual application numbers which were very low. Several months later, it was reported that municipal offices had been instructed to allow incomplete and clearly ineligible applications for regularisation – provided that the €150 application fee was included. Thus, over August—September 2007, the Athens municipality collected over two million euros in fees from 16,402 applicants; interestingly, the director of the Athens municipality application centre chose to blame immigrants “who insist on their right to apply” 126

The actual number of applications has not been revealed by the Ministry. The total number of permits granted came ultimately to just under 20,000 – rather less than the Minister’s stated objective. Table 2.4, overleaf, gives data by significant nationalities, broken down by age group and gender. It is actually instructive to compare these data with the results from the 2005 regularisation, as given in Table 2.3. There are many important differences:

(1) The nationalities concerned. Whereas in 2005, Albanians constituted only 37% of granted regularised permits, here they are 84%. Bulgarians and Romanians are absent here, because of their accession as EU nationals. Pakistanis (who should be second after Albanians) are much lower at ninth place, while Moldovans and Russians are more prominent.

(2) Gender balance. In total, far more males than females were legalised in this process (2.1:1 compared with 1.5:1 in 2005). In particular, the gender balance shifted to males for two high-ranking nationalities in the 2007 process – Egyptians and Indians.

(3) Age. This is difficult to compare because of problems in the 2005 data. However, it looks as if this process included far fewer children (0—15) than were in the 2005 regularisation. For 2007, children are recorded as only 4% of male and 6% of female totals (compared with 11% and 16% in 2005). The higher figures in 2007 are for the age bracket 16—26, possibly those who had been able to provide evidence of school attendance prior to 31 Dec. 2004.

### Table 2.4 Grants of legal status under Para. 4, Art. 18, Law 3536/2007

<table>
<thead>
<tr>
<th>NATIONALITY</th>
<th>SEX</th>
<th>AGE</th>
<th>M Total</th>
<th>F Total</th>
<th>M/F ratio</th>
<th>Country Total</th>
<th>% of Grand Total</th>
</tr>
</thead>
<tbody>
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<td>6,839</td>
<td>3,531</td>
<td>639</td>
<td>17</td>
<td>11,514</td>
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<td>681</td>
<td>59.4%</td>
<td>116</td>
<td>22</td>
<td>4</td>
<td>187</td>
</tr>
<tr>
<td>EGYPT</td>
<td></td>
<td>71</td>
<td>90.3%</td>
<td>392</td>
<td>9</td>
<td>2</td>
<td>490</td>
</tr>
<tr>
<td>INDIA</td>
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<td>0.0%</td>
<td>19.1%</td>
<td>72.2%</td>
<td>8.5%</td>
<td>0.2%</td>
<td>1</td>
</tr>
<tr>
<td>REP. OF MOLDOVA</td>
<td></td>
<td>3</td>
<td>53</td>
<td>64</td>
<td>11</td>
<td>1</td>
<td>132</td>
</tr>
<tr>
<td>RUSSIA</td>
<td></td>
<td>11</td>
<td>14.0%</td>
<td>14</td>
<td>4</td>
<td>29</td>
<td>5</td>
</tr>
<tr>
<td>UKRAINE</td>
<td></td>
<td>4</td>
<td>14.0%</td>
<td>26</td>
<td>10</td>
<td>54</td>
<td>1</td>
</tr>
<tr>
<td>SYRIA</td>
<td></td>
<td>0.0%</td>
<td>32.6%</td>
<td>63.9%</td>
<td>3.5%</td>
<td>0.0%</td>
<td>47</td>
</tr>
<tr>
<td>PAKISTAN</td>
<td></td>
<td>11</td>
<td>14.0%</td>
<td>14</td>
<td>3</td>
<td>163</td>
<td>0.0%</td>
</tr>
<tr>
<td>ARMENIA</td>
<td></td>
<td>0.0%</td>
<td>36.7%</td>
<td>49.0%</td>
<td>14.3%</td>
<td>0.0%</td>
<td>49</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td>3.8%</td>
<td>21.9%</td>
<td>65.3%</td>
<td>7.9%</td>
<td>1.0%</td>
<td>392</td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td>3.8%</td>
<td>33.8%</td>
<td>36.5%</td>
<td>5.7%</td>
<td>0.2%</td>
<td>13,626</td>
</tr>
</tbody>
</table>

SOURCE: Ministry of the Interior
2.6 General characteristics of the Greek regularisation programmes

With the exception of the first programme (White Card), we can identify some common features:

(1) **Restriction as the guiding principle**, with very short-term permits and even more restrictiveness in the renewal possibilities. The result is that many of the legalisations are of the same people, who constantly move into and out of legal status. In the 2001 regularisation, for the prefecture of Nea Ionia in Athens, 92% of applicants had previously been legalised.\(^{127}\) For the 2005 legalisation, the proportion seems to be around 50%, but this approximation is far from reliable.\(^{128}\)

(2) **Emphasis on the payment of social insurance contributions** – even to the extent of making greater demands of immigrants than of Greek workers, in this respect. It is the responsibility in Greek labour law for employers to pay the social insurance of workers, yet this responsibility has been pushed onto immigrant workers who are required to pay the total insurance costs from their own money if their employer has not conformed with the law.

(3) **Emphasis on high application fees**, disproportionate to the processing cost of the permit. Immigrants have emerged as a money-making venture for the Greek state, which funds its own Migration Research Institute (employing only Greeks) as well as making an overall profit for the state. The application fees for residence permits range from €147—900. 25% of receipts are now used for training of staff in municipal offices, for the better management of migration issues.

(4) **The existence of variable statuses and permits, differing legal competencies and massive discontinuities**: the different permit types, their short-term duration and a lack of any long-term planning mean that the Greek state cannot even verify how many years of legal residence an immigrant has had. This is of paramount important for the EU long-term residence status: initially, the Interior Ministry even tried to disqualify periods of legal residence such as Green Cards from the EU permit application procedure.

(5) **Complexity and opaqueness** seem to be a guiding principle, such that neither the state nor the immigrants have much idea of how to manage the situation. The result is an overburdened state and immigrant applicants left in limbo, which is greatly to the benefit of lawyers, mafia operators and corrupt state officials.

2.7 Regularisation Mechanisms

The first clear mechanism for regularisation of illegal aliens can be found in Art. 37, para. 4 of Law 2010/2001: this facilitated the acquisition of 1-year renewable residence permits by decision of the Minister on the grounds of (a) the impossibility of departure or removal from Greek territory, in particular for humanitarian reasons; (b) as a temporary permit for those who had to leave their country of citizenship for reasons of force majeure. A small number of such permits was awarded, but details are not available. Law 3386/2005 provided in its transitional provisions for the continued validity of such awarded permits, but replaced the procedure for awards with Art. 44, which is actually a more comprehensive and carefully thought-out provision than that of the 2001 Law.

\(^{127}\) Original research, conducted by M. Pierre Sintès

\(^{128}\) The approach taken in the 2005 regularisation programmes was so bureaucratic that it is difficult to comment on it: see relevant text, above.
In particular, Art. 44, para. 2 allows the award of a 6-month permit at the discretion of the Minister: the permit may not be renewed, but can be replaced through one of the provisions of Art. 44, para. 1. The latter allows the award of one-year renewable permits on the grounds of (a) labour accidents, (b) victims of certain criminal acts, (c) persons with serious health problems – in all cases provided that the applicant has previously held a permit.

The number of awards of permits under Art. 44, para.2 since the 2006 implementation of Law 3386/2005 is quite high, at around 7,000 persons (or cases) in a three-year period. Table 5, below, shows its beneficiaries, for principal nationalities by gender and age-group.

Slightly more male than female permits were awarded, consistent with the male-female ratio of the immigrant population in general. Similarly with nationalities, whose numbers are more or less proportionate to their presence in Greece (other than that Albanians are under-represented here). The second, third and fourth nationalities here (Georgian, Bangladeshi, Philippine) are slightly over-represented compared with their known population size in Greece, while Bulgarian and Romanian are slightly under-represented. The predominant age groups are the working age population 16—45, which constitutes 81% of the total; males 16—25 are more visible here than females of that age group at more than double the number. In particular, male Albanians aged 16-25 are significant, at 833 persons; also, there is a significant number of Albanian male and female children, at 58 and 66 respectively. Generally, child recipients of this status are in very low numbers, so Albanians are an exception.

There are two problems with these data, and both are serious. The first is that we do not know on what grounds the 6-month permit was awarded; and secondly, that there is no information on what happened on expiry of the non-renewable permit. As a temporary form of regularisation this procedure may be adequate, but it is not evident legislatively or empirically that as a longer-term policy it is sufficient.

2.8 National policy on illegal migration with regard to regularisation

The relationship between policies on illegal migration and regularisation is obscure, and possibly non-existent: it is easier to emphasise the clear relationship between regularisation policy and immigration policy. In effect, Greece’s immigration policy is fundamentally its regularisation policy – a post hoc legalisation of variously:

(i) TCN residents who entered on tourist and student visas, illegally working and/or overstaying;
(ii) TCN residents who entered on tourist and student visas, with the intent of claiming Greek nationality through ethnic background but were rejected
(iii) TCN residents who entered illegally [primarily Albanians across the mountain border]

The formal legal immigrant recruitment mechanism involving Greek consulates has hardly been used, owing to massive bureaucratic problems for employers. Potential employers of migrants are required to deposit with the Greek state three months salary plus the possible costs of forcible return of each migrant. According to informed sources, the Greek state never refunds the deportation costs and sometimes has the three months wages returned with great delays. Thus, employers frequently either refuse to engage with the official recruitment machinery, or

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129 Given that many policy areas in Greece (e.g. planning permissions for housing, or for commercial use of buildings in residential areas) are post hoc legalisations of illegal acts, it should be no surprise that immigration policy also falls into this style of management.
<table>
<thead>
<tr>
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<td>128</td>
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<td>528</td>
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<td>1</td>
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<td>689</td>
<td>9.7%</td>
<td></td>
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<td>53</td>
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<td>1</td>
<td>2</td>
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<td>2.5%</td>
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</tr>
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<td>5</td>
<td>10</td>
<td>5</td>
<td>3</td>
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</tr>
<tr>
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<td>35</td>
<td>57</td>
<td>193</td>
<td>48</td>
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<td>350</td>
<td>9.9%</td>
<td></td>
<td></td>
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</tbody>
</table>

| GRAND TOTAL      | 149  | 1,608 | 1,798 | 325  | 62  | 3,942 | 131  | 759  | 1,588 | 560  | 112   | 3,150 | 7,092 | 100.0% |

SOURCE: Ministry of the Interior
actually require their employees to finance the deposit themselves – usually failing to inform them that it can, in theory, be refunded.

In terms of numbers, the highest annual quota for labour recruitment, set at 57,000 in 2006, is small in comparison with the immigrant population of around 1,000,000; for 2008, the quota has been reduced to 37,000 owing to lack of interest from employers. In previous years, the figures recruited were merely a few thousands per year. Thus, we can assert that Greek immigration policy is fundamentally its regularisation policy.

Views on regularisation policy are mixed, and were quite thoroughly researched in 1997 in preparation of the first regularisation programmes. Competing views in ministries reflected the interests of each ministry, with Agriculture favouring legalisations, and the Ministries of Foreign Affairs and Defence opposing them. Prefectures bordering Balkan countries in the North opposed both legalisations and immigration itself, while Athens tended to support both immigration and legalisations. Both employers associations and trade unions welcomed legalisation and recognised the need for immigrant labour.

Recent official opinion on the topic is in surprisingly short supply, other than continuous criticism of Greek policy from the Ombudsman, HLHR and others. The Greek response to the REGINE governmental questionnaire identifies several structural causes for the irregular status of immigrants, making regularisation programmes an imperative. These include large-scale lapses from legal to irregular status, a sizeable and increasing number of long-term immigrants with illegal employment, and difficulties of border management. Mention is also made of the historic role of separate work and residence permits, along with onerous demands for social insurance payments, in terms of creating impediments for the renewal of permits.

A recent interview with the General Secretary of the Interior Ministry is perhaps instructive, when being asked about the 2005 regularisation and its originally small number of applicants:

...We estimate that by the end of February we will have reached 100,000. Our target was 100,000 applicants.

You could say that there are more, but many of them entered the country without the necessary documents they need to legalise their status. Many came after 2004. We cannot legalise all of them.

If we were to open the door to everyone, like Spain did, we would risk creating more problems. We would see an increase in unemployment.

I believe that our legalisation effort is very good. People have to understand that Greece is not a free-for-all. [Interview with Athanasios Vezirygiannis, Interior Ministry General Secretary: Athens News, 10/02/2006]

Several core assumptions revealed by this interview are open to challenge.

1. “The state cannot regularise all illegal immigrants”; it is not clear why this should not be a policy objective, despite practical difficulty in so doing. The result of restricting the programme in 2006 to those who arrived before the end of 2004, without proposing an alternative policy for those undocumented residents, is merely to perpetuate the problem.

131 REGINE governmental questionnaire: Q. 7
132 Ibidem, Q. 12
“Our target was 100,000...”. There is no known reason for this figure, which appears to have been decided arbitrarily. Arbitrary policy is bad policy, and should be avoided at all costs.

“If we were to open the door to everyone, like Spain did, ... we would see an increase in unemployment”. The claim that immigrant regularisation creates unemployment is not sustained by the standard theoretical literature or any empirical evidence. The implication of this comment is that it is official government policy to permit irregular residence and irregular employment; it is also an attack upon Spanish policy, with the unproven claim that regularisations promote illegal migration flows.

The emphasis on the labour market is important, because protectionism has informed most Greek policy in the employment sphere. It is, therefore, unlikely to be coincidental that there is a policy of issuing *vevaiosti* [receipts] and leaving applicants in limbo for years; alongside this, is the very short-term duration of residence permits, when they are eventually awarded. The problem is further compounded in the 2007 regularisation which permitted the registration of clearly ineligible persons for the process. Combined, these policy measures have the clear result of promoting high segmentation of the labour market, to the benefit of the native population and employers.

### 2.8.1 Estimating the extent of illegally resident TCNs

Despite the general recognition of immigration as a long-term phenomenon, the distinction between legal and illegal immigrants remains unclear. This is primarily because of rigid legal-bureaucratic frameworks: these typically award very short-term statuses, there is heavily delayed processing of applications, severe restrictions concerning the renewal of permits (particularly concerning social insurance payments), and even the award of permits after expiry of their validity. Furthermore, recent practice (in the 2007 regularisation) of permitting applications without valid documentation but payment of an application fee, has had the result of giving the same “grey” legal status to all applicants. This receipt [*vevaiosti*] protects its holders from police detention and expulsion under the immigration rules, but is otherwise worthless. Since 2005, at any one time there seem to be around 500,000 valid permits, another 200,000 or more expired but in the renewal process, and another 300,000 or so merely expired. Recent data indicate some 208,000 pending applications and 181,000 permits issued this year; however, these recent data are incomplete and do not provide sufficient information on migration management.

In comparison, the number of border arrests (18,000 in 2004; 30,000 in 2005) looks insignificant, although these have apparently increased since 2005. More importantly, undocumented immigrants detained within urban centres are usually presented in the data as if they had recently arrived in Greece, when the evidence suggests that many have resided for some time. Overall, the distinction between legal and illegal TCN residents is a largely theoretical fiction, promoted by a state legalistic and bureaucratic mentality. It is thus impossible to talk about stocks of illegally residing TCNs when the great majority of the immigrant population has oscillated between legal, tolerated and undocumented statuses over

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133 This claim is actually made in OECD (2000: 57) where the OECD Secretariat argue that, with the extent of informal employment in the Greek labour market, simply granting legal status to irregular immigrants would reduce labour market flexibility and increase the unemployment of Greek workers. This dogma is based on zero evidence and reflects the policy agenda of “flexible labour markets” touted by the OECD, rather than a systematic exploration of the impact of regularisation on the Greek economy.  
134 *Athens Plus*, 1/8/2008: p. 4
several decades.\textsuperscript{135} It should be noted that the Ministry responsible is unable, statistically, to identify for how long legal immigrants have resided in Greece, or when they were first awarded legal residence status. Nor is it able to state how many legally residing immigrants there are in Greece: it is only able to state the number of valid permits on any one day of the year.

Despite the clear impossibility of estimating illegal stocks under these conditions, some institutions have engaged in this exercise, as shown in Table 2.6, below.

<table>
<thead>
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<th>Estimate</th>
<th>Institution</th>
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<td>60-80,000</td>
<td>Minister of Public Order, in evidence to the Parliament (2006)</td>
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<tr>
<td>200-300,000</td>
<td>Hellenic Migration Policy Institute (2006)</td>
</tr>
<tr>
<td>500,000</td>
<td>GSEE [largest trade union in Greece] (2006)</td>
</tr>
<tr>
<td>205,000</td>
<td>Clandestino Study, ELIAMEP (2008)</td>
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With the exception of the most recent study conducted by ELIAMEP, none gives the basis or methodology of their calculation, although the first seems to be based on the statistic (60,000) pertaining to detected illegally residing immigrants in 2005. The ELIAMEP/Clandestino study undertakes a rigorous analysis of the mostly deficient methodological approaches in various studies, and concludes that irregular migrant stocks have massively reduced in recent years. This reduction is attributed largely to regularisation measures (Maroukis, 2008).

### 2.9 Conclusions

Greek policy has had the effect (and possible intent) of placing its immigrant population in continuous legal uncertainty, thereby weakening their economic bargaining power and impeding immigrants’ integration into Greek society. It is also incompatible with European Union policy on long-term residence and integration of immigrants. The policy solution of regularisation, as a way of assisting immigrant integration, is insufficient to compensate for fundamental structural problems with the immigration system and poor regulation of the labour market. An aggressive policy on irregular employment is needed, with a clear focus on employers: thus far, Greek policy has not only focused exclusively on immigrants, but also transferred onto them the employers’ responsibility for social insurance payments.

Fundamental reform of the entire immigration and employment infrastructure is a requisite for successful management of the problem of irregularly residing third country nationals in Greece. Some basic reforms have been undertaken in the 2001 and 2005 immigration laws, but these represent merely a starting point for the better management of immigration in Greece. In particular, detailed post hoc policy evaluations, continuous monitoring of processes, and major improvements in the quality of data for policy monitoring purposes are all urgently required.

\textsuperscript{135} Lest this seem exaggerated, the author has personally interviewed one immigrant with legal residence (via 1-year permits) exceeding 30 years, who in the early 2000s received a deportation order when his family circumstances changed. There is extensive documentation of others, with legal residence exceeding 20 years, who have been caught in the trap of waiting for a formal permit and being unable to work, leave or enter Greece, as the \textit{vevaiosi} allows neither employment nor travel. Rather more people, with unstable work and low pay, have found themselves in and out of legality (as much as in and out of work), simply because the social insurance demands on immigrants are so high. In some sectors, construction in particular, immigrants pay more social insurance per person than do Greek workers (Baldwin-Edwards, 2004b).
Table 2.7 Synopsis of regularisation programmes in Greece

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<tr>
<td><strong># applicants</strong></td>
<td>371,641</td>
<td>228,200</td>
<td>367,504</td>
<td>n.d.</td>
<td>n.d.</td>
</tr>
<tr>
<td><strong># permits issued</strong></td>
<td>n.d.</td>
<td>219,000</td>
<td>341,278</td>
<td>185,800 (est.)</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Original duration of permits</strong></td>
<td>6 months</td>
<td>1-2 years</td>
<td>6 months</td>
<td>1 year</td>
<td>1 year</td>
</tr>
</tbody>
</table>
2.10 References


Kanellopoulos et al. (2006), _Illegal immigrants in Greece: State approaches, their profile and social situation_, Athens: Centre of Planning and Economic Research (KEPE)


Chapter 3: Italy

Paolo Ruspini

3.1 Introduction
Migrants from developing countries started to enter Italy by the mid-1970s (there were 156,179 legally resident foreigners in 1971). The migratory inflow became important only during the second half of the 1980s, when it was estimated at more than 100,000 people per year. Immigrant population has almost doubled every ten years to date. On 1st January 2007, present foreigners in Italy have been estimated at almost 4 million (Blangiardo, 2008). About one half (46%, that is, more than 1.5 million people) of these foreigners living in Italy are migrants originating from East-European countries. The North-African (19%) and Asian (17%) components are also very numerous, while less relevant is the presence of immigrants from Latin America (10%) and Sub-Saharan Africa (9%). With respect to the countries of origin of immigrants, the data reflects a variegated population, made up of numerous different nationalities, some represented by substantial numbers, other more modest. On January 1, 2007, the first nationality, namely Albanians, accounts for 12.8 of the foreign resident population in Italy, followed closely by Moroccans 11.7% and Romanians 11.6%136. These are the only three groups to reach double figures. None of the other national groups reaches 10%, though the fast increasing presence of Ukrainians should be considered as well as that of Chinese, Filipinos and Tunisians (Blangiardo, 2006).

