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

Ref. JLS/B4/2007/05

Appendix B

Country Profiles of 22 EU Member States and the USA

Vienna, January 2009
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These country profiles have been drafted by a team of experts and research assistants on
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content of each country study is primarily the responsibility of its principal author(s) and
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Austria

Albert Kraler & David Reichel

1. Introduction

At the beginning of the year 2007, the total resident population in Austria stood at 8.3 million persons of whom roughly 826,000 were non-nationals. (See: [www.statistik.at](http://www.statistik.at)). The largest groups of Third Country Nationals are citizens of Serbia and Montenegro\(^1\) (137,289), followed by Turks (108,808) and citizens from Bosnia and Herzegovina (86,427).

<table>
<thead>
<tr>
<th>Basic information on Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total population</strong> (1)</td>
</tr>
<tr>
<td><strong>Foreign population</strong> (2)</td>
</tr>
<tr>
<td><strong>Third Country Nationals</strong> (3)</td>
</tr>
<tr>
<td><strong>Main countries of origin</strong></td>
</tr>
<tr>
<td>Serbia and Montenegro</td>
</tr>
<tr>
<td>Germany</td>
</tr>
<tr>
<td>Turkey</td>
</tr>
<tr>
<td><strong>Net migration</strong> (6)</td>
</tr>
<tr>
<td><strong>Asylum applications</strong> (7)</td>
</tr>
</tbody>
</table>

* 1\(^{st}\) Jan. 2007 ** During 2007 *** 2006  
Source(s): [www.statistik.at](http://www.statistik.at), [www.bmi.gv.at/publikationen](http://www.bmi.gv.at/publikationen)

2. Irregular migration in Austria

There are few global estimates on the stocks of illegally staying foreign residents in Austria. Estimates range between 40,000 and 100,000, but as all available estimates were made before the two recent waves of EU enlargement and a significant share of illegally resident non-nationals before enlargement were believed to be citizens of new Member States, the actual total population of illegally resident third country nationals is likely to be on the lower end of the estimate (Kraler, Reichel & Hollomey 2008).

There are several statistical indicators on illegal migration, notably apprehension figures, figures on expulsion orders and asylum applications, which are traditionally closely correlated to the number of apprehensions.

In 2006, 3,276 persons were expelled for unlawful residence in the territory. In 2007, the number decreased to 1,748\(^2\) (Ministry of the Interior). Taking into account only persons apprehended in the territory and disregarding both double-counting or undercounting, i.e. the fact that figures are likely to be biased, apprehension statistics indicate a population of 16,000 persons who were illegally residing in Austria in 2007. As the number of 16,000 apprehended persons within the territory includes an unknown number of asylum seekers\(^3\) and transiting migrants as well as citizens of

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\(^1\) Separate statistics for the two countries are not yet available  
\(^2\) The reason for this sharp decrease may be the accession of Romania and Bulgaria to the European Union in 2007.  
\(^3\) It is unclear how many asylum applicants submit an application immediately after entry in a border district or once in the country and after a certain period of (undocumented) residence. In
Romania and Bulgaria who are – since 2007 – EU citizens and thus are no longer part of the illegal resident population, a much smaller number of those apprehended in 2007 as illegally staying actually can be considered as illegally resident in a narrow sense. Assuming that only a certain share of irregularly staying persons are apprehended, however, and taking into account estimates for countries of similar sizes, the number of 16,000 can be taken as a low range estimate for the illegally staying population.

**Persons apprehended due to illegal entry and/or residence in 2006**

<table>
<thead>
<tr>
<th></th>
<th>When entering</th>
<th>In the territory</th>
<th>When leaving the country</th>
<th>In course of compensatory measures⁴</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smuggled persons</td>
<td>2,250</td>
<td>8,401</td>
<td>1,057</td>
<td>562</td>
<td>12,270</td>
</tr>
<tr>
<td>Persons staying/entering illegally</td>
<td>590</td>
<td>7,683</td>
<td>1,1341</td>
<td>6,707</td>
<td>26,321</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,840</strong></td>
<td><strong>16,084</strong></td>
<td><strong>12,398</strong></td>
<td><strong>7,269</strong></td>
<td><strong>38,591</strong></td>
</tr>
</tbody>
</table>

Source: Ministry of the Interior

Because of safe third country and Dublin rules, virtually all asylum applicants have entered the country illegally. Thus, asylum applications can be taken as indicators for flows of illegal immigrants. This said, not all irregular migrants lodge asylum claims. Conversely, asylum seekers, once they have formally lodged an application, are no longer illegally resident. In regard to the asylum system, the number of discontinued asylum procedures has been frequently suggested as an indicator illegal migration, although there is no evidence whether “disappeared” asylum seekers have remained in the country, have returned or moved elsewhere.

A second source of irregular migrants who have been in the asylum system are rejected seekers who do not return/ who are not returned. However, no data on rejected asylum seekers remaining in the country exist.

Thus, although the exact extent to which the asylum system is linked and contributes to stocks of illegally resident migrants is unclear, it can be considered a major ‘source’ of irregular migrants. Recently, however, asylum figures have dramatically decreased (see table below), and so have apprehensions, which have sharply declined from a total of 48,751 in 2001 to 38,642 in 2004 and 14,862 in 2007 (Kraler/ Hollomey 2008).

**Discontinued asylum procedures 2003 to 2006**

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discontinued asylum procedures</td>
<td>18,029</td>
<td>7,603</td>
<td>6,765</td>
<td>4,023</td>
</tr>
<tr>
<td>Unfounded</td>
<td>7,065</td>
<td>5,905</td>
<td>1,399</td>
<td>1,303</td>
</tr>
<tr>
<td>Number of all asylum</td>
<td>32,359</td>
<td>24,634</td>
<td>22,461</td>
<td>13,349</td>
</tr>
</tbody>
</table>

the context of the enlargement of the Schengen area, however, the distinction between in-country apprehensions and border apprehensions is increasingly blurred.

⁴ After omission of border controls (i.e. dragnet controls nearby borders)
From the available evidence, therefore, it seems that the importance of irregular entry has considerably declined as a result of EU enlargement as well as a result of the decline of asylum related migration in recent years. Similarly, overstaying can be assumed to be of rather minor quantitative importance in the Austrian context today: In respect to migrants from non-EU Europe, non-compliant forms of migration on a circular basis (e.g. entry on tourist visa and illegal work; entry as seasonal workers and under-declaration of employment etc. and subsequent return and legal re-entry) are more likely to occur than overstaying. Although it is not unlikely that some citizens of new EU Member States without access to employment “overstay” in a technical sense, there are no means to check this. Both legally and in practice, EU citizens (whether new or old) are no longer seen as a category whose residence status can be irregular. Finally, the relatively strict visa issuing practices vis-à-vis third country nationals subject to visa requirements and the substantial financial guarantees required from “sponsors” as well as increased controls similarly reduces the scope for overstaying and leaves visa-free countries as the most likely source of overstayers. In the current context, withdrawal and loss of a legal status thus seems to be the most important pathway into irregularity, with the asylum system being the most important, although not the only source of irregularity as a consequence of status loss and/or withdrawal.

3. National policy on illegal migrants in regard to regularisation

The Ministry of the Interior rejects regularisation as policy response to the presence of irregular migrants. Despite Austria has consistently rejected regularisation as a policy instrument, it has regularised irregular migrants both through (limited) mechanism and through two de facto regularisation programme implemented in the 1990s, which involved relatively large numbers of migrants.

In response to the ICMPD questionnaire, the Ministry of the Interior provides four main arguments why regularisation should be avoided. First, the Ministry of the Interior believes that regularisations would send the wrong signal to prospective irregular migrants and are likely to constitute a pull factor for irregular immigrants, even though the Ministry concedes that such pull effects might be difficult to prove. Secondly, the Ministry argues that long term illegal residence has to be considered a threat to public order, which in turn constitutes an absolute reason for denying a residence title. Third, regularisation of irregularly staying third-country nationals would contradict the principle of equal treatment enshrined in the constitution. Fourth, the Ministry argues that regularisations would undermine managed migration also in a long term perspective, as individual regularisations are likely to imply subsequent family reunifications and therefore would increase future immigration flows in an unpredictable way. Generally, the Ministry considers the topic as highly sensitive and rejects any measures on the European level that would oblige Member States to regularise illegal immigrants (MS Response AT: 1-2, and BMI 2009).

4. Regularisation programmes

In the period under review (1996-2008), no regularisation programme as such has been carried out in Austria. The first major regularisation programme was implemented
in 1990, in the course of which some 30,000 persons were regularised. Under the programme, illegally employed foreign nationals could apply for a work permit to regularize their employment status and by implications, also their residence status, as the latter was subsidiary to the employment status before 1993 (see: Nowotny, 1991). Effectively, this early programme thus regularised both residence and employment of the regularised persons, albeit regularisation of residence status was not an explicit objective of the programme.

In the late 1990s, a special programme for displaced persons from Bosnia and Herzegovina was carried out and was implemented through a special law, known as the ‘Law on Bosnians’ (Bosniergesetz). The programme targeted persons from Bosnia and Herzegovina who were under temporary protection in Austria – in total around 85,000 persons. According to the act persons under temporary protection could obtain a settlement permit, if they had resided in Austria without interruption since 1st October 1997 and if they fulfilled all conditions of the Aliens Act (1997), including access to legal employment and suitable accommodation. In the beginning of the year 2000, the majority of the 85,000 displaced persons from Bosnia and Herzegovina had obtained a settlement permit and thus successfully had changed to the regular residence regime. A small number - around 600 persons continued to reside under the temporary protection regime, while another 5,500 were in the asylum system (cf. Fassmann & Fenzl, 2003: 299 – 300; BosnierG, 1998). Although the programme is strictly speaking not a regularisation programme, as Bosnian displaced persons were legally admitted (if ex post) on a temporary permit and the 1998 programme only ‘normalised’ the status of Bosnians by admitting them into the regular (permanent) residence regime, the entire history of the reception of Bosnian war refugees in Austria suggests that the programme effectively constituted the second step in a two-step regularisation procedure. In terms of target group of this ‘regularisation programme’, the so-called ‘Bosnieraktion’ is similar to programmes for war refugees from the former Yugoslavia implemented in other Member States, which eventually became known and institutionalised as temporary protection programmes. In many respects, subsidiary protection which was developed on the basis of the principle of ‘non-refoulement’ currently fulfils similar functions.

A third programme, implemented between June 2007 and June 2008, however, falls short of a regularisation as defined for the purpose of this study, although its objectives are similar to many employment oriented regularisation programmes proper implemented elsewhere. The programme known as ‘care amnesty’ (Pflegeamnestie) targeted care workers from new EU member states working in breach of general employment regulations and/or in breach of the employment of foreign nationals act. The programme was launched in June 2007 and ended in June 2008. Under the programme, persons working illegally as domestic care workers and meeting the definition of care worker used in the amnesty were eligible to register their employment, while sanctions and penalties have been suspended for the duration of the programme for both for care providers and their employers. However, only persons with a residence right in Austria and principle access to employment were eligible for the amnesty, thus excluding illegally resident third-country nationals as well as third-country nationals without access to employment. The only group of third country nationals that were (theoretically) eligible for the amnesty thus were persons with a restricted status, notably family members and long term residents in the meaning of 109/2003/EC.
According to the Ministry for Social Affairs, more than 9000 registrations were received until 30th of June. As the data only counts new registrations, the figure may include persons who have not been employed (irregularly) prior to registration (i.e. the data may include new registrations proper). Between 90% to 95% of those registering registered as self-employed workers. Although the Ministry of Social Affairs does not have detailed statistics on nationality of applicants for the amnesty, the majority of persons registering under the programme are thought to have been Slovaksians, followed by Romanians. A small number of Austrian citizens also seem to have benefited from the amnesty, reflecting its basic focus on labour law. Apparently, no or only an insignificant number of third country nationals seem to have benefited from the amnesty. The main reason seems to be a very restrictive practice of the Labour Market Service (Arbeitsmarktservice - AMS) in regard to issuing work permits – which third country nationals who are not long term residents require. It is unclear why no long term residents (but a small number of Austrian citizens) have benefited from the amnesty.

The overall number of care workers eligible for the amnesty is not known; however, serious estimates range from 6,000 to 20,000 (see Kraler, Reichel & Hollomey 2008). Although it is assumed that a majority of persons employed as illegal care workers come from new EU member states, anecdotal evidence suggests that there is a certain share of persons from non-EU countries, notably from the Former Yugoslavia. Thus, although the amnesty would have been an opportunity to regularise third country nationals in breach of the Employment of Foreign Workers Act 1975 (as amended) and thus technically in breach of immigration conditions, the opportunity was not seized.

5. Regularisation mechanisms

According to the response of the Austrian Ministry of the Interior to the ICMPD questionnaire, regularisation is a concept alien to the legal framework governing migration. (Response AT: 1).

However, the Ministry of the Interior may regularise non-nationals in an irregular situation on humanitarian grounds. Humanitarian residence permits were first introduced in the 1997 reform of aliens legislation. To a large degree, the introduction of the mechanism was a response to massive problems regarding renewal of residence permits and consequence loss of legal status under the 1993 Residence Act and in particular, to irregularity of minors (See Kraler, Reichel & Hollomey 2008). According to one expert estimate, between 5 and 10% of third country nationals in Vienna were affected by status loss between 1993 and 1997 as a result of the conditions and procedural changes under the 1993 Residence Act. The status is granted on the discretion and on the initiative of the authorities, a provision recently (successfully) challenged before the constitutional court. At the time of writing (January 2009), a proposal for the amendment of humanitarian stay has been tabled (see more details below).

Austrian legislation distinguishes between two types of humanitarian residence titles, namely humanitarian residence permits (Aufenthaltsbewilligung aus humanitären Gründen), i.e. short term permits and humanitarian settlement permits (Niederlassungs bewilligung aus humanitären Gründen), i.e. long term (immigration

5 Telephone Interview, Dr. Hofer, Ministry of Social Affairs, 18 July 2008.
6 Interview with Karin König (Municipality of Vienna, MA17), 27 February 2008
7 See Decision of the Constitutional Court, G 246/07 u.a of 27 June 2008
permits) with principle eligibility for long term residence status in the meaning of directive 109/2003/EC.

Non-refoulement is the most important grounds for granting a humanitarian residence permit. Such a permit may be granted for maximum duration of three months (§72 (1) Residence and Settlement Act 2005 [Aufenthalts- und Niederlassungsgesetz, NAG]). Aliens may also be granted a humanitarian stay to facilitate criminal prosecutions, a provision particularly meant for victims of trafficking (§72 (2) Residence and Settlement Act 2005). Such permits are valid at least six months. In addition, restricted settlement permits or settlement permits without access to employment can be granted (§73) The former can be issued to persons who meet the conditions of the ‘integration agreement’ and in case of dependent employment, have a work permit under the Aliens Employment Act (§73 (2). For the latter, the conditions of the integration agreement have to be met (§73 (3). Humanitarian permits, however, may also be issued in cases of family reunification, in which humanitarian reasons apply (§73 (4). While humanitarian status grants according to §72 and §72 (1)-(3) of the act are issued on discretion of the Ministry of the Interior and no right to apply for the status exists, an application for regular family reunification is a condition for issuing a permit under § 72 (4). In addition, to granting humanitarian status under §§72-73, however, an application for a regular residence or settlement permit may be exceptionally admitted from within the country, if reasons for granting a humanitarian status under §§72-73 apply (see §74 Residence and Aliens Act 2005). A residence status under this provision may be awarded by the provincial authorities, but is subject to approval by the Ministry of the Interior.

The number of humanitarian permits issued has varied between the years and has considerably decreased since 2002. Between 2002 and 2007 more than 6,000 residence titles (both residence and settlement permits excluding extensions) were issued on humanitarian grounds. Humanitarian residence permits are frequently issued to asylum seekers, who were already working in Austria, but whose application was rejected, and who subsequently lost their right to remain according to the Asylum Act. (cf. Asylkoordination n.d.). In particular in respect to humanitarian settlement permits (i.e. long term residence permits), however, admissions from abroad are actually more important in quantitative terms than regularisations of irregularly staying migrants, notably for family related admissions outside the quota systems.

### Grants of humanitarian residence permits

<table>
<thead>
<tr>
<th>Year</th>
<th>Humanitarian residence permit* (Aufenthaltstitel)</th>
<th>Humanitarian settlement permits* (Niederlassungsbewilligung)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>1,679</td>
<td>-</td>
<td>1,679</td>
</tr>
<tr>
<td>2003</td>
<td>711</td>
<td>237 (627)**</td>
<td>1,575</td>
</tr>
<tr>
<td>2004</td>
<td>464</td>
<td>196 (667)**</td>
<td>1,327</td>
</tr>
<tr>
<td>2005</td>
<td>254</td>
<td>112 (478)**</td>
<td>844</td>
</tr>
<tr>
<td>2006</td>
<td>144</td>
<td>91 (61)**</td>
<td>296</td>
</tr>
<tr>
<td>2007</td>
<td>188</td>
<td>93 (150)**</td>
<td>431</td>
</tr>
</tbody>
</table>

* The numbers include only first permits

** The numbers in brackets are issued for family reunification which are issued when quotas (which define the maximum number of permits issued per category per year) are exhausted

Source: BMI 2007, 1753/AB XXIII.GP Anfragebeantwortung and BMI Fremdenstatistik 2002 to 2007, authors’ calculations
In response to the ICMPD questionnaire, the Austrian Ministry of the Interior stressed that humanitarian status should not be viewed as a regularisation instrument. The regularisation of the residence status of Third Country Nationals granted a humanitarian stay should be seen as a mere side effect of the permit and as an emergency regulation (Response AT: 1).

In response to the ruling of the Constitutional Court of June 2008, a proposal for the amendment of the provisions on humanitarian status were tabled in late 2008. The proposal has three main elements. First, victims of trafficking and domestic violence would now be able to lodge an application for a short term residence permit under §72(1) as a victim, rather being awarded a title on the initiative of the Ministry of the Interior. Secondly, if removal has been found inadmissible on grounds of article 8 ECHR, the proposal stipulates that a settlement permit has to be granted. Third, the proposal stipulates that each provincial governor can establish an advisory committee on humanitarian cases. Recommendations by these bodies would not be binding, however, the existence of an advisory body would be a pre-condition that provincial governors can grant a settlement permit on humanitarian grounds. In addition, the proposal requires that the alien is sponsored, either by individuals or associations. Other than under current regulations, where the status is granted by the Ministry of the Interior, the Ministry would only have to be informed about status grants. Particularly the third element of the proposal was heavily criticised by a wide range of social actors as well as provincial governments. The criticism of civil society actors and interest groups focused on two aspects of the proposal, namely that the possibility to apply for humanitarian status may be dependent on the province of residence (and whether the provincial authorities in principle allow for humanitarian status grants by establishing an advisory body) and secondly on the requirement that individuals granted a humanitarian stay should be sponsored for a period of five years. Critics argue that this provision privatises governmental responsibilities and furthermore would lead to dependency and possibly exploitation, while humanitarian status grants would be highly selective, depending on the ability of individuals to find sponsors. In response to the criticism and the refusal of provincial governments to take over the partial responsibility for humanitarian status grants, an amended proposal is currently being elaborated.

6. Conclusions

Austria has never undertaken explicit regularisation programmes aiming the regularisation of irregular staying migrants. However, the "amnesty" of illegally employed aliens implemented in the early 1990s effectively also regularised the residence status of persons covered by the programmes and thus can be seen as amounting to a regularisation programme. Similarly, the programme implemented for Bosnian refugees can be interpreted as a two step regularisation programme. Most Bosnian refugees came spontaneously and hence irregularly and were formally ‘admitted’ only after the fact.

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The reluctance to use regularisation as a policy tool may be explained by two factors: First, the relatively low number of illegally staying third country nationals, and secondly, and perhaps more importantly, the principled opposition against using regularisation, even in individual cases, as a policy tool to address the illegal residence status of third country nationals, a view shared across the political spectrum.

Despite the opposition to regularisation, there have been several laws and programmes which effectively regularised foreigners’ statuses during the last two decades. Although humanitarian status is not seen as a regularisation mechanism by Austrian authorities, several thousand persons have obtained a legal residence on humanitarian grounds in the past years. In public debates, however, regularisation policy has recently become a major focus of public debates on immigration, asylum and irregular work. In respect to irregular work, debates on regularisation have been mainly limited to the care sector and mostly referred to citizens from new EU Member States rather than third-country nationals. In addition, the issue is considered as ‘solved’ after the recent ‘care amnesty’. By contrast, regularisation of illegally staying third country nationals discussed under the label ‘right to remain’ (*Bleiberecht*) has only attracted the attention from the wider public more recently in the context of one well known and widely publicised case. To some degree, the case is a consequence of the practice in some provinces to issue work permits to asylum seekers and subsequently the dilemma how to deal with individuals who had access to work, were employed and whose applications for asylum were subsequently rejected.\(^\text{10}\) In the context of these debates, two major NGOs (*Diakonie* and *SOS Mitmensch*) have proposed a regularisation programme for third country nationals in an irregular situation who had been staying in Austria for an extended period of time. According to the proposal, well integrated individuals should have a right to apply for humanitarian stay after three years of de facto residence. After five years, individuals should have an automatic right to remain. According to proponents of the proposal, the suggested provision would affect approximately 4,000 individuals.\(^\text{11}\) To some extent, the proposed amendments to the regulation of humanitarian stay takes up some of the underlying arguments of the NGO proposal, notably the idea to avoid limbo situation and the proposed obligation to issue residence permits to aliens whose asylum claims or applications for residence permits have been rejected but who cannot be returned on grounds of article 8 ECHR.

At the time of writing, it remains unclear how the provisions on humanitarian stay will be implemented. Nevertheless, the proposal and the subsequent discussion suggest that the government has reversed its principled opposition to regularisation and that Austria is moving towards a more pragmatic approach in respect to the regularisation of illegally staying third country nationals. In particular, the proposal for the first time acknowledges for the first time the need for clear regulations in respect to persons who are irregularly staying and who cannot be returned for an extended period of time.

\(^\text{10}\) Herbert Langthaler, comment, Stakeholder-Workshop des Forschungsprojektes „Undocumented Worker Transitions“ (UWT), Forba, Vienna, 26 November 2008

7. References

Asylkoordination (n.d.): Aylregime in Österreich.  
http://www.asyl.at/projekte/node/asylregime_oesterreich.pdf


BMI (Ministry of Interior), 2007, 1753/AB XXIII.GP Anfragebeantwortung. Available at:  

BMI (Ministry of the Interior), 2009, ICMPD STUDIE betreffend Regularisierungsprozesse der EU-Mitgliedsstaaten. Ö-Stellungnahme


Response AT: ICMPD questionnaire sent to the Austrian government in the course of the REGINE project, 2008.
### Statistical Annex

#### Smuggled persons and persons illegally staying or entering by citizenship 2006 and 2007 (main countries)

<table>
<thead>
<tr>
<th>Country</th>
<th>Smuggled persons</th>
<th>Persons staying/entering illegally</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2006</td>
<td>2007</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total in %</td>
<td>Total in %</td>
<td>Total in %</td>
</tr>
<tr>
<td>Romania</td>
<td>137 1.1%</td>
<td>8 0.1%</td>
<td>21293 80.9%</td>
</tr>
<tr>
<td></td>
<td>294 6.7%</td>
<td>21430 55.5%</td>
<td>302 2.1%</td>
</tr>
<tr>
<td>Serbia and Montenegro</td>
<td>2223 18.1%</td>
<td>1447 14.7%</td>
<td>490 1.9%</td>
</tr>
<tr>
<td></td>
<td>603 13.8%</td>
<td>2713 7.0%</td>
<td>2050 14.4%</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>1506 12.3%</td>
<td>1664 16.9%</td>
<td>189 0.7%</td>
</tr>
<tr>
<td></td>
<td>166 3.8%</td>
<td>1695 4.4%</td>
<td>1830 12.9%</td>
</tr>
<tr>
<td>Moldova</td>
<td>1250 10.2%</td>
<td>772 7.8%</td>
<td>196 0.7%</td>
</tr>
<tr>
<td></td>
<td>175 4.0%</td>
<td>1446 3.7%</td>
<td>947 6.7%</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>19 0.2%</td>
<td>3 0.0%</td>
<td>1373 5.2%</td>
</tr>
<tr>
<td></td>
<td>41 0.9%</td>
<td>1392 3.6%</td>
<td>44 0.3%</td>
</tr>
<tr>
<td>Ukraine</td>
<td>724 5.9%</td>
<td>612 6.2%</td>
<td>275 1.0%</td>
</tr>
<tr>
<td></td>
<td>329 7.5%</td>
<td>999 2.6%</td>
<td>941 6.6%</td>
</tr>
<tr>
<td>Turkey</td>
<td>611 5.0%</td>
<td>510 5.2%</td>
<td>155 0.6%</td>
</tr>
<tr>
<td></td>
<td>205 4.7%</td>
<td>766 2.0%</td>
<td>715 5.0%</td>
</tr>
<tr>
<td>Georgia</td>
<td>476 3.9%</td>
<td>309 3.1%</td>
<td>164 0.6%</td>
</tr>
<tr>
<td></td>
<td>130 3.0%</td>
<td>640 1.7%</td>
<td>439 3.1%</td>
</tr>
<tr>
<td>India</td>
<td>530 4.3%</td>
<td>402 4.1%</td>
<td>93 0.4%</td>
</tr>
<tr>
<td></td>
<td>152 3.5%</td>
<td>623 1.6%</td>
<td>554 3.9%</td>
</tr>
<tr>
<td>Mongolia</td>
<td>445 3.6%</td>
<td>235 2.4%</td>
<td>59 0.2%</td>
</tr>
<tr>
<td></td>
<td>34 0.8%</td>
<td>504 1.3%</td>
<td>269 1.9%</td>
</tr>
<tr>
<td>Other</td>
<td>4349 35.4%</td>
<td>3880 39.4%</td>
<td>2034 7.7%</td>
</tr>
<tr>
<td></td>
<td>2246 51.3%</td>
<td>6383 16.5%</td>
<td>6126 43.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12270 100%</strong></td>
<td><strong>9842 100%</strong></td>
<td><strong>26321 100%</strong></td>
</tr>
<tr>
<td></td>
<td><strong>4375 100%</strong></td>
<td><strong>38591 100%</strong></td>
<td><strong>14217 100%</strong></td>
</tr>
</tbody>
</table>

* For better comparability the numbers of persons from Serbia and Montenegro were added up in 2007, although the countries were counted separately (partly since 2006).

Source: Ministry of Interior; table taken from Kraler, Reichel & Hollomey 2008
Belgium

Albert Kraler, Saskia Bonjour, Mariya Dzhengozova

1. Introduction

According to Statistics Belgium, Belgium had a population of some 10.58 million in 2007 of whom 932,161 (8.8 per cent) were foreigners. The total foreign born population in 2004 stood at approximately 1.2 million or 11.4% of the total population (Ouali & Carles 2007: 15).

<table>
<thead>
<tr>
<th>Basic information on Belgium (2007)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population*</td>
</tr>
<tr>
<td>Foreign population*</td>
</tr>
<tr>
<td>Third Country Nationals**</td>
</tr>
<tr>
<td>Main countries of origin (TCN, 2006)**</td>
</tr>
<tr>
<td>Morocco</td>
</tr>
<tr>
<td>Turkey</td>
</tr>
<tr>
<td>DR Congo</td>
</tr>
<tr>
<td>Net migration (2006)*</td>
</tr>
<tr>
<td>Asylum applications**</td>
</tr>
</tbody>
</table>

*Statbel (see FN 13); ** EMN NCP Belgium 2007

Third country nationals represent around 35% of the foreign population. Although immigration from other EU countries has traditionally been and continues to be an important factor shaping the composition of the foreign population, relatively liberal naturalization requirements and a much higher naturalization propensity among third country nationals compared to EU citizens also are important factors to explain the relatively small share of third country nationals in the total foreign population (see table above). After an all time high of asylum applications in 2000 (42,691 applications), asylum inflow has since dropped sharply. In 2006, just over 11,000 applications have been recorded (Ouali & Carles 2007: 5).

2. Irregular Migration in Belgium

There are a variety of estimates on the irregular migrant population in Belgium, most of which date from the period around the 2000 regularisation programme. Based on the results of a survey among undocumented migrants conducted by the University of Leuven in collaboration with various NGOs, the irregular migrant population has been estimated at 70,000 in 2000. The survey on which the estimate was based showed that 57% of the persons interviewed had filed an application during the regularisation programme in 2000. Applying the share of persons who filed an application to the results of the regularization process, in which 33,219 applications relating to a then

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12 The authors would like to thank Benedikt Vulsteke of the Belgian NCP/ EMN for helpful comments on draft versions of the study
estimated 50,000 persons\textsuperscript{14} were submitted, the number of undocumented migrants was estimated at 71,000 (EMN 2005:27). Similarly, in response to the ICMPD questionnaire, the Belgian Ministry of the Interior states that estimates of the number of persons eligible for the 2000 regularisation programme ranged between 50,000 and 70,000,(Belgium, Response ICMPD MS Questionnaire 2008).\textsuperscript{15} In the early 1990s, the Ministry of Justice estimated the number of irregular migrants at 70,000 to 100,000. Similar numbers were put forward in the first half of the 1990s by journalists, interest organisations and the ILO (EMN 2005:27). A recent report commissioned by the Ministry of the Interior suggests a slightly higher stock of irregular migrants and puts the total number of irregular migrants in 2005 at 110,000 (Van Meeteren, Van San & Engbersen 2007).\textsuperscript{16} The report also provides a time series, which suggests, somewhat counterintuitively,\textsuperscript{17} that the number of irregular migrants has remained constant over the 5 years (2001-2005) covered by the report. Methodologically, the estimate is based on several strong assumptions and the resulting figure seems to be relatively high.

In general, (failed) asylum seekers are thought to constitute a significant share of the undocumented migrant population (Belgium, Response ICMPD MS Questionnaire 2008). Indeed, in the regularisation programme in 2000, the overwhelming majority of applicants came from important sending countries of asylum seekers. However, applications were filed also by a considerable number of migrants from non-asylum countries. The most important countries of origin of undocumented migrants according to the data from the 2000 regularisation programme and data on case by case regularisations are the Democratic Republic of Congo, Serbia, Russia, Turkey and Morocco. Before the two recent waves of enlargement, Polish and Romanian citizens also constituted important categories of undocumented migrants.

Statistics on apprehensions collected by the Federal Police and the Immigration Service provide one of the main statistical indicators on undocumented migration. As can be seen from the table below, apprehension figures have remained at a relatively constant level between 1994 and 2004. Statistics, however, do not distinguish between transit migrants and irregular residents apprehended. For interception of asylum seekers – both legally residing and rejected – separate records are kept (see table below).