3.2 Irregular Migration in Italy
The foreign community is not distributed uniformly over the Italian territory. About 65% of the foreigners legally present are currently found in the northern and 23% in the central areas of Italy (Blangiardo, 2008). The marginal presence of immigrants resident in the South and in the Islands is correlated to the potential demand in the labour markets of the northern areas, both in industry and agriculture. The most recent estimates by the ISMU Foundation on the stock of irregular immigrants throughout the national territory are of around 541,000 individuals in 2005, 650,000 in 2006 and 349,000 in 2007 (Fasani, 2008). In 2005 about 133,000 of them were settled in Italy’s southern regions (Cesareo, 2007).

As to irregularity levels, East-European migrants form the first contingent by number of individuals, both in absolute (about 720,000 units) and relative (19%) terms. More than 240,000 East-European citizens live in the southern regions, however with a definitely higher irregularity rate (32%).

Second in size is the North African group (625,000 individuals), with a slightly rising share in southern regions in comparison with the national average (in both areas 21% against 19%) for the whole of Italy. North Africans show lower irregularity rates than the average (14.1% against 16%).

Immigrants originating from Asia and Oceania total about 580,000 units. This group holds supremacy in terms of presence stability, with a definitely higher residents’ share than the average one and a lower irregularity rate: 12% on a national scale, and 22% in the South and Islands.

Latin-Americans total in all more than 320,000 individuals. They mostly gather in the Centre-North (91%) and their share in the southern regions includes only 6% of all resident foreigners.

136 Own elaboration based on Blangiardo, 2008.
The irregularity rate of this group is slightly lower than the average one, while its stability level is lower, compared to that of other macro-areas of origin.

Sub-Saharan Africa is the area from which originates the less substantial foreign group, in absolute terms: 287,000 units, 14% of which are settled in the South. These migrants show irregularity rates within average values and a fairly high share of non-resident regular migrants, which points out low stability values among those foreigners.

Concerning an irregular migrants’ classification, the first three communities alone total over 40% of all irregular migrants. Romanians hold the first place (94,000 irregulars, equal to 17% of total irregular migrants), followed by Albanians, Moroccans, and Ukrainians (Cesareo, 2007).

3.3 Regularisation measures

3.3.1 Regularisation programmes

Few migrants entered Italy holding a permit to work and to stay. Most of the ‘irregular’ residents entered legally with a tourist visa or for work and their legal justification for residence subsequently expired. In studies on migration it has been generally recognised that Italian migration policies, explicitly designed to combat “illegality”, are in fact an instrument that produces and institutionalises casualisation in its utmost form – which is, precisely, “illegality”. Some elements that underlie the institutionalised production of illegality were already present in the earliest migration laws. This is the case of Law 943/86 which made provision for recourse to amnesties to regularise situations of previous illegality, which had come about precisely because, until then, Italy did not have legislation to regulate the entry and residence of migrant workers, apart from a few ministerial memorandum (Cillo, 2007). Another fundamental element in the institutionalised production of illegality, which has contributed to rendering recourse to amnesties systemic, is the governing of migration movements through flows decrees that annually set an upper limit to the number of entries for the purpose of work for hire. The legislation on flow decrees, introduced for the first time in 1990 by Law 39/90 (Martelli Law), prescribes that it is up to the employer to set in motion the bureaucratic procedures, required by the Interior Ministry, to authorise an entry: hence a migrant worker is excluded a priori from directly and independently requesting a residence permit and is in a position of total subordination to the employer. Furthermore, for many years the flow decrees made provision for very few entries and, in some years, none were issued, obliging migrants to enter Italy illegally or, more frequently, to fall into illegality as “overstayers”. All in all, the Italian short history as a receiving country is marked by six regularisation programmes (1982, 1986-88, 1990, 1995-96, 1998 and 2002), each promoted with the intention of being the last, involving about 1.5 million people. As a consequence, it is clear that “Italian migration polices, ever since their first construction, have organically combined the structural submergence of undocumented migrant workers into the underground economy, due to the quota restrictions on entries, with their periodic emergence through the instrument of amnesties” (Cillo, 2007: 8).

The six regularisation programmes are as follows:

- **1982**, this was an administrative regularisation, instigated by the Ministry for Labour, which offered a work permit to all foreigners who could prove, as well as continuous presence in Italy in the two preceding months, that an employer was willing to employ them legally or that they had been steadily employed in the past. Overall, this measure concerned about 5,000 foreigners (EMN, 2005);

- **1986-88**, this was a legislative regularisation (Law no. 943 of 1986), approved almost unanimously by the Parliament, which offered a legal residence permit and related work permit to all those non-EU citizens who, as well as being in the country on the date the new regulations
became effective (27 January 1987), were employed on an illegal basis [contextually legalised] or had been in the past. The directives included in the text of the law provided for a joint obligation, for both an employer and a foreign worker involved in an informal job relation, to submit a regularisation application to the Provincial Employment Office. This procedure closed with the regularisation of 105,000 migrants, more than one half of which unemployed or not in the position to support with documentary evidence their condition as subordinate workers (Cesareo, 2007);

- 1990, this was a legislative regularisation (Law no. 39 of 1990, the so-called “Martelli” law), approved by the Italian Parliament with a wide majority, but quite strenuously opposed by some parties of the centre and centre-right, which offered a residence permit and related work permit to all foreigners who could prove they were present in Italy on the date the bill came into force (31 December 1989). In that case, the documentary evidence of an effective job relation was not the essential requirement for regularising one’s position. In fact, this provision aimed at recognizing and normalizing the growing presence of foreign citizens on the Italian territory, disregarding their employment conditions. Overall, 222,000 foreigners, among which many women, who most likely had come to Italy as a result of family reunifications, were granted an access to the channels of legality (Cesareo, 2007). Designed for reducing the area of irregularity – disregarding immigrants’ occupational position – and avoiding its regeneration in the future, this law for the first time shed light on the attraction potential associated with mass regularisations provisions. This attraction power was witnessed by a new regularisation provision, issued five years later, which led to the emergence of a significant number of individual positions, mostly referring to subordinate workers (Zanfrini, 2006);

- 1995-96, this was a legislative regularisation (Law Decree no. 489 of 1995), approved by the Italian Parliament with a majority but with a certain difficulty and many amendments, which reaffirmed the strict relation existing between legal status and subordinate employment conditions. This provision offered a residence permit and related work permit to all foreigners who could provide documentary evidence that they were in the country on the date the bill came into force and that they could prove (1) an employer was willing to employ them, (2) a job experience in the past six months or (3) the presence of legally resident family members they could join. For the first time, the possibility to become regularized for family reunification purposes was provided for; a sign that immigration flows were beginning to take stability within the social and economic context of the country. Overall, the measure concerned 246,000 foreigners out of 258,761 applications presented between 1995-1996;

- 1998, this was an indirect regularisation, the result of an item on the agenda approved by a majority of the Italian Senate in coincidence with the reform of the laws on immigration introduced by Law no. 40 of 1998, the so-called “Turco-Napolitano” law (approved by Parliament with a limited majority). This provision offered a residence permit and related work permit, to all foreigners who could prove they were in the country on the date the law became effective (16 October 1998) and who could demonstrate they were illegally employed at that time or at the present. For reasons of political disagreement, the amnesty was organised in a fairly Machiavellian fashion, starting with a limited number of permits being offered to illegal immigrants within the quota for new entries and - when the great difference between applications for legalisation and available permits had been recorded - by gradually increasing the number of permits to be granted until it was transformed into an actual amnesty (Sciortino, 2000). In the context of this procedure, the extent of the phenomenon of immigrants’ entrepreneurship (or self-employment), involving 15% of all submitted regularisation applications, began to overbearingly emerge. Overall, 217,000 applications for legalisation were accepted out of 250,747 applications presented;

- 2002, this is a legislative regularisation which came into force on 9 September 2002, that is 15 days after the publication of the new immigration law (Law no. 189 of 30 July 2002, also known as the “Bossi-Fini” law) in the Italian Official Journal (Gazzetta Ufficiale). Differently
from the previous regularisation actions (especially the one enforced by the so-called “Martelli Law”, in which for migrants the grant of a regularisation title exclusively depended on the fact of staying in Italy, but also at a different level in comparison with the previous similar provisions), “the 2002 procedure did not aim at presenting itself as an amnesty, but rather as a legalisation tool based on existing job relations” (Zanfrini, 2006: 9). It foresees two kinds of legalisation processes: 1) the legalisation of housekeepers and domestic workers for families, covered by art. 33 of the “Bossi-Fini” law; and 2) the legalisation for all dependent workers employed in productive sectors covered by a specific law (legislative decree no. 195, 9 September 2002) which became effective at the same time as the legalisation for housekeepers and carers. While most parties had declared their opposition to another legalization campaign, the implementation of this programme succeeded because it was framed as “humanitarian” in its regularisation of migrant caretakers who look after Italian children and the elderly (Chaloff, 2003). The programme ran for two months from 11 September 2002 to 11 November 2002, and received 702,156 applications (EMN, 2005). About half the applications were for domestic workers and the other half for other jobs in dependent employment. To apply, a migrant had to provide documentation of three months of pension contributions and show proof of continued employment. Because of the length of time involved in processing the applications, from 2003 there were hundreds of thousands of foreigners illegally present in Italy but awaiting ‘regularisation’. A primary challenge was to define their legal status, in part due to possible changes in their employment position. For instance, many people-minders were already unemployed due to the death of the person assisted, and so without the work which they applied to regularize in 2002. Despite this difficulty, when the process ended in November 2003, there were some 650,000 ‘new’ migrants, who had emerged from illegality (EMN, 2005).

### 3.3.2 Regularisation mechanisms

In compliance with the provisions of the Single Act (article 18 of the 1998 immigration law, untouched by the following legislative reform), victims of human trafficking, forced prostitutes in particular, are allowed to receive a special residence permit for reasons of social protection, i.e. to remove them from the violence and obligations of criminal organizations and to help them take part in assistance and social-integration programmes. Noteworthy, is the role played by NGOs and particularly Caritas in the promotion and drafting of these provisions (Ruspini, 2000).

### 3.3.3 National policy on illegal migrants in regard to regularisation

When in 2003 the individual applications were all dealt with, as a consequence of the most massive immigrant regularisation that Italy has adopted to date, there were some 650,000 ‘new’ foreigners in possession of residence permits, who had emerged from illegality. Certainly, this seems a positive result for both the beneficiaries of the law and the society as a whole. However, the Italian experience seems to demonstrate again that repeated legalisation programmes did not solve the problem of illegality, and they are instead more likely to attract new illegal migration (Abella, 2000). Two studies on illegal immigration in Italy (Palidda, 1996 and 1999) show the amnesties to be an increasingly endogenous phenomenon, due to a combination of two factors: (a) the non renewal of residence permits and employment contracts of immigrants who had benefited from previous amnesties, and (b) the growth of the underground economy and the benefits it generates for those who have an interest in migratory flows, providing that those flows remain illegal (OECD, 2000).137

Research on the last legalisations, carried out in Lombardy by the ISMU Regional Observatory on Integration and Multi-ethnicity, seems however to indicate a positive outcome of these

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137 The informal or underground economy in Italy is particularly developed, steadily employing some 17% of the labour force. In addition, it is not necessarily based on open exploitation: even if degrading working conditions are common, there are also many cases where there is a positive trade-off between higher wages and greater employment insecurity, thanks to the possibility of avoiding payments of taxes and social security contributions.
programmes of decreasingly frequent slipping back into irregularity (only 2% of the regularised foreigners interviewed had problems in renewing their residence permits, lacking some requirements). This hypothesis seems confirmed by the analyses carried out at national level on single files of residence permits (Carfagna, 2002). Thus, it has been argued that the increase of the irregular foreign population - and its reproduction after any amnesty has taken place - should be ‘mainly’ attributed to the arrival of new immigrants who make use of entry channels which, after the arrival, do not entitle to any valid residence permits (Sciortino, 2004).

Another thorny issue that should not be underestimated is that the newly regularized immigrants in 2002, unlike many other foreigners, received a one year permit to stay. This makes their position highly precarious, for example by preventing them from applying for public housing because a longer permit is a pre-requisite for this. If we add that the letter of the law limited the permit for people minders to the specific job for which it was released, it’s easy to understand the risk of creating a category of ‘second class’ immigrants, with serious effects on their quality of life and their chances of integration.

Precariousness is one of the most troubled aspects of the situation created by the rules introduced in 2002. Critics have insisted greatly on the ‘precariousness’ caused by a marked reduction in the average duration of residence permits, as well as the marked preference of the Italian government for allowing foreigners in only as seasonal workers. In particular, those who lose their jobs had great difficulty in finding new employment in time to renew their permits, while many ‘seasonal’ workers tend to overstay.

This outcome, clearly in contrast with the stated objectives of the law, also stems from the protracted inability to offer reasonable and timely opportunities for regular entries through decrees programming the flows of immigrants, despite a steady demand for foreign workers. The gap between planned legal quotas and demand for immigrant labour continuously reproduces large strata of illegal immigrants.

### 3.3.4 A “disguised amnesty” or ‘de facto regularisation’ programme?

A clear gap in the outcome of the 2002 and other regularisation programmes has been pointed out by Zanfrini (2006: 30) who argues that “where this regularisation, such as the previous ones and similar measures launched in other countries missed the target is in its ability to weigh significantly upon incoming flows”. Though the percent incidence of “undocumented migrants” was lower than the values achieved in different periods of the past, in absolute terms the estimated number of irregular migrants, as to July 1st, 2005, had already totalled half a million individuals, and showed an irreversible tendency to further increase waiting for a new mass-regularisation law.

As a result in March 2006, in consequence of the law decree on migration flows enforced by the Berlusconi Cabinet, over 500,000 “entry” applications for foreign workers were submitted. A figure that was twice as high as the total admission shares that had been provided for. The real question was that almost all applications were in fact directly submitted by foreign workers who had already come and settled in Italy since long. The major mass media plentifully showed and reported in detail the stories of hundreds of thousands of migrants waiting in queues before the post offices to submit their formal applications. There was an evident rift between law provisions and actual facts (Codini, 2006: 61). Pursuant to the law in force, a foreigner is supposed to find first a job in Italy, and only then, after having found a job and on the employer’s request, he/she is allowed to come in Italy with appropriate documents. Those queued-up migrants told and evidenced a quite different story, a story in which a foreigner who intends to work in Italy, first gets in the country, obviously without appropriate immigration documents (since he/she cannot obtain them in this way), then seeks and finds a job off-the books (as he/she cannot be regularly employed), and finally tries to find a way to regularise him/herself both as a worker and as an immigrant (Codini, 2006). Among illegal and irregular migrants, in 2005 even those with a modest average migration seniority, ¾ had in any case a
usually stable job, which confirms that the Italian economic system absorption capacity goes far beyond the limits established by the quota system, but also “further strengthens in people’s imagination the idea of Italy as a country in which it is possible to enter, live and work in spite of any law provision” (Zanfrini, 2006: 31).

In the southern regions, where a minority of migrants is settled, in 2005 irregularity rates were extremely high (27% migrants did not hold any regular residence permit, against a national average by 16% and by 15% if referred only to the Centre-North (Blangiardo & Tanturri, 2006).

The new Italian centre-left government elected in April 2006 immediately announced the adoption of a second planning decree providing for a number of “entries” substantially equal to the number of submitted applications exceeding those provided for in the previous decree on flows (Codini, 2006). This decree has been promptly branded by the centre-right opposition as a “disguised amnesty” (Zanfrini, 2006. 31). The final result (through the second decree published on December 7 by the Italian Official Journal, providing for 350,000 additional admissions) was a sort of regularisation for about 500,000 immigrants, in short a measure quite similar to the 2002 regularisation – since the question was again granting a residence permit to some hundreds of thousands of irregular foreign workers on condition they had an employer prepared to regularly employ them. The difference lies, however, in the fact that the 2002 migrants’ regularisation was passed through an extraordinary provision aimed exclusively at “regularising” irregular migrants, whereas the 2006 measure was passed instead by means of an “anomalous”, improper use of a law instrument aimed at achieving a different purpose, that is to say, through the regulations of incoming flows. The most relevant element in prospect of this measure is that it shed light on the inadequacy of the regulations in force concerning foreign workers’ admission (Codini, 2006). Some NGOs’ representatives come to the point that “even though the regulation of influxes of migrant workers in Italy is no way a regularisation, it is however perceived and applied as such as the workers called by the employers are de facto already living and working irregularly in Italy” (Quyên Ngô Đình & Accorinti, 2006). Such a trend indicates also that even though the legal system may provide norms to regulate irregular migration, Italy has in fact always opted for mass regularisations based on economic factors rather than based on people’s specific needs.

3.4 Regularisations’ outcomes in historical perspective

The results of regularisations have provided an opportunity to outline trends in the flows towards Italy, demonstrating by and large an increasing tendency to a stable integration in the labour market and in the society (EMN, 2005).

Regularisations per nationalities

In correspondence with the 1990 regularisation, launched by the “Martelli Law”, Moroccans become by far the most relevant foreign community (22%) in numerical terms, while the second place is held by the Tunisian community (12%), among the first ones arrived in Italy. In order of importance, these two communities are followed by Senegalese (7%) and Filipinos (6%). Through the 1995-96 amnesty (the “Dini Decree”), the Albanian community achieves a relevant position (13%), which almost equals the Moroccan one (14%). The 1998 regularisation measures (enforced on the occasion of the passing of the so-called “Turco-Napolitano” Law) confirm the Albanians’ predominance (18%) and the arrival of Romanians (11%), whose number almost equals the Moroccans’. Within the framework of irregularity, a certain weight (8%) is confirmed for the role of the Chinese community. On the occasion of the last regularisation provision (issued after the passing of the “Bossi-Fini” Law), five among the first ten nationalities by number of regularised persons originate from Balkan countries and from the rest of Central and Eastern Europe. Romanians appear as undisputed leaders in the classification by number of applications (143,000) and legalised migrants constituting 21% of the total (Fasani, 2008). This circumstance has the effect of re-designing the overall framework of
regular migration, since it assigns to Romanians a role equalling that of Moroccans and Albanians. In the fifth place we find the Ecuadorians, with a number of applications (37,000) which increased by four times the regularly settled migrants from this country, and Moldavians. However, the real novelty of the 2002 regularisation is that of the Ukrainians, who submitted a number of applications (106,000) eight times higher than that of the residence permits issued before the amnesty, and became the fourth national community by number of present individuals (Zanfrini, 2006: 4-5).

Regularisations per age
The mean age of irregular migrants and regularisation candidates tends to grow over time. If we consider the applications submitted in 2002, the migrants’ mean age is over 32 years, but reaches 38 years for persons originating from Eastern Europe, who in addition are mostly women. Mean age lowers instead in the communities with a male majority, particularly if we consider the communities from Bangladesh, Egypt, Tunisia, India and Pakistan. The irregular migrant population is thus formed by “young men and by no longer very young women”, which clearly reflects different starting situations and migration models (Zanfrini, 2006: 5).

Regularisations per gender
Although women tend to reach the same percentage incidence as men amongst legal immigrants, amongst regularised immigrants the imbalance is more significant, with males constituting three-quarters of the total. Many women entered following the regularisation of spouses under a family reunion visa, as illustrated by post-regularisation data. This situation led to a percentage almost equal between males and females (EMN, 2005). The 2002 regularisation reports a women’s presence highly exceeding the one pointed out by the previous amnesties, as it involves 46% overall emersion applications, and has actually achieved a considerable weight within some emerging communities, such as the Ukrainian, Moldavian and Ecuadorian. Since the basic requirement for having access to this procedure was the existence of a job relation, this figure further confirms the relevance of the female component among the flows directed to Italy, and namely, among those migrating for job reasons. A parallel outcome is also the distribution on the national territory of employment of these migrant women in positions of support to family-related services. 83.6% immigrant women, for whom a regularisation application was submitted, declared to work as home helps (45.8%) or home caretakers (37.8%) (Zanfrini, 2006: 6).

Regularisations per work activity
During two more recent regularisations (1998 and 1995) more immigrants succeeded in finding employment and this shows the increasing need of manpower: in fact, 76.3% of immigrants regularised in 1995 were employed while 92.0% of those regularised in 1998 were employed compared to 68.5% of regularised immigrants in 1986 and 77.4% in 1990 (EMN, 2005).

An analysis of all submitted applications in 2002 allows outlining a fair distribution among workers recruited by companies, to which 52% applications refer, and immigrants recruited by families as home helps (27.6%) or caretakers for old and ill persons (20.4%). The distribution by individual nationalities reflects their gender composition, with communities where women predominate mostly concentrated in the area of services to families, while those with a prevalence of men, usually including subordinate workers employed in companies mainly from Egypt, Pakistan, Tunisia, Algeria, China, Burkina Faso and Morocco. Together with services to families, the building industry absorbs the highest share of regularisation applications (16.6%), as well as the highest number out of already regularly employed migrants, followed by the tertiary industry (16%), particularly trade and catering activities, the manufacturing industry (10.3%), and finally, agriculture (5.3%), whose weight however triples in the southern regions of Italy. Within subordinate jobs for companies, the primacy of Romania goes along with “classical” areas of origin, particularly North-African and Asian countries, while in services to families (and in woman-workers’ regularisations) the contribution of East-European migrants is definitely remarkable (Zanfrini, 2006: 6-7).
At last, the overall beneficiaries of these regularisation measures were mostly immigrants who entered Italy irregularly and, to a lesser degree, immigrants whose previous residence permits expired (“overstayers” totalled 18% in 1990, 13% in 1995 and 9% in 1998). Later the number of “overstayers” has increased, also because for the majority of Eastern European countries the obligation to request a visa has been abolished (EMN, 2005).

### 3.5 Costs and benefits analysis regarding the regularisation programmes

Three functions of regularisations in the Italian migration regime have been summarised by Finotelli (2005: 71) as follows:

1. They allowed the Italian state to periodically recover control on irregular migration flows;
2. They maintained a certain balance in the Italian dual labour market and had an internal control function, periodically transferring migrant labour force from the informal to the formal economy;
3. They substituted an active (and effective) migration policy.

The overall impression when making cost-benefits analysis of irregular migration and particularly of amnesties is that benefits seem to outweigh the costs. In Italy irregular migrants have, overall, been a benefit both in terms of demography and employment: more than half of all regularly residing foreigners were once irregular, which indicates that this method was, in realistic terms, necessary due to partially ineffective official flow planning (EMN, 2005). As far regularisations, it is unquestionable that illegal migrants’ irregular employment continuously feeds a sequence of unfavourable events, such as market distortion, immigrants’ discrimination, competition with the weakest segments of local labour, misappropriation of resources destined to the whole community, weakening of the sense of legality. Thus “any intervention aimed at making emerge irregular labour has therefore its practically taken-for-granted legitimacy” (Zanfrini, 2006: 35).

Some positive regularisation effects out of different analyses of the 2002 regularisation programme include first the possibility to keep the legal status for the regularised migrants and to obtain an extension of their residence permit either through their original employer, or through a new incoming one. According to Cesareo (2007) almost three years after the latter regularisation about 74% regularised migrants continue to carry on a regular job activity, to a greater extent in the South than in the Centre-North of Italy. Secondly, the emersion of a considerable share of concealed labour allows Italy counting on higher tax revenues. In this context, estimates concerning declared income highlight that the contingent of regularised migrants contributes now by over one third of the overall income volume produced by the foreign workers who live in Italy.

From another point of view, in financial terms the fight against irregular migration has enormous costs that jeopardize the investment of integration funds. According to the Italian Audit Court (Corte dei Conti) the fight against irregular migration in 2004 to apply the Bossi-Fini law cost a total of 115,467,000 Euro, or rather 320,000 Euro per day. The total sum invested in immigrant integration and assistance projects in the same year amounted only to a mere 29 million Euro (EMN, 2005). Controls are, on the contrary, insufficiently developed and almost totally non dissuasive in jobs and situations in which the atavistic scourge of informal labour takes place representing the most important market for irregular migration (Zanfrini, 2006; Ruspinii, 2000a).

When it comes to amnesties, Finotelli (2005) argues however that “they are easier where costs are cheaper”. Considering that welfare contributions as unemployment insurance in Italy are
low (or in the case of minimum social assistance, practically nonexistent), amnesties generally had little political costs for the Italian governments (Finotelli, 2006: 72). In the Italian context, there is however a manifest clash between the ongoing migration “normalization” process and the periodical recurrence to “exceptional” or “de facto” regularization actions for irregular migrants. These policy measures have therefore become a fundamental regulation modus in the Italian migration regime with an important inclusion function ex post (Zanfrini, 2006; Finotelli, 2005). At last, in the European context, it is not clear how this widespread ex post regulation instrument called for a national prerogative of any EU member state, as such may facilitate the harmonisation process of the immigration policy towards a common admission framework (e.g. Ministero Interno, 2008; Pastore, 2004).

3.6 References


Ministero Interno, Dipartimento Libertà Civili e Immigrazione – Direzione Centrale Politiche Immigrazione e Asilo (2008), “Italy”, Response to the “ICMPD Questionnaire addressed to EU member states on regularisation processes”, Rome: Ministero Interno.


3.7 Annex

Table 3.1 Regulations regarding regularisations

<table>
<thead>
<tr>
<th>Regulations</th>
<th>Deadline for Entry</th>
<th>Regularisation applications</th>
<th>Accepted applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Labour Memoranda 17.12.1979, 08.03.1980, 02.03.1892, 09.09.1982</td>
<td>31.12.1980</td>
<td>5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Law 943/1986 and subsequent extensions</td>
<td>31.12.1986</td>
<td>113,349</td>
<td>105,000</td>
</tr>
<tr>
<td>Leg, Decree 19/1995 converted with law 617/1996</td>
<td>19.11.1995</td>
<td>258,761</td>
<td>246,000</td>
</tr>
<tr>
<td>Prime Minister Decree 16.10.1998 and Leg, Decree 113/1999</td>
<td>27.03.1998</td>
<td>250,747</td>
<td>217,000</td>
</tr>
<tr>
<td>Law 189/2002 and Law 222/2002</td>
<td>10.06.2002</td>
<td>702,156</td>
<td>650,000</td>
</tr>
</tbody>
</table>

Source: EMN – National Contact Point (2005) based on Italian Ministry of the Interior data

Table 3.2: Applications for the 2002 regularisation by workers’ type of contract, gender and mean age, top 10 nationalities

<table>
<thead>
<tr>
<th>Subordinate jobs</th>
<th>Home-help jobs</th>
<th>Caretaker jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationality</td>
<td>Men</td>
<td>Women</td>
</tr>
<tr>
<td>Romania</td>
<td>29.2</td>
<td>26.9</td>
</tr>
<tr>
<td>Morocco</td>
<td>27.4</td>
<td>29.5</td>
</tr>
<tr>
<td>Albania</td>
<td>25.5</td>
<td>34.8</td>
</tr>
<tr>
<td>China</td>
<td>29.6</td>
<td>27.0</td>
</tr>
<tr>
<td>Egypt</td>
<td>27.5</td>
<td>27.7</td>
</tr>
<tr>
<td>India</td>
<td>28.0</td>
<td>28.7</td>
</tr>
<tr>
<td>Ukraine</td>
<td>31.0</td>
<td>28.1</td>
</tr>
<tr>
<td>Pakistan</td>
<td>28.3</td>
<td>30.8</td>
</tr>
<tr>
<td>Senegal</td>
<td>29.8</td>
<td>28.4</td>
</tr>
<tr>
<td>Ecuador</td>
<td>29.7</td>
<td>30.3</td>
</tr>
<tr>
<td>Total</td>
<td>28.3</td>
<td>28.9</td>
</tr>
</tbody>
</table>

Source: Italian Minister of the Interior (drawn from Zanfrini, 2006)

<table>
<thead>
<tr>
<th>Geographical area and nationality</th>
<th>Law 39/90</th>
<th></th>
<th>Law 48/95</th>
<th></th>
<th>Law 1998</th>
<th></th>
<th>Law 189/02 e 222/02</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M+F</td>
<td>% F</td>
<td>M+F</td>
<td>% F</td>
<td>M+F</td>
<td>% F</td>
<td>M+F</td>
<td>% F</td>
</tr>
<tr>
<td><strong>Total legalised</strong></td>
<td>217,626</td>
<td>26.0</td>
<td>244,492</td>
<td>31.0</td>
<td>217,124</td>
<td>28.0</td>
<td>646,829</td>
<td>46.2</td>
</tr>
<tr>
<td><strong>EUROPE</strong></td>
<td>27,699</td>
<td>41.5</td>
<td>63,128</td>
<td>31.9</td>
<td>81,672</td>
<td>29.8</td>
<td>383,107</td>
<td>56.9</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>22,650</td>
<td>35.4</td>
<td>61,673</td>
<td>31.2</td>
<td>81,024</td>
<td>29.7</td>
<td>382,992</td>
<td>56.9</td>
</tr>
<tr>
<td>of which: - Albania</td>
<td>2,471</td>
<td>11.7</td>
<td>29,724</td>
<td>18.4</td>
<td>5,077</td>
<td>72.4</td>
<td>30,021</td>
<td>78.0</td>
</tr>
<tr>
<td>- Moldova</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>950</td>
<td>69.2</td>
<td>29,471</td>
<td>71.7</td>
</tr>
<tr>
<td>- Poland</td>
<td>5,366</td>
<td>51.8</td>
<td>7,926</td>
<td>66.8</td>
<td>5,077</td>
<td>72.4</td>
<td>30,021</td>
<td>78.0</td>
</tr>
<tr>
<td>- Romania</td>
<td>760</td>
<td>56.2</td>
<td>11,099</td>
<td>28.8</td>
<td>24,098</td>
<td>33.4</td>
<td>134,909</td>
<td>45.2</td>
</tr>
<tr>
<td>- Ukraine</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2,050</td>
<td>79.0</td>
<td>101,651</td>
<td>85.3</td>
</tr>
<tr>
<td><strong>AFRICA</strong></td>
<td>127,027</td>
<td>15.2</td>
<td>96,926</td>
<td>17.8</td>
<td>72,012</td>
<td>17.4</td>
<td>108,540</td>
<td>14.3</td>
</tr>
<tr>
<td>of which: - Morocco</td>
<td>48,670</td>
<td>8.9</td>
<td>34,258</td>
<td>10.2</td>
<td>23,850</td>
<td>11.3</td>
<td>48,174</td>
<td>13.5</td>
</tr>
<tr>
<td>- Senegal</td>
<td>15,966</td>
<td>7.3</td>
<td>9,889</td>
<td>2.6</td>
<td>10,727</td>
<td>5.3</td>
<td>12,372</td>
<td>3.9</td>
</tr>
<tr>
<td>- Tunisia</td>
<td>26,318</td>
<td>7.0</td>
<td>10,362</td>
<td>9.6</td>
<td>5,565</td>
<td>6.1</td>
<td>8,843</td>
<td>4.6</td>
</tr>
<tr>
<td>ASIA</td>
<td>46,973</td>
<td>33.2</td>
<td>61,349</td>
<td>36.4</td>
<td>47,768</td>
<td>27.7</td>
<td>87,949</td>
<td>25.3</td>
</tr>
<tr>
<td>of which: - Bangladesh</td>
<td>3,861</td>
<td>1.0</td>
<td>6,162</td>
<td>0.9</td>
<td>6,689</td>
<td>0.7</td>
<td>10,687</td>
<td>0.7</td>
</tr>
<tr>
<td>- China</td>
<td>8,580</td>
<td>37.3</td>
<td>14,445</td>
<td>41.4</td>
<td>16,787</td>
<td>39.1</td>
<td>33,950</td>
<td>37.8</td>
</tr>
<tr>
<td>- Philippines</td>
<td>13,684</td>
<td>62.3</td>
<td>21,406</td>
<td>62.7</td>
<td>6,696</td>
<td>64.7</td>
<td>9,821</td>
<td>60.1</td>
</tr>
<tr>
<td>- India</td>
<td>2,819</td>
<td>11.8</td>
<td>5,623</td>
<td>3.6</td>
<td>4,697</td>
<td>3.8</td>
<td>13,399</td>
<td>2.9</td>
</tr>
<tr>
<td>- Pakistan</td>
<td>4,510</td>
<td>2.1</td>
<td>4,499</td>
<td>1.4</td>
<td>6,592</td>
<td>1.1</td>
<td>9,649</td>
<td>0.7</td>
</tr>
<tr>
<td>- Sri Lanka</td>
<td>5,258</td>
<td>22.6</td>
<td>6,993</td>
<td>26.2</td>
<td>4,090</td>
<td>27.6</td>
<td>7,030</td>
<td>20.0</td>
</tr>
<tr>
<td><strong>AMERICA</strong></td>
<td>15,501</td>
<td>64.2</td>
<td>23,021</td>
<td>69.5</td>
<td>15,597</td>
<td>68.5</td>
<td>67,143</td>
<td>64.6</td>
</tr>
<tr>
<td>of which: - Ecuador</td>
<td>344</td>
<td>70.3</td>
<td>2,066</td>
<td>72.1</td>
<td>5,178</td>
<td>70.3</td>
<td>34,292</td>
<td>64.7</td>
</tr>
<tr>
<td>- Peru</td>
<td>2,057</td>
<td>60.8</td>
<td>12,753</td>
<td>69.2</td>
<td>4,960</td>
<td>67.5</td>
<td>16,213</td>
<td>65.5</td>
</tr>
<tr>
<td>% over documented migrants</td>
<td>120.9</td>
<td>100</td>
<td>45.9</td>
<td>100</td>
<td>24.9</td>
<td>100</td>
<td>47.8</td>
<td>100</td>
</tr>
</tbody>
</table>

**Source:** Istat and Italian Ministry of the Interior (drawn from Fasani, 2008)
Chapter 4: Spain

Joaquín Arango and Claudia Finotelli

4.1 Introduction
After having been an emigration country for decades, Spain is today one of the major immigration countries of Europe. Migration flows to Spain started to become sizeable in the 1980s, but at modest levels until the beginning of the 21st century. Since 2000, the rate of increase of the immigrant population has been very high: the number of immigrants has increased from about one million in 2000 to about four and a half million in 2007. The majority of foreign residents have a residence permit, and most of them have come for employment reasons. However, this has not come about as the result of a planned, rational immigration policy nor of effective recruitment programmes. As happens in many other countries, the Spanish government has proven not very successful in regulating immigration. In particular, Spanish legislation was characterised for a long time by a certain lack of realism concerning possible ways to meet the substantial demand for foreign labour, especially of low-skilled workers in the construction sector, domestic and other personal services, the care and hospitality industries and agriculture. The mismatch between inadequate policy regulations and strong demand for labour in the economy fuelled irregular migration flows.

4.2 Regularisation processes in Spain

4.2.1 Legal framework and implementation of regularisations
Reducing the rate of irregularity has been a major challenge for the Spanish government throughout the last two decades. Given the inability to reconcile market demands and state regulations, six extraordinary regularisation programmes have taken place. The first one took place in 1985/1986, and was followed by others in 1991, 1996, 2000, 2001 and 2005 (Table 4.1).\textsuperscript{138}

<table>
<thead>
<tr>
<th>Regularisation process</th>
<th>Reference date</th>
<th>Start of the process</th>
<th>End of the process</th>
<th>Government ruled by</th>
<th>Duration of residence permits issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programme E</td>
<td>-</td>
<td>31.01.2001</td>
<td>30.06.2001</td>
<td>PP</td>
<td>-</td>
</tr>
<tr>
<td>Programme F</td>
<td>23.1.2001</td>
<td>16.02.2001</td>
<td>30.06.2001</td>
<td>PP</td>
<td>One year</td>
</tr>
<tr>
<td>Programme G</td>
<td>-</td>
<td>08.06.2001</td>
<td>31.06.2001</td>
<td>PP</td>
<td>-</td>
</tr>
<tr>
<td>Programme H</td>
<td>8.8.2004</td>
<td>7.2.2005</td>
<td>7.5.2005</td>
<td>PSOE</td>
<td>One year</td>
</tr>
</tbody>
</table>

Table 4.1: Overview of extraordinary regularisation processes in Spain (1985-2005)

Source: Cachón 2007; Cebolla and González Ferrer 2008.

\textsuperscript{138} Legislative bases for the regularisation process were the Organic Law 4/2000 of 11th January, the Royal Decree 239/2000 of 18th of February, the Royal Decree 142/2001 of 16th of February and the Royal Decree 2393/2004 of 30 December.
Apart from mass regularisation schemes, the Spanish legislation foresees other individual forms of regularisation such as the *arraigo* (rootedness), humanitarian protection for rejected asylum seekers and the issue of a temporary residence permit for security reasons for collaborating with the Spanish police. However, mass regularisation has played the most relevant role in terms of both magnitude and frequency.

Table 4.2 shows the intended foci. Most processes have targeted irregular workers; however, this was sometimes extended to other migrant categories like relatives (1996, 2000 and 2001), asylum seekers (2000) or specific nationalities such as Ecuadorians (programme E, 2001). The requirements for application were not always clear. However, a general condition, common to all processes, was that the applicants had to prove that they had been living in Spain before a certain date (reference date). The lack of a criminal record was another relevant essential condition for most processes. The only exception in this respect has been the regularisation programme of 2000. In some cases, the requirements for application included previous employment as desirable, but it was only in 2005 that employment was declared an essential application condition. The national background was relevant only in the case of the regularisation process for Ecuadorian migrants in 2001. Finally, evidence of integration efforts was a relevant and desirable criterion only in the case of programme G in 2001 (*arraigo*).

Table 4.2: Intended foci of regularisation processes

<table>
<thead>
<tr>
<th>Regularisation process</th>
<th>Type of irregularity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programme A</td>
<td></td>
</tr>
<tr>
<td>Programme B</td>
<td></td>
</tr>
<tr>
<td>Programme C</td>
<td>Irregular workers, regular residents, relatives</td>
</tr>
<tr>
<td>Programme D</td>
<td>Irregular workers, irregular residents, rejected asylum seekers</td>
</tr>
<tr>
<td>Programme E</td>
<td>Irregular Ecuadorian citizens</td>
</tr>
<tr>
<td>Programme F</td>
<td>Rejected applicants for Programme D</td>
</tr>
<tr>
<td>Programme G</td>
<td>Irregular workers, irregular residents</td>
</tr>
<tr>
<td>Programme H</td>
<td>Irregular workers</td>
</tr>
</tbody>
</table>

Source: own elaboration

All regularisation procedures granted a temporary right to remain. In this case the regularised migrants were issued a short-term residence and work permit. All permits were renewable. However, such temporary titles are only renewable if the regularised migrants fulfil certain conditions like, for instance, an employment relationship. In the long term, regularised migrants have access to a long-term residence status in accordance with EU Directive 2003/EC/109.