\textsuperscript{14} The MS questionnaire response for Belgium provides a revised figure of around 55,000 persons.
\textsuperscript{15} No further information on this estimate was provided and it might actually refer to the EMN estimate.
\textsuperscript{16} The estimate is derived from a two step procedure. First, the study authors have calculated a crime offense rate for irregular migrants derived from a survey of 120 irregular migrants. From police statistics on criminal offenses the authors then derived the number of foreign offenders who were irregular staying. The total number of irregular migrants was then extrapolated by applying the share of migrants who had committed a criminal offense derived from the survey (8.3%) on the total number of foreign offenders who were irregularly staying derived from police statistics (8,966), assuming that the total number of illegally staying offenders represented 8.3% of the total irregular migrant population in Belgium. The authors then arrive at a figure of 108,000 irregular migrants in Belgium, which they classify as a conservative estimate, putting the minimum estimate at 100,000. Applying the same logic to irregular migrants appealing to emergency health care (Dringende Medische Zorg, DMZ), they arrive at a similar figure (111,000) and then use 110,000 as their final estimate. The methodology of the study – a simple multiplier method in the classification of Jandl (2008) has been elaborated by a group of researchers based at the University of Rotterdam and has previously been applied to the Netherlands and generally is considered a relatively robust method.
\textsuperscript{17} One would expect a certain decline of the irregular staying population as a result of EU enlargement like in other Member States.
A recent survey of migrants regularised in 2000, although not statistically representative, provides interesting insights into the pathways into irregularity (See Centrum voor Sociaal Beleid, Université d’Anvers, Groupe d’études sur l’ethnicité, le racisme, les migrations et l’exclusion, Université Libre de Bruxelle 2008). Among the 116 respondents who answered this particular question 28 migrants (24%) entered Belgium clandestinely (without any documents, mainly from other MS, in which some at least had some sort of documentation), 45 (39%) used false papers or documents obtained fraudulently and through a smuggler), 33 (28%) had tourist visas, while the remainder had some other sort of visa, suggesting that legal entry and subsequent overstaying was less common than often thought. However, the high share of irregular entries among the respondents might also be related to the fact that 'forced migrants' (asylum seekers with a reasonable claim to refugee status, de facto refugees from conflict countries) are known to represent the largest share of irregular entries.

### 3. National policy on illegal migrants in regard to regularisation

Like in other EU Member States, the preferred policy option vis-à-vis irregular migrants is voluntarily return, and if voluntary return is not an option, forced removal. At the same time, Belgium has consistently used regularisation in humanitarian cases. In total, an estimated 77,500 persons have been regularised in the period between 2000 and 2007, about half of which were regularised in the 2000 regularisation programme and another half between 2001 and 2007.

In its response to the ICMPD Member State questionnaire, the Belgium government argues that human rights obligations provide an incentive for irregular migration, or more precisely, and incentive for irregular migrants to remain in Belgium, because various entitlements also enjoyed by irregular migrants, for example the right to education for irregular children, access to emergency health care and a relatively broad understanding of emergency health care – make it easier for illegal migrants to persist in their irregular situation. The Ministry of Interior’s response pointed out that in Belgium’s federal system, the Communities and Regions may provide additional rights and assistance to illegal residents, thus reinforcing this pull-factor. The government considers the increasing number of persons residing illegally to be “largely due to

<table>
<thead>
<tr>
<th>Year</th>
<th>Intercepted illegal immigrants</th>
<th>Intercepted asylum seekers*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>14,001</td>
<td>22,231</td>
</tr>
<tr>
<td>1995</td>
<td>14,335</td>
<td>14,285</td>
</tr>
<tr>
<td>1996</td>
<td>13,562</td>
<td>18,063</td>
</tr>
<tr>
<td>1997</td>
<td>14,394</td>
<td>13,168</td>
</tr>
<tr>
<td>1998</td>
<td>12,704</td>
<td>14,643</td>
</tr>
<tr>
<td>1999</td>
<td>13,471</td>
<td>16,935</td>
</tr>
<tr>
<td>2000</td>
<td>15,263</td>
<td>17,113</td>
</tr>
<tr>
<td>2001</td>
<td>14,913</td>
<td>13,504</td>
</tr>
<tr>
<td>2002</td>
<td>17,319</td>
<td>12,830</td>
</tr>
<tr>
<td>2003</td>
<td>16,715</td>
<td>15,556</td>
</tr>
<tr>
<td>2004</td>
<td>13,771</td>
<td>16,657</td>
</tr>
</tbody>
</table>

*this category includes both legally resident asylum seekers and failed asylum seekers

Source: EMN 2005:28
fallacies of return policy efforts”, which include “unwillingness on part of the countries of origin to readmit their nationals; human rights criteria of protection; limited possibilities to arrest and detain people; etc.” (Belgium, Response ICMPD MS Questionnaire 2008).

Also the Belgium government believes that regularisations – in principle – constitute a pull factor and therefore are problematic.\textsuperscript{18} Indirect evidence on a ‘pull effect’ is provided by a recent a memorandum of the Belgian minister responsible for migration and asylum (Chambre des Représentants de Belgique 2008: 12). According to the memorandum persistent rumours about an imminent regularisation programme is, along with other factors (notably the most recent enlargement of the European Union and the accession of Bulgaria and Romania) a major reason for the decline of voluntary returns from 2006 to 2007. However, the pull effect concerns irregular migrants already in Belgium, who postponed return decisions in expectation of another regularisation programme. As elsewhere in Europe, there is little evidence on the direct impact of regularisations on irregular migration flows more generally, although there is some evidence of an influx of irregular migrants from other EU Member States during the 2000 regularisation programme, despite the temporary suspension of Schengen rules for the duration of the programme (See also EMN 2005: 105). The countries of origin of regularised migrants suggest that long-standing migratory links (in respect to Turkey and Morocco) as well as colonial links (Democratic Republic of Congo) are probably more important than any pull effects regularisation policy might have.

There is no entitlement to regularisation in Belgium. The government regards regularisation as an exceptional measure that is granted on a case-by-case basis and wherever possible, the government uses alternative policy option. These include: encouragement to voluntary return; increasing the numbers of forced returns, and delaying forced expulsion of children (and the parents) to the end of the school year to mediate adverse humanitarian. More recently (as has been announced in the latest federal Government declaration), Belgium has opted for the opening of an additional track for legal migration by means of the flexibilisation of (the criteria for) work permits delivery.

Regularisation measures target specific groups of persons who do not qualify for a regular residence permit but cannot be removed to their country of origin. Importantly, regularisation is also used for persons who are technically not illegal, such as asylum seekers still awaiting a decision or certain persons with temporary statuses and restricted permits. Overall, the Belgian government argues that the availability of regularisation mechanisms contributes to a better management of migration flows and improves the situation of certain persons with precarious statuses (Belgium, Response ICMPD MS Questionnaire 2008).

4. Regularisation programmes

Background of the 1999/2000 regularisation campaign

In 1998, a Nigerian woman died during an attempt to repatriate her to her home country. Due to the public outcry that followed, the question of how to deal with irregular migrants became a major issue in the formation of the Verhofstadt government, a coalition of liberals, socialists and ecologists which entered office in 1999. The new government decided to implement a regularisation campaign. An independent commission would examine applications for regularisation and advise the Minister of

\textsuperscript{18}Comment on the draft study, Benedikt Vulsteke (EMN NCP Belgium), 16.1.2009
the Interior on each individual case. Although not legally obliged to do so, the Minister committed himself politically before Parliament to follow these advises. The eight chambers of the regularisation commission would each consist of a magistrate, a solicitor and a NGO-representative (Fischer 2001).

Irregular residents would be eligible for regularisation if they lived in Belgium on 1 October 1999 and belonged to one of four categories at the moment of application, namely (i) asylum seekers who had waited for more than four years – three years if they had minor children – for a decision on their asylum application, or were still awaiting a decision; (ii) aliens for whom return to their country of origin or prior residence was impossible; (iii) aliens who were severely ill; (iv) aliens who could assert humanitarian reasons and had developed lasting social ties in Belgium (Ministry of the Interior 2000). This regularisation programme then did not only concern illegal residents but also asylum seekers who were still in the asylum procedure. The campaign started on 10th January 2000 and ended on 31st December 2002 (Levinson 2005: 2).

Objectives
According to the Belgian government, the objectives of the programme were primarily social-humanitarian in nature: to reduce irregular employment, to resolve problems of public order, to address precarious living conditions of irregular migrants and to address other humanitarian concerns. The issue was considered urgent since the number of irregular migrants had become considerable following significant inflows of asylum seekers over the 1990s, consequent backlogs in processing of asylum claims and the inability to remove a sufficient number of irregular migrants from the territory.

The regularisation campaign was seen as a one-shot operation and presented in official discourse as a measure to reduce both illegal employment, problems with public order and to address humanitarian concerns. (Belgium, Response ICMPD MS Questionnaire 2008).

Qualitative outcomes
Generally, problems were reported with the administrative implementation of the programme, particularly lack of qualified personnel and logistic resources. As a result, the given time frame was exceeded by far.

In response to the questionnaire, the Belgian Ministry of the Interior indicated that there was a certain influx of persons who were illegally staying residents in other member states and who were attracted by the possibility of regularisation. Additionally, the campaign gave a "wrong signal" to irregular migrants in the country, i.e. that it was "worthwhile" to wait for a next campaign and therefore to postpone return decisions (Belgium, Response ICMPD MS Questionnaire 2008).

Quantitative outcomes
Shortly after the launch of the campaign, a survey was conducted with 340 undocumented migrants. 57 per cent of them had submitted a regularisation request. The results from the survey suggest that the regularisation programme did reach a significant share of illegally staying third country nationals, but that an equally significant number of persons remained in an irregular situation and for various reasons, failed to apply.

In the course of the programme, 37,152 dossiers were presented for examination, bearing upon around 55,000 persons (Belgium, Response ICMPD MS Questionnaire 2008), including more than 23,000 minors (EMN 2005: 104). The applicants were mainly citizens of Congo (15.2 per cent), Morocco (14.5 per cent), Pakistan (6.7 per
cent) and Yugoslavia (6.2 per cent). Less significant numbers of applicants were citizens of Poland, Turkey, Romania, India, Algeria and Angola. Most persons applied on the basis of the criterion of humanitarian reasons and/or durable social ties (77 per cent). 24 per cent applied as asylum seekers whose application was pending for more than three or four years, 23 per cent argued that they were unable to return, and 9 per cent applied because they were seriously ill (EMN 2005: 104 – 105).

A total of 786 dossiers were confiscated by the office of the public prosecutor because of several forms of fraud (Belgium, Response ICMPD MS Questionnaire 2008).

By June 2005 approximately 25,597 (70 per cent) applications had received a positive response, while 6,177 (17 per cent) had received a negative response, 810 (2 per cent) were excluded from the regularisation programme due to public order reasons and 4,016 (11 per cent) had been declared unfounded (because of duplicate applications, obtaining refugee status in the meantime, etc.) (EMN 2005: 105). Applying the ratio of applications to persons covered by applications to positive decision, the number of regularised persons can be estimated at 37,900, although expert estimates put the number slightly higher at 40,000 to 45,000 persons.

Outcomes, 1999-2000 regularisation programme

<table>
<thead>
<tr>
<th>Cases</th>
<th>Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of applications</td>
<td>37,152</td>
</tr>
<tr>
<td>Positive decisions</td>
<td>25,597</td>
</tr>
<tr>
<td>Negative decisions</td>
<td>6,177</td>
</tr>
<tr>
<td>Exclusion (public order)</td>
<td>810</td>
</tr>
<tr>
<td>Irrelevant [e.g. Recognised refugees, etc.]</td>
<td>4,016</td>
</tr>
</tbody>
</table>

Note: figures in red are own estimates, based on the ratio cases to persons in respect to total number of applications. It is likely that the number of persons regularised is significantly higher, while the number of persons affected by negative decisions etc. might be somewhat lower.

Sources: EMN 2005: 104-105, Belgium, Response ICMPD MS Questionnaire 2008

The impact on regularisation on individuals regularised in 2000

According to the response to the ICMPD questionnaire, close to 100% of migrants regularised during the regularisation campaign retained the status and were able to renew their BIVR (proof of inscription in the foreigner register) (Belgium, Response ICMPD MS Questionnaire 2008).

A recent study on the post-regularisation trajectories of individuals regularised in the 2000 regularisation campaign provides important insights in respect to the impact of regularisation on regularised individuals (Centruum voor Sociaal Beleid, Université d’Anvers, Groupe d’études sur l’ethnicité, le racisme, les migrations et l’exclusion, Université Libre de Bruxelle 2008). The study is based on a survey of 116 migrants regularised in 2000 and focuses on the post-regularisation experiences of regularised migrants in respect to employment and use of social benefits, although it also addresses a number of other aspects.

Overall, the study finds that regularisation had a positive impact on employment patterns of regularised migrants. In detail, however, the study shows that labour market outcomes differ markedly between different groups of regularised migrants and depend

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19 33 % of the applications fulfilled more than one criterion.
20 E-mail from Benedikt Vulsteke (EMN NCP Belgium), 26 January 2009
on a variety of factors (see in more detail below). In addition, the study also highlights the importance of the most immediate of all consequences of regularisation – the acquisition of a relatively secure and stable residence title – on individuals' wellbeing and sense of security. As the study notes, the period in illegality is often described as a period in which the world literally stood still - a life on standby (ibid.: 16). The fact that 66 out of the 116 respondents of the study (or 57%) had obtained Belgian nationality within the 7 year period since the implementation of the regularisation programme similarly indicates the acute apprehension of the implications of legal status among regularised individuals.

The study indicates that 68% of the respondents of the study were employed at the time of the study (2007), while 16% received unemployment benefits (ibid., pp.147ff). Official data, employing a less extensive definition of employment, shows a somewhat bleaker picture for the same group, with 51% being employed and 14% receiving unemployment benefits. With a 65% labour force participation rate according to official figures regularised migrants, however, show similar employment patterns as the foreign population in Belgium in general (Raxen Focal Point Belgium 2006: 67).

The study, however, also shows the diversity of employment trajectories of regularised immigrants, which the study shows is linked to legal status before regularisation (asylum seeker, rejected asylum seeker, undocumented migrant), legal status of employment (legal or illegal), human capital factors (educational attainment) and social networks. The study thus identifies five main employment trajectories: (1) consolidation (concerning mainly asylum seekers already legally working before regularisation); (2) 'catalysation' (concerning asylum seekers irregularly employed before regularisation, for whom regularisation increased employment stability and opened occupational mobility); (3) continuing dependence on social benefits (mainly concerning other humanitarian migrants); (4) a hybrid trajectory (concerning former asylum seekers who were not employed before regularisation, mainly due to young age and for whom regularisation largely had positive effects on employment); and (5) increasing dependence on social benefits (concerning mainly undocumented migrants, who were not eligible for social benefits before regularisation) (Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle 2008: 149). Although increasing reliance on social benefits and other transfer payments may be taken as an indicator of increasing dependence and thus labour market failure, it may similarly be interpreted as an indicator of the exercise of choice on the part of migrants.

The study stresses occupational mobility as one of its main findings regarding the employment situation. Thus, the study reports a major exodus from construction and agriculture to manufacturing and to a lesser extent, services. The shift away from agriculture and construction can be interpreted to reflect, amongst others, difficult working conditions characteristic of this sector as well as the fact that these sectors are particularly haunted by adverse employment practices such as withholding of wages and irregular pay, long working times, and other irregularities (ibid., pp.93ff).

Although formal educational attainments positively influence the general employment prospects, the study's results indicate significant deskilling among regularised migrants, which the study explains by precarious employment careers, regularised migrants' history of unskilled labour before regularisation as well as the fact that employers tend to value formal qualifications only in combination with relevant work experience. This suggests that there is a penalty for periods of irregularity: Not only is irregular work usually associated with low-skilled occupations. But irregular employment usually also lacks opportunities for occupational mobility and thus effectively blocks employment
careers. The comparatively more successful employment careers of regularised former asylum seekers interviewed in the study who already had access to legal employment before regularisation corroborates this view (ibid. pp. 92-94).

5. Regularisation mechanisms

There is a general possibility to apply for regularisation in Belgium according to article 9bis and 9ter (formerly article 9.3) of the Aliens Law of 1980.\textsuperscript{21} According to the Ministry of Interior, the original article 9.3 was not originally meant as regularisation mechanisms. The purpose was to avoid that foreigners on short term residence permits who had obtained working permits from having to return to their home country to apply for long term residence permits at the Belgian Embassies abroad. In practice the article was increasingly used as a regularisation mechanism for foreigners who applied for a residence permit because they were unable to return to their country of origin or because of ‘exceptional circumstances’ (i.e. humanitarian reasons) (Belgium, Response ICMPD MS Questionnaire 2008, see also Fischer 2001).

In response to widespread criticism of the lack of transparency and absence of clear criteria for eligibility, a number of circulars issued in 1997, 1998 and 2002 specified the eligibility criteria under article 9.3 (see EMN 2005: 105). The main criteria are:

- An unreasonable long asylum procedure
- Medical reasons
- Other humanitarian situations, including
  - parents of children with Belgian nationality;
  - financially dependent aged parents supported by one of their legally resident children;
  - persons who were brought up in Belgium and returned against their will; certain categories of handicapped;
  - persons living in a long-standing relationship to a Belgian citizens or a legally resident alien if the familial unit would cease to exist if the person concerned would return to his country of origin (Belgium, Response ICMPD MS Questionnaire 2008, see also EMN 2008).

The experience of interest organisations shows that applications are most likely to be successful in case of lengthy asylum or family reunification procedures, statelessness, the impossibility of expulsion, or special ties with Belgium (VMC 2008). Article 9ter stipulates that medical conditions which entail an inability to travel and the absence of adequate health care in the country of origin may be grounds for regularisation. In all cases evidence of integration effort and employment as well as absence of criminal records are desirable. For article 9ter family ties will increase the likelihood of successful application. (Belgium, Response ICMPD MS Questionnaire 2008).

Between 2001 and 2004, around 30,000 applications were lodged (Caritas International, 2006: 17, Chambre des Représentants de Belgique 2004: 8531). In 2005, the number of applications for regularisation (including renewals) was 15,927, while the number of regularisations granted amounted to 5,422. 5,549 applications were rejected (Service Public Fédéral Interieur 2006: 61-62). In 2006, 12,667 applications were lodged. 5,392

\textsuperscript{21} Article 9 (3) of the Aliens Law was replaced by article 9bis and 9ter in a reform of the provisions on humanitarian stay in 2006. See Projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Doc. 3-1786)
applications were approved, while 6,024 were rejected (Service Public Fédéral Interieur 2007: 62).

A report by Caritas from 2006 suggests that lack of transparency – which had given rise to various circulars in 1997, 1998 and 2002 – and problematic decisions continued to be a major problem, although the report expected some improvements by the replacement of the article 9.3 by article 9bis and 9ter (Caritas International 2006). However, no information on administrative practice in the application of the amended provisions of the Aliens Law are available.

Outcomes, individual regularisations under article 9bis and 9ter

<table>
<thead>
<tr>
<th></th>
<th>2001-2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>applications</td>
<td>30,000*</td>
<td>15,927</td>
<td>12,667</td>
<td>13,883</td>
</tr>
<tr>
<td>positive decisions</td>
<td>n.a.</td>
<td>5,422</td>
<td>5,392</td>
<td>6,256</td>
</tr>
<tr>
<td>number of regularised persons</td>
<td>5,644</td>
<td>34,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* estimate covering the period 2001 to first half of 2004


6. Conclusions

Both regularisation programmes and regularisation mechanisms form part of Belgian migration policies. Although the 2000 regularisation programme has met several difficulties, notably regarding long delays in processing in applications, the programme has – by and large - been positively evaluated. While its overall impact on stocks and flows of irregular migrants are difficult to assess, it seems that it generally met its main objectives – to address backlogs in the asylum system and address specific humanitarian cases.

The current Belgian government does not intend to implement further regularisation programs in the foreseeable future, although both civil society organisations and migrants in an irregular situation are lobbying for a new programme at the time of writing. According to the government, the provisions under article 9bis and 9ter are – in principle – sufficient as a legal mechanism to regularise irregular migrants and therefore no further programme is required. A circular specifying regularisation criteria on the basis of article 9bis and 9ter of the aliens law has been on the table since March 2008, but has – as of January 2009 – not yet been decided.
7. References:


Van Meeteren, Masja; Marion van San & Godfried Engebersen, 2007, Irreguliere immigranten in België.Inbedding, uitsluiting en criminaliteit. Rotterdam: Erasmus Universiteit Rotterdam

Bulgaria

Mariya Dzhengozova

1. Introduction

The scope of the current study refers to experiences with regularisation practices at a national level. The main sources include: (i) principal laws concerning legalisation of illegally residing third country nationals (TCNs) – Law for the Foreigners in the Republic of Bulgaria as amended 2007 and Law for the Asylum and the Refugees as amended 2005; (ii) expert analysis on the implementation of the laws (Daskalova et al, Ilareva, Zhelyazkova et al); (iii) official population statistics (EUROSTAT, UN Department of Economic and Social Division, State Agency for Refugees (SAR) ), unpublished data provided by the Bulgarian Ministry of the Interior and figures regarding human trafficking (ICMPD Yearbook 2006 on illegal migration). The position of different social actors on regularisation issues has been reconstructed on the basis of an ICMPD questionnaire (2008) addressed to Bulgarian Ministry of Interior (hereafter, response MVR BG). In addition, an expert interview with the lawyer D. Daskalova (Legal Clinic for Refugees and Immigrants, Sofia) complements the description (hereafter, response Daskalova).

<table>
<thead>
<tr>
<th>Basic information on Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population*</td>
</tr>
<tr>
<td>Foreign population**</td>
</tr>
<tr>
<td>Third Country Nationals</td>
</tr>
<tr>
<td>Main countries of origin</td>
</tr>
<tr>
<td>Net migration***</td>
</tr>
<tr>
<td>Asylum applications*</td>
</tr>
</tbody>
</table>

* 2008 ** 2006 *** 2007

Like the other former socialist countries, Bulgaria had limited emigration and immigration before 1989. Not until the early 1990s did the country become part of the world migratory system. The geographical position of Bulgaria may positively affect immigration flows – it is one of the three countries sharing a land-bridge to Asia and the Middle East at the base of the Black Sea. As a result, immigration involves mainly migrants from the Near and Middle East, Afghanistan, China, and people from the former Yugoslav and Soviet republics. The major migrant groups include Syrians, Lebanese, Iraqis, Kurds, and Afghans – they are not new to Bulgaria, as there was migration from these countries in the 1960s and 1970s. For the Russians, Armenians, Ukrainians, etc. Bulgaria is also an option for migration (Zhelyazkova et al 2007: 1).

2. Irregular Migration in Bulgaria

Based on interviews, the Centre for the Study of Democracy estimates that 10-15 per cent of migrants in Bulgaria reside illegally. Data provided by the Ministry of the Interior focus only on three countries – Afghanistan, Turkey and Armenia – and are 'likely to be
an underestimate', according to Zhelyazkova et al (2007: 22). The data are summarised in the following table:

<table>
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<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>175</td>
<td>95</td>
<td>116</td>
<td>386</td>
</tr>
<tr>
<td>Turkey</td>
<td>107</td>
<td>216</td>
<td>172</td>
<td>495</td>
</tr>
<tr>
<td>Armenia</td>
<td>86</td>
<td>145</td>
<td>79</td>
<td>367</td>
</tr>
<tr>
<td>Total</td>
<td>368</td>
<td>356</td>
<td>368</td>
<td>1191</td>
</tr>
</tbody>
</table>


The main channel through which illegal migrants enter the Republic of Bulgaria is the Bulgarian-Turkish border. Compared to 2005, a significant decrease in the migration pressure from Turkey to Bulgaria was observed in 2006. Illegal migrants also use routes via Greece in order to enter Bulgarian territory. On the Bulgarian – Greek border section most of the detained trespassers were citizens of Moldova, Afghanistan, China and other states (in 2006). On this border section the number of detained Moldovan trespassers has doubled in comparison to 2005. On the other hand there is a significant decrease in the number of citizens of Afghanistan compared to 2005. In general, Afghanistan, Turkish and Moldovan citizens represent the dominant group of border violators. In 2005 the number of Afghanistan border violators was 480 and in 2006 it decreased to 119; the number of Turkish border violators was 259 in 2005 and in 2006 it was 269. Finally, the number of Moldovan border violators was 113 in 2005 compared to 190 in 2006 (ICMPD 2006: 67-69).

Besides those who enter the country illegally, a substantial part of the undocumented aliens in Bulgaria have expired residence documents (response Daskalova).

3. National policy on illegal migrants in regard to regularisation

Since the early 1990s national legislation in the sphere of migration in general has experienced and continues to experience adjustment and changes. The harmonisation of Bulgarian laws and norms with international and European standards has intensified this process. In January 2007 Bulgaria became an EU member state and began hosting an external border of the EU. This resulted in stronger and more repressive immigration policies, justified in the name of concerns for security and combating illegal activities (Lewis & Daskalova 2008: 6-7).

4. Regularisation programmes

Up to the present moment, the country has not implemented any regularisation programmes. However, negative population growth creates certain needs. As Bulgarian citizens are tempted by promises of higher-wages in newly-accessible Western European markets, shortages arise in both the high- and the lower-skilled segments of the Bulgarian labour market. 'Bulgaria needs immigrants’ (Lewis & Daskalova 2008: 6) but these needs are not responded to by the current migration framework. Many immigrants in Bulgaria, ‘frustrated by impossible legal obstacles, are forced to leave the country, face extended and inhuman detention and deprivation of rights, and enter the informal economy.' (Lewis & Daskalova 2008: 2)
According to the Ministry of the Interior, Bulgaria does not apply regularisation programmes because 'at present no necessity for their introduction is registered', in view of the absence of 'consistent migration flows or at least a large number of illegally staying immigrants'. In case a foreigner is found to stay illegally in Bulgaria, 'the Migration Directorate enforces Chapter five of the Law for foreigners in the Republic of Bulgaria – Measures for administrative compulsion - Art. 39a', that is the foreigner is expelled (response MVR BG 2008: 5).

The position of the Ministry raises the question to which extent current Bulgarian migration policies respond suitably and sufficiently to the possible relationship between lacks of constant migration flows, the tendency towards negative population growth and the needs of the national labour market.

In addition the relevance and the effectiveness of the administrative detention as a measure against illegal migrants command our attention. The tendency towards increasing numbers of asylum seekers and immigrants being deprived of their liberty through the concept of administrative detention is the single most disturbing trend in Bulgaria and threatens fundamental concepts of human freedom’ (Ilareva 2007: 60-61).

5. Regularisation mechanisms

Regarding regularisation mechanisms, asylum legislation gives certain possibilities. The Law for Asylum and the Refugees as amended 2005 provides for regularisation mechanisms in granting asylum, humanitarian status and temporary protection. According to Art. 2. (1) ‘The President of the Republic of Bulgaria shall provide asylum. (2) The Council of Ministers shall provide temporary protection in cases of massive entry of foreigners under the conditions of this law or in fulfilment of the conclusions of the Executive Committee of the High Commissioner of the United Nations Organisation for the foreigners and upon an appeal of other international organisations. (3) The chairman of the State Agency for the Refugees shall provide a refugee status and a humanitarian status by virtue of the Convention for the refugees status of 1951 and the Statement for the refugees status of 1967, of the international acts on the protection of the human rights and of this law’ (Law for Asylum and the Refugees).

Although the Law introduces the possibility of regularisation mechanisms, there are inconsistencies and difficulties in its practical implementation. 'For example, in order for the initial protection prescribed in law for asylum seekers to function, one needs to be recognised as an asylum seeker. As a result of recent changes in the Law on Refugees, this happens with the registration of an asylum application, not with its submission. In Bulgaria the time between submission and registration has no restriction, resulting in tremendous hardship for asylum seekers as many are obliged to remain indefinitely without legal recourse to basic rights while awaiting 'registration’ (response Daskalova). Crucial is the fact that there is no legal basis for distinguishing between asylum seekers and undocumented migrants: ‘due to the delay in registration of requests for asylum, applicants often spend months before their procedure in front of the State Agency for Refugees begins. As a result hundreds of immigrants are detained for months if not years due to a lack of cooperation from consular bodies, statelessness, or through simple bureaucratic mishap and administrative malpractice’ (Ilareva 2007: 60-61). That means that during a limbo period asylum seekers are without any legal status in the country and thus have no access to the labour market, livelihood support or medical care. They may be detained or even deported, in violation of their internationally protected rights
against refoulement, and in spite of the fact that the Bulgarian Penal Code and International Law provides asylum seekers special protections in terms of 'illegal entry' (Lewis & Daskalova 2008: 13, 15-16).

6. Conclusions

The Bulgarian Ministry of Interior considers regularisation programmes as an ultimate measure: ‘At this stage Bulgaria does not face circumstances, which imply introducing regularisation programmes’ (response MVR BG: 12). It opts for the development of preventive mechanisms within the framework of legal migration: “It is necessary to stress on the prevention … It is always better when the migration is kept in line with the legal provisions and for this reason efforts must be made in this direction” (response MVR BG: 12). This position confirms the already mentioned restrictive tendency in national migration policies.

The issue of illegal employment has been also touched upon– in the opinion of the Ministry “the illegal workers’ issue [is] manifest wherever grey economy is in place or the employers tend to override in one way or another the legal requirements for hiring foreign nationals” (response MVR BG : 12). In this sense it should the policy focus should be on the “awareness - as regards the employers, as well as the candidates to be employed - as early as in the country of origin”. Furthermore, the Ministry supports the Proposal for a Directive of the European Parliament and the Council for applying sanctions against employers of illegally staying third-country nationals: “In our view, the [proposal] comes precisely at the right time” (response MVR BG : 12).

Regarding common EU-action, the Ministry considers advisable the development of a "uniform procedure, which however shall be applicable only when necessary and following a mandatory notification and consultations with the other Member-States” (response MVR BG: 12).
7. References


ICMPD (International Centre for Migration and Policy Development), (2006), Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe.


Response MVR, BG - questionnaire filled in by the Bulgarian Ministry of Interior, February 2008.


Cyprus

Martin Baldwin-Edwards

1. Introduction

Cyprus's immigration policy was mostly formulated in the 1990s, in order to recruit immigrant workers to fill labour shortages in a rapidly expanding economy. Almost overnight, Cyprus was transformed from a country of emigration to a net recipient of migration. All immigration was conceived as temporary, with an administrative distinction between those requiring a permit from the Ministry of Labour and those (mainly in housekeeping) whose residence status fell within the competence of the Interior Ministry (Trimikliniotis, 2005). Immigration policy was essentially protectionist, confined to specific sectors, and tied immigrant workers to one employer, with a limit to maximum duration of stay (Thomson, 2006). This model of immigration policy is similar to the temporary guestworker policies of Arab countries (see Baldwin-Edwards, 2005) and offers no prospects of long-term residence. Cypriot immigration policy was seriously criticised by the Council of Europe (ECRI, 2006) for this reason, particularly as it contradicts the underlying philosophy of the EU directive on long-term residence.

Prior to EU Accession, immigrant levels had been climbing, reaching 30,000 with permits (6.7% of working population) in 2002, but with another 10-30,000 undocumented workers and circa 20,000 Greek and Pontian-Greek workers (Trimikliniotis, 2005; 2007). Thus, immigrant labour represents 15-20% of the total labour force and is amongst the highest in Europe. In 2005, a new immigration policy was adopted that effectively circumvented the EU long-term residence directive, by limiting temporary residence permits to 4 years and disallowing renewals (Polykarpou, 2005). This policy is not visible in any law, and is applied on a discriminatory basis, such that elderly or chronically ill Cypriots can employ domestic workers without temporal restrictions. In other sectors, permit renewal is routinely refused, and this approach has allegedly encouraged legal immigrants to continue their residence by applying through the asylum process (Polykarpou, 2005: 8).