Some major difficulties have been faced during implementation. As a matter of fact, most regularisations were not supported by the necessary administrative machinery and went through a difficult implementation procedure. Sometimes the application conditions were modified when the process was already under way. Such was, for instance, the case of the regularisation of 2000, which turned into a “sequence of processes” (Arango and Suarez 2003). Furthermore, the overlapping of several processes resulted in bureaucratic congestion. This happened, for example, when the regularisation of 2001 coincided with the re-examination of applications presented during the preceding process (2000) and with the special regularisation for Ecuadorian immigrants. All in all, about 1.2 million foreigners were regularised in Spain since 1986 – half of them after the regularisation of 2005. From this standpoint, the latter deserves special attention.
4.2.2 The regularisation of 2005

The regularisation of 2005 was preceded by intense negotiations between the government, the trade unions and the employers’ confederations, and immigrant associations were also heard. In contrast with the previous regularisations, the 2005 regularisation was part of a wider programme to fight irregular employment in Spain. The process admitted the regularisation of foreigners in view of their *de facto* economic and social integration. Only workers could apply, and for the first time, in order to be legalised they had to produce a work contract valid for at least six months.\(^{139}\) Legalisation would take place only when the worker had registered in the Social Security System and the first month’s social dues had been paid. That is the reason for which the regularisation of 2005 has been described as a “real” regularisation by state officials for the REGINE questionnaire. In contrast to previous regularisation processes, it was therefore the employer who had to apply for the regularisation of his or her employee. Only domestic workers with more than one employer could apply by themselves. Furthermore, applicants had also to prove that they had been in Spain six months before the start of the process, i.e. before 8 August 2004, and the only acceptable proof was official registration in the municipal population register (*Padrón municipal*). Last but not least, they had to produce a clean penal record in their country, to be obtained from their embassies or consulates.

As usual, the regularisation process was been accompanied by several implementation problems. In particular, the process required a large number of applications to be presented in a short period of time. It should not be forgotten that the estimated irregular population at the beginning of 2005 was about 900,000 (Cachón 2007; Pajares 2006). But this time the Spanish government did its best to provide the necessary organisational structure for the regularisation process, setting up 742 information points on the whole territory and reinforcing the administration personnel with about 1,700 additional employees. The whole process was supported by a wide network of information points managed by trade unions and migrant organisations, Social Security Offices entrusted with the collection of the applications and Foreigners Offices of the Ministry of Interior for the evaluation of the applications.

The separation between application and decision-making points contributed to a considerable rationalisation of the procedure (Jorrit 2008). Furthermore, the Ministry of Labour established an electronic dossier for the exchange of information among all the ministries involved in the process. At the same time, the Ministry of Labour, together with the Ministry of the Interior, set up an electronic system for the automatic renewal of residence permits to avoid long queues and bureaucratic congestion in front of the Foreign Offices. Additionally, the Minister of Labour announced that the regularisation would be followed by a marked increase in workplace inspections, carried out by the Labour Inspectorate.

All in all, the process cost 12,693,983 euros which were distributed as follows:

1) Information Service of the Ministry of Labour: 826,006 euros.

2) Employment of a special group of temporary workers by the Ministry of Public Administration: 5,657,894 euros.

3) Special contribution for extra working hours of employees of the Ministry of Justice: 75,000 euros.

4) Employment of translators: 3,642,640.21.


The high investment in financial and human resources, however, did not suffice to avoid completely the long queues in front of the administrative offices. Furthermore, getting the necessary documents from embassies and consulates was not always easy: for instance, it was

\(^{139}\) They were reduced to three months for the agricultural sector.
particularly difficult for those immigrant communities without diplomatic representation in Spain. Finally, not all applicants had enrolled in the municipal register on time, despite the fact that they might have been in Spain before August 2008. For the latter, the Spanish government approved new provisions allowing applicants to produce a special certificate issued by the local authority attesting to their “social integration” in the local community, in order to waive the requirement of enrolment in the municipal register (empadronamiento por omisión). About 30,000 applicants were able to avail themselves of such a document.

In spite of the aforementioned difficulties, 691,655 applications were presented between March and May 2005, leading to the following results:

Table 4.3: The final results of the Spanish amnesty of 2005

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Total</th>
<th>Issued</th>
<th>%</th>
<th>Withdrawn</th>
<th>Not admitted</th>
<th>Filed</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>25.598</td>
<td>22.239</td>
<td>86.88</td>
<td>1.442</td>
<td>482</td>
<td>1.414</td>
<td>21</td>
</tr>
<tr>
<td>Romania</td>
<td>118.546</td>
<td>100.128</td>
<td>84.46</td>
<td>7.501</td>
<td>2.788</td>
<td>8.048</td>
<td>81</td>
</tr>
<tr>
<td>Ukraine</td>
<td>22.247</td>
<td>19.466</td>
<td>87.50</td>
<td>988</td>
<td>414</td>
<td>1.363</td>
<td>16</td>
</tr>
<tr>
<td>Morocco</td>
<td>86.806</td>
<td>68.727</td>
<td>79.17</td>
<td>6.887</td>
<td>2.217</td>
<td>8.813</td>
<td>162</td>
</tr>
<tr>
<td>Mali</td>
<td>7.205</td>
<td>6.249</td>
<td>86.73</td>
<td>271</td>
<td>194</td>
<td>475</td>
<td>32</td>
</tr>
<tr>
<td>Senegal</td>
<td>10.100</td>
<td>7.265</td>
<td>71.93</td>
<td>1.371</td>
<td>349</td>
<td>1.083</td>
<td>16</td>
</tr>
<tr>
<td>Ecuador</td>
<td>140.020</td>
<td>127.925</td>
<td>91.36</td>
<td>4.842</td>
<td>584</td>
<td>6.621</td>
<td>48</td>
</tr>
<tr>
<td>Colombia</td>
<td>56.760</td>
<td>50.417</td>
<td>88.82</td>
<td>2.806</td>
<td>361</td>
<td>3.138</td>
<td>38</td>
</tr>
<tr>
<td>Perú</td>
<td>3.605</td>
<td>2.950</td>
<td>81.83</td>
<td>283</td>
<td>87</td>
<td>279</td>
<td>6</td>
</tr>
<tr>
<td>Bolivia</td>
<td>47.325</td>
<td>39.773</td>
<td>84.04</td>
<td>2.889</td>
<td>1.630</td>
<td>2.974</td>
<td>59</td>
</tr>
<tr>
<td>Pakistan</td>
<td>15.782</td>
<td>8.602</td>
<td>54.51</td>
<td>2.292</td>
<td>2.315</td>
<td>2.286</td>
<td>287</td>
</tr>
<tr>
<td>China</td>
<td>13.416</td>
<td>8.159</td>
<td>60.82</td>
<td>2.143</td>
<td>1.127</td>
<td>1.932</td>
<td>55</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>691.655</td>
<td>578.375</td>
<td>83.62</td>
<td>44.457</td>
<td>17.362</td>
<td>50.356</td>
<td>1.105</td>
</tr>
</tbody>
</table>

Source: Spanish Ministry for Labour and Immigration 2006.

Ultimately, 578,375 applications received a positive resolution. Half of regularised migrants were working in the domestic sector, followed by construction, the restaurant business, agriculture and industry. Women represented half of the applicants. Most of them were employed in the domestic sector and were from Eastern Europe and Latin America. In turn, African women experienced lower levels of regularisation which might be related with their lower employment rates (Rubin et al. 2008). As far as regional distribution is concerned, most applications were presented in Madrid, Catalonia and the Autonomous Community of Valencia.

4.3 Outcomes and effects of regularisation processes

4.3.1 Inclusion and stabilisation of irregular migrants

One of the most controversial effects related to regularisation processes concerns their actual capacity to effectively reduce the irregularity rate of foreigners. As Table 4.4 shows, all regularisation processes carried out in Spain had a high recognition rate:
Table 4. 4: Outcomes of regularisation processes in Spain

<table>
<thead>
<tr>
<th>Year</th>
<th>Regularised</th>
<th>Permanent Residents</th>
<th>Approval Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>38.181</td>
<td>34.832</td>
<td>91%</td>
</tr>
<tr>
<td>1991</td>
<td>130.406</td>
<td>109.135</td>
<td>84%</td>
</tr>
<tr>
<td>1996</td>
<td>17.676</td>
<td>21.382</td>
<td>85%</td>
</tr>
<tr>
<td>2000</td>
<td>247.598</td>
<td>199.926</td>
<td>81%</td>
</tr>
<tr>
<td>2001</td>
<td>351.269</td>
<td>232.674</td>
<td>66%</td>
</tr>
<tr>
<td>2005</td>
<td>691.655</td>
<td>578.375</td>
<td>82%</td>
</tr>
</tbody>
</table>

Source: Spanish Ministry of Labour and Immigration.

However, such data are not considered to be reliable enough because they do not provide relevant information on the stabilisation of the residence status of the regularised migrants. For this purpose, it is useful to compare the number of regularised immigrants since 1985 (1,176,324) with that of non-EU citizens living in Spain at the end of 2006 (2,360,804). From such a comparison it can be surmised that, in the long term, extraordinary regularisations have been responsible for the inclusion of about half of the foreign population. Furthermore, such results suggest that regularised migrants usually remain in Spain after they have been regularised – questioning the existence of a transit effect from Southern to Northern Europe after regularisation processes.140

Nevertheless, if we have a look at Table 4.5 (below), regularisations do not seem to have had the same impact on all nationalities. In fact, the ratio of regularised immigrants to foreigners with residence permits is lower in the case of Moroccans and Peruvians than in the cases of Ecuadorians and Romanians.141 Such differences are explained by the period of immigration. Immigration from Morocco and Peru in aggregate terms is older than that from Ecuador and Romania. Furthermore, migrants from Peru benefited from legal immigration channels through bilateral agreements between Spain and Peru. Nowadays, both Moroccan and Peruvian migrants represent “old” communities which use the family reunion channel. On the other hand, recent migration flows are more likely to be irregular. Recent migrants work in the informal economy until the next regularisation process is announced.

In spite of the differences between nationalities, the data clearly suggest that regularisations have had an important inclusion function for irregular migrants. Such a function becomes even more evident if we focus our attention on the last regularisation programme. Owing to the high number of approved applications, the regularisation of 2005 provides the most relevant dataset to evaluate the effects of a regularisation process. The evaluation is favoured by the follow-up carried out by the Spanish government after the end of the process. The number of non-EU citizens with a residence permit living in Spain rose to 2,169,648 at the end of 2005, which implied an increase of 638,562 as compared with the end of 2004. In 2006 most of the regularised migrants were able to renew their residence permits that they had obtained in the regularisation. As we can see from figure 4.1, the number of foreigners with a residence permit renewed for the first time doubled between 2005 and 2006 while foreigners with an initial residence permit decreased considerably (see Figure 4.1).

140 On the contrary, in some cases transit migration seems to have taken place from northern member states towards Spain. This has been, for instance, the case of Ukrainian migrants whose entry into the Schengen space was favoured by a generous German visa policy. While most Ukrainian women moved to Italy to work in the domestic sector, most men continued their journey to Spain to work in the booming Spanish construction industry (Finotelli / Sciotino 2006).

141 Such a result is not a novelty. As we know from the results of the regularisation of 2000, Ecuadorians seem to have profited more from the regularisation process than Moroccans and Peruvians who tended to get their work permits through the general recruitment scheme.
### Table 4.5: Foreign population and regularised immigrants in Spain (2000-2006)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>994,574</td>
<td>2,360,804</td>
<td>42%</td>
</tr>
<tr>
<td>Subtotal</td>
<td>734,015</td>
<td>1,865,590</td>
<td>39%</td>
</tr>
<tr>
<td>Bolivia</td>
<td>43,037</td>
<td>52,587</td>
<td>81%</td>
</tr>
<tr>
<td>Romania</td>
<td>126,463</td>
<td>211,325</td>
<td>59%</td>
</tr>
<tr>
<td>Ecuador</td>
<td>195,226</td>
<td>376,233</td>
<td>51%</td>
</tr>
<tr>
<td>Senegal</td>
<td>13,691</td>
<td>28,560</td>
<td>47%</td>
</tr>
<tr>
<td>Ukraine</td>
<td>27,841</td>
<td>52,760</td>
<td>52%</td>
</tr>
<tr>
<td>Pakistan</td>
<td>14,139</td>
<td>29,669</td>
<td>47%</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>31,038</td>
<td>60,174</td>
<td>51%</td>
</tr>
<tr>
<td>Algeria</td>
<td>16,798</td>
<td>36,499</td>
<td>46%</td>
</tr>
<tr>
<td>Colombia</td>
<td>99,162</td>
<td>225,504</td>
<td>43%</td>
</tr>
<tr>
<td>Morocco</td>
<td>135,285</td>
<td>543,721</td>
<td>24%</td>
</tr>
<tr>
<td>China</td>
<td>20,163</td>
<td>99,526</td>
<td>20%</td>
</tr>
<tr>
<td>Dominican Rep.</td>
<td>5,504</td>
<td>58,126</td>
<td>9,4%</td>
</tr>
<tr>
<td>Peru</td>
<td>5,668</td>
<td>90,906</td>
<td>6,2%</td>
</tr>
</tbody>
</table>

Source: Arango and Finotelli (2009b)

As far as 2007 is concerned, there is still a large number of foreigners with a residence permit renewed for the first time in Spain, while the number of people with a permanent permit is increasing. At the same time, the number of family reunion processes is increasing due to the progressive stabilisation of the foreign population. As a matter of fact, the residence permits issued for this purpose increased from 14,000 to 96,000 between 2000 and 2006. Even though there are no data available on family reunions related to the last regularisation process, the embassies and consulates involved reported an increasing number of applications since the end of 2006.

### Figure 4.1: Distribution of residence permits (2005 and 2006)

![Distribution of residence permits](image)

Source: Spanish Ministry of Labour and Immigration; Own elaboration.
4.3.2 The impact of regularisations on the economy and the Social Security system

The National Spanish Social Security Institute has been monitoring the labour career of all regularised migrants since 2005. After the regularisation process, the number of foreign workers registered in the Social Security System increased to 1,404,449, which implied an increase of 578,313 as compared with the end of 2004. In total, one out of every three foreigners registered in the Social Security System had been regularised in 2005. According to information provided by the Spanish Ministry of Labour, tax incomes and social security contributions related to the regularisation process were respectively 92,859,672 euros and 93,345,503 euros. As a consequence, the overall contributions to the Social Security System by the end of 2005 exceeded 800 million Euros for the first time.

From this standpoint, regularised migrants were supposed to have provided a fundamental contribution to the budgetary superavit of the Spanish State. Such monetary effects did not disappear. According to the data of the Social Security System, 461,319 of the regularisation-related enrolments were still valid in October 2006. This means that almost 80 per cent of the regularised immigrants were still working legally at least one year after the regularisation process. On the other hand, among the migrants already ‘outside’ the system we find 19,288 Ecuadorians, 15,698 Romanians, 15,043 Moroccans, 9,582 Colombians and 9,582 Bulgarians. Losses were not equally distributed across sectors: construction and the restaurant business lost respectively only 1,146 and 4,197 workers while the domestic sector had 104,193 fewer workers than a year after the regularisation process. Similar effects have also been observed in the case of agriculture. According to our interviews with the farmers’ association, COAG, only 10—20% of the regularised immigrants were still working in the agricultural sector at the end of 2007. Such observations fit with a recent econometric evaluation of regularisation processes (Ferri et al. 2006). According to its results, economic sectors like commerce and the hotel trade register a significant growth after a regularisation process, while this is not the case for the agricultural sector.

As far as the effect of legalisation on welfare gains or losses of households is concerned, Ferri et al. observed that regularisations have different effects on different types of households. In this respect, urban self-employed households or urban skilled employees clearly benefited from the regularisation process while, in general, the impact of regularisations on unskilled labour is less. Regularisations also change the savings habits of immigrants, because regularised migrants are likely to spend more money in their country of residence instead of devoting it almost completely to remittances (as is usually the case when they are irregular). But the most important key results of the aforementioned study are related to the relationship between regularisation and real wages, because it seems that unskilled native workers are affected by regularisations, since real wages are more likely to fall, while skilled native labour benefits from regularisations. Such findings have been also outlined by de Espinola (2006). According to his analysis, real wages in the Spanish economy have been increasing in the industrial sector, while they have been decreasing in construction and in the service sector. In this respect, Ferri et al. (2006) attribute to the trade union a very important role in mitigating the effects of regularisations on wages and employment.

4.3.3 The clean-up effect of regularisations

Our previous considerations outline how regularisations, and especially the regularisation of 2005, allowed the legal inclusion of a large number of irregular foreign workers. All in all, Table 5 and the outcomes of the last regularisation process suggest that regularisations have been able to reduce the irregularity rate. However, measuring such effect in practice is not that easy. Estimations of this issue are usually based on the comparison between the figures of the non-EU citizens enrolled in the municipal register with those foreigners in possession of a residence permit in Spain. The difference between the two figures is improperly considered to
be a reasonable – though vague – estimation of the number of irregular migrants living in Spain. Indeed, the estimations often provided by the Spanish media usually show some ignorance about the disadvantages of this statistical source. First of all, most estimations consider only the absolute number of foreign residents without considering that EU citizens cannot be irregular per se and should therefore be excluded from all irregularity estimations. Furthermore, such estimations should also take into account categories like asylum seekers or foreign students who are omitted from the figures on legal residents. Finally, estimations often do not consider immigrants who have applied for the renewal of an expired residence permit.

In spite of all this, a large number of Spanish researchers argue that the Padrón still represents the ground for achieving more clarity on such an opaque phenomenon as the extent of irregularity. This is, for instance, the case of Recaño and Domingo (2005) who tried, quite successfully indeed, to estimate irregularity before the regularisation of 2005. The two demographers observed in 2005 that there was quite a high correspondence between the irregularity rate of certain migrant groups living in Spain and their participation in the regularisation process. According to Pajares (2006), who has also used the Padrón data to estimate irregularity, the regularisation was quite successful in reducing irregularity – though he estimated that about 500,000 irregular migrants were still living in Spain after 2005. Similar conclusions have been advanced by Lorenzo Cachón (2007), who suggests that between 300,000 and 400,000 irregular migrants did not participate in the regularisation process. Finally, according to Cebolla and Gonzalez (2008) the number of irregular migrants might be even lower (168,532) if the estimates include students, asylum seekers as well as an approximate number of those foreigners that are renewing their residence permit.

In all the aforementioned cases, the regularisation seems to have not been able to eliminate completely the phenomenon of irregularity in Spain. Such persistence might be related to several factors. First of all, not all irregular migrants can participate in regularisation processes either because they are too young or because they do not have a job. In the case of the last regularisation process there was quite a large segment of the population who could not fulfil the criteria related to registration in the municipal register. Interviews conducted with representatives of immigrants’ associations revealed that this was especially the case for Bolivians and Romanians. Furthermore, such estimations should take into account that there is always a part of the irregular population whose application is withdrawn. In the case of the last regularisation process, only 83.70% of the applications were accepted. Finally, there is a general tendency to explain the persistence of irregularity through a ‘pull effect’ of regularisation processes. Such an effect represents for sure one of the most controversial questions related to regularisation processes. Several researchers, of course, have pointed to the difficulties of measuring it (Blangiardo and Tanturri 2004; Arango and Finotelli [2009]). As a matter of fact, there is no real empirical evidence for the existence of such an effect on a large scale. In particular, measuring a ‘pull effect’ on some communities does not demonstrate the overall pull effect of regularisation processes. However, some considerations are possible using the limited data at our disposal.

Table 4.6 (below) shows a considerable increase in the number of detected migrants at the sea borders between 2005 and 2006. Such an increase might be misinterpreted as a pull effect on African migration. However, we assume that the increase of 2006 is more related to the change of smugglers’ strategies during 2006. Furthermore, if there had been a ‘pull effect’, the detected irregular migrants would increase also in the Strait of Gibraltar. Nevertheless, the figures do not provide any evidence for that. Finally, migration from Western Africa represents only a small part of the overall migration and is, therefore, one of the (quantitatively) less relevant migration systems with which Spain is involved.