2. Irregular Migration in Cyprus

Whereas in the late 1990s the predominant form of illegal immigration into Cyprus was by sea via Lebanon, after the opening up of the Green Line the favoured illegal migration route changed to become via Turkey and then crossing into the Republic of Cyprus from the North. This route is slowly being brought under control, but in 2004 and 2005, the total numbers crossing illegally were over 5,000 for each year, with 2,700 and 3,900 applying for asylum. By 2006, this was down to 3,800 illegal entries, of which 2,000 applied for asylum and 1,150 voluntarily left the territory.

The predominant nationality/gender of illegal immigrants has been Syrian males (54-62% over 2005-7) and of asylum-seekers has also been Syrian males (12-27% over 2005-7), followed by Pakistanis, Georgians (including women), Bangladeshis, Iranians and Indians.

In earlier years, there were very large numbers of asylum applications (over 10,000 in 2004) – of which many were from Bangladeshis and Pakistanis, who had arrived as
students and were told that they could not work. As asylum applicants, they had the right to work in certain sectors – mainly agriculture (Thomson, 2006). The asylum figures have also increased through migrant workers contracts’ expiry, and their desire to remain in Cyprus. This problem arises because Cyprus does not tolerate the presence of illegal immigrants, and reportedly imprisons and expels those who are detected. Deportations follow the same sort of pattern for nationalities/gender as illegal immigration and asylum-seeking. For 2006, there were 3,000 deportations, of which 21% were Syrians, 12% Bangladeshi, 8% Sri Lankans, 7% Pakistanis, and around 5% each of Egyptians, Iranians and Turks.  

3. National policy on illegal migrants in regard to regularisation

It is only since 2002 that Cyprus has assumed responsibility for asylum processing (previously it was managed by UNHCR), and this has not been considered a great success in terms of recognition rates and fair hearings. The policy on illegal immigrants seems to be (although is not obviously stated anywhere) that the presence of illegal immigrants is not tolerated, and will automatically lead to detention and deportation. This applies equally to those whose employment ended (under the tied-employer permits); thus, there is little distinction between illegal immigrants and others whose legal status has changed. There is, according to various sources, great opposition to the EU directive on long-residence being implemented, and every effort has been made in recent years to prevent legal long-term workers from applying. There is similar opposition to implementation of the Directive on Family Reunification. Clearly, as the Council of Europe has pointed out, Cyprus’s guestworker policy is at odds with EU policy and has to be reformed. Whether or not that reform will lead to the need for regularisation programmes is a matter of conjecture: however, the very great extent of illegal immigrant presence on Cyprus is a matter of concern.

4. Regularisation programmes

None. As indicated above, the immigration policy of Cyprus has the effect of creating illegal aliens through its temporary guestworker policy, which is in conflict with the EU directive on long-term residence. 

5. Regularisation mechanisms

Cyprus exceptionally grants temporary residence permits on humanitarian grounds – e.g. health reasons, child welfare, asylum procedures. No data are available at this time.

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22 All statistical data in this section are derived from unpublished statistics provided to ICMPD by the Aliens and Immigration Unit, Cyprus Police.
6. References


Czech Republic

David Reichel

1. Introduction
In December 2006, there were some 10.3 million people living in the Czech Republic including 321,451 foreigners. The majority of the foreign population consists of Ukrainians (102,594), followed by Slovaks (58,384), Vietnamese (40,779) and Russians (18,564).

<table>
<thead>
<tr>
<th>Basic information on the Czech Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population*</td>
</tr>
<tr>
<td>Foreign population*</td>
</tr>
<tr>
<td>Third Country Nationals* (incl. Romania and Bulgaria)</td>
</tr>
<tr>
<td>Main countries of origin*</td>
</tr>
<tr>
<td>Ukraine</td>
</tr>
<tr>
<td>Slovakia</td>
</tr>
<tr>
<td>Vietnam</td>
</tr>
<tr>
<td>Net migration**</td>
</tr>
<tr>
<td>Asylum applications**</td>
</tr>
</tbody>
</table>

* 31 December 2006 ** During 2006

Since 2004, the Czech Republic is a member of the European Union and since December 2007, the Czech Republic is also a member of the Schengen area.

2. Irregular Migration in the Czech Republic
In 2006, there were 4,371 cases of illegal border crossings reported of which 16 per cent were committed by Czech citizens as the largest group. The largest group of foreigners crossing the Czech borders illegally were Ukrainians with 654 cases, followed by Poles (460) and Germans (289). In the same year 7,117 persons (6299 events) were reported to stay illegally in the Czech Republic. The vast majority of these persons held the Ukrainian citizenship (68%), followed by Vietnamese (7%), Russian and Byelorussians (each 2 per cent). Since the year 2000, the numbers of apprehended illegal aliens has dropped sharply from some 22,000 to 7,117 in 2006 (see: [www.czso.cz](http://www.czso.cz) → illegal migration, based on data of the Police Headquarters CZ).

Out of these 7,117 persons 5,094 were detected inland, of whom 37 per cent (or 1,889) reported themselves. The remaining persons were detected during checks and security operations ([ICMPD, 2007: 96](http://www.czso.cz).

According to the response to the questionnaire sent to the Czech government in the course of the project, the Czech Republic was rather a transit country and had only become a destination country. Since the year 2000, illegal residents are documented, yet

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23 See: [www.czso.cz](http://www.czso.cz)
24 Filled in by Department for Asylum and Migration Policies within the Ministry of Interior
prior to 2000 there was no differentiation between illegal entrance and illegal stay (Response CZ).

For the Czech Republic a good deal of estimates on illegal migration exists. Most of the estimates are of low quality, although they were quoted repeatedly, and address mainly foreigners who are working illegally in the Czech Republic regardless of their residence status. An estimate of the number of foreigners who reside illegally in the Czech Republic in the year 2000 puts the number at 295,000 to 335,000 persons including foreigners who work illegally, their dependants and persons who are transiting the country illegally (cf. Drbohlav & Lachmanová, forthcoming). The figure includes and estimated 165,000 undocumented workers and 30,000 dependents, figures drawn from previous research done by the authors. In addition, they add 100,000 to 140,000 transit migrants, a figure drawn from a 1994 IOM report, whose accuracy and methodology is unclear. Even if one only restricts oneself to the resident illegal migrant population, the figure can no longer seen been as accurate for today as there have been major changes since 2000 (e.g. EU enlargement, different numbers of asylum seekers, enlargement of Schengen area, introduction of Dublin regulations, etc.). The decreasing number of persons apprehended due to illegal migration (border crossing and illegal stay: 53,000 in 2000 and 7,500 in 200725) substantiates the assumption that the number of persons residing illegally in the Czech Republic has decreased sharply since 2000.

3. National policy on illegal migrants in regard to regularisation

The general policy towards undocumented migrants is very strict, as there is (almost) no possibility to obtain a legal status. Only since 1 January 2008, undocumented migrants can attend primary and secondary school without being reported to the police, which was mandatory for schools prior to 2008. Generally, the policy towards undocumented migrants is very restrictive in the Czech Republic and the migrants are criminalised to a large extent26.

According to the Ministry of Interior, the Czech Republic does not consider regularisation as an effective mechanism to combat illegal migration. In 2004, the government adopted an Action Plan on Combating Illegal Migration, including five basic areas to be tackled, namely prevention, control and sanctions, legislation, inter-ministerial cooperation, and international co-operation (Response CZ: 5).

4. Regularisation programmes

No regularisation programme has ever been conducted in the Czech Republic, nor are there currently any plans for a programme, despite the presence of a relatively large irregular migrant population.

5. Regularisation mechanisms

Generally, it is very difficult (rather almost impossible) for illegal migrants to become legalised in the Czech Republic. Only few asylum seekers obtain legal status through applying for visas, e.g. student visas27.

25 Cf. Drbohlav & Lachmanová, forthcoming
26 Email from Multicultural Center Prague, 10 March 2008
27 Email from Multicultural Center Prague, 10 March 2008
According to the Czech government, there is no kind of regularisation mechanism available (Response CZ).

6. Conclusions

The Czech Republic reports that there is no significant evidence that immigration policy would have an impact on the numbers of undocumented migrants. The government considers the implementation of the amendment of the Asylum Act (in force since February 2002) as an effective instrument, as the objective to decrease the number of asylum seekers was achieved which is traced back to the implementation of the act\textsuperscript{28}. The numbers of detected illegal migrants already decreased from 2000 to 2002 (Response CZ: 4).

The Czech Republic reports that it has already been affected by regularisation programmes conducted in another country, namely Italy. “As an example of an impact of regularization programme in other country can be seen an increased number of Egyptian nationals coming to the Czech Republic during the summer months in 2006 who then applied for asylum. According to the intelligence information (proved by interviews conducted with applicants) the Egyptian nationals intended to use the Czech Republic as a route to Italy (their target country) as there was expected to be regularization. In 2005 there was only 7 asylum applications submitted by Egypt nationals, in 2006 there was 422 applicants registered. In 2007 the numbers sharply decreased.” (Response, CZ: 12)

Furthermore, the governmental response declares to prefer ‘traditional’ measures to deal with illegal migration and regularisation is not considered necessary in the near future (Response CZ: 12).

In view of the role of the European Union concerning regularisation programmes, the Czech Republic states that the level of harmonisation of migration policies is not sufficient for Europe wide programmes (Response CZ: 13):

“We consider there is not enough space for establishing such standardised approach at the moment. The reason is that there is not established any mechanism and competence of the Europen Commission to put such approach in practice. If there is a standardised approach for regularization programmes in future, it is possible only after agreement of all Member States.” (Response CZ: 13)

Altogether, the government of the Czech Republic totally rejects regularisations in whatever form.

\textsuperscript{28} The overall decrease of asylum application is not mentioned
7. References


ICMPD, 2007: 2006 Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe. A Survey and Analysis of Border Management and Border Apprehension Data from 20 States

Response CZ: ICMPD questionnaire sent to the Czech government in the course of the REGINE project, 2008.

Website of the Czech Statistical Office: www.czso.cz
8. Statistical annex

**Persons apprehended for illegal migration, Czech Republic, 2000 - 2007**

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal border crossing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-Foreigners</td>
<td>30,761</td>
<td>21,090</td>
<td>12,632</td>
<td>11,125</td>
<td>9,433</td>
<td>4,745</td>
<td>3,676</td>
<td>2,837</td>
</tr>
<tr>
<td>-Czech citizens</td>
<td>1,959</td>
<td>2,744</td>
<td>2,109</td>
<td>2,081</td>
<td>1,262</td>
<td>944</td>
<td>695</td>
<td>547</td>
</tr>
<tr>
<td>Total</td>
<td>32,720</td>
<td>23,834</td>
<td>14,741</td>
<td>13,206</td>
<td>10,695</td>
<td>5,689</td>
<td>4,371</td>
<td>3,384</td>
</tr>
<tr>
<td>Illegal stay</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreigners</td>
<td>22,355</td>
<td>18,309</td>
<td>19,573</td>
<td>21,350</td>
<td>16,696</td>
<td>9,800</td>
<td>7,117</td>
<td>4,712</td>
</tr>
<tr>
<td>Illegal migration of foreigners - total</td>
<td>53,116</td>
<td>39,399</td>
<td>32,205</td>
<td>32,475</td>
<td>26,129</td>
<td>14,545</td>
<td>10,793</td>
<td>7,549</td>
</tr>
</tbody>
</table>


**Expulsions, Czech Republic, 2000 - 2007**

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of foreigners expelled by court</td>
<td>1,242</td>
<td>761</td>
<td>1,350</td>
<td>1,993</td>
<td>2,068</td>
<td>2,252</td>
<td>1,951</td>
<td>1,609</td>
</tr>
<tr>
<td>Number of foreigners administratively expelled</td>
<td>10,042</td>
<td>11,064</td>
<td>12,700</td>
<td>14,176</td>
<td>15,194</td>
<td>10,094</td>
<td>6,960</td>
<td>4,629</td>
</tr>
<tr>
<td>Implemented administrative expulsion</td>
<td>1,065</td>
<td>2,258</td>
<td>1,481</td>
<td>593</td>
<td>433</td>
<td>761</td>
<td>665</td>
<td>245</td>
</tr>
</tbody>
</table>

Denmark

Alfred Wöger

1. Introduction

On 1 January 2008, the total population of Denmark was estimated at 5,455,791 of whom almost 10% or 505,000 persons represented the total foreign-born population. Furthermore 5.5% of the total population or 298,490 individuals were not Danish citizens and about 67% of the total number of immigrants and descendents were third country nationals. As it appears from the table below, Turkish foreigners constituted the largest group, with more than 29,000 people, followed by Iraqis and Germans. The group of foreigners which increased the most in 2007 was from Poland. In the course of 2007, the number of Polish people increased by 4,089 persons, corresponding to an increase of the population group of about 40%. During this period also 2,246 persons applied for asylum in Denmark. Main countries of origin of asylum seekers were Iraq, Afghanistan, Iran, Syria, Russia, Serbia and Montenegro and South Korea. In the first quarter of 2008 the number of asylum seekers decreased 13% compared to 2007 (www.dst.dk).

<table>
<thead>
<tr>
<th>Basic information on Denmark</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total population</strong>*</td>
</tr>
<tr>
<td>5,455,791</td>
</tr>
<tr>
<td><strong>Foreign population</strong>*</td>
</tr>
<tr>
<td>294,490</td>
</tr>
<tr>
<td><strong>Third Country Nationals</strong>*</td>
</tr>
<tr>
<td>197,902</td>
</tr>
<tr>
<td><strong>Main countries of origin</strong>*</td>
</tr>
<tr>
<td>Turkey 29,160</td>
</tr>
<tr>
<td>Iraq 17,369</td>
</tr>
<tr>
<td>Germany 16,842</td>
</tr>
<tr>
<td><strong>Net migration</strong>*</td>
</tr>
<tr>
<td>23,090</td>
</tr>
<tr>
<td><strong>Asylum applications</strong>*</td>
</tr>
<tr>
<td>2,246</td>
</tr>
</tbody>
</table>


2. Irregular Migration in Denmark

The Danish research on illegal immigration is very limited due to the fact that the government until very recently was convinced that this phenomenon hardly existed in the country. The Danish Police states there are no official statistics on the number of illegal immigrants in Denmark (Danish Ministry of Refugee, Immigration and Integration Affairs, 2006: 56). Nevertheless there is a presumable number of persons staying illegally or irregularly in Denmark. Three major groups can be identified:

- overstaying visitors
- aliens working without authority
- rejected asylum seekers

It is estimated that the largest group of unauthorized immigrants residing in Denmark consists of rejected asylum seekers (Vedsted-Hansen, 2000: 402f.). According to the Danish Police between May 2003 and September 2006 587 persons, whose asylum application has been rejected, did not present themselves at one of the two Danish asylum centres which are responsible for the repatriation of refused asylum
seekers. Furthermore within the short period from 1 January to 10 February 2007 the southern border of Denmark reported 241 illegal border crossings. It was also estimated that in 2006 about 1,600 refugees disappeared. A report of the Danish Ministry of Refugee, Immigration and Integration Affairs, published in 2006, pointed out that about 1,400 Ukraine nationals were living and working in Denmark without permission. In total, statistical estimates assume that somewhere between 1,000 and 5,000 illegal immigrants reside in Denmark. It is also presumed that the major part of these persons is working particularly in the agricultural and construction sectors (Roskilde University, 2007: 24ff.).

3. National policy on illegal migrants in regard to regularisation

In Denmark undocumented immigrants are not considered an eminent social problem and are therefore in practice not an important issue in political and public discourse. This can primarily be explained by the estimated number of illegal migrants, which is very small in Denmark due to the fact that there are few ways to enter the country and that life is rather tough for individuals not being allowed to stay (Vedsted-Hansen, 2000: 402).

Consequently for the Danish Ministry of Refugee, Immigration and Integration Affairs the prevention of “illegal migration in Denmark is primarily focussed on returning persons, who are not or no longer allowed to stay in Denmark legally. An efficient return policy is considered to be an important tool in order to prevent illegal migration. [...] It is a priority of the Danish Government to sign readmission agreements with countries from where Denmark receives illegal migrants, and to return persons, who do not have a valid permission to stay. Denmark has initiated specific measures for rejected asylum seekers, who do not cooperate [sic] with the police in facilitating their own return. Engaging actively in regions of origin is part of the Danish strategy to fight the root causes for illegal migration. (Danish Ministry of Refugee, Immigration and Integration Affairs, 2006: 55-56.).

Only very recently several cases of Polish workers who came to Denmark legally as workers but were exploited by their employers have been discussed in the media and in political and public debate. However, those cases are still regarded as exceptions to the rule (Roskilde University, 2007: 26).

According to the Legal Advisor of the Danish Red Cross Asylum Department Thorbjørn Bosse Olander, failed asylum seekers who cannot be deported are also becoming an important issue in Denmark. These persons are offered to stay in the asylum centres until they can return to their home country or another safe country. Until then they are provided with meals and additionally get a small amount to cover their daily expenses. From his point of view this arrangement with failed asylum seekers prevents them from having to work illegally in order to survive as in some other countries. Nevertheless some of them work illegally while they stay in the asylum centres and others choose to disappear and work then also illegally (Response E-mail Danish Red Cross Asylum Department).

4. Regularisation programmes

According to the response of the Danish Ministry of Refugee, Immigration and Integration Affairs to the ICMPD questionnaire, two regularisation programmes have been carried out in Denmark:
Under Act No. 933 of 28 November 1992, residence permits on a temporary basis were granted for specific individuals from the former Republic of Yugoslavia who as a result of the war found themselves in an unbearable situation. Form 1 December 1992 to 19 December 2002 temporary resident permits were granted for almost 4989 persons in distress, mainly Bosnians. Residence permits were valid for half a year at a time and individuals were authorized to take up paid employment if a job vacancy has been announced for three months and could not be filled by a person with a work permit in Denmark.

On 30 April 1999 in view of the crisis in Kosovo a special emergency act came into force. Under Act No. 251, the so-called Kosovo Act, temporary resident permits were granted for certain persons from the Kosovo province in the Federal Republic of Yugoslavia. This act applied for those arriving under the UNHCR Humanitarian Evacuation Programme as well as for those migrating spontaneously to Denmark. Until 3 June 2000 almost 3000 persons from Kosovo were granted temporary resident permits. Residence permits were valid for half a year at a time. Permission to take up paid employment would be granted if they had a written employment contract and the appointment conditions did not conflict or deviate from normal employment conditions according to Danish labour regulation (salary, working hours, etc.) (Response DK: 2ff.).

Since then no further regularisation programme has been carried out.

5. Regularisation mechanisms

According to the Danish Ministry of Refugee, Immigration and Integration Affairs there are three regularisation mechanisms in Denmark:

Residence permits on humanitarian grounds
The Danish Aliens Act, Section 9b, 1, stipulates that a residence permit on humanitarian grounds can be granted to a foreign national registered by the Immigration Service as an asylum seeker in Denmark. The applicant must be in such a situation that significant humanitarian considerations warrant a residence permit. Applications are submitted to the Ministry of Refugee, Immigration and Integration Affairs and it conducts a factual assessment on a case-by-case basis. The Ministry’s ruling regarding a humanitarian residence permit is final – it cannot be appealed to any other administrative authority (EMN 2008: 107). Persons who are granted residence permits on humanitarian grounds are usually families with young children from areas in a state of war or with very difficult living conditions. Applicants receive a residence permit valid for six months and a work permit. The main reason for not granting this on a permanent basis is that the permit depends upon the situation in the home country of the individuals. A new assessment is made every year. The number of humanitarian residence permits granted was 186 in 2005 and 216 in 2006 (mainly to Iraqis and Afghanistan nationals) and 223 in 2007 (EMN 2008: 107).

Residence permits on special grounds, e.g. serious illness, other exceptional reasons
Residence permits on special grounds are usually granted to children who arrive in Denmark unaccompanied and whose parents reside in another country. Furthermore, the residence permit may be granted to asylum seekers, who have been rejected but who during a minimum period of 18 months have not been able to leave the country. Applicants receive a residence permit for six months, which can be renewed first for another six months, then for one year and after that for three years. After a total of five years with temporary residence, they may apply for permanent residence permit.
Unaccompanied minors can obtain a permanent residence permit after just two years and ten months following the submission of their application (ECRE 2008). They are also granted full access to the Danish labour market. In 2006 36 residence permits were granted on grounds of exceptional reasons. (Response DK: 3)

*Residence under the Job Card scheme*

A residence permit under the Job Card scheme is issued for six months. It cannot be extended, but if the applicant finds a job before the residence permit expires, he or she has the right to obtain a permanent residence permit pursuant to the ordinary provisions (Response DK: 7).

In 2007 about 2062 residence permits on behalf of the Job Card scheme were granted and 50 per cent of these permits have been issued to persons from India (Danish Ministry of Refugee, Immigration and Integration Affairs, 2008)

6. Conclusions

Until now illegal migration has not been considered an important issue in Denmark. The prevention of illegal migration focuses on returning persons who are not allowed to reside in the country, mainly rejected asylum seekers.

According to the Danish Ministry of Refugee, Immigration and Integration Affairs there is also no evidence to suggest that the conducted regularisation programmes attracted inflows from other European member states. Furthermore, there are no plans to conduct a regularisation programme in the near future (Response DK: 13).
7. References


Response DK: Response to the questionnaire sent to the Danish government in the course of this project filled in by the Ministry of Refugee, Immigration and Integration Affairs.

Response E-mail: Response to an e-mail sent to the Danish Red Cross Asylum Department in the course of this project filled in by the Legal Advisor Thorbjørn Bosse Olander.


1. Introduction

Estonia has a long history of both emigration and immigration that has coincided with periods of colonization, independence and occupation. The first Republic of Estonia was declared on 24 February 1918. During the period of independence from 1918 to 1940, Estonia was already a multi-ethnic country with recognised Russian, Swedish, Jewish, German and Latvian minorities, all of which had almost completely disappeared by 1945 due to the acts of occupation regimes (Jäärats, 2008). The Second World War, a Soviet occupation (1940-1941), a German occupation (1941-1944) and another Soviet occupation (1944-1991) had a devastating impact on Estonian demographics. Until the time of regaining the independence on 20 August 1991, the population loss was offset by the Soviet occupying power via forced industrialization and by allowing and encouraging the entry of constant waves of migrants from different parts of the Soviet Union, including Russia, Belarus, Ukraine, Moldova, the Caucasus and Central Asia (Jäärats, 2008). In the light of these historical events and the country's geopolitical location (being the Estonian eastern border with Russia the external border of the European Union since 1 May 2004), the main countries of origin for immigration are the former Soviet Union countries, first and foremost Russian Federation. During approximately 50 years (between 1945-1988) about 500,000 foreigners settled in Estonia from the regions of the former Soviet Union, making up about 35 per cent of the total population of Estonia by the year 1989 (EMF & EMN, 2007b). The immigration pressure from the CIS countries has been constant and due to accession of Estonia to the European Union there is no reason to predict decrease according to the Estonian National Contact Point of the EMN, although the statistics of the year 2004 do not show significant increase in immigration (EMF & EMN, 2007a). Comparing the 1989 census data with the indicative figures of 1945, the Estonian population was 1,565,622 persons, almost double (1.8 times) that of 1945, including 963,000 Estonian (61.5 per cent) and 602,381 persons of other ethnic backgrounds (the remaining 38.5 per cent) (Jäärats, 2008). According to the data of the Statistical Office of Estonia and Minister of Population, the population of Estonia was however 1,344,684 in 2006, compared to 1,356,045 in 2003 and 1,372,071 in 2000. The main reason for the decrease of the population is the very low birth rate (negative population growth) since the middle of 1990s.

In Estonia the definitions of citizenship and nationality are based on different grounds. A person who by nationality is an Estonian may hold the citizenship of the United States of America and is therefore a citizen of a third country. At the same time, a person who is born in Russia and is of Russian nationality but has acquired Estonian citizenship through naturalisation, is considered a citizen of Estonia and the European Union. The citizenship of Estonia is based on legal continuity. The current state of Estonia is the legal successor of the Republic of Estonia established in 1918. The principle of continuity is applicable also for the citizenship. In 1992 the 1938 Citizenship Act was re-entered into force and according to that all persons with the citizenship of Estonia as on 16 June 1940 and their successors were considered as Estonian citizens. Jus sanguinis and the principle of continuity of Estonian statehood are thus the two principles regulating the Estonian citizenship.
In 2006 the composition of population was divided as follows (in percent): Estonians 69%, Russians 26%, Ukrainians 2%, Finns 1%, Byelorussians 1%, and other nationalities 1%. When in 2006 82% of the population were citizens of Estonia, 10% were aliens with undefined citizenship and 8% were citizens of another state, then in 1992 the situation was the following: 68% of Estonian citizens and 32% of persons with undefined citizenship. During the years in between, a part of the persons with undefined citizenship acquired Estonian citizenship while some acquired the citizenship of another country (EMF & EMN, 2007b).

According to Jäärats (2008) the recent changes in Estonian immigration policy have been facilitated by the relative success of integrating past immigrants into Estonian society, the declining and ageing population, rapid economic growth and the resulting projected lack of labour.

2. Irregular Migration in Estonia

A publication of the Centre of Policy Study Praxis (No 2/2002) argues that because of the geographical location, vicinity of the Scandinavian welfare states and the number of illegal immigrants living in the Russian Federation, Estonia is a potential transit country for refugees coming from the South and East where the harsher economic situations and unemployment may motivate people to cross the border illegally or submit an application for asylum (EMF & EMN, 2007b). According to the Citizenship and Migration Policy Department/Ministry of the Interior of the Republic of Estonia, the Estonian legislation does not however provide a consistent definition of illegal immigrants. With regard to the National Aliens Act, a legal permit must exist for an alien to enter and stay in Estonia (Blaschke, 2008). Furthermore section 6(1) of the Aliens Act establishes a fixed annual immigration quota as follows: “The annual immigration quota is the quota for aliens immigrating to Estonia which shall not exceed 0.05 per cent of the permanent population of Estonia annually”. In 2008, this ceiling was raised to 0.1 per cent. This quota functions in comparison to other countries as a control measure that is intended to constitute an absolute ceiling for admissions per annum, rather than a "desirable quota" based on estimations of need. Jäärats (2008: 209) observes that “the annual immigration quota is fixed and centrally determined without any involvement of local government, social partners or the civil society”.

In 2006 the Estonian Border Guard discovered 63 cases of illegal immigration and 109 illegal immigrants. As compared to the year 2005, the number of cases of illegal immigration has more or less remained on the same level, 20% more illegal immigrants were discovered. The citizenship or country of origin of the illegal immigrants discovered by the Border Guard Administration in 2006 are as follows: Moldova – 32; Kazakhstan – 16; Russian Federation – 14; Ukraine – 10; Byelorussia – 4; Ghana – 1; Turkey – 1; Israel – 1; Romania – 1; Republic of Cote d’Ivoire – 1; Stateless persons – 28 (EMF & EMN, 2007b). The persons denied entry includes the most citizens of the neighbouring countries (Russian Federation and before the EU accession Latvia) and citizens of India and the Philippines. In the case of the latter, they are usually members of a ship’s crew who wish to enter the country during the ship’s stay at port without having a valid basis for entry (EMF & EMN, 2007a).

3. Regularisation programmes

No regularisation programmes have been implemented in Estonia, although the special provision on persons of Estonian origin and persons who had resided in Estonia before
and continued to reside there continuously (see below) could be considered a programme rather than a mechanism, notwithstanding the fact that the relevant provisions are contained in regular immigration legislation.

4. Regularisation mechanisms

In view of the Obligations to Leave and Prohibition to Entry Act there is only one possibility to legalise a person’s status. If a person staying in Estonia without a basis of stay who is of Estonian origin; or settled in Estonia before 1 July 1990, has not left Estonia to reside in another country, continued to stay in Estonia and does not contradict the interests of the Estonian State a precept for legalisation can be issue, which obliges the alien to apply for a residence permit. Regularisations are processed individually and case-by-case and aim at securing a legal status for long-term residents. The regularisation norms are stated in the law and are therefore permanent (Blaschke, 2008; Ministry of the Interior, 2008). The legalisation programme was mainly addressed to residents of the former Soviet Union who had resided in Estonia for a long time but due to the political changes lost their legal basis to stay in the country (Ministry of the Interior, 2008). Residents of the former Soviet Union who wanted to stay in Estonia they had to present an application for residence permit before 12 July 1994. When this deadline approached it was discovered that about 90 per cent of them hadn't done that. The deadline was prolonged first time for one year and then again until 30 April 1996. The sufficient time left made the presentation of applications possible. According to the Estonian Ministry of the Interior (2008: 4) however a large number of aliens were documented through this ‘programme’. The highlighting in quotes seems a proof of recognition by the Ministry of the Interior of the peculiarity of this procedure when compared with former statements of the Citizenship and Migration Policy Department by whom, despite the existing legalisation frameworks for aliens, “Estonia does not have any specific regularisation program” (Blaschke, 2008: 13).

Estonia has legalised the status of persons who were residing in the country illegally by use of section 20 of the Aliens Act which entered into force in 1997 and according to which aliens who had applied for a residence permit before 12 July 1995 and who had been granted a residence permit and lack a criminal record became entitled to the rights and duties provided for in earlier legislation. Accordingly, such aliens do not need work permits for employment in Estonia during the period of validity of their temporary residence permits and they have the right to apply for a permanent residence permit in view of the procedure and conditions established by the Estonian Government starting from 12 July 1998. An application for a permanent residence permit must be submitted at least one month before the expiry of a temporary residence permit (Ministry of the Interior, 2008). In view of IOM (2000) although the irregular aliens who registered were issued precepts to leave the country, they were also informed as to how to regularise their stay.

In addition to the above mechanism, section 21 of the Aliens Act which entered into force in 1999 forms the basis for legalisation of persons staying illegally in Estonia. Section 21 stipulates that a residence permit may be issued outside of the immigration quota to an alien to whom the issue of a residence permit is justified (...) and who settled in Estonia before 1 July 1990 and has thereafter not left to reside in another country (Ministry of the Interior, 2008). The same rationales of the legalisation programme apply for the above legalisation mechanisms, i.e. to secure a legal status to long-term residents of the former Soviet Union in Estonia. The most essential qualities for application include the presence in the territory before a certain date, length of
residence and family ties. As mentioned earlier, the absence of criminal record as well as the proof of employment form also an important part. The needs of certain group of illegal immigrants and those of the State for sustained immigration policy are declared reasons for these legalisation mechanisms (Ministry of the Interior, 2008).

Estonia does not issue residence permits on the basis of humanitarian reasons. According to the Aliens Act a residence permit should not be issued or extended to an alien if some country, a part from the Schengen visa area, has applied a prohibition on entry for this alien and if the prohibition has entered in the Schengen Information System.

Regularisation is certainly not an issue of public discussion in Estonia and no regularisation programme is in progress for the time being (Blaschke, 2008). At the European level, the Estonian Government seems however to share concern for a common approach including a better exchange of information and consultation before launching any new programme or mechanism (Ministry of the Interior, 2008).
5. References


Finland

David Reichel

1. Introduction

The history of migration in Finland is different from the histories of most other EU Member States. After WWII Finland was a country of emigration and many persons were migrating to Sweden. Only in the 1990s Finland started to experience immigration, however, the number and percentage of foreigners living in Finland is the smallest in the EU 15 (Salmenhaara, 2005: 15).

<table>
<thead>
<tr>
<th>Basic information on Finland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total population</strong>*</td>
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<tr>
<td><strong>Foreign population</strong>*</td>
</tr>
<tr>
<td><strong>Third Country Nationals</strong></td>
</tr>
<tr>
<td><strong>Main countries of origin</strong>*</td>
</tr>
<tr>
<td><strong>Russia</strong></td>
</tr>
<tr>
<td><strong>Estonia</strong></td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
</tr>
<tr>
<td><strong>Net migration</strong>**</td>
</tr>
<tr>
<td><strong>Asylum applications</strong></td>
</tr>
</tbody>
</table>

* 31\(^{st}\) December 2007  ** During 2007; Source: Statistics Finland, [www.stat.fi](http://www.stat.fi)

2. Regularisation in Finland

Until recently irregular migration was not an important issue in Finland, therefore regularisation of irregular migrants was not an issue either. Hence, there was no specific legislation on regularisation in Finland, although there have been discussions on the issue (until 2003). No systematic irregular immigration was observed and the irregular foreign workforce is assumed to be very small, especially compared to Southern European countries (Salmenhaara, 2003: 17). However, in 2002 the topic of the irregular workforce was discussed in the Finnish parliament, leading to plans to modify the proposal for the new Aliens Act in order to be able to impose stricter controls on irregular employment (Salmenhaara, 2003: 17).

Due to the unimportance of irregular immigration in Finland (and immigration in general) it is likely that many regularisations took place on the basis of normal work and residence permit legislation (Salmenhaara, 2003: 17). This assumption is corroborated when looking at the asylum statistics provided by Statistics Finland:

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29 The author would like to thank Tero Mikkola, Senior Advisor to the Minister of the Interior, for helpful comments on draft versions of this chapter.
Asylum-seekers and refugees in Finland 1999 to 2007

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
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</thead>
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<tr>
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<td>3,170</td>
<td>1,651</td>
<td>3,443</td>
<td>3,221</td>
</tr>
<tr>
<td>Decisions on asylum 1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>– Asylum granted</td>
<td>29</td>
<td>9</td>
<td>4</td>
<td>14</td>
<td>7</td>
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<tr>
<td>– Residence permit granted</td>
<td>467</td>
<td>458</td>
<td>809</td>
<td>577</td>
<td>487</td>
</tr>
<tr>
<td>– No asylum or residence permit granted</td>
<td>1,330</td>
<td>2,121</td>
<td>1,045</td>
<td>2,312</td>
<td>2,443</td>
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<tr>
<td>Family reunification</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>– Opinions in favour/decisions in favour 2)</td>
<td>186</td>
<td>214</td>
<td>475</td>
<td>363</td>
<td>303</td>
</tr>
<tr>
<td>– Adverse opinions/decisions 3)</td>
<td>357</td>
<td>302</td>
<td>762</td>
<td>324</td>
<td>499</td>
</tr>
<tr>
<td>Quota</td>
<td>650</td>
<td>700</td>
<td>750</td>
<td>750</td>
<td>750</td>
</tr>
<tr>
<td>– Additional quota</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Refugees received by municipalities 3)</td>
<td>1,189</td>
<td>1,212</td>
<td>1,857</td>
<td>1,558</td>
<td>1,202</td>
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Immigrating as refugees

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<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
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<tbody>
<tr>
<td>Asylum-seekers</td>
<td>3,861</td>
<td>3,574</td>
<td>2,324</td>
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<tr>
<td>Decisions on asylum 1)</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>– Asylum granted</td>
<td>29</td>
<td>12</td>
<td>38</td>
<td>68</td>
</tr>
<tr>
<td>– Residence permit granted</td>
<td>771</td>
<td>585</td>
<td>580</td>
<td>792</td>
</tr>
<tr>
<td>– No asylum or residence permit granted</td>
<td>3,418</td>
<td>2,472</td>
<td>1,481</td>
<td>961</td>
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<tr>
<td>Family reunification</td>
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<tr>
<td>– Opinions in favour/decisions in favour 2)</td>
<td>162</td>
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<tr>
<td>– Adverse opinions/decisions 3)</td>
<td>746</td>
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<td>209</td>
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<tr>
<td>Quota</td>
<td>750</td>
<td>750</td>
<td>750</td>
<td>750</td>
</tr>
<tr>
<td>– Additional quota</td>
<td>–</td>
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<td>–</td>
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<tr>
<td>Refugees received by municipalities 3)</td>
<td>1,662</td>
<td>1,501</td>
<td>1,142</td>
<td>1,793</td>
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Immigrating as refugees

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<tr>
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<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
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<tbody>
<tr>
<td>Asylum-seekers</td>
<td>25,114</td>
<td>26,615</td>
<td>27,757</td>
<td>29,550</td>
</tr>
</tbody>
</table>

1) Decisions of the Finnish Immigration Service,
2) From 1 May 1999, decisions,
3) Refugees by quota, asylum-seekers having received a favourable decision and persons admitted under the family reunification scheme; Source: Website of Statistics Finland and Ministry of Interior

In its response on behalf of the Finnish government to the questionnaire sent out in the course of this project, the Ministry of the Interior emphasises that Finland has no experience with regularising migrants, neither through programmes nor through mechanisms. Finland has ‘very few illegally staying third country nationals’, which in eyes of the government is due to three facts. First, Finnish law stipulates that an alien may reside legally in the country until a final decision has been reached on his application; second, aliens who cannot be removed from the country are granted a residence permit – the Ministry describes this as ‘the main principle’ upon which Finnish asylum law is based - and third, aliens who are not granted a residence permit are ‘effectively removed from the country’. (MS response FI: 2-3)

The Ministry concedes that some Finnish policy mechanisms may be ‘interpreted in a broad sense to include regularisation mechanism [sic] because they prevent the emergence of groups of illegal third country nationals that could in other circumstances require the establishment of specific regularisation mechanisms’. As the two main examples of such preventive mechanisms, the Ministry mentions the granting of residence permits on ‘compassionate grounds’ (Section 52 of the Aliens Act) and in cases where an alien cannot be removed from the country (Section 51 of the Aliens Act). (MS response FI: 3-4)
According to the Finnish Immigration Service, the numbers of permits granted under these mechanisms were:

<table>
<thead>
<tr>
<th>Section 52:</th>
<th>Section 51:</th>
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<tbody>
<tr>
<td>2007 - 210</td>
<td>2007 - 24</td>
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<tr>
<td>2006 - 163</td>
<td>2006 - 299</td>
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<tr>
<td>2005 - 159</td>
<td>2005 - 259</td>
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<tr>
<td>2004 - 464</td>
<td>2004 - 27</td>
</tr>
<tr>
<td>2003 - 249³⁰</td>
<td>2003 - 8</td>
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</table>

(MS response FI: 3-4)

The granting of a permit on compassionate grounds under section 52 is discussed at some length in a recent publication of the European Migration Network. It is a continuous permit given to aliens residing in Finland taking into consideration their health, ties to Finland, circumstances they would face in the home country, their vulnerable position or other compassionate grounds. Most of these permits have been granted to rejected asylum seekers whose return to the home country is impossible. A compassionate ground may also be the impossibility of receiving essential medical care in the alien's home country. Each case is assessed individually and the standard and the access to medical care in applicant's country of origin are closely evaluated when assessing the case. A permanent residence permit can be granted to aliens who after being issued a continuous residence permit, have resided legally in the country for a continuous period of four years and if the requirements for issuing a continuous permit are still met (EMN 2008: 11).

3. Conclusions

Irregular migration is not considered a social or a political problem in Finland. Regularisation procedures have not been applied in the past, nor does the Finnish government intend to implement them in the foreseeable future.

The Ministry of the Interior states that it does not regard regularization programs as 'suitable measures for regulating migration'. Other policy instruments should be developed or strengthened to address issues such as labour market shortages. The Finnish government therefore deems a common EU framework for the management of regularization unnecessary.

³⁰ These numbers are slightly different from the data provided in a recent EMN study, which states the number of residence permits issued on compassionate grounds were as follows: in 2005 - 161 permits; in 2006 - 164 permits; in 2007 - 232 permits and in 2008 (January-June) - 103 permits (European Migration Network Ad-Hoc Query 2008: 11).
4. References


Germany

Albert Kraler, Mariya Dzhengozova, David Reichel

1. Introduction

At the end of 2006, the German population stood at 82 million people of whom 8.2 per cent or 6.7 million were not German citizens. By far the largest group of foreigners living in Germany were citizens of Turkey (1.7 million), followed by Italians (0.5 million) and Poles (0.36 million). The large majority of third country nationals are admitted in the framework of family reunification. As in the 1990s, asylum applications have continued to drop sharply in the 2000s, from 95,000 in 1999 to 21,000 in 2006.

<table>
<thead>
<tr>
<th>Basic information on Germany</th>
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<tbody>
<tr>
<td><strong>Total population</strong>*</td>
</tr>
<tr>
<td><strong>Foreign population</strong>*</td>
</tr>
<tr>
<td><strong>Third Country Nationals</strong> (excluding Romania and Bulgaria)*</td>
</tr>
<tr>
<td><strong>Main countries of origin</strong></td>
</tr>
<tr>
<td>Turkey</td>
</tr>
<tr>
<td>Italy</td>
</tr>
<tr>
<td>Poland</td>
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<tr>
<td><strong>Net migration</strong>**</td>
</tr>
<tr>
<td><strong>Asylum applications</strong>**</td>
</tr>
</tbody>
</table>

* 31 December 2006 ** 2005
Source: Statistisches Bundesamt Deutschland (www.destatis.de)

Since the 1990s, analysts have pointed to Germany's ongoing need for immigrants to bolster economic development and maintain a dynamic workforce, given the rapid aging of the country's population. A process of policy review began in 2001 with a government commission's report on immigration and integration policy (Oezcan 2004).

2. Irregular Migration in Germany

The German government refrains from providing figures concerning the number of illegally staying third country nationals in Germany, since it deems it impossible to make a realistic estimate. (BMI 2007a: 141-148; Schönwalder et al. 2006: 27) Numbers that circulate in the media and among researchers range from a hundred thousand to at least a million. (Sinn et al 2006: 58-59; CoE 2006: 3-5, Cyrus 2008)

According to Schönwalder et al. (2006), police and asylum statistics indicate that the number of illegal residents increased sharply in the second half of the 1990s. This is all the more plausible since control at Germany's eastern borders was almost absent in the direct aftermath of the reunification of the Federal Republic of Germany and the German Democratic Republic. The disappearance of the Iron Curtain opened the way to Germany for many Eastern Europeans, while "very few legal options were made available to

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31 The authors would like to thank Axel Kreienbrink (Federal Office for Migration and Refugees, Nuremberg) for helpful comments on a draft version on this chapter
them”. In addition, the German asylum law was significantly tightened in 1993. With this legal migration channel “largely blocked”, more immigrants may have entered illegally. Since the late 1990s however, the number of illegally staying third country nationals in Germany seems to be stagnating and, because of the effects of EU enlargement, decreasing (Schönwalder et al. 2006: 30-33).

3. National policy on illegal migrants in regard to regularisation

In its response to the Member State questionnaire, the Federal Ministry of the Interior emphasised that the German government was strongly opposed to mass regularisations, which are expected to work as a pull factor for illegal migrants. In the view of the Ministry of the Interior, mass regularisation conducted in one EU Member State may negatively affect other EU Member States as regularised persons might subsequently migrate within the Union.³² (Germany, Response ICMPD MS Questionnaire 2008).

German migration laws and regulations comprise a residence status which is neither irregular nor undocumented: the so-called “Duldung” (‘toleration’). Foreign residents who are legally obliged to leave the country and whose deportation cannot be executed, are issued a document stating that they have received a “suspension of deportation”, or “Duldung”. This document is issued for a period of days, weeks or a few months, and may be prolonged indefinitely, each time for a short period, as long as the obstacle for deportation persists. Tolerated persons have only limited access to the German labour market and receive basic social assistance, often only partly in cash and partly in kind (Geyer 2007; Cyrus & Vogel 2005: 21-23).

According to the Ministry of the Interior, 154,780 ‘tolerated’ aliens were living in Germany in August 2007. More than half of them – about 87,570 – had lived in Germany for more than six years (BMI 2007b). Recent German debates about regularisation centred on the question of how to tackle the situation of these “langjährige Geduldeten” (long term tolerated persons). Following a the 2006/2007 regularisation programme and regularisations through mechanisms, the number of tolerated persons has been reduced to some 110,000 as of 30 September 2008 (MuB 2008b).

4. Regularisation programmes

There have been several regularisation programmes for specific groups of tolerated persons who had no criminal records and were employed. Until 2005 the Federal Ministry of the Interior reports ten such ‘amnesty programmes’:

³² The Ministry admits that there are no scientific studies on the impact of regularisations on other EU countries (Germany, Response ICMPD MS Questionnaire 2008).
1993 Regulation governing the right to stay of nationals from Angola, Mozambique and Vietnam who entered the GDR as contract workers up to and including 13 June 1990 on the basis of intergovernmental agreements;

1993 Regulation for long-lasting asylum cases on the basis of the asylum compromise of December

1993 Regulation for asylum seekers from Afghanistan, China, Iraq, Iran, Laos, Libya and Myanmar (Burma)

1994 Regulation governing the right to stay for Pakistani nationals who belong to the Ahmadiyyah sect and entered Germany before 1 January 1989

1994 Regulation governing the right to stay for Turkish nationals belonging to the Yazidi sect who entered after 31 December 1989 and whose asylum application was rejected before 1 July 1993

1996 Regulation for cases of hardship regarding foreign families who lived in Germany for many years and had entered before 1 July 1990, if their lives have since that time centred on Germany and if they have integrated into the German economic, social and legal order. Altogether 7,856 persons were regularised.

1999 Regulation governing the right to stay for rejected asylum seekers and expellees from other countries than the Federal Republic of Yugoslavia and Bosnia and Herzegovina. At least 18,258 applicants were regularised

1999 Regulation for rejected asylum seekers who have been staying in Germany for a long time. This regulation is to refer to individuals who have not left Germany despite the rejection of their application for asylum due to reasons they cannot be held responsible for.

2000 Regulation governing the right to stay for civil war refugees from Bosnia and Herzegovina and Kosovo, in particular traumatised persons from Bosnia-Herzegovina.

Source: Cyrus & Vogel 2005: 22-23

In November 2006, the Conference of Ministers of the Interior of the Bundesländer agreed upon a regularisation programme targeting persons who had long been tolerated and who could prove to be integrated into German society.

This regularisation programme was not laid down in law. It was adopted as a common position of the responsible Länder authorities on the issuing of residence permits according to §23 (1) of the Residence Act and became known as the IMK-Bleiberechtsbeschluss (Decision of the Conference of Ministers of the Interior on the Right to Remain). The deadline for submitting applications for residence permits under this regulation was 16 May 2007. The eligibility criteria were rather strict. Among others, the applicant had to earn sufficient income to be able to support him/her self and his/her family, without having recourse social benefits (Marx 2006). In addition, a range of other criteria – school success of children, length of schooling, language proficiency, etc. – were applied. According to the response to a parliamentary question submitted by one of the opposition parties, 71,857 persons applied for a residence permit under the programme, of which 19,779 persons had received a residence permit by 30 September 2007. An additional 29,834 persons were granted a toleration status to enable these persons to look for jobs in order to meet the income criterion. In the case of 7,785 persons, the application was rejected (Deutscher Bundestag 2007: 7). A study published in early 2008 shows marked variations in the implementation of the regularisation programme in different provinces. However, the study also suggests that there was significant good-will among all parties involved to solve situations of long-term tolerated persons and discretion was largely used in favour of applicants. Negative
decisions thus there often not the result of bad will or strict interpretation of the IMK-Beschluss but derived from the fact that exclusion grounds applied (for example, a conviction for a criminal offense, deceit of immigration authorities, lack of identity documents). The fact that the criminal and administrative offenses which constitute absolute exclusion grounds are largely linked to irregular status, for example offenses against immigration regulations or poverty related offenses such as free-riding on public transport, has also been severely criticised (Schührer 2007: 78ff). In a similar vein, the integration requirements have been subject to major criticism. In particular, the fact that toleration status implied major constraints in people’s daily lives and thus acted as a major exclusion mechanisms was, according to critics of the regularisation programme, not sufficiently taken into account. Indeed, demanding proof of integration, including employment, from persons whose access to employment was restricted, has been regarded as a major paradox of the programme (See Schührer 2007).

As part of the reform of the Zuwanderungsgesetz (Immigration Law), a temporary scheme for regularising the residence status of ‘tolerated’ foreigners was laid down in law, which came into force in August 2007. Aliens who on 1 July 2007 had lived in Germany for at least eight years – six years if they had minor children – with a ‘tolerated’ status would be granted a temporary residence permit, provided they showed willingness to integrate, disposed of suitable housing, spoke sufficient German and had not knowingly misinformed the German immigration authorities. Their permit would be valid until 31 December 2009, before which date they were to find employment, so as to dispose of sufficient income (BMI 2007b).

By 31 December 2007, 22,858 persons had applied for regularisation, of whom 13,674 were still awaiting a decision. 1,816 applications had been rejected, while 1,770 foreigners had been granted a residence permit on humanitarian grounds. The large majority of applicants however, namely 9,088 foreigners, had received a residence permit “auf Probe” (propotionary permit), i.e. conditional on their earning sufficient, independent and sustainable income before the end of 2009. Their residential status in Germany remains insecure. (MuB 2008).

5. Regularisation mechanisms

Regularisation mechanisms exist in Germany, albeit to a fairly limited scope. Individual irregular aliens may obtain a residence permit through “Bleiberechts- oder Altfallregelungen” (regulations for status adjustment of old cases), if their expulsion has been delayed for many years. These regulations concern aliens who are officially ‘tolerated’. Persons without any status (no toleration) cannot apply for regularisation in Germany. Eligibility criteria comprise absence of criminal records, sufficient means of subsistence through employment and integration in Germany. The Ministry of the Interior, however, does not regard these provisions as constituting regularisation mechanisms (Germany, Response ICMPD MS Questionnaire 2008). Detailed statistics on residence permits issued on humanitarian grounds, excluding permits issued to persons admitted from abroad can be found in the annex to this chapter.

Current legislation provides for regularisation the following cases.

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33 Exluding Thüringen and Bayern, whose figures were not yet available.
Granting of residence in cases of hardship (Chapter 5, Section 23a, par 1 of the Residence Act): The supreme Land authority may, on petition from a Hardship Commission to be established by the Land government, order a residence permit to be issued to a foreigner who is required to leave the Federal territory (hardship petition). According to the individual case concerned, the said order may be issued with due consideration as to whether the foreigner’s subsistence is assured. The residence permit may be issued and extended for a maximum period of three years. In 2005, 186 persons benefited from hardship petitions, in 2006 – 1, 165, in 2007 – 1,711 and in 2008 (January-June) – 1,298 (EMN 2008: 107 and 113).

Residence permit on humanitarian grounds in case of a deportation ban (Abschiebungshindernisse): A foreigner should be granted a residence permit where a deportation ban applies on the basis of existing danger of the foreigner being subjected to torture or inhumane or degrading treatment or punishment in the country of deportation. (Chapter 5, Section 25, par. 3 of the Residence Act). The residence permit should be issued for at least one year. In 2005, 1,998 persons were granted residence permit on that ground, in 2006 – 5,512, in 2007 – 9,395 and in 2008 (January-June) – 7,823 (EMN 2008: 107 and 113).

Urgent humanitarian or personal grounds (Chapter 5, Section 25, par. 4 of the Residence Act): A foreigner who is non-enforceably required to leave the Federal territory may be granted a residence permit for a temporary stay if his or her continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. The residence permit may be issued and extended for a maximum period of three years but for no longer than six months. In 2005, the number of residence permits issued was 1,492: in 2006 – 4,079; in 2007 – 7,227 and in 2008 (January-June) – 4,308 (EMN 2008: 107 and 113). Furthermore, a residence permit may be extended if departure from the Federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case. In 2005, the number of people provided with such extension was 7, in 2006 – 4; in 2007 – 38 and in 2008 (January-June) – 883 (EMN 2008: 113).

Victims of human trafficking (Chapter 5, Section 25, par. 4a of the Residence Act): A foreigner who has been the victim of a criminal offence may also be granted a residence permit for a temporary stay, even if he or she is required to leave the Federal territory. The permit shall be issued for six months and extended; a longer period of validity is permissible in substantiated cases. Significantly low number of residence permits has been issued on this ground: in 2007 – 3 and in 2008 (January-June) – 14 (EMN 2008: 113).

Legal or factual grounds (Chapter 5, Section 25, par. 5 of the Residence Act): A foreigner who is required to leave the Federal territory may be granted a residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if

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35 In addition to the grounds listed in the main text, German legislation contains two provisions on admission on humanitarian grounds. According to chapter 5, section 22 of the Residence Act a foreigner may be granted a residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. According to chapter 5, section 23, par. 1 of the Residence Act the supreme Land authority may order a residence permit to be granted to foreigners from specific states or to certain groups of foreigners in accordance with international law, on humanitarian grounds. The order shall require the approval of the Federal Ministry of the Interior.
deportation has been suspended for 18 months. The permit may be issued and extended for a maximum period of three years but for no longer than six months. In 2005 the number of permits issued was 1,896, in 2006 – 7,148, in 2007 – 16,917 and in 2008 (January-June) – 19,468 (EMN 2008: 107 and 113).

Right of residence for integrated children of foreigners whose deportation has been suspended (Chapter 10, Section 104b of the Residence Act): A minor, unmarried child may be granted a residence permit in his or her own right in the event of the said child’s parents or the parent possessing the sole right of care and custody not being granted a residence permit or an extension of the same and leaving the federal territory, where (i) the child has reached the age of 14 on 1 July 2007; (ii) the child has been lawfully resident in Germany or resident in Germany by virtue of suspended deportation for at least six years; (iii) the child has a command of the German language; (iv) on the basis of the child's education and way of life to date, he or she has integrated into the prevailing way of life in Germany and it is ensured that the child will remain integrated in this way of life in the future and (v) care and custody of the child are ensured. A relatively low number of residence permits has been granted on that basis: in 2007 – 45 and in 2008 (January-June) – 66 (EMN 2008: 107 and 113).

6. Conclusion

German responses to irregular migration from the 1990s up to this date are characterised by a reluctance to undertake large-scale regularisation programmes and a preference for intermediate solutions (toleration) and a series of ad-hoc measures targeting specific groups, often groups with specific protection needs (war refugees, temporary refugees, etc.). Apart from the enormous complexity resulting from this preference for ad-hoc solutions, the important role of administrations and differences in policy between different Länder also are important factors explaining the form and extent of regularisation measures in Germany.

As this country fact report shows, however, Germany has in the past one-and-a-half decades effectively regularised a significant number of illegally staying third country nationals, even though the great majority only received "toleration status" and thus have to a large extent never benefitted from a full status adjustment.
7. References


8. Statistical Annex

Residence permits issued on humanitarian grounds

<table>
<thead>
<tr>
<th>Residence Permits</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>First half 2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hardship cases (Länder) §23a AufenthG</td>
<td>186</td>
<td>1.165</td>
<td>1.711</td>
<td>1.298</td>
<td>4.360</td>
</tr>
<tr>
<td>Deportation ban (§ 25 Abs.3 AufenthG)</td>
<td>1.998</td>
<td>5.512</td>
<td>9.395</td>
<td>7.823</td>
<td>24.728</td>
</tr>
<tr>
<td>Urgent personal or humanitarian grounds (§25 Abs.4 AufenthG)</td>
<td>1.492</td>
<td>4.079</td>
<td>7.227</td>
<td>4.308</td>
<td>17.106</td>
</tr>
<tr>
<td>legal or factual grounds (§25 Abs.5 AufenthG)</td>
<td>1.896</td>
<td>7.148</td>
<td>16.917</td>
<td>19.468</td>
<td>45.429</td>
</tr>
<tr>
<td>Probationary residence permits (§104a Abs.1 Satz 1 AufenthG)</td>
<td>8.604</td>
<td></td>
<td>13.394</td>
<td></td>
<td>21.998</td>
</tr>
<tr>
<td>Regulations for old cases (‘Altfallregelung’, §23 Abs.1 i.V.m. §104a Abs.1 Satz AufenthG)</td>
<td>1.513</td>
<td></td>
<td>244</td>
<td></td>
<td>1.757</td>
</tr>
<tr>
<td>Regulations for old cases / adult children of long term tolerated persons (§23 Abs.1 i.V.m. §104a Abs.2 Satz 2 AufenthG)</td>
<td>323</td>
<td></td>
<td>487</td>
<td></td>
<td>810</td>
</tr>
<tr>
<td>Regulations for old cases/ unaccompanied refugees (§23 Abs.1 i.V.m §104a Abs.2.Satz 1 AufenthG)</td>
<td>54</td>
<td>81</td>
<td></td>
<td></td>
<td>135</td>
</tr>
<tr>
<td>Integrated children of tolerated persons (§23 Abs.1 i.V.m §104b AufenthG)</td>
<td>45</td>
<td>66</td>
<td></td>
<td></td>
<td>111</td>
</tr>
</tbody>
</table>

Total Residence permits 116,434

Settlement Permits (Niederlassungserlaubnisse)

| Humanitarian grounds after 7 years of residence (§26 Abs.4 AufenthG) | 18.237| 17.759| 22.397| 13.948 | 72.341 |
| Grand total (Residence + Settlement Permits)                     |      |      |      |       | 188.775|

Source: EMN 2008
Hungary

David Reichel

1. Introduction

Hungary has to deal with a decreasing population. Between 1980 and 2007 the Hungarian population shrunk from app. 10,709,000 to app. 10,066,000 (and to an estimated 10,045,000 in 2008). On 1 January 2007, the foreign population of Hungary stood at around 166,000 persons of whom roughly 67,000 were Romanian citizens, almost 16,000 were Ukrainian citizens and some 15,000 were Germans, constituting the three largest groups of foreigners living in the country (see: www.ksh.hu).

<table>
<thead>
<tr>
<th>Basic information on Hungary</th>
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<tbody>
<tr>
<td>Total population*</td>
</tr>
<tr>
<td>Foreign population*</td>
</tr>
<tr>
<td>Third Country Nationals</td>
</tr>
<tr>
<td>Main countries of origin*</td>
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<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td>Net migration</td>
</tr>
<tr>
<td>Asylum applications**</td>
</tr>
</tbody>
</table>

* 1st Jan. 2007 ** During 2006
Source: UNHCR 2008; www.ksh.hu

Since 2004, Hungary is a member of the European Union and since 21 December 2007, Hungary belongs to the Schengen area.

2. Irregular Migration in Hungary

There are no known valid estimates on illegally resident third country nationals in Hungary. However, there are statistical data on border apprehensions which may be analysed as an indicator for illegal migration, although they are subject to bias since they depend on changes in the legal framework and in border management activities. Besides, apprehensions of illegal migrants could include asylum seekers, multiple-counting and persons who are in principal eligible to enter the country, but not at the moment of the apprehension (e.g. someone forgot her/his passport).

In 2006, 15,219 border apprehensions were reported in Hungary including both foreigners and citizens of Hungary, of whom the largest group consisted of citizens of Ukraine (2,090) followed by Romanians (995) and Moldavians (745). This number also includes Hungarians (273).

2,381 people were apprehended while entering the country illegally and 10,568 people were apprehended while leaving Hungary in 2006 (Futo/Jandl, 2007: 124 - 125).

In the Hungarian government’s response to the questionnaire36, it was indicated that there is a linkage between the increase of undocumented migrants and a country’s restrictive policy, as migrants who cannot meet certain criteria might enter the respective country illegally (Response HU).

36 filled in by Department of Migration, Ministry of Justice and Law Enforcement
It is furthermore noted that there are problems where third country nationals enter and stay legally in the territory, but fail to meet the purpose for which the permit was actually issued, as - for instance - students who have the intention to work (Response HU).

Another indicator for the number of illegal residents in a country is the number of applicants to regularisation programme(s) as illustrated below.

### 3. National policy on illegal migrants in regard to regularisation

The issue of illegal foreign labour was a public issue introduced by politicians in 2002. Illegal foreign labour was presented as a threat by the then oppositional Socialist Party which led to quota for foreign workers in Hungary. However, the quota never came close to being reached. Of 81,000 possible work permits, only some 200 were issued in the first half of 2002 (Sik and Zakarias, 2005: 10-12).

Generally, the population of Hungary is ethnically very homogeneous and immigrants are also mostly ethnic Hungarians. According to Sik and Zakarias (2005), this homogeneity contributes to a permanent and relatively high level of xenophobia in Hungary. In December 2004, there has been a referendum on double citizenship for ethnic Hungarians living abroad, which was rejected due to too low election turn out (Sik and Zakarias, 2005: 10-12).

According to the response of the Hungarian government to the questionnaire sent out in the course of this project, regularisations are seen as last resort solutions and should be linked to well-defined policy objectives, but other policy options – such as effective border control or effective measures against overstaying – should be considered first (Response HU).

According to the Department of Migration within the Ministry of Justice and Law Enforcement, regularisation programmes cannot be considered as appropriate measures to tackle the problem of illegal migration if studies or researchers show that such programmes attract illegal migration. Additionally, problems of regularisation programmes could be that they only cover certain categories of undocumented migrants (mainly workers) while vulnerable groups (e.g. children) are not covered (Response HU).

### 4. Regularisation programmes

Until now, there has only been one regularisation programme carried out in Hungary in 2004.

**Objectives**

The implementation of the programme was related to Hungary’s accession to the EU with the objective to decrease the number of illegally staying migrants, thereby also decreasing the number of persons who might potentially migrate to other member states illegally. In addition, the programme was motivated by family reunification considerations, as there were persons with family ties to Hungarians who had no other chances to obtain a residence permit. The programme was linked to the EU-accession of Hungary and hence, should be seen as an exceptional measure (Response HU).
Implementation

In April 2004, Hungarian legislators decided to implement a regularisation project which would be in force for 90 days, from May 2004 to June 2004. The legal basis of the programme was §145 of the Act no. XXIX of 2004 'on the amendment, repeal of certain laws and determination of certain provisions relating to Hungary's accession to the European Union', within the immigration law.

The criteria for regularisation as laid down in the law were:

- Residence before 1st May 2003 in Hungary
- No criminal records: The programme excludes non-nationals detained in alien policing detention, except for non-nationals who fall under the clause relating to family ties to Hungarian citizens; as well as non-nationals serving a term of imprisonment, or non-nationals against whom a criminal procedure or an arrest warrant is pending.
- Personal reasons, namely (a) family ties, such as spouses of Hungarians or non-Hungarians who are lawfully resident in Hungary, or (b) evidence of integration, such as the ability to handle affairs in Hungarian and culture linkage to Hungary justifying their further stay, or (c) economic reasons, such as ability to certify an income-generating activity in Hungary (e.g. to be the owner or executive officer of a company, or (d) the expulsion of a person may not be enforced due to non-refoulement provision. (Response HU; cf. ECRE, 2004)

Persons whose application was approved obtained a temporary right to remain in the country. Non-nationals were issued a one-year residence permit, while applications from those falling under section (d) will be considered in a discretionary manner. No legal remedy is available if the application is refused; with respect to the applicants falling under category (a) this is contrary to Hungary’s obligations under Article 8 (right to family life) taken in conjunction with Article 13 (right to an effective remedy) of the European Convention on Human Rights. All persons who were issued a one year residence permit on the abovementioned grounds shall also be issued a work permit without considering the labour market situation (cf. ECRE, 2004).