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142 The data used for this estimation did not take into account the depuration process of the municipal register and might contain a certain degree of overestimation.
Table 4.6: Detected migrants at the Spanish sea borders

<table>
<thead>
<tr>
<th>Year</th>
<th>Migrants</th>
<th>Vessels</th>
<th>Detected migrants</th>
<th>Vessels</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Gibraltar</td>
<td>Canary Islands</td>
</tr>
<tr>
<td>2000</td>
<td>15.195</td>
<td>807</td>
<td>12.785</td>
<td>2.410</td>
</tr>
<tr>
<td>2001</td>
<td>18.517</td>
<td>1077</td>
<td>14.405</td>
<td>4.112</td>
</tr>
<tr>
<td>2004</td>
<td>15.671</td>
<td>740</td>
<td>7.245</td>
<td>8.426</td>
</tr>
<tr>
<td>2006</td>
<td>39.180</td>
<td>-</td>
<td>7.502</td>
<td>31.678</td>
</tr>
<tr>
<td>2007</td>
<td>18.057</td>
<td>-</td>
<td>5.579</td>
<td>12.478</td>
</tr>
</tbody>
</table>

Sources: Coslovi 2007; Ministry of the Interior 2008

Another factor that should be taken into account is that the entry of irregular migrants after a regularisation process also depends on the restrictiveness of visa regulations. Figure 4.2 relates visa policy with the number of migrants who yearly register for the first time in the municipal register (variaciones residenciales). The registrations of Romanians increased significantly after the abolition of the visa obligation in 2002. In this particular case, the data might suggest that the regularisation produced a ‘pull effect’ on the Romanian community. As a matter of fact, a recent study of the migration mechanisms in the two Romanian communities of Luncavita and Feldru outlined the existence of a ‘pull effect’ of regularisation processes as most of their members moved to Spain attracted by the ongoing regularisation – supported by strong social networks and, of course, an open visa policy (Elrick and Ciobanu).

Nevertheless, the experience of Luncavita and Feldru cannot be used to validate the existence of a ‘pull effect’ in other communities and national groups. There is, for instance, less evidence for a ‘pull effect’ of regularisation processes for Ecuadorians and Colombians, whose numbers dropped after the introduction of the visa obligation in 2001 and 2003. According to these figures, the majority of the regularised Ecuadorians and Colombians had arrived in Spain (and registered in the Padrón) before 2003. We can, therefore, assume that the number of Colombians and Ecuadorians might have increased after the regularisations of 2000/2001 favoured by a generous visa policy. On the other hand, the visa obligation reduced the ‘pull’ potential of the regularisation process of 2005. There is still little evidence for the increase of Bolivians after the regularisation, but we can easily assume that their migration pattern might follow the Colombian and Ecuadorian one. The number of Bolivians might have increased after the regularisation, but it is supposed to drop after the introduction of a visa obligation in April 2007.

As far as Morocco is concerned, we can observe a slight increase of Moroccan enrolments after 2004. Such an increase might be the consequence of the improvement of diplomatic relations between Spain and Morocco up to 2004. However, Moroccans are an old and quite stable community. The increase in this case might be, thus, more the consequence of family reunions and legal labour recruitment than of the ‘pull effect’ of the last regularisation process.
4.4 Conclusion

The data presented in this report show that regularisation processes seem to have considerably reduced the irregularity rate in Spain. Their overall effect can be summarised in the following points:

1) Regularisations had an important inclusion function for those irregular migrants who were already living in the country.

2) Regularisations are usually most relevant for recent immigrants, whereas more established migrants can benefit from other policies (e.g. family reunion)

3) The majority of the regularised migrants have been able to renew their residence permit, thus stabilising their residence status.

4) More than 80% of the regularised migrants were still registered in the Social Security System a year after the regularisation process.

5) Regularised migrants show a general tendency to change employment sector after having been regularised. Female domestic workers usually transfer into the restaurant business, while male workers move from agriculture into construction.

6) There is little empirical evidence for an overall ‘pull effect’. Nevertheless, it can be assumed that the increase of irregular migration after a regularisation process depends not only on the attractiveness of regularisations but also on a complex set of factors: these include visa regulations, the attractiveness of the informal economy and the efficiency of foreign labour recruitment procedures.
4.5 References


Chapter 5: Switzerland

Paolo Ruspini

5.1 Introduction
The transformation of Switzerland into an immigration country took place at the same time as the industrial take-off during the second part of the nineteenth century. The proportion of foreigners in the total population increased from 3 per cent in 1850 to 14.7 per cent in 1910 (Mahnig & Wimmer, 2003). It was not until the 1888 that Switzerland’s net migration became positive. In 1931, the Federal Law of Residence and Settlement of Foreigners (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer - ANAG) was enacted. It can be regarded as a ‘police law’ aimed at border control and the defence of the national territory, profoundly inspired by the international political context of the time, the economic crisis and a widespread xenophobia directed against a so-called ‘overforeignisation’ (‘Überfremdung’) of the Swiss society (Mahnig & Wimmer, 2003).

Since the Second World War, Swiss migration policy has been dictated by the need for unskilled labour. This led to the introduction of the system of ‘quotas’ (Kontigentierung) that depend on the demands of the labour market. Rotation of the labour force (‘guest worker system’) insured that immigration was temporary and prevented immigrant groups from durable settlement in the country. In 1970, the federal government set up the Central Register of Foreigners (RCE) for monitoring and recording the influx of foreign workers. Until recently Switzerland has been reluctant to acknowledge the stabilization of foreigners which already started in the 1970s (Wanner, Fibbi & Efionayi, 2005).

The need to comply, however, with the European integration process, implied an adaptation of the Swiss immigration legislation, reflected in the model of the three circles that was designed in 1991. Accordingly, immigration from outside the EU and EFTA (first circle) and the United States, Canada, and Central and Eastern Europe (second circle) should no longer occur. Since November 1998, Switzerland follows a ‘dual entry-scheme’, which basically prohibits the recruitment of workers from outside EFTA and the EU, unless concerning highly qualified persons whose recruitment is justified for special reasons. The quota system does not, however, fully reflect immigration in Switzerland in practice. Changing migration patterns, family reunification and the growing number of asylum-seekers have transformed the breakdown of the foreign population (Gil-Robles, 2005). Contrary to the suspiciousness towards the aliens, Switzerland has in fact one of the highest immigration rates in Europe. This phenomenon is due in part to the comparatively restrictive access to citizenship (Mahnig & Wimmer, 2003).

According to the 2000 census, 22.4 per cent of the total population of 7.4 million is foreign born and 20.5 per cent, or nearly 1.5 million, are foreigners (defined as persons with a foreign nationality). Switzerland used to be a destination country for employment-seeking French, Germans, and Italians. In the latter half of the 20th century however, it has hosted a large number of Eastern European dissidents, Yugoslavian refugees, and asylum seekers from the Middle East, Asia and Africa (D’Amato, 2008; Kaya, 2005).

The distribution of the foreign population according to citizenship (Table 1) shows an increase in the number of migrants from the former Yugoslavia, Turkey, and non-European countries. Between 1970 and 2000, the number of Italian and Spanish migrants decreased whereas the number of Yugoslavians, Turks, and Portuguese increased significantly. Sri Lanka, India and China are the main Asian countries of origin, with most Sri Lankans seeking asylum and most Indians and Chinese coming as students (Kaya, 2005).

143 This concept refers to a situation in which the society had become ‘foreign’ to its own members because of immigration, while establishing a causal link between the number of foreigners and the threat to Swiss identity.
On 16 December 2005, the Swiss Senate approved a new Law on Foreign Nationals which replaces the existing law dating back to 1931. The new law ratified with a majority of 67 per cent of Swiss voters on 24 September 2006, aims at regulating the admission and residence of non-EU/EFTA nationals who are not asylum seekers. The law reaffirms current two-tier immigration practises and restricts some residency rules. Only a few thousand highly skilled workers from outside the EU and EFTA are allowed to come and work in Switzerland each year. Illegal immigrants and rejected asylum seekers can be jailed for up to two years pending deportation - a doubling of the current length. Particular measures are to be stipulated, for instance against people smugglers, illicit labour and marriages of convenience. Concerning the latter, the new law provides sanctions such as the detention or fines of up to CHF 20,000 either for the perpetrators or the facilitators (art. 113).

Table 5.1: Evolution of the foreign population in Switzerland 1970–2000 by citizenship

<table>
<thead>
<tr>
<th></th>
<th>1970 Number</th>
<th>%</th>
<th>1990 Number</th>
<th>%</th>
<th>2000 Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of foreigners</td>
<td>1,080,076</td>
<td>100</td>
<td>1,245,432</td>
<td>100</td>
<td>1,495,549</td>
<td>100</td>
</tr>
<tr>
<td>Germany</td>
<td>118,289</td>
<td>11.0</td>
<td>86,197</td>
<td>6.9</td>
<td>112,348</td>
<td>7.5</td>
</tr>
<tr>
<td>Austria</td>
<td>44,734</td>
<td>4.1</td>
<td>30,172</td>
<td>2.4</td>
<td>29,849</td>
<td>2.0</td>
</tr>
<tr>
<td>France</td>
<td>55,841</td>
<td>5.2</td>
<td>52,715</td>
<td>4.2</td>
<td>62,727</td>
<td>4.2</td>
</tr>
<tr>
<td>Italy</td>
<td>583,850</td>
<td>54.1</td>
<td>383,204</td>
<td>30.8</td>
<td>322,203</td>
<td>21.5</td>
</tr>
<tr>
<td>Spain</td>
<td>121,239</td>
<td>11.2</td>
<td>124,127</td>
<td>10.0</td>
<td>84,559</td>
<td>5.7</td>
</tr>
<tr>
<td>Portugal</td>
<td>3,632</td>
<td>0.3</td>
<td>110,312</td>
<td>8.9</td>
<td>142,415</td>
<td>9.5</td>
</tr>
<tr>
<td>Former Yugoslavia</td>
<td>24,971</td>
<td>2.3</td>
<td>172,777</td>
<td>13.9</td>
<td>362,403</td>
<td>24.2</td>
</tr>
<tr>
<td>Turkey</td>
<td>12,215</td>
<td>1.1</td>
<td>81,655</td>
<td>6.6</td>
<td>83,312</td>
<td>5.6</td>
</tr>
<tr>
<td>‘Other’ European</td>
<td>56,993</td>
<td>5.3</td>
<td>83,721</td>
<td>6.7</td>
<td>99,279</td>
<td>6.6</td>
</tr>
<tr>
<td>Africa</td>
<td>5,121</td>
<td>0.5</td>
<td>24,768</td>
<td>2.0</td>
<td>49,873</td>
<td>3.3</td>
</tr>
<tr>
<td>Americas</td>
<td>18,425</td>
<td>1.7</td>
<td>30,357</td>
<td>2.4</td>
<td>51,124</td>
<td>3.4</td>
</tr>
<tr>
<td>Asia</td>
<td>8,327</td>
<td>0.8</td>
<td>62,937</td>
<td>5.1</td>
<td>92,145</td>
<td>6.2</td>
</tr>
<tr>
<td>Oceania</td>
<td>1,063</td>
<td>0.1</td>
<td>1,763</td>
<td>0.1</td>
<td>2,994</td>
<td>0.2</td>
</tr>
<tr>
<td>Unknown</td>
<td>25,376</td>
<td>2.3</td>
<td>727</td>
<td>0.1</td>
<td>318</td>
<td>0.0</td>
</tr>
</tbody>
</table>


5.2 Irregular migration in Switzerland

The term *sans papiers* is commonly used in Switzerland, mainly to designate seasonal or other immigrant workers who have lost their legal status, and members of their families. It also covers rejected asylum-seekers who have not stayed and have merged into the population, often working more or less illegally (Gil-Robles, 2005). There are no statistics about the number of illegal residents in Switzerland, only assessments can be made (FOM, 2008). A detailed governmental report on ‘Illegal migration’ in Switzerland estimated the total number of...

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144 New stricter asylum rules have been approved at the same time. Starting from 1 January 2007, applications of asylum seekers failing to produce either a passport or identification card without a credible reason will be automatically turned down. The loss of the right to social security benefits and reduction of the amount of emergency aid came into effect on 1 January 2008. Only refugees who have received ‘temporary asylum’ benefit from the law which received wide criticism and disapproval from the United Nations Refugee Agency as the toughest in Europe.

145 The number of first-time, year-round, renewable residence permits, which includes working rights, is limited to 4,000, and the number of non-renewable, one-year residence permits to 5,000.
irregular-status migrants between 50,000 and 300,000, some of whom have been living in the country for ten years or more (IMES, 2004). A following investigation supported by the FOM and carried out by a Bern based research establishment with the assistance of six institutions gathering data and conducting 60 experts’ interviews all over Switzerland, accounted for 90,000 irregular-status foreigners - implying a margin of error of +/-10,000 persons (Gfs.bern, 2005).

The following profile of illegal residents in Switzerland can be drawn from the experience of specialists in the field of support and counselling for illegal residents and the results of the few research at local and national level: the majority originate from Latin America (in particular women), ex-Yugoslavia, Eastern Europe, Turkey and in a few cases from African and Asian countries. They are mostly between 20 and 40 years old. Men tend to be in the majority in three cantons (Bâle-Ville, Thurgovie and Tessin) out of the six investigated, although there are many women (with or without children) particularly in the French-speaking cantons as well as full families living illegally in Switzerland (Gfs.bern, 2005; SIT, 2004; Achermann, C. & D. Efionayi-Mäder, 2003). Many of these people have been through compulsory education and vocational training or university. There seems however to be a certain agreement between the majority of experts that a percentage between 55 and 85% of sans-papiers living in Switzerland don’t have a post-compulsory education (Gfs.bern, 2005). The vast majority of them are in gainful employment, mainly in the following sectors: household staff (cleaners, child-minders, carers, etc.), cleaning firms, hotel industry, construction industry, agriculture and prostitution. On average their wages are considerably below the norm. The available estimation of the average wage in the mentioned working sectors is around CHF 1,000/2,000. The maximum wage has been estimated between CHF 3,000/5,000 (Gfs.bern, 2005). Some of these people came into Switzerland as tourists or, in fewer cases, illegally. Some had a valid residence permit at one time which, for various reasons, was lost or not renewed (Achermann, C. & D. Efionayi-Mäder, 2003).

5.3 *De facto* regularisations versus regularisation programmes

Until recently, the situation of persons without a regular residence permit in Switzerland was not perceived as a relevant problem. This might be eventually attributed to the fact that the lack of documents was generally perceived as an indication of illegality or, in any case, as a self-inflicted problem of the alien. Therefore, even if there were undocumented migrants, they could not count on much support from the local population or other actors to redress their legal situation (Efionayi-Mäder et al., 2003).

It was the situation of nationals of former Yugoslavia, and particularly Kosovars, that sparked off debate on the *sans-papiers* in Switzerland in the late 1990s. As a consequence of the adoption of the “three circle” model in the Swiss immigration law, citizens belonged to the “third circle” could not obtain a work permit in Switzerland after 1991. Since Yugoslavia was excluded from the recruitment countries, many of the present seasonal workers were unable to complete the four years required for a one-year resident permit and were subsequently threatened with deportation. The federal authorities’ attitude was to refuse to allow any collective regularisation but to express a willingness to consider the possibility of issuing residence permits in cases of hardship. The Bern authorities demanded to be allowed to exercise their discretion, while providing information about the practices they followed in the so-called ‘Metzler’ circular (Gil-Robles, 2005). This circular was signed by Federal Councillor Ruth Metzler on 21 December 2001 issuing instructions for establishing criteria for the regularisation of the status of foreign residents in cases of hardship. It sought to reconcile a Federal Court decision according to which a number of years spent illegally in Switzerland could not be taken

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146 In 1998 the government turned down a majority motion for an amnesty by the National Council. The main reason for its decision was that an amnesty would not be an effective or lasting answer to the problem of illegal foreign workers.
into account for the purpose of obtaining advantages, with the need to bear in mind the implications of a long stay in Switzerland for a foreign national.

The way in which decision-making powers and financial burdens are divided between the Confederation and the cantons partly accounts for the problem of foreigners in irregular status. Decisions on allowing aliens to reside in Switzerland are, in fact, taken by the Confederation, while the canton of residence deals with social aspects, and also executes deportation orders issued in Bern. As a result, different cantons adopt very different approaches by asking, or not asking, for a regularisation of all their aliens.

Between 1996 and 2000, the French speaking canton of Vaud supported claims for regularisation by migrants from the former Yugoslavia and resisted federal decisions for deportation. Vaud appealed to the federal government to grant those migrants residence permits in the framework of regulations concerning cases of hardship. Although the federal government rejected the canton’s initiative, the government of Vaud in June 1997 decided not to deport these migrants. At last the canton prevailed and in 2000, 220 families were granted permanent residence permits (Laubenthal, 2007). A second mobilization concerned a group of migrants from Kosovo who were threatened with deportation from the canton of Vaud and organised themselves in the alliance “En quatre ans on prendre racine” (“In four years you take roots”). The decision taken in August 1999 by the Swiss Federal Council involved 6,000 former seasonal workers who had formerly applied for political asylum at the outbreak of the Kosovo war. Once more the canton of Vaud set a precedent and former seasonal workers who had spent more than eight years in the canton were granted residence permits. These cantonal initiatives are, as a matter of fact, de-facto collective regularisation campaigns.

Organisations from the asylum and anti-racism movements together with the Swiss trade unions were central actors in the pro-regularisation movements, and their activity was crucial in generating public acceptance of the demand for regularisation. Overall, the Swiss movement sought to legitimate its claim on the basis of the recent migration history linking Yugoslavia with Switzerland. It presented the regularisation issue as a labour market issue, stressing the importance of illegal migrants as members of the Swiss labour market (Laubenthal, 2007).

As a result of these mobilization and the subsequent cantonal decisions, during the winter session of 2001, the Swiss Parliament dealt with the ‘sans-papiers’ issue and 14 parliamentary inquiries have been presented (CFE, 2006). Protagonists of the left-wing parties demanded ‘amnesties’ and wide scale regularisations, while most centrist parties insisted on the case-by-case hardship regulation. Some members of parliament did, however, criticise the lack of transparency in the determination of ‘hardship’. One of the reactions of the involved federal offices was the publication of a document enumerating the conditions leading to the determination of ‘hardship’ which was recognised as the only possible solution to the sans-papiers problem (Efionayi-Mäder et al, 2003; CFE, 2006). Since September 2001, 3694 persons applied for a residence permit invoking cases of serious hardship. Out of this number, 2123 persons received a positive answer originating from the former Yugoslavia, South American countries (Ecuador, Colombia) as well as African ones (FOM, 2008).

The rationale behind the ‘hardship’ concept has been defined as humanitarian and its objective is to give protection to cases where a return from Switzerland would be excessively rigorous, despite the illegal stay (FOM, 2008). In 2000, the Swiss Federal Council launched a campaign called “Humanitarian Action 2000” to deal with approximately 15,000 people living in Switzerland without legal status. The campaign was aimed at rejected asylum seekers who could not be expelled, and others still waiting for a final asylum decision. To obtain provisional admission, the following requirements had to be met: (1) entry into Switzerland before 31 December 1992; (2) no criminal record; (3) willingness to integrate; (4) the asylum seeker concerned should never have ‘disappeared’ and (5) the delay in the asylum procedure should not have been self-inflicted (DFGP, 2000). 6,502 asylum seekers from Sri Lanka, who had been
working in Switzerland for a long time, benefited from the action. During Humanitarian Action 2000, there was no automatic granting of provisional admission; on the contrary, the Federal Office for Refugees (FOR) reviewed the cases of the Sri Lankan citizens individually. In the cases of citizens meeting the requirements enumerated above, but coming from other countries (apparently some other 6,500 persons) the cantons could ask the FOR to re-examine their cases (Efionayi-Mäder et al, 2003; DFGP, 2000). In autumn 2006, the Federal Commission for Foreigners (CFE) in collaboration with the working group on undocumented migrants (Groupe de travail Sans-papiers - created in 2002 and provided with power of mediation) called for an harmonisation across the Swiss cantons in the treatment of the cases of hardship (CFE, 2006). At last, on 12 December 2007, a new call for mass regularisation of the undocumented migrants in Switzerland has been made at the municipality of Zürich by the socialist Salvatore Di Concilio and Hans Urs von Matt (Gemendeirat der Stadt Zürich, 2007).