Qualitative outcomes

Problems have arisen with determining the identity of certain applicants. Also, many foreigners who were granted a one-year residence permit under the regularisation programme were still unable to meet the criteria after their permit expired (Response HU).

Quantitative outcomes

1,540 persons applied for regularisation in the course of the programme, of whom app. 60 per cent were men. 1,194 persons (or 77.5 per cent) were issued a residence permit, who mainly originated from China, Vietnam and Romania, followed by persons from former Yugoslavia, Mongolia and Nigeria. The majority of permits were issued on the basis of gainful employments (55%), followed by issuances due to ‘family ties’ (25%) (Response HU).

37 During the 90 days it possible to submit applications.
38 Data provided by the Hungarian authorities
5. Regularisation mechanisms

In Hungary there is the possibility to obtain a residence permit on humanitarian grounds if the requirements for a residence permit are not fulfilled. For instance, a residence permit granted on humanitarian grounds is issued for those who applied for refugee status or for temporary or subsidiary protection. This way their stay can be rendered legal until the authority makes a decision in their case. With regard to some of the categories addressed by this measure, international and EU legal obligations also have to be taken into account, for instance in case of unaccompanied minors or victims of human trafficking (Response HU).

Generally, permits on humanitarian grounds may be granted to persons who (a) are recognised by Hungary as stateless persons, (b) have been recognised by Hungary as persons of the right to stay, (c) applied to the refugee authority for refugee status or for temporary or subsidiary protection, (d) were born in the territory of Hungary and subsequently were left without a legal guardian (also unaccompanied minors), (e) cooperated with the authorities in a crime investigation and have provided significant assistance to gather evidence. These permits are valid for the duration of one year, except for permits according to the last case (e) which are valid for six months. This case (e) has to be initiated by the public prosecutor, the court or the national security agency. Residence permits granted on humanitarian grounds are renewable (Response HU).

Between 2003 and February 2008, the main countries of origin of those third-country nationals who were granted residence permits on humanitarian grounds were the following (the trends might differ according to the year in question): Afghanistan, Algeria, China, Georgia, Iraq, Iran, Mongolia, Nigeria, Serbia and Montenegro (before their independence, the former Yugoslavia), Somalia, Turkey and Vietnam. 7,524 residence permits on humanitarian grounds were issued between 2003 and 2007; however, the numbers of permits increased considerably from 311 in 2003 and 991 in 2005 to 2,945 in 2007.\(^{39}\)

6. Conclusions

Hungary has implemented one regularisation programme in 2004, which was seen as a special measure at a specific time point in the Hungarian history (EU accession). The objectives of the programme were to reduce the number of illegally residing third country nationals. Moreover, in the response to the questionnaire, filled in by a representative of the Ministry of Justice and Law Enforcement / Migration Department, it is stated that regularisation programmes in general can serve as a tool to decrease the number of illegal migrants or rejected asylum seekers in a country, even though these programmes only provide temporary solutions to real problems. Moreover, it is noted that there are further advantages to regularisations which comprise increased revenues from taxes and social security contributions, benefits for the regularised migrants (social security benefits, health care and pension) and more accurate determination of the number of third country nationals residing in a country (Response HU: 3).

Furthermore, regularisation programmes can focus the fight against illegal employment and labour force shortages as well as the prevention of exploitation of illegal migrants who are more often exposed to exploitative or abusive situations because of their unsettled status (Response HU: 4).

\(^{39}\)Data provided by the Hungarian authorities
There are no follow-up data and/or studies on legalised migrants; hence, it is not possible to say anything about the number of regularised persons who have again fallen into illegality or have migrated to another country. Generally, it cannot be said that the regularisation programme in Hungary has constituted a pull factor for illegal migration to Hungary (Response HU).

Currently, Hungary is not planning to implement any regularisation programmes, however, there is interest in the experiences of other member states as well as positive and negative aspects of other regularisation programmes (Response HU: 16).

According to the Hungarian respondent, at least an information exchange mechanism on planned regularisation programmes should be foreseen at EU-level, as regularisation programmes may attract other flows of illegal migrants which would affect other states.

A standardised approach at the EU-level regarding regularisation programmes could be foreseen, as such programmes can have an impact on neighbouring member states, especially since the introduction of the Schengen Rules (taking into account that some member states are more affected by undocumented migrants than others which may lead to the decision that regularisation programmes are the sole solution). This proposed approach could focus on preventive measures and try to identify the causes of problems produced by the presence of irregular migrants in some countries, as for instance the lack of effective border control, restrictive immigration or labour law policies (Response HU: 16).
7. References


Response HU: ICMPD questionnaire sent to the Hungarian government in the course of the REGINE project, 2008.

Ireland

Mariya Dzhengozova

1. Introduction

The chapter covers Ireland’s experiences with regularisation in the period between 1995 and 2008. The main sources include state approaches to illegal migration determined by domestic legislation, reports on asylum and immigration of the Irish Naturalisation and Immigration Service; official statistics provided by the Central Statistics Office (CSO) and by the Irish Refugee Council. Expert analysis concerning the legal and socio-economic situation of illegally resident third country nationals have been also taken into consideration (Mac Veigh 2003; MacEirí 2005, Quinn & Hughes and Ruhs 2005). In addition, the study was built on ICMPD questionnaire (2008) addressed to the Department of Justice, Equality and Law Reform (referred to as DJELR response). Comments provided by representatives of the Immigrant Council of Ireland were also used (hereafter, ICI response). The study begins with basic information on the country including also a brief description of the main factors affecting the development of migration policies.

<table>
<thead>
<tr>
<th>Basic information on Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total population</strong>*</td>
</tr>
<tr>
<td><strong>Foreign population</strong>*:</td>
</tr>
<tr>
<td>(Non-nationals)</td>
</tr>
<tr>
<td><strong>Third Country Nationals</strong>*</td>
</tr>
<tr>
<td>Rest of Europe (non-EU)</td>
</tr>
<tr>
<td>Africa</td>
</tr>
<tr>
<td>Asia</td>
</tr>
<tr>
<td>America</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Not stated</td>
</tr>
<tr>
<td><strong>Net migration</strong>*</td>
</tr>
<tr>
<td><strong>Asylum applications</strong></td>
</tr>
</tbody>
</table>

* 2006 ** 2006 *** 2007

Due to dynamic economic development in the 1990s Ireland turned from a ‘country of emigration’ into a ‘country of immigration’. In 2007 the number of people living in Ireland increased to 4,172 Million of who 419,733 had non-Irish nationality (CSO). Ireland does not have any land borders with migrant-sending countries, which reduces the possibility for illegal immigration. Illegal entry into Ireland is probably easiest via Northern Ireland, which may be accessed from the UK.

There are at least three categories of illegal immigrant: persons who enter the State illegally and continue to reside illegally, persons who enter legally and whose residence
status later becomes irregular and persons who have valid residence status but is in contravention of certain employment conditions. An illegal immigrant is explicitly defined in the Illegal Immigrants (Trafficking) Act 2000 as a non-national who enters or seeks to enter or has entered the State unlawfully” (Illegal Immigrants (Trafficking) Act, Section 1(1)). The Immigration Act 2004 provides at Section 5 that all non-national persons who are in the State without the necessary permission are unlawfully present, except for asylum seekers, convention refugees and their families and programme refugees. Of special importance is the fact that in 2002 the Irish Refugee Council called for a clear distinction between illegal migrants and asylum seekers who enter by illegal means in any future Irish legislation (Irish Refugee Council, 2002).

Illegal working of third country nationals (TCNs) is likely to happen more frequently in the practice - some migrant workers do not leave Ireland after their employment permits expire. The issue about regularisation of undocumented workers is currently gaining importance – in October 2007 the Irish Congress of the Trade Unions (ICTU) submitted a proposal dealing with the subject.

2. Irregular Migration in Ireland

The Garda National Immigration Bureau provides some statistics on illegal immigration. According to the respective annual reports, in 2006 a total of seven hundred and eighty nine non-national persons (789) were either removed from the jurisdiction by Order or prevented from re-entering due to existence of an Order; in 2005 the number of persons deported was six hundred and fifteen (615) and in 2004 – six hundred and twenty-four (624). In 2000 the number of deported persons was a hundred ninety four (194) (Garda National Immigration Bureau 2006, 2005, 2004 and 2000).

NGOs such as the Immigrant Council of Ireland hold some data on illegally resident immigrants who use their support services - of 231 cases of undocumented migrants accessing the services of the Immigrant Council 179 cases (77 per cent) had entered Ireland legally and later became undocumented. A further 52 cases (23 per cent) had entered illegally (Quinn & Hughes 2005: 19).

In reference to the Annual Report on Statistics on Migration, Asylum and Return 2006 supplied by the Department of Justice, Equality and Law Reform (DJELR), the total number of deportation orders signed between 2002 and 2006 is 11,202 and of these 2,409 were effected (Department of Justice 2006: 46). According to the same source the total number of voluntary returns between 2002 and 2006 (operated by both DJELR and IOM) is 2,421 (Department of Justice 2006: 47).

Regarding the employment of illegal migrants, potential source of information is held by the Department of Social and Family Affairs. Personal Public Service Numbers (PPSNs) are allocated to all people who seek work or make a social welfare application in Ireland. Estimation of the number of people who have overstayed their permission to remain in the State could be done through checking active PPSNs against Garda National Immigration Bureau (GNIB) information (Quinn & Hughes 2005: 20).

3. National policy on illegal migrants in regard to regularisation

The country passed a number of laws aimed at combating illegal immigration including legal basis for (i) deporting non-nationals in violation of Ireland's immigration laws; (ii)
ban the trafficking of illegal immigrants and the carrying of a passenger who does not have proper immigration documents, and (iii) penalize or imprison employers and workers who do not comply with the Employment Permits Act 2003. That resulted in an increase in the number of deportations, up from 188 in 2000 to 590 in 2003 (Ruhs 2004). Other state measure, which facilitates repatriation, is the return agreements signed with Poland, Nigeria, Romania, and Bulgaria. They engage also the International Organization for Migration (IOM) to operate voluntary return programs on its behalf.

4. Regularisation programmes

DJELR reports that Ireland carried out a regularisation programme – it started on 15 January 2005 and ended on 30 May 2005. On 14 December 2004, the Minister for Justice announced the Irish Born Child Administrative Scheme 2005 (“IBC/05”) to deal with the many parents of Irish children who were undocumented and who faced the prospect of being deported. This scheme allowed parents of Irish citizen children to apply for permission to remain on the basis of their parentage of an Irish child born in the State before 1 January 2005, subject to certain criteria, both stated and unstated’ (ICI response 2008). The circumstances that led to the programme are as it follows:

Prior to 2005, all children born in Ireland were entitled to Irish citizenship. In 2004, the constitution was changed - being born in Ireland no longer led to automatic entitlement to citizenship. In January 2003, the Supreme Court in Lobe and Osayande v. the Minster for Justice, Equality and Law Reform (L&O), held that the non-national parents of Irish citizens were not automatically entitled to reside in the State. However, the Court also acknowledged that children born in Ireland of non-national parents are Irish citizens and, as such, cannot be deported. Following the L&O judgment, 11,493 cases of parents of Irish children remained under consideration and deportation notices were being issued by the Department of Justice, Equality & Law Reform with respect to many families. Following this judgment, the Minister decided to remove the process whereby an immigrant parent could seek permission to remain in Ireland solely on the grounds that he or she was the parent of an Irish citizen child. Parents of Irish children who were undocumented or who had applied for and had been refused refugee status were issued letters stating the Minister’s intention to deport them. However, families of Irish citizen children were allowed to make applications for humanitarian leave to remain pursuant to section 3 of the Immigration Act of 1999, as amended, and these applications were considered on a case-by-case basis. Furthermore, a ‘number of parents of Irish citizen children were deported after the L&O judgment and many felt compelled to bring their Irish citizen children with them, thus leading to the ‘de facto’ deportation of Irish citizens. Other families left the State together with their Irish citizen children in order to avoid deportation (ICI response 2008).

There was no clear legislative basis for the introduction of the “IBC/05” scheme - it forms part of the general provisions of Section 3 of the Immigration Act 1999. According to DJELR it was estimated that between 15,000 and 20,000 persons would have been eligible to apply. This was based on the applications outstanding in 2003 and on records of asylum applications after that date. The number of qualifying parents illegally in the State outside the asylum process, or who left the State after the birth of their child and before the scheme, was estimated. The principal countries of origin included Nigeria, China and Romania’ (DJELR response 2008: 3-4). As a result, the number of applicants was 17,900 of whom 16,693 were granted the status (statistics provided with DJELR response). The statuses awarded by the programme were temporary permissions to remain with a permission to work, which were renewable. As a result, 14, 101 persons
applied for renewal (the top five countries being Nigeria, China, Philippines, Moldova and Ukraine) and 13,838 persons were granted renewal (statistics provided with DJELR response). 'As anticipated there were some illegal re-entries by persons returning to make application under the scheme. Also many fathers of Irish children entered for the first time, most through the asylum process, to make application under the scheme. It is estimated that out of the almost 1200 applications which were refused, some 600 applicants had not been resident on a continuous basis (or at all) in the State since their child's birth' (DJELR response).

There are no official evaluations of the programme; however, The Immigrant Council of Ireland provides some information about the implementation process. A number of parents who were refused under the IBC/05 Scheme applied to the High Court for judicial review of the Minister's decision to refuse them residency. The High Court held in seven cases that the Minister had unlawfully breached the rights of Irish citizen children by not considering their rights and entitlements when refusing their parents' applications for permission to remain in the State under the IBC/05 Scheme on grounds such as lack of continuous residence. The High Court judgments upheld the children's rights not only under the Irish Constitution but also pursuant to the European Convention on Human Rights. However, on 20 December 2007, the Supreme Court overturned these decisions...In accordance with the findings of the Court, “applicants who were not successful in their application under the IBC/05 Scheme remain in the same position as they had been before their application”. The Court concluded by saying that Constitutional and Convention rights of Irish citizen children and their families are “appropriately considered” in the context of representations pursuant to section 3 of the Immigration Act of 1999, as amended – after their receipt of notification of the Minister's intention to issue a deportation order. As a result of the Court judgments, the IBC Unit of the Department of Justice, Equality & Law Reform has said that it now intends to issue all parents who were refused residency under the IBC/05 Scheme with letters stating the Minister's intention to deport them. In this way, parents of Irish citizens are said to avail of the same opportunity for leave to remain under section 3 of the 1999 Act as other non-Irish nationals with respect to whom the Minister intends to make a deportation order, that is, they may make representations to the Minister setting out reasons why they should not be deported' (ICI response 2008).

5. Regularisation mechanisms

The introduction of IBC/05 Scheme is a result of a change in the implementation of a preceding regularisation mechanism - from 1996 to 2003 non-national parents of Irish citizen children were generally granted permission to remain in the State. This policy ended in February 2003. At that time 11,500 applications for permission on that basis were outstanding. The IBC/05 scheme was introduced to deal with these outstanding applications and also with the cases of persons who entered after February 2003 and before the Constitution was amended to preclude the acquisition of citizenship by virtue of birth in the State alone, with effect from 1 January 2005 (DJELR response). According to DJELR, the amendment ended the phenomenon of mass asylum applications, many by heavily pregnant women, of persons drawn to the State by the possibility of Irish citizenship for their children. In this context it was decided that, rather than engaging in a case by case analysis, a general policy would be adopted of granting those persons permission to remain in the State provided that they fulfilled certain basic criteria. This was extended to parents who were legally in the State on the basis of visas or work permits’ (DJELR response 2008: 3).
In the opinion of ICI, ‘Section 4 of the Immigration Act 2004 can be also considered as a regularisation mechanism. It provides the Minister for Justice, Equality & Law Reform, or an immigration officer on his behalf, statutory discretion to give a non-Irish national permission to be in the State and to impose conditions on such permission in relation to engagement in employment or duration of stay as he deems fit’... Section 4 of the 2004 Act vests the Minister with particular statutory functions that must be exercised by him or her. The exercise of these functions must be governed by the requirements of administrative law in relation to the exercise of discretionary powers. However, despite the clarity of this legislation, the Minister claims that he is not obliged to consider applications for residency made pursuant to section 4 in a situation where a person is in the country without permission and/or has made an unsuccessful application for refugee status. While the Minister claims not to be bound by section 4 of the 2004 Act there are many instances where the Minister has regularised migrants by granting them permission to remain, for example, based on marriage to an Irish national or being the parent of an Irish child. Although the Irish Born Child Administrative Scheme (IBC/05) has ended, it would appear as though those who were granted residency under that scheme were granted it on the basis of section 4 permission’ (ICI response).

**Leave to Remain pursuant to Section 3 of the Immigration Act, 1999** - one discretionary mechanism for regularisation is granting persons who may be deported leave to remain in the State. Section 3 of the Immigration Act of 1999, as amended, gives the Minister for Justice, Equality & Law Reform the authority to issue deportation orders to non-Irish nationals living in Ireland. These non-Irish nationals include a person:

- Who has served or is serving a term of imprisonment imposed on him or her by a court in the State;
- Whose deportation has been recommended by a court in the State before which such person was indicted or charged with any crime or offence;
- Who has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977);
- To whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies;
- Whose application for asylum has been transferred to a convention country for examination pursuant to section 22 of the Refugee Act, 1996;
- Whose application for asylum has been refused by the Minister;
- To whom leave to land in the State has been refused;
- Who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State; and
- Whose deportation would, in the opinion of the Minister, be conducive to the common good

Persons must be notified in writing of the Minister’s proposal to deport them and the reasons for their proposed deportation. Within fifteen working days from the date of the notification letter, these persons may make representations in writing to the Minister setting out the reasons why they should be allowed to remain in the State. The Minister then has the discretion under section 3(6) not to deport a person but to instead

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Section 4 provides as follows: ‘4.—(1) Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as “a permission”)’ (Irish Statute Book).
offer him or her leave to remain. Section 3(6) lists certain matters to which the Minister
shall have regard in determining whether to make a deportation order. These matters
include: (i) age of the person; (ii) duration of residence in the State of the person; (iii)
family and domestic circumstances of the person; (iv) nature of the person’s connection
with the State, if any; (v) employment (including self-employment) record and prospects
of the person; (vi) character and conduct of the person both within and (where relevant
and ascertainable) outside the State (including any criminal convictions); (vii)
humanitarian considerations; (viii) any representation duly made by or on behalf of the
person; (ix) the common good; and (x) considerations of national security and public

‘There is no time limit or procedure in relation to the Minister exercising his discretion
to allow a person to remain in the State. If the Minister considers that a person should
not be deported, then the person will be granted leave to remain in Ireland usually for
an initial period of one year, which may be renewed. Individuals with leave to remain
are generally granted the right to seek and enter employment, to establish a business, to
travel and to access full-time education and training initiatives, to go on the list for local
authority housing and medical care. Non-Irish nationals include persons who have been
refused refugee status, and these individuals may apply for “leave to remain on
humanitarian grounds” despite having received a refusal of refugee status. Leave to remain on humanitarian grounds is the same as leave to remain for any non-Irish national under
section 3. Failed applicants for refugee status granted humanitarian leave to remain
have almost all the same social and economic rights as a refugee. If refused leave to
remain, individuals who sought refuge may be deported, regardless of how long they
have lived—legally—in Ireland (ICI response).

In reference to the Irish Refugee Council, Ireland gives leave to remain to very small
numbers of unsuccessful asylum-seekers whereas in some EU countries the numbers
who get refugee status is well surpassed by the numbers who get leave to remain. Some
people currently waiting for a decision on their leave to remain applications have been
in Ireland - legally - since the late 1990s and the risk of being deported in the future
when their status is changed to 'illegal immigrant' hangs over them...In 2004, the
number of former asylum seekers deported (599) was 8 times the number who got
leave to remain (75)' (Irish Refugee Council 2005).

Section 3(11) empowers the Minister to amend or revoke a deportation order. It is open
to a person who has been issued a deportation order to apply from within the State or
abroad to seek to have the order amended or revoked on the basis of further
representations he or she makes to the Minister (or claims that prior submitted
information was not considered in the deportation decision). Any such person would
have his or her case re-examined and the order lifted in circumstances where it was so

6. Conclusions

The most recent change in legislation The Immigration, Residence and Protection Bill of
2008 does not provide for any regularisation mechanism. According to the ICI, the Bill
allows for the deportation without notice of any person who is unlawfully present in the
State. Section 4(5) provides a significant new power vested in the State and effectively
abolishes the 'Section 3 Process' established in the Immigration Act of 1999, as
amended. The Bill does not provide for any avenue to deal with and provide for persons
in exceptional circumstances. For example, there is no flexibility to deal with persons
whose residence permits are non-renewable, or who were not able to apply for a
modification of their existing residence permit, or who did not manage to apply for the renewal of their permit within the time period specified in the Bill. Once classified as unlawfully resident, a foreign national no longer has any possibility of regularising his or her status in the State. Furthermore, section 4(8) of the Bill provides that a foreign national shall not be entitled to derive any benefit from any period of unlawful presence in the State. This is a departure from section 3(6) of the 1999 Act, where the duration of residence in the State of the person was a factor to be taken into account by the Minister in granting leave to remain. In the opinion of the Immigrant Council of Ireland, the new provision contravenes the constitutionally protected right to fair procedures and has the potential to breach Article 8 of the ECHR... There is concern that the abolition of the section 3 process and the introduction of summary deportations will prevent migrants in an irregular migration situation from being able to access voluntary return programmes. Following publication of the Bill, the Minister for Justice stated that, following trade union pressure, he was considering putting in place a formal scheme which would give those who became undocumented “through no fault of their own” the chance to legally re-enter the workforce. However, newspapers reported that the Minister was not considering introducing a general amnesty “or any form of mass regularisation that would involve granting a concession without looking at the circumstances of the case” (ICI response 2008).

The question about regularisation of undocumented workers is currently gaining importance. In October 2007 the Irish Congress of the Trade Unions (ICTU) submitted a proposal ‘A Fair Way In’. ICTU called for ‘the development of a fair and transparent regularisation process for undocumented workers in Ireland. The aim of the regularisation scheme should be to provide a bridge for workers out of their irregular situation back into a regular situation’ (ICTU 2008: 4). Regarding common EU actions and standardised approach to regularisation, the official position of the DJELR is that the ministry has ‘no views’ to the subject (DJELR response).
7. References

Conroy, P, 23 February 2005, Speaking note Closed Roundtable of ICI and MRCI, Regular and Irregular Migration - The Undocumented in Ireland 2005 and regularisation programmes. Any lessons to be learnt?


Irish Statute Book, Office of the Attorney General, Section 4 of the Immigration Act 1999 as amended, legislation [online]. Available at:
MacVeigh, T. (2003), Ireland; Migration Country Report In Niessen J. & Schibel Y. & Magoni, R. (eds.), EU and US approaches to the management of immigration. Available at:

MacÉinrí, P. (2005), Ireland, In Niessen J. & Schibel, Y. & Thompson, C. (eds.), Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. Available at:

Quinn E. & Hughes G. (2005), Illegally Resident Third Country Nationals in Ireland: State Approaches Towards the Situation. Available at:


Ruhs, M. (2005), Managing the Immigration and Employment of non-EU national in Ireland, the Policy Institute at Trinity College at Dublin. Available at:

Ruhs, M. (2004), Ireland: A Crash Course in Immigration Policy, Migration Information Source. Available at:

1. Introduction

Immigration to Latvia is a relatively new issue on the country’s political agenda. Latvia received its independence from the Soviet Union in 1991. Since then, together with the recent post-EU accession emigration of free movement Latvian workers and the resulting labour shortage at home (e.g. Karnite, 2006), the country’s main migration issue has been the status of its 1.1 million Russian-speaking residents. The latter are a visible legacy of the Russification policy of the Soviet Union when millions of people were removed from their homelands and sent to other parts of the territory (Heleniak, 2006). According to the data of Central Statistical Bureau the total population of Latvia in 2008 was 2.3 million of which Latvians made up 59%, and Russians 28%. Other major nationalities were Belarussian (3.7%), Ukrainian (2.5%) and Polish (2.4%). Due to demographic trends, ethnic Latvians’ share of the population has been decreasing, another cause of government concern. Since 1991 net migration in Latvia is negative: in average more people leave Latvia than arrive. The main long-term migratory flows are to and from CIS countries (e.g., Russian Federation, Ukraine and Belarus) with which the local people have kept family relations, acquaintances and do not face language problems (Sūpule, 2005). Recent foreign immigrants represent only 1.6 per cent of the total population in Latvia, partially as a result of restrictive migration policies that were adopted in the 1990s (Indāns, 2008). After 1991, only those who were Latvian citizens as of June 17, 1940 and their successors were able to receive Latvian citizenship, and therefore only they had the right to vote. Latvia sought to limit citizenship in order to favour Latvians over ethnic Russians and other minorities. However, laws were eased in 1998, granting citizenship to all children born in Latvia after August 21, 1991, and making it easier for Russian-speakers to become naturalized. Nonetheless, about a fifth of all residents remained non-citizens in 2005 (De Houwer & Salimbeni, 2007). Therefore immigrants in Latvia are people that have arrived in Latvia for any reason after 1990. The migration statistics of 2005 shows that the main contributor countries to the immigration flow (a total of 1,886 individuals with a 13.3% increase over a year before) were the Russian Federation (14.95%), Lithuania (14.00%), Germany (10.02%), Estonia (7.10%), Great Britain (6.79%), USA (6.47%), Ukraine (3.76%), Finland (3.66%), Sweden (3.61%), Israel (3.08%) (OCMA & EMN, 2007a).

The main immigrant groups are: foreign nationals receiving residence permits due to family reunification, non-citizens who have been granted citizenship of another country and a residence permit in Latvia, and foreign nationals who have received a residence permit in Latvia due to employment (OCMA & EMN, 2007a). The emigration flow (a total of 2,450 individuals in 2005 with a 10.7% decrease over a year before) covered the following countries: the Russian Federation (31.2%), Germany (10.2%), Great Britain (6.8%), USA (5.8%), Ukraine (4.6%), Belarus (4.2%), Lithuania (4.2%), Ireland (3.4%).

The editors would like to thank Ginta Indrane of the Office of Citizenship and Migration Affairs for comments on the draft version of this chapter.

In compliance with the EU Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long term residents, non-citizens in Latvia may become EU long-term residents since 2006 (Karnite, 2007).
and Estonia (3%). According to Ivlevs (2007) “the employment vacuum created by the emigration of Latvians and Ukrainians to the West is encouraging immigration to Latvia (and Ukraine) from further East – from former Soviet states including those in Central Asia. Ironically perhaps this is creating similar tensions to those reported in the West by the wave of immigration from new European states like Latvia (and the Ukraine)”.

2. Irregular Migration in Latvia

According to the Office of Citizenship and Migration Affairs (OCMA) the national legislation of Latvia provides no definition of an illegal immigrant. Generally, there seems to be a common understanding that an illegal immigrant/resident is a person who does not or no longer fulfil the requirements regarding the entering and/or residence in Latvia (Blaschke, 2008). According to the estimation of representatives of State Border Guards and experts from the International Organization for Migration in Latvia, the number of illegal immigrants in Latvia is small – some dozens and they try to enter Latvia mainly from Ukraine and Lithuania (Šūpule, 2005). Most illegal migrants utilise Latvia as a transit route to other destinations, primarily in Western and Northern Europe. However, even as a transit route, Latvia is not a very attractive option due to its underdeveloped ferry traffic and its tight control systems at airports and railway stations (Gromovs, 2005). Illegal immigrants from CIS do not have other real possibilities to enter the EU territory than via the Baltic States or Poland. Therefore potential illegal migrants must rely on land routes to enter Latvia and then several borders of neighbouring countries must be crossed upon leaving Latvia, making this a difficult and unsafe option for illegal traffic. Other factors like its northern climate, geographical position relatively far from Western Europe, limited social benefits and lack of large ethnic communities to support and welcome newcomers would prevent Latvia from becoming a first choice goal for illegal migrants (Gromovs, 2005).

783 individuals were refused entry into the country on the national border by the State Border Guard in 2005. That year, the most entry permits were refused to citizens of Russia (48%), Belarus (13%), Ukraine (11%), and India (5%). Other countries did not exceed the 5% threshold. Compared to 2004, the number of admissions refused decreased considerably, mainly due to the introduction of minimum requirements for border control and cancellation of electronic border control for citizens of the European Union, European Economic Area and the Confederation of Switzerland. (OCMA & EMN, 2005). Citizens of Ukraine and Moldova still attempt to use Latvia as a transit country on their way to Western Europe while using counterfeit passports of citizens of Lithuania (OCMA & EMN, 2005). All in all, since 1995, the number of illegal migrants apprehended while using Latvia as a migratory route is small. However, the large number of illegal immigrants in neighbouring countries such as the Russian Federation and Belarus (300,000) suggest that Latvia could be utilised as a transit route to Northern and Western Europe again in the future (Gromovs, 2005; Indāns, I. & K. Kruma, 2006).

In Latvia, illegally employed persons are considered inhabitants who have not formalised their legal relations in writing (labour contract not signed, social insurance contributions and personal income tax not ensured) and aliens who work in Latvia without work permits. Undeclared employment is a more extensive concept that includes non-payment of taxes, remuneration paid “in envelopes”, non payment of compensation for overtime and work carried out at night. At present, both the notions of “illegal” and “undeclared” employment are used interchangeably. According to Indāns (2007) the level of illegal employment among third country nationals in Latvia is insignificant, while the level of hidden employment and informal economy is rather high.
Estimates by Latvia’s Central Statistics Bureau put the informal economy at 16 per cent of Latvia’s GDP, while Latvia’s Ministry of Finance has estimated the level of hidden employment as 14-20 per cent (Indāns, 2007). According to Pabriks (2007), who relies both on Indāns as well as some official Latvian government figures, 936 people were found in 2005 to be illegally employed without work contracts. According to State Labour Inspection data, the largest number of people in Latvia is illegally employed in building, small woodworking enterprises, trade, timber industry, and in the service sphere, especially in the sector of hotels and restaurants.\textsuperscript{43} Illegal employment also exists in childcare as well as in entertainment and sports. In 2005, the State Border Guard caught only 21 workers who were employed illegally, mainly from the Russian Federation (10). In comparison, during the first two months of 2006, 209 workers in 108 enterprises were caught working without a contract (Indāns, 2007). According to Pabriks (2007), who relies both on Indāns as well as some official Latvian government figures, 936 people were found in 2005 to be illegally employed without work contracts. Since the EU accession, the illegal employment’s trend in the Republic of Latvia seems, however, on the rise and the struggle against it became one of the priorities of the State Labour Inspectorate (SLI) (Indāns, 2007). According to the State Labour Inspection data, the number of persons found to be illegally employed without work contracts increased up to 1,802 persons in 2006 and 2,846 in 2007.

3. Regularisation programmes and regularisation mechanisms

In his paper “Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union” Blaschke (2008) relies for Latvia on the contribution from Iveta Muceniece, Director of European Affairs and International Cooperation of the Office of Citizenship and Migration Affairs (OCMA) according to whom no regularisation programs exist for Latvia. Regularisations are thus examined and decided only on a case-by-case basis. The Minister of Interior envisions the possibility within the Latvian Immigration Law to grant a residence permit in accordance with other regulations of Immigration Law (Blaschke, 2008).\textsuperscript{44} Mostly this clause has been used for humanitarian grounds and since 2005 approximately 30 permits have been issued. People who have been issued such permits are usually not entitled to the right of family reunification but who due to one or other reason are not able to stay in their home country; a typical example is the case of an elderly mother of a Russian citizen who has a residence permit in Latvia. Although persons with residence permits are not entitled to the right of family reunification with their parent(s), if the parent is old, sick, alone, etc. he/she receives this type of residence permit. The permit is usually issued for one year but it is renewable for a period up to four or five years (it is not strictly regulated by the law). After five years of continuous residence a person can obtain a permanent residence permit (European Migration Network Ad-Hoc Query 2008: 110).

There is no other clue concerning immigrant “regularisation” programmes or mechanisms in Latvia in all the other works reviewed for this fact sheet. All the current debate on immigration policy in this small Baltic country seems in fact focused on the best way to tackle the lowest birth rates in Europe and the labour shortage in low skilled sectors as the construction industry through a more open immigration policy able to

\textsuperscript{43} Information provided in the commentary to the draft version of this chapter by Ginta Indrane, Office of Citizenship and Migration Affairs, 13.1.2009

\textsuperscript{44} The legal basis for regularizations is Immigration Law (Article 23, Paragraph 3 and Article 24, Paragraph 2); Administrative Procedure Law (Response Latvia, ICMPD MS Questionnaire, January 2009)
boost the country's development but at the same time being sensitive to the possible return of free-movement Latvian workers.
4. References


Response Latvia, ICMPD MS Questionnaire, January 2009


5. Statistical annex

### Statistical Data of Return and Forced Return Decisions 2003-2008

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<tr>
<th>Year</th>
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*Decisions taken by the State Border Guard and Office of Citizenship and Migration Affairs

Source: Office of Citizenship and Migration Affairs (via email)
Lithuania

Violeta Targonskiene

1. Introduction

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<td>Net migration*</td>
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<td>Asylum applications**</td>
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* 1st Jan. 2007 ** In 2007


2. Irregular Migration in Lithuania

According to official statistics45 presented by the Migration Department in 2006, 208 illegal migrants were identified in the Republic of Lithuania (detained for a period less than 48 hours or longer than 48 hours for reasons of illegal entry of stay). To another 2042 aliens Administrative Offence Protocols were drawn up under Article 206 of the Code on Administrative Offences46. These numbers stayed practically the same over the last few years. The situation was, however different in the first years of Lithuanian independence: Lithuania restored its independence in 1990. Starting from this time migration flows to and from Lithuania can be analysed. The collapse of the Soviet Union meant also more possibilities for citizens of the former Soviet Union to migrate. More than 14.000 foreigners migrated to Lithuania in 1990 (mainly from former Soviet republics), this number decreased each year: 11.828 in 1991; 6.640 in 1992 and only 2.536 in 199747. At that time many undocumented persons resided in Lithuania.

At the same time the population of the newly developed state had to apply for Lithuanian citizenship within a certain period of time. While a part of population did not apply on time, some did not solve their legal status question at all (did not apply for citizenship of other newly independent states – former USSR republics or did not get residents permits in Lithuania).

45 www.migracija.lt
46 Violation of the procedure of aliens’ entry / stay in / passing in transit through / exit from the Republic of Lithuania
Estimations or statistics on the number of illegal migrants or undocumented persons that resided or currently are residing in Lithuania are not available.

3. National policy on illegal migrants in regard to regularisation

Lithuania does not consider regularisation as a prominent tool in its policies vis-à-vis irregular migration. Conclusions on the policy on regularisation though may be drawn from the respective development of the legal acts in the last years since independence.

The Lithuanian legislation does not provide a definition for undocumented or illegal immigrants. In the absence of a specific legal definition, an illegal immigrant is understood as a person who entered or resides in the Republic of Lithuania illegally.

The first Law on the Legal Status of Aliens was adopted in 1991 and regulated the arrival, departure and residence of aliens in the Republic of Lithuania. This Law was of significant importance for the newly independent state as it, for the first time, provided definitions such as: “foreigner”, “stateless person”, “residence permit in Lithuania”, “visa”, etc. The Law was in force until July 1999. The second Law on the Legal Status of Aliens was adopted in December 1998 and came into force in July 1999. This Law abolished the immigration quota and provided rules for arrival and departure of foreigners which were common for all aliens. This Law was in force until April 2004. These legal acts did not provide any clear definitions of undocumented persons.

The current Article 10 of the Law of the Republic of Lithuania on the Legal Status of Aliens (further – Aliens Law) provides a definition on “illegal entry into the Republic of Lithuania”. According to this Article an entry is considered illegal if the alien:

a) enters into the Republic of Lithuania despite having been included on the list of aliens for whom an alert has been issued for the purpose of refusing entry into the Republic of Lithuania;

b) enters the Republic of Lithuania not through the border control post;

c) when entering the Republic of Lithuania produces another person's document or a forged travel document;

d) enters the Republic of Lithuania without a valid travel document and without an appropriate document entitling him to enter the Republic of Lithuania;

e) enters the Republic of Lithuania holding a visa issued upon producing misrepresented information or forged documents.

According to Article 23 of the Aliens Law the residence of an alien in the Republic of Lithuania is considered illegal if he/she:

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51 Adopted on 29 April, 2004; came into force on 30 April, 2004; http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=232378&p_query=&p_tr2=
52 According to the Aliens Law (Para 32 of Article 2) “alien means any person other than a citizen of the Republic of Lithuania irrespective of whether he is a foreign citizen or a stateless person”.

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a) has been staying in the Republic of Lithuania for a period exceeding the period of visa-less stay set by an international treaty of the Republic of Lithuania, an EU legal act or the Government of the Republic of Lithuania;

b) is staying in the Republic of Lithuania overstaying his visa;

c) is staying in the Republic of Lithuania holding an annulled visa after the expiration of the term of expulsion from the Republic of Lithuania;

d) holds counterfeit travel documents;

e) holds a falsified visa;

f) is staying in the Republic of Lithuania without a visa if it is required;

g) is staying in the Republic of Lithuania without a valid travel document, save for asylum applicants;

h) has illegally entered the Republic of Lithuania.

Large-scale regularisation programmes were applied three times in Lithuania since 1995: in 1996, 1999 and 2004. They all were connected with the above mentioned amendments of the migration legislation. The main reason for these measures was to provide aliens with a chance to legalise their status in Lithuania.

Small-scale regularisation mechanisms are introduced in the Aliens Law. These legal provisions are long-term or permanent measures. The main reason for the introduction of these mechanisms was the humanitarian aspect.

4. Regularisation programmes

As indicated above regularisation programmes came along with changes in the migration legislation.

The first regularisation programme was closely connected with the Law on Immigration. This law came into force on 1 January 1992 and introduced the immigration quota which had to be approved each year by the Government of the Republic of Lithuania. This quota was only approved by the Government for the first time in May 1993, and the migration services started to examine applications for immigration only from 1 July 1993. Hence foreigners who arrived in Lithuania from 01.01.1992 till 01.07.1993 could not exercise their right to immigrate to the country. After proper examination of this situation the decision was made to approve a legal provision which would help certain foreigners to submit documents for immigration. On 17 April 1996 the Temporary Law on issue of permanent residence permits in the Republic of Lithuania to the aliens, who arrived to reside in the Republic of Lithuania after the entering into force of the Law on Immigration was adopted. According to this temporary Law aliens who arrived to reside in the Republic of Lithuania after the Law on Immigration came into force and could not fulfil the requirements set up in this Law due to the lack of a respective quota, could obtain a permanent residence permit in the Republic of Lithuania. To these foreigners the requirements set in the Law on Immigration were not applied if their place of residence was registered by the order set by the Government of the Republic of Lithuania or certified by an effective court decision. Such aliens had to submit their application till 31 December 1996.

The second regularisation programme was connected with the Law on the Implementation of the Law on the Legal Status of Aliens adopted on 17 December 1996.

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53 Information provided by the Deputy Director of the Migration Department Mr. Janas Vidickas, 7 May 2008.
This law provided that aliens staying in the territory of the Republic of Lithuania illegally on the date of entering into force of this Law (on 31 December 1998) were obliged to register in the Ministry of the Interior within 3 months and to submit the necessary documents to establish the legitimacy of residence in the Republic of Lithuania. In this case the aliens were exempted from the liability for illegal entry and residence. The question on their further legitimacy of residence in the Republic of Lithuania had to be examined not later than within 3 months after the registration date.

According to the Law on the Implementation of the Law on the Legal Status of Aliens adopted on 29 April 2004, aliens staying in the territory of the Republic of Lithuania illegally on the date of entering into force of this Law (on 30 April 2004) were obliged to register personally within 7 days in the Migration Department under the Ministry of the Interior of the Republic of Lithuania. Such aliens had to submit the necessary documents to establish their legal status in the Republic of Lithuania. In this case the aliens were exempted from the liability for illegal entry and residence. The question on their further legitimacy of residing in the Republic of Lithuania had to be examined according to the new Law on the Legal Status of Aliens.

Neither of these programmes was used by large numbers of persons that would have utilised this opportunity of legalisation of their stay - mainly because the overall numbers of illegal or undocumented immigrants were not very high. Given the relatively low impact of these programmes there were also no serious disputes or considerations on political level on this issue. Nevertheless the time limit for regularisation programme was discussed in the parliament: while the Government of the Republic of Lithuania proposed a 3-month time limit for the registration of aliens in 2004 the adopted Law foresaw a time limit of only 7 days following the proposals of some committees of the Parliament

All large-scale regularisation programmes were connected with legal amendments in the law of the legal status of aliens with the main aim to avoid "orbit" situations where persons that would have the right to legalise themselves according to the old legal acts could not do so according to the new legislation. On the other side these programmes partly aimed at stateless persons - mainly former citizens of the former Soviet Union who did not solve their legal status since independence.

The Laws of the Republic of Lithuania did not make any special references to the target groups to which regularisation programmes were aimed. All persons residing in Lithuania illegally at the moment of entering into force of the above mentioned legal acts could register as illegal migrants and try to legalise their status, thus could have benefited from these regularisation programmes.

All three regularisation programmes had one common requirement: foreigners had to provide "necessary documents to establish their legal status in the Republic of Lithuania". Additionally the first regularisation programme realised in 1996 required from aliens to have their place of residence "registered by the order set by the Government of the Republic of Lithuania or certified by the effective court judgement". In this way regularisation programmes were not unconditional, which might have influenced their effectiveness. Additionally the length of the last regularisation


56 The absolute majority of aliens who registered themselves according to the these programmes were representatives of former Soviet Union republics, statistical data from the Migration Department, www.migracija.lt Migration Annual 2004
programme (in 2004) was very short (only 7 days), a term which cannot be considered to be sufficient.

54 aliens registered as illegal migrants during the regularisation programme in 1996 (32 citizens of the Russian Federation, 12 stateless persons, 5 citizens of Moldova, 4 citizens of Armenia, 1 citizen of Belarus); 51 of them got residence permits. In 1999 385 aliens registered (the biggest groups constituted citizens of the Russian Federation and stateless persons); 157 of them got residence permits. In 2004 103 aliens registered (the biggest groups: citizens of the Russian Federation, Armenia and stateless persons); 77 of them got residence permits.

5. Regularisation mechanisms

“If, [according to article 132 of the Aliens Law] an alien's expulsion from the Republic of Lithuania is suspended” due to the certain circumstances provided in the Law “and the circumstances have not disappeared within one year from the suspension of enforcement of the decision to expel the alien, he shall be issued a temporary residence permit”. The mentioned circumstances are listed in paragraph 2 of article 128. This article provides that the implementation of the decision regarding the expulsion of an alien from the Republic of Lithuania is suspended if:

a) the decision regarding the expulsion of an alien from the Republic of Lithuania is appealed against in the court, except in cases when the alien must be expelled in view of the threat constituted by the alien to state security or public order;

b) the foreign country to which the alien may be expelled refuses to accept him;

c) the alien is in need of immediate medical aid, the necessity of which shall be confirmed by a consulting panel of a health care institution;

d) the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.).

The introduction of these regularisation mechanisms was caused by practical problems related to the deportation of aliens from Lithuania. In cases when an alien does not have any legal grounds to stay in the country, his or her expulsion still can be impossible if an alien is a stateless person and does not have any residence country or lost the right to reside in another country, or if the transport connection with the country of origin is not possible, or travel documents are not available, etc. In all such cases the situation requires a solution that could avoid a forced continuation of an illegal stay without any possibilities to legitimatise the stay and to develop a normal social and private life.

The working group encompassing representatives from interested state institutions (Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Social Security and Labour, etc.) and international organisations (UNHCR, IOM) was established in Lithuania for drafting the new Law on the Legal Status of Aliens (which was adopted and came into force in 2004). Representatives from NGOs (e.g. Lithuanian Red Cross Society) were invited to some meetings. The draft Law was agreed with international experts from an Austrian/Lithuanian Twinning Project. This working group decided that regularization mechanisms should be introduced into the Law in order to solve the above described practical problems related to the expulsion of illegal migrants. According to the previous legislation such persons could fall under humanitarian protection status (in this case they were not granted the right to participate in social integration programmes, unlike those who were granted protection status). As the new Law introduced subsidiary protection status instead of humanitarian status with a clear indication of the principle

57 Migration Annual 2004, www.migracija.lt
of non refoulement, such persons could not enjoy this status anymore - a new legal regulation thus was needed. As a result the current regularization mechanism (see above) was drafted. The Ministry of Interior as the main institution responsible for drafting was asked to provide a clear list of grounds when such regularization measure could be applied (the first draft only knew the impossibility of a deportation caused by humanitarian reasons)\(^58\). Beside that the introduction of this norm did not cause major discussions in parliament.

The Aliens Law specifies the target group for regularization mechanism as aliens whose expulsion from Lithuania was suspended. Practically these aliens are illegal migrants detained in the country for illegal stay or asylum seekers whose application was rejected.

In 2005 3 residence permits were issued according to this regularization mechanism, in 2006 – 15\(^59\).

6. Conclusion

Regularisation programmes that were implemented in Lithuania were not caused by any specific factors in the internal labour market (there are only a few cases of identified illegal employment, etc.) and were also not connected with an increase of numbers of illegal migrants.

Lithuania’s experience with regularization programmes was mostly caused by the gaps in the developed legislation. After the collapse of the Soviet Union, Lithuania had to draft and adopt new legal documents in the field of migration (as in many other areas) in a very short period of time. Phenomena of migration as well as the respective legal tradition in this field were not too much known in Lithuania and only developed in the last 20 years. The main expectation of the new legislation straight after restoring independence was to determine: who is a foreigner, what are the rules of entry, stay and issuance of visas, etc.. In this situation some categories of foreigners were not covered simply because many migration processes at that time were not predictable. Nevertheless the Lithuanian legislative body found a way to solve this problem and to cover existing gaps. As a result, the regularisation programmes in Lithuania are to be understood as measure to fight illegal migration and to implement the state migration policy in a more transparent way. The effectiveness of these regularisation programmes was possibly decreased by additional requirements set up in the legal acts and partly by the limited period of implementation. Traditionally regularisation programmes therefore were connected with the introduction of new migration legislation. At the moment there are no considerations on a political or executive (administrative) level on additional regularisation programmes.

Regularisation mechanisms were introduced in the current Aliens Law (entered into force in 2004). The mechanism was caused by practical difficulties related to the expulsion of aliens from the Republic of Lithuania. In this way the final aim of the regularization mechanism is of two kinds: on the one side to help affected persons to realise their social and private needs for which a legal status in the country of residence is essential, and on the other side to avoid "orbit" situations when foreigners are forced

\(^58\) This was emphasized, for example, in the comments to the Draft Law submitted by the National Security and Defence Committee of the Parliament; http://www3.lrs.lt/pls/inter3/dokpaiseska.showdoc_l?p_id=218100&p_query=&p_tr2=
to live in the country illegally without any possibility to leave the country. The regularisation mechanism is exceptional – it can be applied only under certain circumstances: a decision on expulsion must be taken and then suspended under the grounds listed in the Law. Currently there are no new regularisation mechanisms planned.

7. Documents consulted

- Temporary Law on issue of permanent residence permits in the Republic of Lithuania to the aliens, who arrived to reside in the Republic of Lithuania after the entering into force of the Law on Immigration adopted on 17 April 1996;
- Law on the Legal Status of Aliens, adopted on 29 April 2004;
- Official statistics provided by the Department of Statistics to the Government of the Republic of Lithuania (http://www.stat.gov.lt/en/) and Migration Department under the Ministry of Internal Affairs (Migration Annual 2004, Migration Yearbooks 2005 and 2006; www.migracija.lt);
- Documents from the Committees of the Parliament of the Republic of Lithuania (Seimas), adopted during adoption procedure of above mentioned legal acts (www.lrs.lt).

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Luxembourg

David Reichel & Alfred Wöger

1. Introduction

As of 1 January 2007 the Luxembourgian population was estimated at 476,200 of whom 198,300 (41.6%) were foreigners. At around 73,700 Portuguese citizens constitute by far the largest group of non-nationals in Luxembourg. Other important immigration groups originate from France, Italy, Belgium and Germany (Statec Luxembourg, 2007: 9).

Hence, Luxembourg is the country with the highest share of foreigners in the OECD countries. However, the overwhelming majority of non-nationals are EU citizens, while the number of Third Country Nationals (approximately 27,300 in 2007) is relatively low. The largest group of TCNs are persons from former Yugoslavia [Serbia, Montenegro] who numbered 8,339 in 2003 (cf. OECD, 2008: 59).

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<th>Basic information on Luxembourg</th>
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<td><strong>Total population</strong>*</td>
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<td><strong>Foreign population</strong>*</td>
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<td><strong>Third Country Nationals</strong>*</td>
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<td><strong>Main countries of origin</strong>*</td>
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<td><strong>Net migration</strong>*</td>
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<td><strong>Asylum applications</strong>**</td>
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Source: Council of Europe, 2006; UNHCR, 2007; Statec Luxembourg, 2007

2. Irregular Migration in Luxembourg

Like in other European countries, illegal entry became only an issue relatively recently and historically, (partial) illegality was not unusual. Thus, most of the Portuguese immigrants who came to Luxembourg in the 1970s technically entered the country illegally and regularised their stay only after entry.

No estimates on the irregular migration exist. From the available evidence it seems that irregular migration to Luxembourg is mainly related to the asylum system, i.e. mainly pertains to rejected asylum seekers and in the 1990s, to war refugees from ex-Yugoslavia. As Kollwelter argues irregularity is thus partly due to the restrictive nature of both asylum law and administrative practice (Kollwelter, 2005: 12).

3. National policy on illegal migrants in regard to regularisation

In 1997, six NGOs campaigned for regularisation of persons in semi-irregular employment situations and of former asylum seekers with special consideration of the
integration of those persons. The campaign was rejected in 1998 with the explanatory statement that the decisions have to be made case by case (Besch, 2000).

For the moment Luxembourg’s authorities have not yet taken a position concerning an eventual EU framework for the management of future regularisation programmes or mechanisms, however, it is annotated that the collection of statistical information about regularisations in the EU is therefore useful (MS Questionnaire Response LU).

4. Regularisation programmes

Before 1997 several regularisations were made in Luxembourg, which are briefly illustrated in the following (cf. Besch, 2000):

In 1986 around 1,100 Portuguese and Spanish persons were regularised.

On 15 July 1994, 470 Bosnian citizens, whose temporary residence permit had already been extended several times, were allowed to apply for a carte d’identité d’étranger (ID card for foreigners) if they had work, a dwelling which is not state-subsidised and had not committed any offences against the public order.

On 15 July 1995, 996 persons from former Yugoslavia obtained a statut particulier and therefore, could remain in the country and apply for a d’identité d’étranger in case the before mentioned conditions were met. However, with the signing of the contract de Paix de Dayton in the end of 1995 the statut particulier was no longer granted to those persons.

On 21 July 1996 all persons from former Yugoslavian states were granted a statut particulier if they met certain conditions. Around 1,500 persons achieved this status. Additionally, certain other persons could obtain right of residence when they migrated to Luxembourg prior to December 1995 and were (among others): senior citizens, chronically ill and disabled persons, persons living in mixed marriages, or persons from minority regions.

The exact number of those persons is not known.

Regularisation programme 2001:
The programme "Regularisation de certaines catégories d’étrangers séjournant sur le territoire du Grand-Duché de Luxembourg" was carried out between 15 May 2001 and 13 July 2001 (MS Questionnaire Response LU).

There was no special legal basis laid down, however, the government referred to the Immigration law of 1972 and published some kind of manual (Vade-mecum) (Kollwelter, 2005: 12).

The programme carried out at the national level targeted illegal residing persons as well as rejected asylum seekers. The following criteria had to apply to persons who wanted to become regularised:

a) any major person, living and working in Luxembourg since 01.01.2000, affiliated to the social security system, when he/she has a stable employment
b) any major person living and working in Luxembourg since 01.01.2000 without being affiliated to the social security system, when he/she has a stable employment
c) any major person living in Luxembourg since 01.07.1998 without interruption
d) any person with health problems not allowing him/her to return to his/her country of origin
e) any person older than 65 years, living in Luxembourg since 01.01.2000 who is the father/mother of a child in possession of a foreigner identity card delivered by Luxembourg’s authorities
f) any major person living in Luxembourg since 01.01.2000 who is the child of the holder of a foreigners identity card delivered by Luxembourg’s authorities
g) any person who is the father/mother or the child of a Luxembourgian citizen.
(MS Questionnaire Response LU)

The main type of statuses granted is short-term residence permit with permit to work. After their expiration a new analysis of the situation of the persons concerned has to be done. The persons concerned have to be employed and to live in a residence without the financial support of the state. The renewal of their status is depending on the fulfilment of these conditions (MS Questionnaire Response LU).

The conduct of the programme took place in co-operation with NGOs defending foreigners’ rights (MS Questionnaire Response LU).

2,882 persons applied for regularisation in the course of the programme, however, although principally available, more detailed statistics on gender and citizenship of persons who applied and who were granted regularisation were not provided (Response LU).

On 31 December 2002, 1,839 people had received a positive response and 64 per cent of those received a residence and a work permit. Three-fourth of the persons who applied for regularisation originated from former Yugoslavia (Levinson, 2005: 61).

The implementation of the programme was considered as innovative and positive by the OECD on the one hand, due to the close consultation with employers of the sectors most affected by labour shortages and the employers who hired unauthorised immigrants were not sanctioned as long as they pay any outstanding social contributions. On the other hand the programme was also criticised due to several reasons including the low number of applicants given that the number of refugees was much higher. Additionally, the arrival date was set before a bombing campaign in the FRY leading to the exclusion of a high number of refugees (Levinson, 2005: 61).

5. Regularisation mechanisms

In Luxembourg there is a humanitarian status available for persons meeting certain criteria. Essential requirements to award a humanitarian status are family ties, lack of criminal record, employment, health condition, and other humanitarian reasons (e.g. education). Mainly short-term permits combined with work permits are granted. To obtain a renewed permit the situation of the persons concerned are analysed. The renewal of the permit depends on whether the person concerned is employed and is accommodated without the financial support of the state. There are no statistics of the issuances of those regularisations available, neither concerning the issuance of the humanitarian status, nor concerning any follow-up data (Response LU).

According to the UNHCR, 351 persons were granted a humanitarian status other than a refugee status in 2006 (UNHCR, 2008: ANNEX).
6. Conclusions

Over the past two decades, several regularisation programmes have been implemented. However, since 1997, only one programme was conducted in 2001. In the course of the programme almost 2,900 persons applied for regularisation which is a remarkable number for a small country like Luxembourg, considering that in 2001 there were only some 22,500 Third Country Nationals residing in the country.

The main reason of the regularisation programme 2001 was to reduce the number of persons illegally residing in the country and indicates a generally flexible approach of the Luxembourgish government. However, there is no follow-up data on the regularisation programme, nor on the effects of the programme on illegal resident population and the evolution of the illegal resident population after the programme.
7. References


Council of Europe, 2006: Recent demographic developments on Europe 2005, CD-ROM


OECD, 2008: A Profile of Immigrant Populations in the 21st Century. Data from OECD countries

Response LU: Response to the questionnaire sent to the Luxembourgian government in the course of the REGINE project, filled in by Tom Goeders, Ministry for Foreign Affairs and Immigration

Statec Luxembourg, 2007: Luxembourg in figures
Available at: www.statistiques.public.lu/, 20 March 2008


Malta

David Reichel & Albert Kraler

1. Introduction

In 2006, the Maltese population was equal to 405,577. Due to the small size of the island, Malta is the most densely populated territory in the EU (1,283 persons per square km). (NSO, 2007)

According to the 2005 population census, the number of non-nationals was 12,112 of whom 4,713 were British citizens. (NSO, 2007b). In general, Malta does not conceive itself as a country of immigration and immigration is generally viewed as exceptional.

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<td><strong>Total population</strong>*</td>
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<td><strong>Foreign population</strong>*</td>
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<td><strong>Third Country Nationals (Non EU citizens)</strong></td>
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<td><strong>Main countries of origin</strong>*</td>
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<td>Great Britain</td>
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<td><strong>Net migration</strong></td>
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<td><strong>Asylum applications</strong>*</td>
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* As of Census Day 27 November 2005 ** Within one year of census day *** During 2005
Source: NSO, 2007b; UNHCR, 2007

Malta joined the European Union in 2004 and acceded to the Schengen area on 21 December 2007.

2. Irregular Migration in Malta

There are no known estimates on illegally residing foreigners in Malta.

Since the carrier sanctions were introduced, there are almost no illegal migrants arriving in Malta by plane.

Illegal immigration to Malta, however, is an issue of major concern to Maltese authorities. In the last years Malta had to deal with – compared to the size of the population – significant inflows of asylum seekers arriving in Malta by boat. A majority of these who arrive in Malta are believed to have headed for Italy and often are intercepted on sea en route to Italy. As a general rule, asylum seekers are detained in detention centres for up to 18 months, except in the case of vulnerable persons (pregnant women, children, sick persons).

At the beginning of 2006 there were 149 pending asylum applications, and during the year 2006 1,272 asylum applications were lodged. 550 applicants were recognised either as refugees or on other humanitarian reasons (mostly humanitarian 522) and 637 were rejected. (UNHCR, 2008: 97)
Since 1996, the asylum applications lodged in Malta have increased sharply.

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<td>Applications</td>
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<td>65</td>
<td>165</td>
<td>85</td>
<td>71</td>
<td>116</td>
<td>350</td>
<td>568</td>
<td>997</td>
<td>1.166</td>
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Source: UNHCR, 2007: 418

Many rejected asylum seekers are rejected and subsequently deported. However, there are also groups of rejected asylum seekers who cannot be deported, who are initially detained in centres and after a period of 18 months are released to so called open centres.

According to a press article, the number of these non-deportable rejected asylum seekers is around 2,000. These persons are not allowed to work in Malta and have to get along with roughly 4 Euros (1.75 Lm) a day. Hence, it is believed that a significant number of such persons are illegally employed (cf. Vella Matthew in Malta Today, on 13 June 2007, [http://www.maltatoday.com.mt/2007/mw/mw_june13_2007/t13.html](http://www.maltatoday.com.mt/2007/mw/mw_june13_2007/t13.html), 14 March 2008)

3. National policy on illegal migrants in regard to regularisation

Illegal migration is one of the major issues discussed in the country and there are numerous articles on illegal migration in the numerous news papers in Malta. These discussions are always connected to the discourse of "limited space" (Amore, 2005).

Generally, asylum seekers are treated as illegal aliens and are thus detained in closed and open centres. The praxis of systematically detaining asylum seekers could be assessed as very problematic and in contravention to the principles of the Geneva Convention. The problems in centres increase since the number asylum seekers increases and the duration of processing appeals filed by rejected applicants (FIDH, 2004: 19 – 20).

4. Regularisation programmes

There has never been a regularisation programme in Malta.

5. Regularisation mechanisms

The humanitarian permit, granted to asylum applicants and rejected asylum seekers alike, is a temporary regularisation mechanism. It is usually issued for a period of 1 year, and if no specific reasons for non-prolongation exist, is usually renewed after expiry (own Interviews, PROMINSTAT Fact Finding Mission to Malta, January 2008).

A problem resulting of the high number of humanitarian statuses (in comparison to the low number of refugee statuses – see above) are a lack of integration of the persons concerned as they are only issued temporary residence permits (FIDH, 2004: 30).

6. Conclusions

Malta has not answered the questionnaire sent to the government in the course of the project which leads to the absence of a general statement on regularisations.
According to the immigration policy and treatment of irregular migrants and asylum seekers, it has to be concluded that Maltese policy has been against any kind of regularisation until now. Furthermore, there has not been any policy assisting the integration of refugees, indeed the issuance of more humanitarian statuses than refugee statuses could be seen as means that further the departure of migrants due to the lack of integration possibilities and future perspectives (cf. FIDH, 2004: 28-30).

7. References

Amore Katia, 2005: Active Civic Participation of Immigrants in Malta. Country Report prepared for the European research project POLITIS, Oldenburg 2005, [www.uni-oldenburg.de/politis-europe](http://www.uni-oldenburg.de/politis-europe)


The Netherlands

Saskia Bonjour, Mariya Dzhengozova, Albert Kraler

1. Introduction

On 1 January 2008 the population of the Netherlands numbered 16.404 million people and the total number of persons with a foreign background (including first and second generation - with at least one parent born outside the Netherlands) was 3.216 million. The largest countries of origin are Indonesia and Germany, followed by Turkey, Suriname and Morocco. Among foreign nationals, the largest groups are Turks (96,779), Moroccans (80,518) and Germans (60,201) and various other EU nationals. However, the second largest groups of non-nationals after Turks are actually persons whose citizenship is not known or who are stateless (89,268), suggesting a relatively high share of persons with unclear residence status.

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<td><strong>Total population</strong>*</td>
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<td><strong>Foreign population</strong></td>
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<td>(including stateless and unknown citizenship)*</td>
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<td><strong>Main countries of origin</strong>*</td>
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<td><strong>Asylum applications</strong></td>
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<td>* 1st January 2007 **2006</td>
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2. Irregular Migration in the Netherlands

Most recent calculations, based on the number of apprehended irregular aliens, estimate the number of illegal immigrants in the Netherlands between April 2005 and April 2006 at almost 129,000. This figure should however be taken as no more than an indication of the actual size of the irregular population.60 (Van der Heijden e.a. 2006: 14; Kromhout e.a. 2008)

3. National policy on illegal migrants in regard to regularisation

Until the end of the 1980s, illegal residence and work was condemned in formal discourse, but tolerated in practice. The 1990s witnessed a turn in policies however. Efforts to prevent prevent illegal immigrants from accessing the labour market and the social security system were stepped up progressively. For instance, social-fiscal

60 With a probability of 95%, the number of illegal immigrants lies between 74,320 and 183,912.
numbers were tied to a valid residence status and employees were required to identify themselves in the workplace (Van der Leun 2003: 17, 37).