5.4. National policy on illegal migrants in regard to regularisation

Swiss convergence with the process of European integration concerning asylum and immigration is reflected by the reinstated two-tier immigration practises, which attempt to satisfy the demand for foreign labour, while making it difficult for all but the most skilled third-country nationals to enter. Because of domestic political pressure and the peculiar characteristics of the Swiss democracy, it seems that the country will continue to emphasise its criteria of control and cost in the immigration and asylum legislation and policy, rather than abide to any present and future demographic or economic needs (Efionayi, D., J. M. Niederberger & P. Wanner 2005). In this context, the fight against illegal immigration becomes equally essential because, as underscored by the report on illegal migration from IMES (2004) and other institutional actors; it is considered a phenomenon with harmful effects on the labour market and on the population. According to the same report, the effects can be summarised as follows IMES, 2004: 28):

- an artificial lowering of salary and social status.
- an increase in unemployment.
- disadvantages for companies that respect the law.
- long-term obstacles for the integration of foreigners resident in Switzerland.
- economic loss in terms of unpaid premiums for social insurances.
- problems of integration linked to illegal residence.

The effects of these unfavourable circumstances are reflected by the manner with which undocumented immigrants are dealt. As earlier mentioned, federal policy concerning the regularisation of undocumented immigrants works on a case-by-case basis and refuses to broach the subject of regularising the entire group collectively. The reasons why any other type of amnesty has been rejected by the Federal Council and its rationale are, according to the FOM (2008: 6), as follows:

- (...) a case-by-case approach allows to take into account the personal situation and to make an evaluation of the serious personal hardship of the concerned person. This policy has been accepted by the Parliament (law on foreigners of 16.12.2005), as well as the voters (vote of 24.09.2006).
- the actual provisions aim at protecting the Swiss labour market and avoiding wage dumping. These protections would be challenged by pronouncing a general amnesty.
- the Federal Council is fighting undeclared work and foresees severe sanctions towards incorrect employers.
an amnesty would cause disregard of legal dispositions and incite foreigners to evade the legislation in order to get an amnesty at a later stage.

to regulate undeclared workers from third countries would constitute an ‘inequality’ of treatment with regard to workers from other states, especially from the 10 new EU member states that are fixed a quota during a period of transition. An amnesty would be a wrong signal in migratory policy matters. In this context, the Federal Council thinks that the need for foreign workers can be covered by the opening to the new EU member states.

in the long run, a general amnesty cannot resolve the problem and cannot efficiently check the number of illegal residents. Experiences from neighbour states show this clearly. Illegal residents would only be replaced by other illegal residents, who accept insecure working conditions and hope to become regularised one day themselves (pull-effect).

an amnesty has an incentive effect, because once a regulation is applied, there is hope that this will be repeated.

the employer who employs an undeclared worker creates himself an unjustified advantage. An amnesty would incite this attitude.

an amnesty could also have a negative effect on unemployment (regularised illegal residents would count as unemployed people).

As mentioned above, a different approach can be observed at local level, i.e. on a canton- by- canton basis, and it has been initiated and brought forward by the same sans-papiers with support from trade unions, NGOs and different sectors of the Swiss civil society at large (FIZ, 2008; SEK, 2008; SIT, 2008). Although the main arguments against comprehensive regularisation rests on the fact that this could make Switzerland more attractive and increase criminal activities, those who are in favour of a comprehensive solution emphasise the economic contribution of undocumented people, namely in the area of domestic work and so on (Kaya, 2005). In any case, although the economic contribution of undocumented migrants is not questioned, the federal authorities do not view it as a strong enough argument to favour a collective regularisation at the national level. Interestingly, Swiss employers remain in a veil of silence on the matter (Kaya, 2005).

5.5 References


Federal Office for Migration – FOM (2008), “Switzerland”, Response to the “ICMPD Questionnaire addressed to EU member states on regularisation processes”, Berne-Wabern: FOM.


Greppi S., W. Minoggio, L. Da Vinci & A. Colubriale (2003), La popolazione straniera e i flussi migratori in Ticino, Lugano: SUPSI.


Schweizerischer Evangelischer Kirchenbund - SEK (2008), REGINE – NGO Fragebogen, REGINE – NGO Fragebogen, Response to the “ICMPD Questionnaire addressed to EU member states on regularisation processes”.


Syndicat Interprofessionnel des Travailleuses et Travailleurs (SIT) (2008), “Suisse”, REGINE – NGO Fragebogen, Response to the “ICMPD Questionnaire addressed to EU member states on regularisation processes”.


Ufficio Federale dell’Immigrazione, dell’Integrazione e dell’Emigrazione (IMES) (2004), Rapporto sulla Migrazione Illegale, Berna-Wabern: IMES.


Chapter 6: United Kingdom

Audrey Lenoel

6.1 Irregular migration in the UK

6.1.1 Official definition of irregular migration

As in other European countries, the issue of undocumented migrants is a very contentious one, and the terminology and concepts surrounding the phenomenon are sensitive and debated. Different stakeholders tend to use different terminologies depending on their view of the problem. Many international organisations tend to use the term ‘irregular’ while non-governmental organisations in support of migrants’ rights would use both the terms ‘irregular’ and ‘undocumented’. The term ‘irregular’ is generally used to describe movements of people which are not in accordance with the laws of states while ‘undocumented’ is usually used to describe the position of people already in the country who are either without residence permits, or the residence permit they need to do what they are currently doing – usually working. The terms used in documents produced by the UK government departments and in most public debates are that of ‘illegal’ or ‘unauthorised’ migration (IPPR, 2006). It is worth noting here that different NGOs oppose the use of these terms as these are arguably strongly related to criminality and might therefore not be suitable to talk about a population generally committing an administrative rather than a serious criminal offence (IPPR, 2006, p.5). They also emphasize the risk of influencing public attitudes towards migrants negatively by using these terms (JCWI, 2006, p.15).

The term ‘illegal migration’ can encompass many different forms of abuse of the immigration rules such as entering the country illegally by avoiding immigration controls or by breaking the immigration rules in the UK (by working full time having been allowed in to study or failing to leave at the end of their stay). For the purpose of producing estimates, the Home Office has however defined ‘unauthorised’ or ‘illegally resident’ migrants as anyone who does not have valid leave to remain in the UK (Woodbridge, 2005). This includes:

- **Illegal entrants** (including clandestine entrants and those using deception on entry by presenting false documents or misleading immigration officials). We can note here that the concept of illegal entry was extended in 1976. Before then, the terminology only covered entering the country by avoiding immigration officials (e.g. through coming in small boats or hidden in containers before then), but it came to refer to foreigners who entered the country by deceiving in a material way an immigration official following courts decision in 1976. The term also covers those foreigners who sought to enter the UK and pending a decision on their application abscond (Guild, 2000, p.213).

- **Overstayers** (those who have not left the UK after valid leave to remain has expired – overstayers can be any kind of migrants: visitor, student, au pairs, working holiday makers, etc.); and

- **Failed asylum seekers** who do not comply with instructions to leave the UK, who are not appealing or who have exhausted their rights of appeal (including those who abscond during the process).

In their estimates, the Home Office exclude the category of migrants who are legally in the UK but who are breaching the conditions of their leave to remain (particularly through working), a situation also termed ‘semi-compliance’ with immigration control (Anderson in: House of Lords, 2008, p.11), e.g. immigrants on student visas working more than the 20 hours legally allowed during term time, or asylum seekers working in breach of temporary admission
conditions, or visitors working despite not being authorised to do so. This category is not the target of regularisation measures and will therefore not be included in this study.

6.1.2 Characteristics of the Irregular Migrant Population in the UK

6.1.2.1 Estimates
Illegal immigration is notoriously extremely difficult to measure and the UK is no exception despite its geographically insular position. The difficulties of producing estimates in the UK relate to the following issues outlined by John Salt in Pinkerton et al. (2004):

- A lack of embarkation records to allow the matching of inflow and outflow data on individuals;
- The fact that there have not been any large-scale regularisation exercises in the UK which we could draw data from (regularisations being one of the main data sources used as an indicator of numbers of illegally resident populations); and
- The fact that special surveys have been small-scale and piecemeal.

UK enforcement statistics\textsuperscript{147} produced by the Home Office therefore remain the best indicator of the extent of illegal migration (see Table 6.1).

Table 6.1: UK Enforcement Statistics

<table>
<thead>
<tr>
<th>Type of enforcement &amp; Voluntary returns</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons refused entry at ports and removed</td>
<td>27,605</td>
<td>31,295</td>
<td>38,275</td>
<td>37,865</td>
<td>50,360</td>
<td>38,110</td>
<td>39,730</td>
<td>32,840</td>
<td>34,825 (P)</td>
</tr>
<tr>
<td>Persons against whom enforcement action was initiated (1)</td>
<td>21,080</td>
<td>22,950</td>
<td>50,570</td>
<td>76,110</td>
<td>57,735</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Persons removed as a result of enforcement action and voluntary departures</td>
<td>7,320</td>
<td>6,440</td>
<td>7,820</td>
<td>10,290</td>
<td>14,205</td>
<td>19,630</td>
<td>18,710</td>
<td>21,720</td>
<td>22,840</td>
</tr>
<tr>
<td>Persons leaving under Assisted Voluntary Return Programmes</td>
<td>-</td>
<td>50</td>
<td>550</td>
<td>980</td>
<td>895</td>
<td>1,755</td>
<td>2,715</td>
<td>3,655</td>
<td>6,200</td>
</tr>
</tbody>
</table>

Source: Home Office, 2007a

(1) Information not available from 2003 to 2006 due to quality issues

\textsuperscript{147} The enforcement statistics produced by the Immigration Research and Statistics section within the Research Development Statistics (RDS) of the Home Office cover enforcement, detention and removals. For more details, see: http://www.homeoffice.gov.uk/rds/immigration-enforcement.html
However, enforcement data only cover those migrants subject to immigration controls against whom some enforcement actions have been taken and therefore represent only a fraction of the total illegal migrant population which, by definition, might not be captured by those controls. Furthermore, it is important to bear in mind that enforcement is driven by policy decisions rather than objective needs, and the number of enforcement decisions is therefore mainly a reflection of the more or less stringent political stance on irregular migration. We can in fact argue that the number of decisions tells us nothing about the scale of the ‘problem’\(^{148}\). It is therefore extremely difficult to estimate the extent to which enforcement statistics are an indicator of the total illegally resident population and many estimates are therefore not based on these. In fact, direct methods are of limited value for measuring the illegally resident migrant population as much of it will remain statistically hidden to such methods (Pinkerton et al., 2004).

In 2004, a team of researchers working at the Migration Research Unit of University College London reviewed methodologies used in different countries within and beyond Europe to estimate the stock of illegally resident persons and assessed their applicability to the UK situation (Pinkerton et al., 2004). They found that most of the methods used in the 28 studies they reviewed were either not applicable in the UK (e.g. those relying on a population register which does not exist in the UK) or would produce too inaccurate results. They however identified an indirect technique previously used in the US called the *residual method* as being potentially applicable to the UK context. Pinkerton et al. viewed this method as the most applicable in the UK context because there were not enough sufficiently disaggregated and centralised statistics to use other direct or indirect methods. However, they clearly indicated the caveats of using this methodology, particularly the need to check whether UK Census data could be used in the same way US census data were used. Subsequently, the Home Office adapted the methodology to fit the data sources available in the UK and produced estimates of the illegally resident population using this method (Woodbridge, 2005).

The residual method uses data from the UK Census conducted in April 2001 and immigration data from the Home Office. It takes the total foreign-born population in the UK (excluding EEA-born population as they not subject to immigration control) obtained from the Census as its starting point, and then subtracts an estimate of the foreign-born population here legally. The later category consists of foreign-born persons living in the UK who have been granted settlement (estimate derived from Home Office flow data as stock figures were not available), temporary legal migrants (Home Office data on persons granted temporary leave to remain which period included the end of April 2001, e.g. persons on student or employment-related visas, including dependants) and quasi-legal migrants (Home Office data on number of persons awaiting a decision on their asylum application or the outcome of an appeal following a refusal). The difference between the total foreign-born population and this estimate of the ‘legal’ foreign-born population is an estimate of the number of unauthorised migrants in the UK. Using this method, the research team found that the total unauthorised migrant population (including failed asylum seekers) living in the UK in April 2001 was ranging between 310,000 and 570,000 (i.e. between 0.5 and 1% of total UK population) with a central estimate of 430,000 (i.e. 0.7% of the total UK population of 59 million at the time) (Woodbridge, 2005). This very broad range can be explained by the limitations in the data sources and the fact that the residual method could only be imperfectly applied to the UK context.

As we would expect, these estimates have been criticised and the limitations of the sources on which they are based have been pointed out. These estimates are first of all quite out of date, being based on 2001 figures, and it will only be possible to repeat this exercise by using the data of the next Census that will only take place in 2011. Furthermore, it has been highlighted in the past that foreign-born populations (authorised and unauthorised) are undercounted in censuses but there are no estimates available for this (Woodbridge, 2005). Arguably, illegal migrants would be particularly undercounted in censuses as they would avoid direct, doorstep measures.

\(^{148}\) Interview with Mr Don Flynn, Director of the Migrants’ Rights Network (MRN), 21st May 2008.
like a census. Although the method takes this into account and a range of zero, ten and twenty per cent undercount for the unauthorised population suggested by the Office for National Statistics (ONS) is applied to calculations, this poses the problem of relying on Census data for estimations. The think-tank Migration Watch UK has claimed that the number of illegally resident immigrants is likely to be much higher and that estimates need considerable adjustments (MigrationWatch, 2005). MigrationWatch’s major criticism is that the estimates do not include children born in the UK who are not British citizens – i.e. a subset that includes UK born children of illegal migrants – and argue that between 5% and 15% should be added to the unauthorised population to account for this discrepancy. The pressure group also suggests that estimates should be revised so as to include the number of failed asylum seekers who have not been deported after 2001. They particularly emphasize the importance of this as the year 2002 saw a peak in asylum applications. It is however important to note here that if the number of asylum applications did increase in 2002 compared to 2001, it considerably decreased from 2003, while the number of removals also slightly decreased each year (Home Office, 2007a). Overall, MigrationWatch UK estimated the unauthorised migrant population to be in the range of 515,000 to 870,000 with a central estimate of roughly 670,000 at the end of March 2005 (Migration Watch, 2005).

We can note that failed asylum seekers arguably form a substantial part of the undocumented migrant population in the UK but it is difficult to obtain an accurate number of failed asylum applicants liable to removal still living illegally in the UK as some would have left the country of their own accord, but their number was estimated to be between 155,000 (number of persons due to be removed according the Home Office database) and 283,500 (79,500 reported removals subtracted from the approximately 363,000 unsuccessful applications between 1994 and 2004) in a 2005 report by the National Audit Office (2005).

6.1.2.2 Profile of illegal migrants

It is particularly difficult to draw a picture of the undocumented migrants living in the UK as their illegal status means that they elude registration and statistical coverage (Tapinos, 1999 in: Pinkerton et al., 2004) and are particularly difficult to research. In other countries, large-scale regularisation exercises have allowed knowing more about the characteristics of irregular migrants but such programmes have not been implemented in the UK. Some case studies have however drawn some valuable information, such as a survey of illegally resident migrants in detention conducted by Black et al. (2004).

This research based on interviews with a randomly selected sample of 83 migrants detained in three immigration detention facilities explored the motivation of the respondents for coming to the UK, their routes both to the UK and into illegal residence (whilst outside the detention centre), their experiences of living as an illegal resident in the UK (including means of support), their involvement in the job market and their use of public services. As shown elsewhere, the findings suggested that undocumented migrants are men in their majority, and relatively young (median age was 29). Most of them were living in London, or at least stayed in the capital at their arrival. Three quarters of those interviewed (62 out of 83 respondents in total) had worked illegally whilst in the UK, while those who were not working relied on family members or friends to support them. The respondents who were working illegally were generally doing unskilled work even though they were often highly qualified and skilled. Although they did not report difficulties in finding work, they were usually paid cash-in-hand and reported poor working conditions and long hours, and low rates of pay (often below the minimum wage). These findings are consistent with other research suggesting that irregular migrants generally work in sectors that pay low wages but have high demand for labour, i.e. jobs characterised by the 3Ds: dirty, difficult and dangerous. A report on the employers’ use of migrant labour conducted for the Home Office (Dench et al., 2006) noted for instance that:

"Illegal working was cited as more of an issue within low-skill jobs, particularly among smaller employers and in less regulated sectors. Those using a number of subcontractors or agencies..."
within the Hotels and catering, Agriculture and Construction sectors were also felt to have higher levels of illegal working. Larger organisations were believed to be more visible and to have more centralised policies, human resources departments and procedures for checking documentation. Agricultural workers were cited as more likely to be mobile and illegally paid ‘cash in hand’. However, a large proportion of employers felt it had grown increasingly hard to employ illegally in the Agriculture sector because of pressure from clients such as supermarkets.”

Despite a dearth of data, we can note that the sector of domestic work is also associated with high levels of undocumented work and that these jobs are almost exclusively done by women (Wright and McKay, 2007).

Finally, when questioned about their future plans, three quarters of the respondents in the study conducted by Black et al. who had thought about it reported that they would again leave their country of origin - in most cases to return to the UK.

6.2 Regularisation measures

6.2.1 Large-scale regularisation programmes

Large-scale regularisation programmes (generally termed ‘amnesties’ in national debates) are not a characteristic of the United Kingdom and so far no large-scale general regularisation programme has taken place. The UK government is opposed to the idea and the principle of a “general amnesty” has frequently been ruled out by the government at first in the 1998 White Paper *Fairer, Faster, Firmer* at a time when there were huge backlogs particularly in the asylum system, and again in April 2006 by the former immigration minister Tony McNulty. While a new proposal for a general amnesty was discussed, the immigration minister Liam Byrne restated the government official stance on this issue in September 2007, adding that “an amnesty for immigrants illegally in the UK is unnecessary and would simply create a strong pull for waves of illegal migration”.

The UK position on this question can probably be explained by the high sensitivity of the issue of irregular migration in the country and the belief that its insular position means that borders can be more effectively controlled. This has underpinned some UK policy choices in the past as Guild (2000) notes that ‘the need to control illegal immigration arriving from other Member States is the primary justification of the UK for refusing the full effect of Article 14 EC and for refusing to enter the Schengen system’ (2000: 228-229). Today, the government’s rejection of any large-scale amnesty goes with a very strong emphasis on improving border controls and prevents irregular residence and work (see conclusion).

6.2.2 Small-scale programmes

In the UK, regularisations are generally only considered in the context of removal (Guild, 2000: 211). There have however been a few small-scale one-off regularisation programmes and mechanisms, generally implemented following changes to the law either by Parliament or important decisions of the courts, and recognising *fait accompli*. The UK government has tended to look at regularisations on a case-by-case basis, or in terms of specific cohorts in order to accommodate certain populations physically present in the state (and in particularly difficult situations), outside immigration rules. These regularisations generally applied to a finite number of people and cannot be regarded as general amnesties.

149 This was for instance the reason for implementing the *Regularisation of Overstayers Scheme* in October 2000, following important changes in the law affecting overstayers.
Like most of the rights available to irregular migrants in the UK, regularisations were in the form of concessions made by the Minister, the Secretary of State for the Home Department, in the exercise of his discretion outside the Immigration Rules and the Immigration Act, therefore limiting the rights of appeal for the decisions (IPPR, 2006, p.14; Guild, 2000).

According to Apap et al. (2000), a regularisation ‘model’ exists in Europe, and the UK, together with Germany, the Netherlands, France and Belgium, belongs to the group of North European states that tend to regularise ‘fait accompli’ cases of migration on a selective basis accompanied by further, often complicated requirements (protection, integration). This approach would contrast with the one adopted by South European countries where regularisation tends to be one-off, with relatively straightforward criteria, and stresses economic aspects (integration into the labour market).

The first mechanisms adopted in the UK were restricted to certain nationalities, and the numbers of persons it applied to were very limited:

- Following the introduction of the Immigration Act of 1971 and a court decision which gave a particularly harsh interpretation of legality of residence, the UK announced its first regularisation programme, which ran from 1974 to 1978. Out of 2,430 requests, this programme regularized 1,809 citizens of the Commonwealth and former colonies (mostly Pakistani) who had been living without authorization in the UK between March of 1968 and January 1 1973 by granting them Indefinite Leave to Remain (permanent residence). 621 were refused (26% refusal rate).
- In 1977, a second regularisation programme covering the same category of people was announced. As in 1974, this amnesty was granted to limit the adverse consequences of court decisions extending the concept of illegal entry in the UK (Guild, 2000) and regularized 462 people out of 641 applicants (28% refusal rate).
- More recently, a de facto regularisation happened following the EU enlargement and the opening of the UK borders and market to nationals of EEA Accession States in May 2004. Immigrants from those states who were working in the UK in an irregular capacity prior to that date were allowed to continue working in the UK if they registered to do so. This in effect has been an amnesty, as there would have been no point in seeking to detect and detain these people who on return to their country of origin would have been eligible to return to the UK to work. Between May 2004 and June 2005, of the 231,545 persons who applied to the Worker registration Scheme (WRS), 15% reported that they had entered the UK prior to 1 May 2004 (Home office, 2005).

The UK government also conducted backlog clearance exercises of asylum applications. In these cases, the persons were not irregularly on the territory as their residence was lawful on account of their outstanding asylum applications, and these exercises are therefore not strictly speaking regularisations of illegal migrants.

To deal with the huge backlog of over 100,000 cases that had accumulated by July 1998, a special policy was introduced to grant indefinite leave to most asylum claims outstanding since 1993. Those made between 1993 and 1995 were weighed up individually taking into account factors such as community ties, family connections and records of working in the UK for economic purposes and on a voluntary basis, and a form of limited ‘exceptional’ leave was granted for four years.
Table 6.2: Persons granted asylum or exceptional leave under the backlog criteria

<table>
<thead>
<tr>
<th>Year</th>
<th>Granted</th>
<th>Refused</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>11,140</td>
<td>1,275</td>
</tr>
<tr>
<td>2000</td>
<td>10,325</td>
<td>1,335</td>
</tr>
</tbody>
</table>

Source: Home Office, 2007a, table 3.1, p.46

The Family Indefinite Leave to Remain (ILR) exercise (2003)
Announced by the Home Secretary on 24 October 2003, this “one off exercise” allows certain asylum-seeking families who have been in the UK for four or more years to obtain settlement. The basic criteria were that the applicant(s) applied for asylum before 2nd October 2000 and had at least one dependant aged under 18 in the UK on 2 October 2000 or 24th October 2003. It applies to all asylum seeking families whether or not they have decisions or appeals pending or whether they have already reached the “end of the line”, providing they have not previously left the UK either voluntarily or by removal. Excluded from the exercise are those who have a criminal conviction and/or whose presence in the UK is not deemed conducive to the public good. The deadline for applications under the concession was 31 December 2004 but the Home Office continued to accept applications for consideration after this date.

Table 6.3: Grants of settlement under the Family ILR exercise:

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9,235</td>
<td>11,245</td>
<td>5,000</td>
</tr>
</tbody>
</table>

Source: Home Office, 2007a, table 3.1, p.46

The UK has also conducted case-by-case regularisations through expedience or obligation. These can be regarded as ‘forced’ regularisations which are the result of court decisions or international regulations. Here, we can mention the follow-up given by the UK to its condemnation in the European Court of Human Rights on 2nd May 1997 for violation of Art.3 of the Convention, prohibiting inhuman, cruel or degrading treatment, with regard to regularisation of seriously ill foreigners in cases where they cannot be transported or in the scenario where their life would be shortened should they be deported to their country of origin due to the absence of sufficient care (Apap et al., 2000). More recently, some rights for irregular migrants were derived from the Human Rights Act 2000 (which incorporated the European Convention on Human Rights into domestic law), such as the right to respect for family life (Art.8 of Human Rights Act 2000) which might lead to an obligation to regularise a foreigner illegally residing in the State if s/he has family links with a national or a legally established foreigner established in the country, and right to freedom from inhuman or degrading treatment (art.3) (See European Court of Human Rights case n. 146/1996/767/964). This Act established in domestic law what might have been granted as a concession.

The violation of human rights has actually been the main reason to conduct some regularisation exercises, such as the regularisation programme for domestic workers in 1998-99.

In response to concerns about the treatment of overseas domestic workers, changes to the Overseas Domestic Workers Concession were introduced, the most significant of which allowed a domestic worker to change employer. A number of domestic workers who came to the UK prior to July 1998 found themselves in an irregular situation because as a result of abuse and exploitation they had left their original employer. Ministers therefore decided that as a general approach, in the case of those domestic workers who brought themselves to the attention of IND between 23 July 1998 and 23 October 1999, their stay would be regularised, with twelve
months’ leave granted in the first instance. The programme included those who had already come to the attention of IND and against whom enforcement action was pending. This concession is however currently threatened by the plan recently announced by the Home Office to rigidly limit domestic workers’ leaves to an initial brief period of 12 months, with no extensions being possible beyond that date (following changes in immigration rules related to the introduction of the Points-Based System\textsuperscript{150}). This plan could however be modified, following the rallying of organisations against it and the admittance by the Home Office that this change would again make domestic workers vulnerable to the conditions that the original measure was supposed to address.

Finally, we can mention a policy implemented in 2000 which was not designed as a regularisation scheme but became one in practice:

*Regularisation of Overstayers Scheme in 2000:\textsuperscript{151}*

This was an interesting example of a policy turning into a regularisation scheme when it had not been intended to. It arose because changes to the law in 1999 had abolished an automatic right of appeal for people who had been living in the UK for seven years or longer. In order to prevent the law from having retrospective effect in depriving people who had a right of appeal under the existing legislation, the government announced that anyone with a right of appeal who applied to regularise their stay before 2 October 2000 would retain their right of appeal in the event of an adverse decision. The official publicity for the scheme went to lengths to say that it wasn’t an ‘amnesty’, and that the decision-making criteria for allowing a person to regularise or for refusing them would remain exactly the same. By and large, this criteria was that the person was required to show that they had established substantial connections with the UK - having a family life for example – or that there were other compelling reasons why the person should be removed. The Home Office stated that the measure did not mean that merely residing for 7 years, with no other factor being involved, would lead to regularisation. But once the existence of the scheme was announced, immigration legal advisors across the country started proclaiming the existence of an amnesty, and advertised their services for anyone who had merely resided for 7 years or more. The Home Office (IND) had been poorly-prepared for the influx of applications which ensued and officers started to interpret the scheme as applying to anyone who had resided for 7 years. So a mixture of pressure from the legal advice community and poor administration in the Home Office succeeded in subverting the scheme to the point where it did become an amnesty.

### 6.2.3 Permanent regularisation programmes

There are permanent regularisation mechanisms in the UK which take the form of “concessions” granted on a case-by-case basis by the Secretary of State for the Home Office. These concessions are now embedded in immigration rules.

In relation to these mechanisms, Apap et al. (2000) note that “[…]*permanent regularisation is only undertaken in the UK according to very strict conditions and moreover it does not undertake a real call for candidatures due to its permanence in time, whilst the one-off regularisations practised in Italy, Spain and Greece form real programmes that are the object of open advertising campaigns, which guarantees their success and effectiveness*”.

- *Long residence rules*

In 2003, the long residence concessions were incorporated into the immigration rules. Based on long residence, the Home Office will normally allow someone to remain in the UK. These rules are based on the principles of the European Convention on Establishment, which the UK ratified in October 1969 and which states that nationals of countries that are

\textsuperscript{150} See paragraphs 159A-159H of the Part 5 of the new Immigration Rules, [http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/)

\textsuperscript{151} The following explanations were provided by Mr Don Flynn.
party to said Convention should not be required to leave the host country they are in if they have lawfully resided there for over 10 years, unless there are particularly compelling reasons why they should be required to leave (for example reasons relating to public policy, security, health, or morality). In addition, those whose residence in the UK has been partly or wholly unlawful can also benefit (normally after 14 years). Other factors taken into account in these applications are age, strength of connections with the UK, character, conduct, associations and employment record, domestic circumstances, criminal record and any representations received on the applicant’s behalf. The Home Office concession and subsequent rules cover nationals of any country. As Guild (2000) notes it, this is in effect a rolling regularisation programme, allowing overstayers, illegal entrants, and failed asylum seekers, providing they have not been removed or gone underground, to legalise their stay in the UK (see also European Migration Network Ad-Hoc Query 2008: 113).

- **The 'seven-year rule'**
  A concession embodying a general presumption against removal of families with children who have put down roots in the UK, announced in March 1999. The policy benefits families otherwise liable to be removed, with children who were born in the UK and have lived here continuously to the age of seven or over, or who, having come to the UK at an early age, have accumulated seven years' or more continuous residence. ILR normally granted to the whole family.

- **Discretionary leave (DL) / Humanitarian Protection (HP)**
  Where someone is in need of international protection, but they do not qualify for asylum under the Refugee Convention, or if they have human rights grounds, they may be granted a form of temporary leave called Humanitarian Protection (HP) or Discretionary Leave (DL). In these cases, it is the principle of protection that applies (as opposed to *fait accompli*).

In addition to the above-mentioned policies UK immigration law does allow for overstayers, or other undocumented migrants to make applications outside the rules at any time to regularise their leave. Usually in order to be successful in such an application, there have to be underlying compassionate, exceptional or humanitarian grounds on which the Secretary of State may exercise his discretion to grant leave to remain.

### 6.2.4 Changes in preferences over time

The position of the UK has been quite consistent over time. However, the following evolution has been noted with respect to the UK approach to regularisation:

“ [...] the United Kingdom’s regularisation system, initially based on one-off procedures recognising *fait accompli* but restricting itself to certain nationalities, has developed towards permanent procedures which, whilst still motivated by *fait accompli*, obviously do not rule out the idea of the protection of the person, when this is called for.” (Apap et al., 2000)

Permanent mechanisms are less contentious than one-off large scale programmes, and that might be a reason why they have been preferred in the UK. As argued by Levinson (2005), regularisation granted on a rolling and individual basis is less likely to draw the type of attention that a large-scale effort would (Levinson, 2005). However, the length of time required to obtain a permanent residence permit is usually prohibitively long (14 years).

It is also important to note that certain concessions given on a discretionary basis have been integrated into the immigration rules, e.g. the long residence rule.

#### 6.2.4.1 Legal basis for the regularisation measures

- **Long residence**: these concessions were incorporated into the immigration rules in 2003. Until 5 July 2006, applications on the basis of long residence were considered
under two separate frameworks: applications on the basis of UK immigration rule and applications based on Home Office policy as set out in the Border and Immigration Agency (BIA) instructions to its caseworkers. On 5 July 2006, the instructions to caseworkers were withdrawn and it was stated that applications on the basis of long residence would be considered only under the UK immigration rules, and a new guidance was published in 2007. The guidance to caseworkers is not law and BIA can exercise its discretion to treat a person more favourably than its guidance provides.

6.2.4.2 Reasons leading to the adoption of regularisation measures

As mentioned above, regularisation measures in the UK can broadly be explained by:

- The need to regularise certain groups of people following changes to the law either by Parliament or important decisions of the courts (1971; 1977; long residence rule)
- Backlog clearance exercises, following failure of the administration to deal with the huge backlog of asylum applications (in 1998 and 2003)
- The need to take action following a campaign by associations and trade unions: the 1998 Domestic Workers Regularisation Programme.

Anderson (1999) has analysed the support campaign that has contributed to the adoption of this regularisation programme, and emphasized some of key elements of its success. First of all, she points out that the associations that initiated the campaign made judicious use of the media and managed to put women’ personal stories at the forefront. According to Anderson, “it gave campaigning material a very strong human rights focus, taking individual cases of abuse, people’s stories, then drawing out the role of immigration legislation in facilitating this abuse and showing the possibilities for change. This meant that the campaign could appeal to an audience not necessarily sympathetic to undocumented workers.” They also made good use of the statistics they had recorded on the problem and this bolstered the media work as “It meant that women’s experiences could not be passed off as simply due to a bad employer, and encouraged people to look for the structural causes of such abuse”. They also worked to put the issue of migrant domestic workers on the agenda of other groups, both nationally and internationally, and were particularly successful at securing the support of the Transport and General Workers Union (TGWU) in their campaign. Finally, Anderson underlines how the recent change in government following the accession to power of the Labour Party provided the right political context for the campaign to be a success: “It is important to remember however that this immigration “success” came within the context of a government that was regarded by many on the left as even harsher on asylum seekers than its Conservative predecessors. It was in some ways, to mix my metaphors, a tailor made carrot! The numbers affected were not large, they were women, they had clearly been abused, the change was not a big one, but it can be cited as a liberal policy by the government’s defenders.”

6.3 Planning and decision making process

6.3.1 Aims of the measures

- Long residence rules: these rules are based on the principles of the European Convention on Establishment, which the UK ratified in October 1969, and were integration in the national immigration rules in 2003. The long-residence rules can be classified as regularisation for reasons of fait accompli as it recognise the presence of persons illegally in the country over a certain period (14 years). As stated in the guidance for caseworkers applying the rule, “the main purpose of the two Long Residence rules is to enable people who have been working here, or otherwise contributing to the economy, to regularise their position” (p.8)
• The seven-year children policy (DP/069/99) for families with children is a concession of the Home Office (outside immigration rules) aimed at taking the situation of children into account when a family is liable for removal.

• The Domestic Workers regularisation was concomitant to the changes to the Overseas Domestic Workers Concession announced on 23 July 1998 and it was aimed at ‘rectifying’ a situation that might have occurred because of the impossibility to change employers under the provisions of the previous concession. The concession was aimed at regularising the situation of overseas domestic workers who might have found themselves in an "irregular situation", usually after leaving an employer who abused or exploited them. The reasons leading to this programme can therefore be seen as relating to the protection the human rights of people who might have been in a very sensitive situation following the application of previous rules.

6.3.2 Target groups/focus of the measures

• Long residence concession: all illegal residents in the country for 14 years or more.

• Domestic workers regularisation: in this case, it is a very specific socio-professional group. It is probably not surprising that it was this group that was the object of one of the very rare UK regularisation exercises as, in other countries such as Greece, France and the USA, domestic workers have formed an important proportion of the target groups of more general amnesties (Anderson, 1999).

The regularisation programme only applied to those who were originally admitted to the UK prior to 23 July 1998 with the correct entry clearance for employment as a domestic worker and became irregular following the breach of the conditions attached to their visas (see domestic workers’ concession before 1998).

6.3.3 Categories of irregular migrants targeted

• Long residence rules: overstayers, illegal entrants, and failed asylum seekers, providing they have not been removed or gone underground.

• Domestic workers regularisation: Overstayers. The programme also included those that had already come to the attention of the immigration authorities and against whom enforcement action was contemplated, and those who had been granted leave to remain exceptionally to await court proceeding against an abusive employer.

6.3.4 Conditions of access/criteria

• The long residence concession

The regularisation criteria of this concession152 are:

(i) Territorial criterion: The long residence concession allows for a discretionary grant of settlement after 14 years continuous residence of any legality, providing that there is no strong reason for them to be sent home such as a criminal record. Applicants have to show evidence from their documents to prove that they have lived in the UK for the full 14 years, which means proving the date of arrival as accurately as possible. The residence should be continuous but short periods of absence will not count against the calculation of the period if they do not exceed 18 months in total. However, enforcement actions taken against an individual as well as a period of imprisonment or detention would “stop the clock” for the purposes of the “14-year” Rule. Enforcement actions include a notice of liability to removal; or a decision to remove or a notice of intention to deport. Guild (2000: 221) argues that this is problematic as it is not uncommon to see many

years passing between a deportation order and any serious effort being made to expel the individual.

(ii) The IDI state that a person who satisfies the appropriate continuous residence requirement should normally be granted Indefinite Leave to Remain, unless a grant would, in all the circumstances of the case, be against the public interest. Other criteria are therefore taken into account before reaching a final decision.

(iii) Economic criterion: the applicant should be able to demonstrate that they have been working and contributing to the economy while in the UK. Reliance on public assistance is not favourably considered and applicants should be self-supporting, i.e. not living on public funds, even though this criterion is not sufficient ground to refuse a grant (Guild, 2000).

(iv) Compassionate circumstances/humanitarian criteria: there is not strict definition of this criterion but it might include such things as significant or serious illness, frailty or particularly difficult family circumstances. These particular personal circumstances are most likely to be taken into consideration when the applicant qualifies for a grant under the territorial criteria (14 years of continuous residence) but other factors (such as a criminal conviction or a bad immigration history) suggest that granting that person an ILR might be against the public interest. In these cases, the different criteria would have to be weighed up against each other in order to reach the best possible decision.

(v) Criteria related to family situations: families otherwise liable to be removed, with children who were born in the UK and have lived here continuously to the age of seven or over, or who, having come to the UK at an early age, have accumulated seven years' or more continuous residence, are eligible to be granted an ILR.

(vi) Criteria related to the integration of applicants: Everyone who applies under the Long Residence Rules since April 2007 has to show that he has sufficient knowledge of the English language and of life in the UK before qualifying for ILR. This might imply passing the ‘Life in the UK test’ and taking and passing a course in English and citizenship if language ability is deemed not satisfactory.


(i) Professional status criterion: the programme was aimed at overseas domestic workers and the applicant were therefore required to provide proof that they were employed as domestic workers at the time of the application was made.

(ii) Possession of a valid passport.

(iii) Economic criterion: the domestic worker had to demonstrate that s/he was self-supporting and would not need to recourse to public funds, usually through a letter from the employer stating salary details and other ‘in kind’ payments.

(iv) Temporal criterion: the individuals had to bring themselves to the attention of IND within 12 months of the announcement and that they had continued to be employed in a domestic capacity.

6.3.5 Groups excluded
- Long residence rule: applies to all illegally resident migrants who have resided in the country for at least 14 years, but can exclude people with a criminal record and/or a bad

153 For details, see Anderson, 1999.
immigration history. The latest category refer to people who committed deliberate or blatant attempts to circumvent immigration control, e.g. by absconding, contracting a marriage of convenience or using false documents.

- **Domestic workers regularisation**: excludes migrant workers who entered the country without the right entry clearance.

### 6.3.5 Status, rights, responsibilities

- Persons meeting the requirements of the *long residence concession* should normally be given Indefinite Leave to Remain (ILR). ILR is permission to stay permanently (settle) in the United Kingdom, free from immigration control. From 2 April 2007, all applications for ILR will require the individual to demonstrate proficiency in English and knowledge of life in the UK.

- **Domestic Workers regularisation**: applicants who had been residents in the UK for at least four continuous years were normally granted ILR, while those who had been in the UK for less would obtain a 12-month leave in the first instance.

### 6.4 Implementation

#### 6.4.1 Long residence rule

JCWI notes that it is a lengthy and often a not straightforward procedure and that, in the past, some applications were refused because applicants did not pay taxes (which as an undocumented worker is difficult to do in any event, unless under a false name) (JCWI, 2006).