In July 1998 the so-called Linking Act (Koppelingswet) entered into force. It introduced a new Article 1b in the Aliens Act specifying five categories of lawfully resident aliens. They are: (i) aliens who have a temporary or permanent residence right; (ii) aliens who have a provisional residence permit; (iii) aliens who are awaiting a decision on their application for first admission or prolonged stay; (iv) aliens who are allowed to stay for a short period of three months and (v) aliens whose applications have been rejected but who cannot be expelled, for instance because of severe health problems.

Until 1998 the Dutch Social Security System did not contain conditions related especially to aliens. There was no clear definition of the concept of ‘resident’: individual circumstances were decisive and case law stipulated that there had to be a lasting bond between the Netherlands and the person concerned (Groenendijk & Minderhoud 2001: 540-543). All ‘residents’ were insured under national insurances. Since the entry into force of the Linkage Act, aliens who cannot be brought under one of the five categories stay “unlawfully” in the Netherlands. Unlawful residents are excluded from public services, i.e. from social security benefits, health care, social housing and education. They are granted access solely to imperative medical care, education for minors, and publicly financed legal assistance (Van der Leun 2003: 124-125; Davy 2001).

Ten years after the introduction of the law, the situation still remains problematic. In 2008 CWIA (Committee white illegals Amsterdam) has started a petition for ‘white illegals’ (witte illegalen). The petition encloses a call to Members of Parliament to support legalisation for so called ‘white illegals’. They are labour migrants who came to the Netherlands before 1992, holders of a social-fiscal number; they have paid taxes for years. With the introduction of the Linking Act 1998 these people fell into an irregular status (PICUM 2008).

4. Regularisation programmes

Over the years, the number of regularisation programmes and the number of regularised migrants has been very small in the Netherlands. In 1975, residence permits were given to 10,416 irregular migrant workers, mainly Moroccans and Turks. In a regularisation programme of the early 1990s, out of 1,379 applications, 679 were accepted and 700 refused. In 1995 there was a second regularisation programme, with 1,125 applications of which 106 were accepted and 1,119 refused. This programme was continued in 1999 and received about 8,000 applications of which over 2,200 people were accepted and about 6,000 refused. Many of those rejected launched legal appeals, which then ran for many years (Greenway 2007). In broad outline, the criteria for regularisation were comparable in these different programmes. Most importantly, proof was to be provided of lengthy stay and work in the Netherlands, including payment of taxes and social benefits (Bennekom e.a. 2000: 8; Van der Leun & Ilies 2008: 11).

*Return project for rejected asylum seekers*

In 2002, the first government led by premier Balkenende announced a ‘regularisation’ campaign for asylum seekers who had been waiting for more than five years for the result of their first asylum application. However, this government resigned after only 87 days in office. Instead, the second Balkenende government, a coalition of Christian-

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61 A three-way center-right coalition government with his Christian Democrats, Lijst Pim Fortuyn, and the People’s Party for Freedom and Democracy
Democrats and Liberals, decided on the fate of these long-term asylum seekers in January 2004. Just over 2,300 people were granted a residence permit. The main criteria was that the applicant had filed his first application before 27 May 1998, had continuously resided in the Netherlands since, and was still awaiting a decision on his application. Asylum applicants were not eligible for the program if they had provided wrong or incomplete information, which if provided would have led to rejection of the asylum claim. (Dutch House of Representatives 2004).

The Immigration and Naturalisation Service (IND) estimated at the time that about 26,000 asylum seekers who had applied for asylum under the old Aliens Act, would not meet the criteria of the one-time “regularisation campaign” and “would have to leave the country” (Marinelli 2005: 1). These asylum seekers had been in the Netherlands for some five years, and had exhausted all the procedural opportunities to get their claims recognized. The largest groups came from Iraq, former Yugoslavia, Azerbaijan, Iran, and Somalia (Van Selm 2004). Around 2,000 persons left the country; most of them did so voluntarily, with extra departure funds (Marinelli 2005: 1).

The limited scope of the regularisation process and the hard line adopted towards those who did not meet the criteria met with broad public protest. In 2005, relief groups and filmmakers joined forces in the ‘26 000 faces’ campaign: a series of film clips meant to show the individual person and story behind each of the 26,000 asylum seekers who were obliged to leave the Netherlands. Minister Rita Verdonk, with the support of Parliament, responded by releasing personal information about asylum seekers to the media, stating that the government was entitled to defend itself against “incorrect and one-sided information being put forward by asylum seekers who were dissatisfied by their treatment and the negative decision on their asylum application” (Marinelli 2005: 2) In addition, there was a petition, signed by some 200 thousand people62, several demonstrations, and protests by refugee advocacy interest groups. Moreover, various local authorities refused to cooperate with the national return policies. As a result of this non-cooperation, municipalities were granted an important say in the regularisation program that was to be implemented in 2007 (see below).

During the time the second Balkenende government was in office, there were a number of scandals which caused public outcry. A detention centre near Schiphol Airport burned, and 11 ‘illegals’ died in the fire. Also, it became known that the Dutch government was sending known homosexuals back to Iran, as well as sharing information with the authorities in Congo about the asylum seekers it was extraditing, thus endangering their lives. Finally, the separation of families due to the return policies of the Dutch government met with protest. In 2004, the UN Committee for the rights of children found that Dutch foreigner policies violated the rights of young refugees and undocumented children.

In the electoral campaign of 2006, the opposition emphatically promised to return to more ‘human’ foreigner policies, should it be elected into office. The regularisation campaign of 2007 was the way in which the centre-left government Balkenende III – which succeeded the centre-right government Balkenende II – kept this promise.

**Regularisation of asylum seekers**

A regularisation programme for asylum seekers who had made lengthy but fruitless efforts to obtain a Dutch residence permit came into effect on 15 June 2007. It was included in the Coalition Agreement of the current government and stems from the administrative agreement with the Association of Dutch Municipalities (VNG). It is

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62 See www.eenroyaalgebaar.nl
intended for those foreign nationals who: (i) submitted their initial application for asylum before 1 April 2001, or who reported to the Immigration and Naturalisation Service (IND) or the Aliens Police to submit an initial asylum application; (ii) who have resided continuously in the Netherlands since 1 April 2001, as on record at the IND and the Repatriation and Departure Service (DT&V) or as demonstrated by the statement from the Mayor; and (iii) have indicated in writing that they will unconditionally withdraw any pending procedures when accepting residence under general amnesty. Family members of foreign nationals granted a residence permit under this regulation may also receive a permit subject to certain conditions.

By 15 June 2007 the IND started to officially assess the files of foreign nationals on record with the IND or DT&V. The files of foreign nationals who reported to the IND by means of a Mayor's statement are currently being assessed (IND 2008a). The total number of foreign nationals who will be granted a residence permit in this regularisation programme is expected to total around 27,500. Since 15 June 2007, almost 25,000 foreign nationals have been offered a residence permit (IND 2008b).

About 500 asylum seekers whose files were assessed do not meet the criteria for a residence permit. In coordination with the municipalities, the COAs (central reception centres) and the IOM, DT&V is stepping up its efforts to deport these foreigners, so as to prevent new backlogs. The government intends to ensure effective repatriation and to prevent rejected asylum seekers from taking to the streets, inter alia by lodging them in reception centres where their freedom of movement is restricted, and by expanding the reintegration support (Ministry of Justice 2008).

5. Regularisation mechanisms

Between 1990 and 2003, a particular regularisation mechanism was in force: the so-called 'three-year-policy'. A residential permit was granted to any alien who had to wait for more than three years for a final decision on his admission request. The ratio underlying this policy was that the administration had an obligation to decide within a reasonable period of time and should bear the consequences for failing to do so. Another practical drive was to prevent backlogs. It might be argued however that this procedure should not be considered a regularisation mechanism, since the aliens to whom it applied were never in an unlawful situation. (CMR, Response ICMPD NGO Questionnaire 2008; Apap e.a. 2000: 17)

The ‘three-year-policy’ was exceptional: in general, the Dutch governments have preferred regularisation programmes which were presented as ‘one time only’ to structural regularisation mechanisms. Outside of such regularisation programmes, it is virtually impossible for an illegal migrant to obtain a regular residence status. Currently the sole available channels - which Van der Leun & Ilies (2008:12) describe as “far-fetched” - are asylum application and marriage to a Dutch national.

6. Summary

Governmental policies in the Netherlands do not favour the regularisation of unlawful residents. The de facto tolerant attitude of the 1970s and 1980s was abandoned in the 1990s for a much more restrictive line, gradually impeding the access of irregular aliens to the labour market and social security system. Regularisation mechanisms are currently virtually non-existent. The regularisation programmes which have been implemented in the 1990s were limited in scope: the maximum of permits granted was
2,200, in the programme of 1999. The most recent regularisation campaign in 2007 was much more significant in scale, with 27,500 aliens granted the right to stay.
7. References


8. Statistical annex

### Expulsions from the Netherlands 2002-2006 (totals de facto and de jure)

<table>
<thead>
<tr>
<th>Year</th>
<th>Asylum-seekers</th>
<th>Other irregular migrants</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>21 300</td>
<td>29 100</td>
<td>50 400</td>
</tr>
<tr>
<td>2003</td>
<td>21 900</td>
<td>33 800</td>
<td>55 700</td>
</tr>
<tr>
<td>2004</td>
<td>14 900</td>
<td>27 000</td>
<td>41 900</td>
</tr>
<tr>
<td>2005</td>
<td>12 500</td>
<td>32 400</td>
<td>44 900</td>
</tr>
<tr>
<td>2006</td>
<td>10 200</td>
<td>30 100</td>
<td>40 300</td>
</tr>
</tbody>
</table>


### Removals and absconding 2002 - 2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Voluntary &amp; enforced removals</th>
<th>Absconding</th>
<th>Total involved</th>
<th>% removed out of involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>28 200</td>
<td>22 200</td>
<td>50 400</td>
<td>56</td>
</tr>
<tr>
<td>2003</td>
<td>29 500</td>
<td>26 200</td>
<td>55 700</td>
<td>58</td>
</tr>
<tr>
<td>2004</td>
<td>22 400</td>
<td>19 500</td>
<td>41 900</td>
<td>53</td>
</tr>
<tr>
<td>2005</td>
<td>22 400</td>
<td>22 500</td>
<td>44 900</td>
<td>50</td>
</tr>
<tr>
<td>2006</td>
<td>18 850</td>
<td>21 450</td>
<td>40 300</td>
<td>47</td>
</tr>
</tbody>
</table>


### Regularisations in the Netherlands

<table>
<thead>
<tr>
<th>Year of Governmental Decree</th>
<th>Number of Regularisations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>15 000</td>
</tr>
<tr>
<td>1979</td>
<td>1 800</td>
</tr>
<tr>
<td>1991</td>
<td>2 000</td>
</tr>
<tr>
<td>1999</td>
<td>1 800</td>
</tr>
<tr>
<td>2007</td>
<td>27 500</td>
</tr>
</tbody>
</table>


### Irregular immigrants apprehended by the police in 2005-2006, per nationality

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Absolute number</th>
<th>% out of the European/non European irregulars</th>
<th>% out of the irregular population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europeans</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgarians</td>
<td>1013</td>
<td>38</td>
<td>12</td>
</tr>
<tr>
<td>Romanians</td>
<td>446</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>Other nationalities</td>
<td>1235</td>
<td>46</td>
<td>15</td>
</tr>
<tr>
<td>Total Europeans</td>
<td>2694</td>
<td>100</td>
<td>32</td>
</tr>
<tr>
<td>Non-Europeans</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkish</td>
<td>799</td>
<td>14</td>
<td>9</td>
</tr>
<tr>
<td>Northern African</td>
<td>816</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>Africa other</td>
<td>1450</td>
<td>25</td>
<td>17</td>
</tr>
<tr>
<td>Surinamese</td>
<td>120</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Asian</td>
<td>1980</td>
<td>34</td>
<td>23</td>
</tr>
<tr>
<td>American</td>
<td>338</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Unknown</td>
<td>292</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Total non-Europeans</td>
<td>5795</td>
<td>100</td>
<td>68</td>
</tr>
<tr>
<td>TOTAL</td>
<td>8489</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>
Source: van der Heijden et al., 2006, authors’ calculations (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Expulsions from the Netherlands 2002-2006 (totals de facto and de jure)

<table>
<thead>
<tr>
<th>Year</th>
<th>Asylum-seekers</th>
<th>Other irregular migrants</th>
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<tr>
<td>2003</td>
<td>21 900</td>
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</tr>
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<td>14 900</td>
<td>27 000</td>
<td>41 900</td>
</tr>
<tr>
<td>2005</td>
<td>12 500</td>
<td>32 400</td>
<td>44 900</td>
</tr>
<tr>
<td>2006</td>
<td>10 200</td>
<td>30 100</td>
<td>40 300</td>
</tr>
</tbody>
</table>


Number of irregular third country nationals apprehended in border regions by the Military Police (KMAR), sea and air borders

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>9 987</td>
</tr>
<tr>
<td>2005</td>
<td>10 588</td>
</tr>
<tr>
<td>2006</td>
<td>7 842</td>
</tr>
<tr>
<td>2007</td>
<td>8 189</td>
</tr>
</tbody>
</table>


Number of third country nationals apprehended after having crossed the external maritime and air border irregularly

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>10 803</td>
</tr>
<tr>
<td>2006</td>
<td>11 634</td>
</tr>
</tbody>
</table>

Poland

Mariya Dzhengozova

1. Introduction

The current report focuses on national experiences with regularisation practices and it is based on: (i) relevant domestic laws; (ii) expert analysis (Iglicka and Gmaj, forthcoming); (iii) official population statistics [data provided by the Polish Ministry of Interior and Administration, Central Statistical Office, Eurostat] as well as figures regarding human trafficking from ICMPD Yearbook 2006 on illegal migration. The position of the principal state actor has been reconstructed on the basis of an ICMPD questionnaire (2008) addressed to Polish Ministry of Interior and Administration (hereafter, response MSWIA). In addition, a telephone interview with the expert K. Gmaj (Center for International Relations, Warsaw) complements the study (hereafter, response Gmaj). It begins with basic information and an overview of the main factors affecting migration policies in Poland.

<table>
<thead>
<tr>
<th>Basic information on Poland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population*</td>
</tr>
<tr>
<td>Foreign population**</td>
</tr>
<tr>
<td>Third Country Nationals</td>
</tr>
<tr>
<td>Main countries of origin</td>
</tr>
<tr>
<td>Net migration**</td>
</tr>
<tr>
<td>Asylum applications***</td>
</tr>
</tbody>
</table>


For many countries in Western Europe and North America, Poland has been one of the largest sending areas in Central and Eastern Europe and a vast reservoir of labour. Since the beginning of the 1990s it is gradually shifting from a major sending country into a country of net-immigration and transit migration. Poland’s accession to the EU in May 2004 is likely to foster the changes in the migratory processes (Iglicka 2005). An important consequence (with a possible impact on regularisation) is the implementation of Schengen requirements – the introduction of mandatory visas for Poland’s eastern neighbours, Ukraine, Belarus and Russia.

2. Irregular Migration in Poland

Illegal entrance and overstaying (inflows from regular status into illegality) are one of the main types of irregularity currently observed in Poland. For example, in the first 9 months of 2007, the number of foreigners deported on the basis of illegal entrance was 2,265 (Iglicka and Gmaj, forthcoming: 20).

Regarding the origin of undocumented migrants, in general, a stable “core” is represented by citizens of the former Soviet Union counties with Ukraine leading.
followed by Armenia, Russia, and Moldova. Nationals from Vietnam and Mongolia belong to the stable ‘core’ as well. Apart from this “core”, there are small numbers of Afghanistan, Azerbaijani, Bangladeshi, Belarusian, Chinese, Somali, Indian, Iraqi, Pakistani, Sri Lanka, Turkish, Yugoslavian, and many others citizens (Iglicka and Gmaj, forthcoming: 9-10). In particular, Chechens constitute one of the important groups of foreigners who try to enter Poland illegally. Their aim is to apply for a refugee status. Since Poland entered the Schengen zone (20 December 2007) the number of Chechens crossing Polish border illegally grew visibly: from 20 December 2007 to 17 January 2008 Border Guard stopped 600 persons, 95 per cent of whom were Chechens. (Iglicka and Gmaj, forthcoming: 17).

With reference to the ICMPD Yearbook on Illegal Migration, Ukrainian, Russian and Moldavian citizens represent the dominant group of border violators for 2005 and 2006 (table 1). The majority of apprehension of people entering the country has been made at the Ukrainian border – 769 apprehensions in 2005 compared to 836 in 2006. Other significant groups of TCNs border violators come from Vietnam, Belarus, Georgia and China. The total number of migration-related apprehension of illegal migrants was 3,231 in 2005 compared to 2,741 in 2006 (ICMPD 2006: 177-178).

Table 1: Apprehension of illegal migrants by nationality

<table>
<thead>
<tr>
<th>Country</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ukraine</td>
<td>1,430</td>
<td>1,234</td>
</tr>
<tr>
<td>Russia</td>
<td>469</td>
<td>336</td>
</tr>
<tr>
<td>Moldova</td>
<td>366</td>
<td>354</td>
</tr>
</tbody>
</table>

Source: ICMPD 2006

A third category of irregular TCNs are foreigners who enter Poland with tourist visa, although their real aim is work. Thus their stay in Poland is legal - they have legal basis: tourist visa - but their status starts to be irregular when they undertake an employment in a shadow economy. This group can be considered as a “very specific category of illegal migrants interested in circular migration” (response Gmaj).

3. Regularisation programmes

The first regularisation action in Poland is known as the “Great abolition” (implemented from 1 September 2003 to 31 December 2003). The programme was introduced on the occasion that the new Act of 13 June 2003 on Aliens entered into force. The objective was to settle the status of those foreigners who had already demonstrated the existence of de facto ties with the country, but who had not established ongoing legal residence. The measure addressed the need to accommodate whole families of Armenians, living in Poland with an ambiguous status for several years. “The arguments for the regularisation indicated that it was mainly an acknowledgment of the status quo, designed to facilitate the ability of established migrants (whose children attend school and who work or run a business) to emerge from the grey zone - the informal economy” (Iglicka& Kazmierkiewicz & Weinard 2005: 8). This need was also justified in the cases of aliens who resided in Poland for a long period, were able to cover their costs of residence, had children attending Polish schools for years, however - for some reasons - did not meet the formal requirements allowing legalising their stay on general rules. The situation of the aliens who could not be expelled due to technical or humanitarian reasons was also taken into account while designing the programme (response MSWIA: 6).
The prerequisites for application were as it follows: 1) residing continuously in Poland since at least 1 January 1997; 2) submitted, by 31 December 2003, an application for granting a temporary residence permit to the proper authority; 3) indicated the place of accommodation and presented a legal title authorising to occupy such place; 4) possessed: a promise of issuing a work permit on the territory of the Republic of Poland or an employer's written declaration confirming intention to either employ an alien or to entrust an alien with other gainful work or perform function in boards of legal persons carrying out economic activity if work permit was not required or an income or property sufficient to cover the costs of alien's maintenance and medical treatment as well as maintenance and medical treatment of dependent members of alien's family, without the need to claim social assistance for the period of one year; 5) the regularisation: a) did not constitute a threat to the state security and defence as well as to the public security and public policy; b) did not constitute the burden for the state budget; c) was not in breach of the interest of the Republic of Poland (response MSWIA: 3). It was estimated that the measure could be applicable for not more than 10,000 aliens, addressing mainly citizens of Armenia, Vietnam and Ukraine (response MSWIA: 8-9).

The programme regularised the residence of aliens for one year providing them with the possibility for continuation (when requirements are met). "Granting to those aliens permit for indefinite period as well as releasing them from obligation to obtain a work permit was not considered as it would mean better treatment of aliens residing illegally in the territory of the Republic of Poland than the aliens residing there legally" (response MSWIA: 17).

The “Great abolition” did not achieve high numbers: first of all it covered a small group of settled migrants (only those who have been residing since 1 January 1997). The number of application was 3,508 (of which 1,626 from Armenia, 1,341 from Vietnam, 88 from Ukraine, 68 from Mongolia and 47 from Azerbajan). The total number of positive decisions was 2,747 (out of which 1,245 for Armenians, 1,078 for Vietnamese, 68 for Ukrainians, 51 for Mongolians and 19 for Azerbajan nationals (data provided by the MSWIA).

The small number of applicants is explained with the fact that the requirements resulted difficult to complete with. The condition for having a flat, for example, wasn’t easy to fulfill – as Poland does not apply social housing policy, it is very difficult to buy or hire a flat - sometimes foreigners rent a flat in the so-called shadow economy. It was also difficult to prove that one has a job contract (response Gmaj). In addition, the time limit for submitting an application was not enough, some of the aliens were made familiar with the possibilities offered under the programme too late to submit an application and some of the aliens were afraid of presenting themselves for Polish authorities due to the threat of being expelled.

As a result, in 2007 was launched “Major abolition – continuation”. This programme lasted from 20 July 2007 to 20 January 2008 and was addressed to the aliens who, having met all of the requirements specified in the Great abolition, did not use the opportunity to regularize their residence, because they were not aware of this possibility or who were afraid of reporting to the competent authorities due to the fear of being expelled from the territory of the Republic of Poland (response MSWIA: 6). The previous requirement for having resided in Poland since at least 1997 narrows the target group – applicants should have at least 10 years of continuous residence, excluding all those illegal migrants that have come after 1997 (response Gmaj). The number of applicants was 2,022 (of which 1,125 from Vietnam, 574 from Armenia, 114...
from Ukraine and 43 from China). The number of positive decisions was 177 of which: 102 for Armenians, 26 for Vietnamese, 12 for Ukrainian and 10 for Mongolian nationals (data provided by the MSWIA).

In addition to the Great Abolition and Major Abolition, the Polish Ministry of Interior and Administration considers the so-called “Small abolition” as another regularisation programme. It was also introduced on the occasion that the new Act of 13 June 2003 on Aliens. The duration was determined in the period between 1 September 2003 and 1 November 2003. The programme pertained to illegal immigrants who wanted to leave Poland – it created an opportunity for the aliens residing illegally to leave the territory of the Republic of Poland without the consequences caused by illegal stay (ban of entry into the territory of the Republic of Poland) provided that they had not obtained so far a decision on expulsion or on an obligation to leave the territory of the Republic of Poland and their data were not recorded in the index of aliens whose residence on the territory of the Republic of Poland is undesirable. As a result, 282 foreigners took advantage of it including 139 citizens of Ukraine, 26 citizens of Armenia, 25 citizens of Mongolia and 23 citizens of Bulgaria (data provided by the MSWIA).

4. Regularisation mechanisms

Together with the “Great abolition” introduced in 2003, the Act on Aliens 2003 was amended in reference to tolerated status (“pobyt tolerowany”). The institute of the tolerated status is a result of the harmonisation with EU legislation and is the equivalent to temporary and/subsidiary protection. This type of protection was envisaged to those of aliens who did not meet the criteria for being granted a refugee status, according to the Geneva Convention of 1951, but, on the other hand, could not be expelled to their country of origin due to the risk of the breach of their basic human rights that could be found there... A permit for tolerated stay is also granted when expulsion of an alien is not possible due to the technical or formal obstacles beyond the authority responsible for executing the decision on expulsion. Such obstacles are e.g. inability to confirm an identity of an alien or inability to provide an alien with a travel document. In the mentioned cases, a permit for tolerated stay is granted ex officio on a case-by-case basis...Cases of aliens who could not be expelled due to the humanitarian or technical reasons were also taken into account while creating the institution of permit for tolerated stay (response MSWIA: 6-7).

The residence permit is for 1 year with the possibility for continuation (when the conditions are met) - the permit for tolerated stay may be withdrawn when prerequisites for granting the said permit do not apply any longer. Aliens who have been granted a permit for tolerated stay have the right for gainful employment and public assistance.

The total number of applications for 2007 is 3,138\textsuperscript{63} compared to 2,213 for 2006. Major groups are comprised by Russian (2,870 applicants in 2007 and 2086 applicants in 2006) and Vietnamese nationals (118 applicants in 2007 and 50 applicants in 2006). The number of beneficiaries in 2007 is as it follows: 2,910 persons have been granted refugee status (“nadanie statusu uchodźcy”) the two major groups being 2,864 Russian and 18 Iraq nationals. The total number of people given tolerated status\textsuperscript{64} (“zgoda na pobyt tolerowany”) was 218, including 173 Vietnamese, 12 Chinese and 7 Armenian nationals The number of beneficiaries for 2006 is the following: 2,177 persons have

\textsuperscript{63} It includes First and Second Instances.
\textsuperscript{64} Permits for tolerated stay were mainly granted ex officio (response MIA PO: 21).
been granted refugee status of which 2,083 Russians and 9 Iraqis; the number of persons granted tolerated status was 84, the major groups being from Vietnam-48 persons and Pakistan-10 persons (data provided by the MSWIA).

Financial consequences that result from the introduction of the measure relate to rights such as right for education, employment, social benefits etc. They are estimated as it follows: “taking into account the current Polish unemployment rate, it shall be born in mind that part of aliens granted tolerated stay will need public assistance. The costs of such assistance will be maintained by a state budget and municipal budgets. It is estimated that the costs will not be very high. It should be expected that due to planned introduction of visas for the citizens of Ukraine, Belarus and Russian Federation Poland as a member state of the EU as well as planned accession to the Dublin Convention, the number of permits for tolerated stay to be granted about 200 families (about 650 people) per year. This may stay for about 0.03% of all of those who need public assistance [c.a. 2,150,000 according to data presented by the Ministry of Labour and Social Policy] (response MSWIA: 23).

According to the MSWIA, other regularisation mechanism is Visa granted for exceptional circumstances (art. 33 of Act of 13 June 2003 on Aliens). It legalises a stay of aliens upon their application in a short (three month) period because of exceptional circumstances including: 1) alien’s appearance in person before an agency of the Polish public authority; 2) alien’s entry in Poland because of the necessity to undergo medical treatment, which he/she cannot undergo in other country; 3) an exceptional personal situation requires the presence of an alien in the country; 4) it is required by the interest of the Republic of Poland; 5) there is a well-founded reason to suspect that an alien is a victim of trafficking in human beings within the meaning of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings and it has been confirmed by an authority competent with respect to conduct procedure on combating trafficking in human beings. The visa is issued for the period of residence necessary to realise the purpose for which it was issued. In any case such a visa may not be issued for the period exceeding 3 months. It is granted for a period of residence necessary for the alien to decide on cooperation with an authority competent with respect to conduct the procedure on combating trafficking in human beings, however not exceeding 2 months. A visa is issued or refused by the Head of the Office of Foreigners. An alien who stays outside the territory of the Republic of Poland submits an application for issuance of this visa through the consul. An alien who stays on the territory of the Republic of Poland through the voivod competent with respect to the place of an alien’s residence (response MSWIA: 5).

The total number of applicants for 2006 and 2007 is 1,270. Major groups are comprised by: 337 Ukrainian, 143 Armenian, 92 Russian, 91 Vietnamese and 65 Belarus nationals. The number of visas issued for 2006 and 2007 is 1,061 (287 for Ukrainian, 144 Armenian, 73 Russian, 63 Belarusian and 43 Vietnamese nationals) (data provided by MSWIA).

Other regularisation mechanism is considered to be the residence permit for a fixed period granted to an alien married to the Polish citizen or to an alien possessing a permit to settle or a long-term resident’s EC residence permit on the territory of the Republic of Poland (art. 57 sec. 3 of the Act of 13 June 2003 on Aliens - Journal of Laws of 2006, No 234, item 1694, with amendments). This mechanism was introduced in the Act of 13 June 2003 on Aliens (entered into force on 1 October 2005) and was aiming at protecting the family life of Polish citizen being married to an alien. The scope of this regulation was extended on spouses of aliens having permits for indefinite stay in Poland. This mechanism is not applied in case of marriage of convenience or in cases
justified by the reasons related to the state security and defence, the public security and policy or the interests of the Republic of Poland (response MSWIA: 7). Residence permit for a fixed period is granted for a period exceeding 3 months and not longer than 2 years. As a rule, no work permit is required for an alien holding a permit granted for an alien married to a Polish citizen. The same rule applies to an alien holding a residence permit for the purpose of family reunification (response MSWIA: 18). No separated data concerning the number of illegally residing aliens who applied for or/and obtained the residence permits for a fixed period granted for aliens married to Polish citizens or married to aliens for whom a permit to settle or a long-term resident’s EC residence permit was granted (response MSWIA: 21).

5. Conclusions

Compared to mass regularisation programmes (like for example in Southern Europe), the scope of the programme(s) in Poland is rather limited – it concentrates on a specific group of settled migrants (who have “strong ties” with the receiving country). The measures were repeatedly introduced in 2003 and 2007 as they failed to access potentially eligible applicants. In this sense, Great and Major abolition did not play role of a pull factor for new immigrants (response MSWIA: 8-9)

In the opinion of the Ministry of Interior the number of aliens who were granted a residence permit on the basis of regularisations was too small, comparing to the total population of Poland, to make the influence on the national economy or on the labour market. Moreover, “regularisations resulting in reduction of number of illegally staying foreigners in non-restricted way attained image of country applying European standards in managing migration... Besides orientation for temporary and quick results in reduction of number of illegally residing migrants, regularisation plays always role of one of measures undertaken by the state authorities to manage the migration accordingly to national strategy” (response MSWIA: 8-9).

The specific requirement for having been resident since at least 1 January 1997 raises the question about measures addressing irregular migrants that have come after 1997. In this respect, no further activities are panned by the State: “Regularisation programmes should not be offered too often nor regularly as they may cause the situation when aliens stay illegally in the country concerned, expecting the next regularisation” (response MSWIA: 26). In addition, the current situation is characterised by a “public concern rather on emigration than immigration. In the context of immigration of importance is the opening in 2006 of the labour market for the neighbouring countries [Ukraine, Russia, Belarus] (response Gmaj).

Regarding possible EU action, the Ministry agrees that regularisation programmes and mechanisms undertaken by one of the Schengen Countries may influence on migratory situation in another one. “However it must be taken into account that the states that use regularisation have various political, economic and historical determinants to apply this instrument. There are also various reasons why immigrants find themselves in irregular situation” (illegal entry, loss of legal status) (response MSWIA: 26). In this sense, the need and usefulness of a standardised approach towards regularisation needs further analysis. ‘Due to different reason for aliens’ regularisation and different reasons for irregularity, it is difficult to say whether standarised regularisation procedures at the EU level would be possible and desirable... It is necessary to develop and strengthens instruments leading to find out solutions for aliens not having a legal title to reside in the territory of the state concerned. The said instruments could be of a control nature.
They could also aim at effective return, including voluntary return” (response MSWIA: 26–27).

7. References

Blaschke, Jochen (2008), *Trends on regularisation of third country in irregular situation of stay across the European Union*, Briefing paper, Directorate-General Internal Policies

Policy Department C Citizens Rights and Constitutional Affairs


EUROSTAT, Population statistics online

ICMPD (International Centre for Migration and policy Development), (2006), Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe


Journal of Laws of 2003, No 128, item 1175, Residence permit for a fixed period granted on the basis of art. 154 of an Act of 13 June 2003 on Aliens


Journal of Laws of 2006, No 234, item 1694, with amendments, residence permit for a fixed period granted to an alien married to the Polish citizen or to an alien possessing a permit to settle or a long-term resident’s EC residence permit on the territory of the Republic of Poland, art. 57 sec. 3 of the Act of 13 June 2003 on Aliens.