Unfortunately, it has not been possible to obtain the number of persons regularised under the 14 year residence rule. Indeed, the relevant statistical category for this concession combine the grants under the long residence concessions after 10 or 14 years residence together, and it is therefore impossible to break them out in order to obtain numbers for the concession applying to irregular migrants only.

#### 6.4.2 Domestic workers’ regularisation programme

Anderson (1999) provides an assessment of the implementation of the policy:

1) This programme was not a great success as it led to only a small number of regularisations. Unfortunately, it has not been possible to obtain the number of regularisations under this scheme from the Home Office\(^\text{154}\).

2) Migrant domestic workers could apply for regularisation from July 1998 and July 1999 later extended to October 1999. The guidance notes that persons who entered prior to 23 July 1998 and missed the 23 October 1999 deadline would normally have enforcement action taken against them when they come to light, but that each application would nevertheless be examined on an individual basis and a leave might be granted if the person satisfies the requirements. Anderson notes that the deadline was problematic, particularly because of the lack of publicity for the programme which meant that many of those who might have been eligible in its framework did not hear about it in sufficient time. This issue was further aggravated by the fact that regularisation criteria

\(^{154}\) In reply to a request to the Immigration Research and Statistics (IRS) department of the UK Border Agency, we were told that, regarding the ’1998-99 Domestic Workers Regularisation Exercise’, the data available is not detailed enough to identify these cases. Settlement of Domestic Workers in general is included in ‘Permit free employment’ within table 5.3 of Home Office (2007a). Although it might possible to break them out for the 1998 and 99, there are almost certainly data quality issues.
were only clearly defined by January 1999, resulting in delays in the submissions of applications.

3) This programme was not greatly publicised and its announcement probably did not reach many of those who might have been eligible to regularisation. Levinson (2005) notes that the lack of publicity has actually been a common reason for programme failure or weakness in the UK.

4) Anderson (1999) underlines the very important role played by non-governmental organisations in the implementation of the measure. They played the crucial role of mediator between the migrant domestic workers and the institution that they generally mistrusted, i.e. the Home Office. Furthermore, when it became clear that one of the main difficulties applicants to regularisation had was to provide proof that they had entered the country as domestic workers with the right entry clearance, it was decided that registration with Kalayaan – the support organisation that had launched the campaign for domestic workers – would count as such proof.

5) This regularisation programme was implemented during what Anderson has qualified a ‘period of well publicised chaos within the Home Office’ resulting from a series of internal changes (new computer system and immigration services moving offices). This context, as well as different aggravating problems relating to delays in establishing the regularisation criteria and the lack of clear instructions given to the Home Office caseworkers, resulted in important delays in decision making.

6) Different practical implementation difficulties arose. First of all, meeting the requirements proved difficult to many because of the type of documentation that was required. Submitting a valid passport was for instance very difficult as many domestic workers who entered the UK under the concession had their passports taken by their employers or - if they had managed to hold on to it - had not renewed it on expiry. Applicants were therefore very dependant on the good will of their embassies to provide the necessary documents, and some embassies (the Filipino in particular) cooperated more than others. Providing proof of current employment and that applicants were able to support themselves was also very problematic as employers were reluctant to provide any documents for fear of being prosecuted for employing illegal immigrants or becoming liable to paying tax and national insurance. The establishment of such criteria can seem quite paradoxical as ‘one of the purposes of the exercise was to free domestic workers from dependence on their employers for their immigration status, yet the necessity of a letter from their employer only reinforced this dependency’ (Anderson, 1999). As mentioned above, migrants also had to submit a proof that they entered the country as domestic workers, with the right entry clearance. This was difficult to provide, not least because there was no specific entry clearance granted domestic workers. A major step in solving this problem was the decision made by the authorities to accept registration with the support organisation Kalayaan as such a proof. However, the records kept by this organisation had not been developed for this purpose and information on some applicants was missing.

Finally, Anderson reports problems of representation as different ‘immigration advisers’ and more or less reputable law firms saw the regularisation exercise as an opportunity to offer their services to possible applicants and apply high fees.
6.5 Evaluation and outcomes

Although no numbers were found on this particular issue, it is believed that the workers domestic programme appeared in the end to have been very costly in terms of time, money and emotional investment for all those involved (Levinson, 2005).

The length of time required to obtain a permanent residence permit under the long residence rule is usually prohibitively long (14 year), and therefore this regularisation mechanism is unlikely to act as an incentive to come and stay irregularly in the UK.

Because the requirements of the Domestic Workers regularisation were so strict, it is also very unlikely that it encouraged illegal immigration.

6.6 The UK and Europe: debates on regularisation policy in the UK

The regularisation programmes implemented in other countries (Spain in particular) are often mentioned and discussed in public debates. The views on these measures are, as we could expect, quite contrasted between those in favour of a regularisation exercise in the UK and those rejecting this option. The transcripts of the debates that took place at the House of Commons on 20 June 2007 during debates about this issue reflect these differing views155. On the one hand, the supporters of a regularisation in the UK argued that a country like Spain just took a *de facto* situation into account by recognising a population that had established strong links with the country and contributed to its economy, and that these measures eventually prevented further growth of the underground economy. They pointed out the financial gains resulting from conducting such exercises and the fact that Spain paid off its social security deficit following the 2005’s measures. Furthermore, they argued that these measures - alongside other policies aimed at reinforcing borders and extending the state’s control over the black economy - contributed in decreasing the number of illegal migrants and deterring further illegal migration. On the other hand, the main argument put forward by the opponents of such measures is that large-scale regularisation exercises might have acted as magnets to more irregular migration, citing the Italian and Spanish examples. As no definite answer can be given to this question, the amnesties implemented in the different EU countries will continue to be discussed in debates.

The issue of illegal migration is extensively covered in the media and extremely contentious in the UK. It is difficult to distinguish a clear trend in the public opinion on an issue such as the regularisation of illegally residing immigrants. Here, we can mention two surveys with contrasting results recently conducted. In July 2006, a YouGov survey for the think-tank MigrationWatch, which campaigns against mass migration, suggested that 72% of the people opposed the principle of an amnesty, with only 11% in favour156. In April 2007, an ORB poll commissioned by Strangers into Citizens found that 66% of British people believe undocumented migrants who have been in the UK for more than four years and who work and pay taxes should be allowed to stay and not be called illegal, and that 67% also believe asylum seekers should be allowed to work157. However, we can argue that, rather than showing contrasting views on the problem, these results reveal the issues relating to asking leading questions in surveys.

155 http://www.parliament.the-stationery.office.co.uk/pa/cm200607/cmhansrd/cm070620/halltext/70620h0001.htm
6.7 Conclusions

In January 2007, the ‘Strangers into Citizens’ campaign for an earned regularisation of the long-term illegal migrants was launched in the UK. This campaign launched by a broad range of Christian Churches and other faith organisations argue that ‘earned regularisations’ in countries such as the US and Spain have been successful and should be implemented in the UK. They recommend that irregular migrants who have lived and worked in the UK for more than four years, have a command of English, a clean criminal record and a referee who is either an employer or person of standing in the community be granted a two-year work permit; at the end of those two years, subject to employer and character references, they should be given ILR. This campaign has been backed up by the think-tank IPPR, which estimated in a report published in April 2006 that a regularisation of irregular migrant workers could raise £1bn in taxes. The ‘Strangers into Citizens’ coalition has also gained the support of some MPs – particularly in the Liberal Democrat party - and the endorsement of the new mayor of London, the Tory Boris Johnson.

The proposal put forward by the ‘Strangers into Citizens’ campaign is however not the only regularisation scheme that is currently recommended. The support organisation JCWI for instance recommends a one-off regularisation differentiating between illegal migrants residing in the UK for at least 7 years, those who have been in the UK between 2 and 7 years, and the victims of trafficking and severe labour exploitation. They recommend the first group should be granted ILR, the second group a five years leave to remain before being eligible for settlement while the third group should be able to regularise their stay regardless of length of residence in the UK. They particularly insist the qualifying criteria for the different groups should not focus on proof of employment as this has proved contentious in the past, with employers being given too much leverage over the process. They also argue that ILR should be given in order to avoid the Spanish experience of regularising migrants with only temporary residence leading them to continually fall back into irregularity. Finally, JCWI recommends that a permanent regularisation process should allow illegal migrants who have been residing in the UK for at least 7 years to be granted ILR (JCWI, 2006).

We can note here that no clear right-left wing divide can be observed on this issue, and there seems to be debates within each party.

Some of the arguments commonly put forward by activists in favour of regularisation are that:

- The current deportations of migrants illegally residing in the country run at about 25,000 a year. However, as highlighted earlier, the backlog of cases of failed asylum seeker awaiting removal is believed to be somewhere between 155,000 and 283,500 people. A report from the Parliament raised that issue in 2006, stating that, even without any new unsuccessful applications, it would take between 10 and 18 years to tackle the backlog based on the current removal rate of the Home Office’s Immigration and Nationality Directorate (House of Commons, 2006)

- The National Audit Office has estimated the cost of forcibly deporting an irregular migrant at £11,000, so it could cost up to £4.7billion to deport all those currently in Britain (IPPR, 2006)

- If irregular migrants were allowed to work legally, the potential taxes they would pay could be as high as £1billion per annum. (IPPR, 2006)

The government rejects this plan at the moment, and wants to appear confident in its ability to remove illegal migrants. Both the Labour and Conservatives have ruled out an amnesty, although - as mentioned above - the Liberal Democrats have backed earned citizenship for some migrants. On 18 September 2007, the Lib Dem came up with a proposal for the regularisation of undocumented migrants. It included the ‘development of an earned route to citizenship, beginning with a two-year work permit, for irregular migrants who have been in the UK for ten
years, subject to: (i) public interest test; (ii) a long-term commitment to the UK; (iii) a clean criminal record; (iv) the payment of a charge, waived for those who have completed a set number of hours of service in the community or volunteering and (v) an English language and civics test, or proof that the applicant is undergoing a course of education in these subjects (Liberal Democrats Plans for Immigration Reform 2007). The immigration minister, Liam Byrne, rejected the principle of an earned regularisation, saying: "I believe those here illegally should go home - not go to the front of the queue for jobs and benefits. That's why we're now deporting someone every eight minutes and doubling our frontline enforcement resources"
(Guardian, Sept 2007).

The government wants to appear confident in its ability to manage the problem and claims that irregular migration could eventually be dealt with through a series of measures aimed to make living in an irregular status in the UK an unsustainable position in the long-term (Home Office 2007b). In 2007, the Government stated its enforcement strategy: 'Our overall aim is to make it as straightforward as possible for migrants to stay compliant, while penalising those who break the rules. We will reduce the number of people not complying because of carelessness (e.g. allowing their visa to expire) and prioritise tough enforcement action against those who cause the most harm (e.g. traffickers and other forms of organised crime).’ This strategy consists in progressively denying work, benefits and services to irregular migrants by working in partnership with tax authorities, benefits agencies, Government Departments, local authorities, police and the private sector (Home Office 2007b). It should also be implemented through reinforced border controls (new technologies: e-borders, etc.), improved internal controls (including the introduction of compulsory ID cards for foreign nationals), removals (by lowering their cost) and employer sanctions (introduction of civil penalty in 2008)\textsuperscript{158}.

This last point is central to the goal of discouraging illegal migration and the Home Secretary Jacqui Smith emphasized that "by stamping out illegal working we are making the UK a less attractive destination for illegal migration" (Home Office Press Release, 23 November 2007) The Immigration (Restrictions on Employment) Order 2007 (SI 2007/3290) came into force on 29 February 2008. This will see the coming into force of the new regime for a combination of prosecutions and civil penalties for employers who employ – knowingly or unknowingly - people who do not have permission to work in the UK for which provision was made in the Immigration, Asylum and Nationality Act 2006.

\\textsuperscript{158} The Asylum and Immigration Act 1996 made it illegal to knowingly or negligently employ people who do not have permission to work in the UK (with a penalty of £5,000 if proved). However there were only 33 successful prosecutions between 1998 and 2000 (Layton-Henry, 2004 – in IPPR, 2006). Gangmasters Act 2004 introduced an obligatory licensing system for gangmasters and employment agencies who supply or use workers involved in agriculture in order to reduce exploitation.

Under a new system of civil penalties introduced in 2007, employers who negligently hire illegal workers could face a maximum fine of £10,000 for each illegal worker found at a business. If employers are found to have knowingly hired illegal workers they could incur an unlimited fine and be sent to prison.
6.8 References


www.homeoffice.gov.uk/rds/


http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0306.pdf


http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter18/


http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/accession_monitoring_report/


http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubacc/620/620.pdf


http://www.nao.org.uk/publications/nao_reports/05-06/050676.pdf


http://www.gcim.org/attachements/GMP%20No%2033.pdf


http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr2905.pdf


http://www.londonmet.ac.uk/londonmet/library/n48636_3.pdf

**Newspaper articles:**


**Interviews:**

- Mr Don Flynn, Director of the Migrants’ Rights Network (MRN), London, 21st May 2008
- Dr Franck Duveil and Mr Bastian Vollmer, COMPAS, Oxford, 4th June 2008
- Dr Bridget Anderson, COMPAS, Oxford, 4th June 2008
6.9 **Annex**

Persons removed from the United Kingdom and those subject to enforcement action, 2000-2006. According to Type of Removal

Table 6.4: Persons refused entry at port and subsequently removed (2)(3)(4)

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>38,275</td>
<td>37,865</td>
<td>50,360</td>
<td>38,110</td>
<td>39,730</td>
<td>32,840</td>
<td>34,825</td>
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<td>of which</td>
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<td></td>
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</tr>
<tr>
<td>principal asylum applicants (5)(6)</td>
<td>5,440</td>
<td>4,175</td>
<td>3,730</td>
<td>2,980</td>
<td>2,865</td>
<td>2,690</td>
<td>2,685</td>
</tr>
<tr>
<td>Dependents of asylum applicants (5)(7)</td>
<td>700</td>
<td>345</td>
<td>245</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>non-asylum port removal cases (8)</td>
<td>32,835</td>
<td>33,690</td>
<td>46,630</td>
<td>35,130</td>
<td>34,010</td>
<td>26,855</td>
<td>26,575</td>
</tr>
<tr>
<td>non-asylum cases removed under enforcement powers (9)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,155</td>
<td>2,950</td>
<td>5,320</td>
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</tbody>
</table>

Table 6.5: Persons removed as a result of enforcement action and voluntary departures (3)(4)(10)(11)(12)

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</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>7,820</td>
<td>10,290</td>
<td>14,205</td>
<td>19,630</td>
<td>18,710</td>
<td>21,720</td>
<td>22,840</td>
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<td>of which</td>
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</tr>
<tr>
<td>principal asylum applicants (6)</td>
<td>2,990</td>
<td>4,130</td>
<td>6,115</td>
<td>8,270</td>
<td>7,435</td>
<td>8,135</td>
<td>9,015</td>
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<tr>
<td>dependants of asylum applicants (7)</td>
<td>1,210</td>
<td>1,285</td>
<td>990</td>
<td>3</td>
<td>3</td>
<td>3</td>
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<tr>
<td>non-asylum cases</td>
<td>4,830</td>
<td>6,160</td>
<td>8,090</td>
<td>11,365</td>
<td>10,070</td>
<td>12,305</td>
<td>12,830</td>
</tr>
</tbody>
</table>

Table 6.6: Persons leaving under Assisted Voluntary Return Programmes (13)(14)

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>550</td>
<td>980</td>
<td>895</td>
<td>1,755</td>
<td>2,715</td>
<td>3,655</td>
<td>6,200</td>
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<td>of which</td>
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<tr>
<td>principal asylum applicants (6)</td>
<td>550</td>
<td>980</td>
<td>895</td>
<td>1,755</td>
<td>2,300</td>
<td>2,905</td>
<td>4,630</td>
</tr>
<tr>
<td>dependants of asylum applicants (7)</td>
<td>405</td>
<td>330</td>
<td>710</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>non-asylum cases (15)</td>
<td>10</td>
<td>420</td>
<td>860</td>
<td>3</td>
<td>3</td>
<td>3</td>
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</tbody>
</table>

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159 Blaschke 2008: Annex II
Table 6.7: Total persons removed (2)(3)

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<tr>
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</thead>
<tbody>
<tr>
<td>Total</td>
<td>46.645</td>
<td>50.625</td>
<td>68.630</td>
<td>64.390</td>
<td>61.160</td>
<td>58.215</td>
<td>63.865</td>
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<td>of which</td>
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<tr>
<td>dependants of asylum applicants (7)</td>
<td>1.495</td>
<td>3.170</td>
<td>4.890</td>
<td>2.315</td>
<td>1.955</td>
<td>1.950</td>
<td></td>
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<tr>
<td>non-asylum cases (8)</td>
<td>37.665</td>
<td>39.850</td>
<td>54.720</td>
<td>46.495</td>
<td>46.245</td>
<td>42.530</td>
<td>45.585</td>
</tr>
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Table 6.8: Persons against whom enforcement action was initiated (16)

<table>
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</thead>
<tbody>
<tr>
<td>Illegal entry action initiated</td>
<td>47.325</td>
<td>69.875</td>
<td>48.050</td>
<td></td>
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<tr>
<td>Deportation action initiated (17)</td>
<td>2.525</td>
<td>625</td>
<td>235</td>
<td></td>
<td></td>
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<tr>
<td>Administrative removal action initiated</td>
<td>720</td>
<td>5.610</td>
<td>9.450</td>
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Table 6.9: Total persons against whom enforcement action was initiated (16)

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</thead>
<tbody>
<tr>
<td>Total</td>
<td>50.570</td>
<td>76.110</td>
<td>57.735</td>
<td></td>
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<td></td>
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<td>of which</td>
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<td></td>
</tr>
<tr>
<td>principal asylum applicants (6)</td>
<td>43.465</td>
<td>67.150</td>
<td>46.200</td>
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<tr>
<td>dependants of asylum applicants (7)</td>
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</tr>
<tr>
<td>non-asylum cases</td>
<td>7.105</td>
<td>8.960</td>
<td>11.535</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Notes
1 Under Sections 3(6), 3(7) or 33(1) of the Immigration Act 1971, or under Section 10 of the Immigration and Asylum Act 1999.
2 Includes cases dealt with at juxtaposed controls.
3 Includes persons departing ‘voluntarily’ after enforcement action had been initiated against them.
4 Due to a reclassification of removal categories, figures for 2006 are not directly comparable with previous years.
5 Due to a change in the working practices of the Border and Immigration Agency, from February 2003 all port asylum removals have been carried out by enforcement teams using Port Powers of removal.
6 Persons who had sought asylum at some stage, excluding dependants
7 Data on dependants of asylum applicants removed have only been collected since April 2001. Information on the type of removal of dependants is only available from 2004.
Figures up to March 2001 may include a small number of dependants of principal asylum applicants refused entry at port and subsequently removed. The breakdown of dependants by type of removal is only available from 2004.

Removals which have been performed by Immigration Officers at ports using enforcement powers

From January 2005 figures include persons who it has been established have left the UK without informing the immigration authorities.

Excludes Assisted Voluntary Returns; includes people removed under AVR-FRS (Facilitated Return Schemes) in 2006.

Since January 2004, figures include management information on the number of deportations.

Persons leaving under Assisted Voluntary Return Programmes run by the International Organization for Migration. May include some cases where enforcement action has been initiated.

In 2006 there were 5,340 persons who had sought asylum at some stage leaving under Assisted Voluntary Return Programmes, of whom 5,330 left under Voluntary Assisted Return & Reintegration Programme (VARRP) and 10 left under the Assisted Voluntary Return for Irregular Migrants (AVRIM) Programme.

Persons leaving under the AVRIM Programme run by the International Organization for Migration. May include some on-entry cases and some cases where enforcement action has been initiated. Removals under this scheme began in December 2004.

Illegal entrants detected and persons issued with a notice of intention to deport, recommended for deportation by a court or proceeded against under Section 10.

Deportation figures may be under-recorded in 2000. 2001 figures may exclude some persons recommended for deportation by a court.