Journal of Laws of 2006, No 234, item 1695, with amendments, permit for tolerated stay, art. 97 of an Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland
Journal of Laws of 2007, No 120, item 818, residence permit for a fixed period granted on the basis of art. 18 of the Act of 24 May 2007 on the amendment of the Act on aliens and other acts

Response MIA PO - questionnaire filled in by the Polish Ministry of Interior and Administration, February 2008.
Portugal

Mariya Dzhengozova

1. Introduction

According to estimates by the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, in 2005 there were some 10,495 Million people living in Portugal of whom approximately 764,000 were reported foreigners (Population Division of the Department of Economic and Social Division of the United Nations Secretariat 2005).

2. Irregular Migration in Portugal

There is no reliable and/or accessible official information on the exact size and characteristics of illegally residing TCNs. According to researchers, the number of undocumented migrants is estimated to be between 80,000 and 100,000 (Fonseca & Malheiros & Silva 2005: 12). Changes in patterns of illegal migration have been recently observed. They are expressed in a “shift from the traditional individual movements of people coming from the PALOP countries with established social networks in Portugal to the structured illegal trafficking networks controlled in the sending countries and composed mainly of Eastern European immigrants” (Teixeira et al 2007: 282). This statement is further supported by data from regularisation programmes. The majority of beneficiaries (67 percent) of the regularisation in 1996 were predominantly from PALOP states (Esteves et al. 2003). Principal countries of origin were Angola, Cape Verde, Guinea Bissau, Brazil (Response MAI 2008: 4). The regularisation in 2001 authorized about 170,000 permits, the majority of them to Ukrainians (63,500) and Brazilians (36,600) (Levinson 2005: 3). Finally, in 2004 was regularised the situation of illegal workers coming predominantly from Ukraine; Romania, Cape Verde; Guinea Bissau, Moldavia (Response MAI 2008: 4).

3. Regularisation programmes

In Portugal have been conducted five regularisation programmes so far. While pre-2001 regularisations were not directly concerned with participation in the labour market, it has been a key prerequisite for regularisations since 2001. That includes: the 2001 stay permits process, the special regularisation of Brazilian workers in 2003 and the 2004 regularisation based on social security (Fonseca & Malheiros & Silva 2005: 3).

Extraordinary regularisations 1992-1993
This ‘extraordinary’ regularisation campaign (October 1992-March 1993) targeted all non-EU foreigners that could prove they had residence in Portugal for a certain number of months before the regularisation. About 80,000 people applied and only 38,400 were regularised. Inefficiency of the regulatory mechanisms led to increase in the number of undocumented immigrants immediately after the campaign. That resulted in a

65 The editors would like to thank Lucinda Fonseca for providing valuable advise during the writing of the study. In addition, we would like to thank Jorge Portas of the Serviço de Estrangeiros e Fronteiras for the provision of the statistical data annexed to this chapter.
subsequent new regularisation process, which took place in 1996 (Fonseca & Malheiros & Silva 2005: 2).

Extraordinary regularisations 1996

The second 'extraordinary' regularisation lasted for six months (between June and December 1996) and was largely a response to a shift in the country's ruling political parties from liberal to socialist. Successful applicants had to prove that they were involved in a professional activity, had a basic ability to speak Portuguese, had housing, and had not committed a crime. In this programme a distinction was made between applicants from Portuguese-speaking countries, who could apply if they had been in the country since 31 December 1995, and those from non-EU states, who had to have been in the country prior to 25 March 1995 in order to apply. As a result, 67 percent of the immigrants regularized were from PALOP states (Portuguese-speaking African countries). Approximately 35,000 applications were made and 31,000 residence permits were issued (Fonseca & Malheiros & Silva 2005: 2; Esteves & Fonseca & Malheiros 2003: 16). The programme has been criticised regarding preferential treatment given to applicants from PALOP countries, bureaucratic delays, inadequate information campaign and there were reports that undocumented immigrants were arrested at some application centres (Levinson 2005: 2-3; Esteves & Fonseca & Malheiros 2003).

Regularisation based on employment January-November 2001

In 2000, the growing pressure of employers, the changing characteristics of immigrants and the noticeable presence of non-documented workers led to the introduction of a temporary-stay (permanence) permit (DL no. 4/2001 of 10 January). It was attributed to undocumented foreigners working in Portugal who could present valid work contracts. In this sense, the stay permit associated the possibility of regularisation to the condition of having work in Portugal. That created a new immigrant status – confirmed by the DL no. 34/2003 - people in possession of a temporary-stay (permanence) permit are not considered residents in Portugal (not even temporary/short-term ones) and, therefore, have reduced civic rights.

The stay permit allowed the foreign workers that were irregularly in Portugal to stay in the country for one year. Around 185,000 foreigners obtained this kind of permit. Once obtained, stay permits can be renewed up to four times. This system was suspended in November 2001 and removed from the revised law on entry, stay and exit of non-EU foreigners from Portuguese territory (D.L. n.34/2003 of 25 February). The principle of recruitment of foreign workers outside the national territory was introduced (Esteves & Fonseca & Malheiros 2003: 13). However, most Portuguese employers do not recruit abroad but employ foreigners who are already in the country, which means that they will probably arrive without the appropriate visas and contracts as undocumented immigrants (Esteves & Fonseca & Malheiros 2003: 16-17). That explains the limitations of the proposed policy.

Agreement between Portugal and Brazil 2003

In 2003 was signed the so-called Lula agreement between Portugal and Brazil. It allowed the regularisation of irregular Brazilian workers settled in Portugal and also irregular Portuguese workers living in Brazil. In order to benefit from this agreement, Brazilians should present a work contract or at least a promise of work contract. The main considerations that led to the formulation of the agreement were the special historical, cultural and economic ties between the two countries, and the debate on the conditions of Brazilian immigrants working in Portugal (Fonseca & Malheiros & Silva 2005: 2).

This measure provides for family reunion and for the possibility of regularising foreign workers that settled in Portugal before the 12 March 2003 and made social security and
fiscal contributions for a period of at least three months. However, the programme was criticised for being slow - a number of immigrant cases were left pending and for excluding cases of irregular immigrants who started to work after March 2003 and contributed for social security (Levinson 2005: 3).

Normative-Decree N. 6/2004
The Normative-Decree N. 6/2004, of 26 April included opened up the possibility for regularisation of non-EU foreign workers that could prove they were active in the Portuguese labour market before 12 March 2003. Potential beneficiaries were able to show tax payments and contributions to the national social security for a period of at least three months leading up to the aforementioned date. The application period was for 45 days - between the end of April and mid-June 2004. In this period, foreign workers were asked to send a pre-registration document to the ACIME (High Commission for Immigration and Ethnic Minorities). Approximately 40,000 applications were received (Fonseca & Malheiros& Silva 2005: 2). This regularisation was criticised by several NGOs for the length of time involved in the process, for obliging immigrants (who fulfilled the requirements) to leave the country in order to obtain a work visa in a Portuguese consulate (normally in Spain). It was also criticised for rejecting those who made contributions to social security after March 2003 (Fonseca & Malheiros & Silva 2005: 3).

4. Regularisation mechanisms

The Portuguese new Nationality Law (OL no. 2/2006 of 17 April) provides for regularisation mechanism by naturalisation, however, the scope of this mechanism is rather limited. The new law strengthens the principle of *jus soli* (right of the soil) in recognising the status of citizenship to those who have established *strong bonds* with Portugal. It introduces the so-called *subjective right to naturalisation*, which actually affects illegal migrants – it means that citizenship is granted to children born in Portugal if (i) at least one parent has lived as a legal resident for five or more years in the country or (ii) the child has finished the pre-primary education (four years) (SEF). The Foreigners and Borders Office (SEF) provides statistics on the number of naturalisation awarded broken down by nationality (there is no information on resident status).

Regarding residence permits for carrying out a subordinated professional activity, the revised Law on Entry, Permanence, Exit and Removal of Foreigners into and out of Portuguese Territory (Act 23/2007 of 4 July 2007) provides for a regularisation mechanism. It stipulates that exceptionally, against a proposal of Director General of SEF or by initiative of the Minister of Internal Affairs, the requisite on holding a valid residence visa may be dispensed with, if the foreign citizen, apart from the other general conditions, fulfils the following: "a) Holds a work contract or has a labour connection confirmed by a workers' union, by an association which is party to the Consulting Councillor, or by the Work General Inspectorate; b) Has legally entered in national territory and here remains legally; c) Is registered in the Social Security System and accomplished all his/her obligations to that department (Article 88 n 2, Act 23/2007 of 4 July 2007)." According to SEF, until now 12000 immigrants (most of them Brazilians) have benefited from this regularisation mechanism.

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67 Data provided by Maria Lucinda Fonseca, 22 July 2008.
5. National policy on illegal migrants in regard to regularisation

The debate on irregular migration in Portugal is closely linked to clandestine work and the informal economy.

According to the International Medical Assistance (AMI) the high number of immigrants in irregular situation in the country is an indicator for the limited capacity of the authorities in dealing with regularisation demands: “The legislation is still restrictive, consequently the control of migratory fluxes is inefficient, then, this kind of policy promotes only the illegality situation and the government tries to fight this with extraordinary regularisation [programmes]” (Response AMI 2008: 3). The NGO pays attention to the conditions under which one qualifies for regularisation: "legislation is still very little friendly of those who look up to regulate their situation, and...the requirements are too hard to accomplish". The need of revision of requirements is also supported by the Jesuit Refugee Service (JRS): “some documents that are required for regularization are nearly impossible to get from countries of origin, especially when it comes to migrants who have been in Portugal for long periods of time; also, the fine that migrants need to pay for their irregular permanence in Portugal should be omitted, since most irregular migrants are in a very vulnerable [economic] condition” (Response JRS: 3). Other aspects which were criticised by NGO in respect to most regularisation programmes is the length needed by authorities in processing the documents. In relation to regularisation mechanisms, it was highlighted the need of a special provision on victims of human trafficking who entered the country illegally: “they can be given a residence authorization since they accept to collaborate with the authorities” (Response AMI 2008: 3).

Regarding positive aspects of regularisation programmes, the General Confederation of Portuguese Workers (CGTP) and the General Union of Workers (UGT) support the opinion that such programmes reduce social exclusion, insecurity, poverty and criminality and thus are important for the society as a whole and the protection of migrant workers’ rights. Nevertheless, UGT is not in favour of extraordinary processes of regularisation – they are associated with a policy of open doors and UGT stresses on the need of control mechanisms (interview with UGT). In comparison, CGTP is against the quota system as a means of migration control introduced by the Portuguese government. According to the Confederation, this has proved to be a failure, and migrants in irregular situations still persist. In this sense, CGTP presents two suggestions in fighting against clandestine work. Firstly, regularisation processes should be carried out on EU level in all countries at the same time: this would hinder movements and circularisation of people within Europe. Secondly, control mechanisms against companies who support clandestine work should be introduced and coordinated on EU level with the collaboration of Member States’ authorities, securing thus efficiency of labour inspection authorities (interview with CGTP). UGT also advocates for regulations on EU level, which, according to the Union, are possible only through a harmonisation of processes and procedures in all Member States with regard to immigration and labour market (difficult, though...). At the same time, the needs and the situation of different groups of irregular migrants has to be evaluated, in order to find tailored measures for different groups (interview UGT).

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68 An NGO involved in the process of regularisation
69 NGO involved in the process of regularisation
6. Conclusions

According to the Portuguese government's response to the MS questionnaire, "labour market needs [lie at the heart of effective migration] management" (Response MAI, 2008:3). Indeed, in the past, "specific labour [market] needs, like in public works and tourism, were the main motives [for regularisation programmes]. Since 2001, combating the informal employment is the main motive for the following regularization programmes and mechanisms" (Response MAI, 2008:3). Social actors by and large have similar positions. Overall there is thus an overall consensus in Portugal that regularisations may be an appropriate means to promote immigrant integration, reduce the informal economy and increase protection of workers. Albeit no new programmes have been carried out since 2005, the reform of nationality legislation in 2006 suggests that Portugal continues to follow an increasingly rights based approach to tackling illegal immigration, consistent with the its general immigration and immigrant policy framework – indeed, Portugal ranked second (after Sweden) in the recent edition of the Migrant Integration Policy Index, indicating the relative inclusiveness of its overall policy framework (Niessen et al. 2007). Generally, along with Spain, Portugal's attitudes towards regularisation are among the most favourable in the European Union. However, in the absence of relevant in-depth studies on the outcomes and impacts of regularisation programmes an answer the question to what extent past regularisation programmes actually achieved their various objectives – to promote the integration of immigrants, to combat social exclusion and marginalisation and to reduce informal employment is much less sure.
7. References:


Blaschke, Jochen (2008), Trends on regularisation of third country in irregular situation of stay across the European Union, Briefing paper, Directorate-General Internal Policies

Policy Department, Citizens Rights and Constitutional Affairs


Interview with CGTP, 2008, conducted by Veronika Bilger, Lucinda Fonseca and Elisabeth Strasser

Interview with UGT, 2008, conducted by Veronika Bilger, Lucinda Fonseca and Elisabeth Strasser


Response MAI, PT - questionnaire filled in by the Portuguese Ministry of Interior and administration, Department for International Relations and Cooperation, Aliens and Border Service, February 2008.

SEF (The Foreigners and Borders Office), www.sef.pt, legislation and statistics online


Response AMI, 2008: ICMPD questionnaire filled in by the International Medical Assistance

Response JRS, 2008: ICMPD questionnaire filled in by the Jesuit Refugee Service

8. Statistical annex

Number of refused, apprehended and removed aliens during the period 1997-2003

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<tbody>
<tr>
<td>Number of refused aliens</td>
<td>1358</td>
<td>1497</td>
<td>1098</td>
<td>2472</td>
<td>2636</td>
<td>4189</td>
<td>3695</td>
</tr>
<tr>
<td>Number of Apprehended aliens</td>
<td>NA</td>
<td>1994</td>
<td>8080</td>
<td>26140</td>
<td>8942</td>
<td>12975</td>
<td>17886</td>
</tr>
<tr>
<td>Number of removed aliens</td>
<td>NA</td>
<td>106</td>
<td>898</td>
<td>1145</td>
<td>607</td>
<td>1995</td>
<td>2790</td>
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Source: Data provided via email (06 January 2009) by Serviço de Estrangeiros e Fronteiras
Romania

David Reichel

1. Introduction

Romania is rather a country of emigration than of immigration, with very large numbers of emigrants. Prior to 1993, those emigrants were mostly ethnic minorities who tried to escape from discrimination or just to find better living conditions; recorded emigration reached its peak with 96,929 Romanians who legally emigrated (Horváth, 2007: 1 – 3). Other (unrecorded) forms of migration subsequently emerged, in particular irregular circular migration in the Schengen area after removal of the visa requirement for Romanians (Baldwin-Edwards 2007: 7). In 2007, Romania entered the European Union.

<table>
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<tr>
<th>Basic information on Romania</th>
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<tbody>
<tr>
<td><strong>Total population</strong></td>
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<tr>
<td><strong>Foreign population</strong></td>
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<tr>
<td><strong>Third Country Nationals</strong></td>
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<tr>
<td><strong>Main countries of origin</strong></td>
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<tr>
<td>Moldova</td>
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<tr>
<td>Turkey</td>
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<tr>
<td>Italy</td>
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<tr>
<td><strong>Net migration</strong></td>
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<tr>
<td><strong>Asylum applications</strong></td>
</tr>
</tbody>
</table>

* 1st July 2005 ** End of 2003 (foreign citizens with temporary residence) *** 2005

2. Are there known groups of illegally residing TCNs?

Irregular migration is an important issue when analysing migration to, from and through Romania which had become popular under the Communist regime, where possibilities of legal migration were rather restricted. However, as for legal migration, irregular emigration is far more important than irregular immigration. Irregular emigration from Romania was strongly related to (irregular) labour migration to EU countries (cf. Horváth, 2007:6).

The older tolerated irregularity of localised border crossings was replaced by more stringent border checks and conformity with the EU Acquis in preparation for Romania’s accession to the EU. Asylum-seekers and refugees showed a clear upward trend until 2001, when the figures halved: the main nationalities have been Iraqis, Somali, Indians and Chinese (Baldwin-Edwards 2007: 26). However, asylum applications remain at a very low level.

There is no general statistical assessment of illegal migration in Romania; however, there are several statistics which indicate the phenomenon (Blaschke, 2008: 33-34). In 2003, 5,386 foreign citizens were apprehended in illegal situations in Romania and to 4,619 of them visas for leaving the country were issued. Those measures mainly concerned persons from Turkey (911), China (612), Republic of Moldova (441), Syria (241) and Israel (217) (cf. SOPEMI, 2004).
Furthermore, during 2003 3,253 persons were apprehended when illegally crossing the Romanian border. 1,681 of whom were foreign citizens (SOPEMI, 2004).

<table>
<thead>
<tr>
<th>Number of refused and removed aliens in Romania in 2003</th>
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<tbody>
<tr>
<td><strong>2003</strong></td>
</tr>
<tr>
<td>Number of refused aliens</td>
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<tr>
<td>Number of removed aliens</td>
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</tbody>
</table>

Source: Blaschke, 2008: ANNEX II based on GéDAP/CIREFI data

Almost 56,000 aliens were refused entry into the country in 2003. The main nationalities of those migrants were Hungarian (19,268), Moldovan (15,506), and Serbian (9,342). Moreover, 500 persons were removed from Romania in 2003 (Blaschke, 2008: ANNEX II).

More recent data on apprehensions at the border show a small decline to around 50,000 refused entry in 2005 and 2006, of which more than 50% were nationals of the Rep. of Moldova (Tompea and Nastuta 2008: 178). A very sharp decline in the number of temporary residence permits – from 70,000 in 2000 to 48,000 in 2006 – has been linked with tighter border controls, in particular affecting the irregular circular migration of petty traders (Baldwin-Edwards 2007: 26).

3. National policy on illegal migrants in regard to regularisation

There is no information on the national policy in regard regularisations in Romania.

The Romanian legislation regarding migration issues has been changed substantially in recent years, as it was necessary to adjust their legislation to EU policy needs, especially concerning border controls, political asylum laws and practices, and human rights protection of minority groups (Baldwin-Edwards, 2005: 1).

4. Regularisation programmes

There has not been any regularisation programme in Romania, as stated by the Immigration Office (Blaschke, 2008: 38).

However, it has to be noted that Romanian citizens who migrated to EU countries irregularly often were included in regularisation programmes (especially in Italy and Spain) which legalised their residence status and provided legal access to the labour market (Horváth, 2007: 7).

5. Regularisation mechanisms

Although the Romanian legislation does not include a definition of regularisation, there is a central assessment criterion for extended residence permits in case of illegal residents (e.g. a student with an expired resident permit who is able to prove that she/he is still a student and fulfills the necessary criteria) (Blaschke, 2008: 34). There is also a form of temporary ‘toleration’ granted by the Immigration Office, giving 6-month renewable permissions to stay (as opposed to reside) for a range of specified
circumstances (EMN 2008: 111—2). There is no information on the number of persons (if any) receiving such a status.

In 2006, out of 551 decisions on asylum applications 10 persons received a positive decision other than refugee status (51 recognised refugees, 283 rejected applications and 207 otherwise closed) (UNHCR, 2008: ANNEX), however, there is no information on what kind of status those persons received.
6. References

Baldwin-Edwards, Martin (2007), 'Navigating between Scylla and Charybdis: Migration Policies for a Romania within the European Union', *Southeast European and Black Sea Studies* 7/1, 5—35


OECD (2004), SOPEMI Report for ROMANIA.


UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 10/06/2008

[www.unhcr.org/statistics/populationdatabase](http://www.unhcr.org/statistics/populationdatabase)

Slovak Republic

David Reichel

1. Introduction

The Slovak Republic consists of roughly 5.4 million inhabitants (see: www.statistics.sk). According to the OECD, in 2004, 0.4 percent of the Slovakian population are foreigners and 3.9 percent are foreign born (http://dx.doi.org/10.1787/615583184240, 14 March 2008).

There are also statistics on the composition of ethnic groups in the country. According to the population census, carried out in 2001, the number of ethnic Slovaks is considered to be 85.8 per cent of the population followed by Hungarians (9.7 per cent) and Roma 1.7 per cent (www.statistics.sk).

<table>
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<th>Basic information on Slovakia</th>
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<tbody>
<tr>
<td><strong>Total population</strong>*</td>
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<tr>
<td>Ukraine</td>
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<td>Czech Rep.</td>
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<td>Poland</td>
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<tr>
<td><strong>Net migration</strong></td>
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<tr>
<td><strong>Asylum applications</strong></td>
</tr>
</tbody>
</table>

*S As of 1st Jan. 2005 ** 2006

Source: UNHCR, 2008; Website of the Statistical Office of the Slovak Republic www.statistics.sk; Council of Europe, 2006

Slovakia has separated from Czechoslovakia and become a independent state in 1993 (Biffl, 2004: 5).

Since 1 January 2004 the Slovak Republic is a member of the European Union and since 21 December 2007, it is also included in the Schengen area.

2. Irregular Migration in Slovakia

There are no known estimates on the number of TCN staying in Slovakia illegally. In general, however, Slovakia is considered as a transit country for illegal migrants (cf. Divinský, 2005: 9 - 10).

This matter of fact can be illustrated clearly on the basis of border apprehensions of migrants who were not authorised to cross the borders of Slovakia.

Altogether, the ratio of apprehensions of persons entering and leaving Slovakia are balanced (51 % entry), however, this balance vanishes while differentiating the numbers by region of border. 91 per cent of all apprehensions at the border with Austria are outflow migrations and almost 99 per cent of all apprehensions at the border with the Czech Republic are also outflow migrations. Contrary the share of apprehensions of illegal outflow at the border to Ukraine is only 0.3 per cent.
At the website of the Statistical Office of the Slovak Republic there is a graph on illegal residence available, which includes all persons found present at the territory of Slovakia who did not meet the conditions of legal residence. The numbers are differentiated by citizenship. More than 900 persons originated from Ukraine in 2005 (only 100 in 2004) and almost 400 held Indian citizenship in 2005 (almost 900 in 2005), as the two largest groups. Other citizens with more than 100 cases per year were Russian Federation, Moldova, China, Georgia, Pakistan and Bangladesh.

Russian Federation, India, Moldova, China and Bangladesh were also the most important countries of origin of asylum seekers who lodged an application in Slovakia.

### 3. National policy on illegal migrants in regard to regularisation

Persons who enter Slovakia illegally or reside in the country illegally may be taken into detention for the time inevitably needed, but no longer than 180 days. If those detained persons do not apply for asylum, they will be sent back to their country of origin. At the end of 2004, 20 readmission agreements with 18 countries were in operation (Divinský, 2005: 15).

The Ministry of Interior of the Slovak Republic states that there could be a potential relation between immigration policy and illegal migration and a relation between more severe conditions for residence and illegal migration; however, these are just assumptions as there has not been conducted any profound research in the Slovak Republic (Response SK).

According to the response by the Slovak Ministry of the Interior, the mechanism of tolerated stay is regarded as sufficient for dealing with illegally resident aliens and there are no plans for any policy change (Response SK:14).

### 4. Regularisation programmes

No regularisation programme has ever been carried out in Slovakia.

### 5. Regularisation mechanisms

According to the Slovakian Ministry of the Interior, the status of tolerated stay can be seen as a regularisation mechanism according to the definitions of the REGINE project.
The mechanism of tolerated stay aims to prevent illegal residence and to improve the verifiability of aliens in the territory.

This status was introduced with the new Act on Stay of Aliens in 2002. There are certain grounds (laid down in the Act on Stay of Aliens) which can lead to the issuance of a tolerated stay by the police:

A tolerated stay is issued to an alien
a) if there is an obstacle of an administrative expulsion,
b) the person was provided with a temporary shelter,
c) if his/her exit is not possible and his/her temporary custody is not effective,
d) the person is a minor found in the SR territory,
e) the person is a victim of a criminal offence related to the trafficking in human beings and he/she is at least 18 years old; a law enforcement agency or a person designated by the Interior Ministry shall communicate to the alien a possibility and conditions of issuance of the tolerated stay on such ground, as well as rights and obligations resulting thereof, or
f) if respect for his/her private or family life thus requires.

Persons who submit a request for voluntary return, the period (no more than 90 days) from the time of the written request until the exit or withdrawal of the request is considered as a tolerated stay, except the alien is taken into temporary custody or the person is entitled to reside in the territory under special conditions, as an asylum seeker for instance (Response SK: 3).

The tolerated stay is issued on request for a period of no more than 180 days, however, of the grounds for the issuance still exist, the tolerated stay can be renewed (Response SK: 3).

Only persons who are granted a tolerated stay because they were victims of offences relating to trafficking in human beings and they are 18 years of age or older as well as aliens who are granted a tolerated stay under an international convention (i.e. if respect for her/his private life thus requires) are allowed to work in Slovakia, contrary to persons who obtain only a tolerated stay but not the right to work (Response SK: 3).

Between 2002 and 2004, 148 persons were granted a tolerated stay in Slovakia (Divinský, 2005: 18). In 2007, 372 persons obtained a tolerated stay of whom 83 were Ukrainians, 27 Russians, 21 Vietnamese and 19 Moldavians (Response SK).

In 2006 out of 2,834 decisions on asylum applications, 1,948 were otherwise closed, 878 applications were rejected, 8 applications were recognised as refugees and no asylum seekers was granted another humanitarian stay (UNHCR, 2008: 98).

6. Conclusions

The Slovak Republic is considered to be rather a transit country than a destination country for irregular migrants. There has never been any regularisation programme in Slovakia and since 2002 there is the regularisation mechanism “tolerated stay” which was introduced with the purpose to prevent illegal stay of foreigners and to improve their verifiability of their stay in the Slovak Republic.

In regard to European Union policy, the Ministry of Interior states that it is not able to assess possible Europe-wide policies or regulations. For the Slovak Republic the
mechanism of tolerated stay is sufficiently working and there are no plans to implement any regularisation programmes in the Slovak Republic in the future.
7. References

Biffl, Gudrun, 2004: Immigration and Integration Issues in Austria and Slovakia. Contribution to the seminar: Migration in Central Europe: Austria, the Slovak Republic and the EU, April to May 2004, Vienna.


Council of Europe, 2006: Recent demographic developments on Europe 2005, CD-ROM


Response SK: Response to the questionnaire sent to the Slovak government in the course of this project filled in by the Ministry of Interior of the Slovak Republic


1. Introduction

At the end of 2006, there were some 2 million people living in Slovenia of whom roughly 53,000 persons were foreigners (cf. www.stat.si).

<table>
<thead>
<tr>
<th>Basic information on Slovenia</th>
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<tbody>
<tr>
<td><strong>Total population</strong>*</td>
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<tr>
<td><strong>Foreign population</strong>*</td>
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<tr>
<td><strong>Third Country Nationals</strong>*</td>
</tr>
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<td><strong>Main countries of origin</strong>*</td>
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<tr>
<td><strong>Net migration</strong></td>
</tr>
<tr>
<td><strong>Asylum applications</strong></td>
</tr>
</tbody>
</table>

* As of 31 December 2005 ** During 2005


Slovenia has become an independent state in 1991 and acceded to the European Union in 2004.

2. Irregular Migration in Slovenia

The number of persons residing in Slovenia illegally is considered to be very low, due to the reason that it is very hard to make a living in Slovenia without being registered. There are no known estimates on illegal residents in Slovenia.

Generally, Slovenia is rather a transit country than a destination country of illegal migration. In 2007, there were 2,479 illegal border crossings (3,992 in 2006) reported on the territory of Slovenia. Most of those were reported at the border to Croatia (77 %) and the nationality of most persons was Serbian, followed by Albania and FYROM (www.policija.si – statistics, 06 March 2008).

In 2006, 1,117 foreigners were accommodated in Centres for foreigners (where foreigners are sent to until they can be deported), mostly due to the reason that they failed to meet the conditions to reside in Slovenia or they failed to verify their identity (Ministry of the Interior, 2007: 10).

Besides, there is a special group of persons which are discussed in connection with illegal residence, namely the so-called ‘erased’ persons. In 1991, when Slovenia gained its independency, persons from other states of the former Yugoslavia could apply for Slovenian citizenship. Around 170,000 people obtained Slovenian citizenship; however, there was also a group of persons who did not apply for citizenship. In 1992 these

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70 This assumption is also supported by the Ministry of the Interior (see Response SI)
people were erased from the permanent population register. Hence, those persons were deprived of their right to live in Slovenia. The official number of the ‘erased’ persons is 18,305 (Zorn, 2004).

Until now, many of the so-called ‘erased’ persons achieved to regularise their status (Amnesty International, 2005: 3; UNHCR, 2008b), and it is not known how many persons still live in Slovenia without a status.

According to an article published by the UNHCR there is an estimated number of 4,000 persons who remain without a legal status (UNHCR, 2008b), however, according to data and analysis of the Ministry of the Interior those persons have emigrated, as the open number of some 4,000 persons is almost the same since 2006 and there were only 360 applications in the past three years mainly lodged by persons who did not meet the necessary requirements.

3. National policy on illegal migrants in regard to regularisation

Despite the low numbers of illegal migration and the fact that Slovenia is considered to be rather a transit country than a destination country, illegal migration is an important political issue in the public discourse. There were major public discussions about illegal migration (in connection with asylum seeking) in Slovenia since the mid-90s whereby illegal migration and asylum seeking was largely condemned. The public discussion contributed to a simplification of migration issues, where migrants were perceived as ‘them’ who stood against the autochthon people as ‘us’. There were also some critical voices who discussed the bad living conditions with which many immigrants had to struggle. At the same time (until 2001) immigration policy was never put at the top of the political agenda (Andreev, 2005: 18-19).

The position of the Slovenian government vis-à-vis illegal migrants could be described as very tight and restrictive. This position is also emphasised in the response of the Ministry of the Interior to the ICMPD questionnaire:

“Slovenia thinks that regularisation mechanisms and programmes are not appropriate instrument for reducing undocumented immigrants numbers. In our opinion such instrument is raising possibility of inflow of illegal immigrants to the state. That is why Slovenia does not have mechanisms and programmes for regularisation.” (Response SI: 5)

The Ministry furthermore states not to notice any connections of immigration policies and numbers of illegal migrants so far. For persons who are found residing in Slovenia illegally sanctions are foreseen and not regularisations, because the Ministry assumes that regularisations would encourage inflows of illegal migrations (Response SI).

Combating illegal migration was an important topic of the Slovenian presidency of the European Union. The Minister of the Interior, Dragutin Mate, sees combating illegal migration as a priority, including a development of an effective policy of returning illegal immigrants (See: http://www.mnz.gov.si/en/splosno/novice/news/article/2049/5709/?cHash=973e99d2c6, 11 March 2008).

71 Information provided via email on 19 June 2008
4. Regularisation programmes in Slovenia

There are no known cases of regularisation programmes of illegal migrants conducted in Slovenia.

Until now, there has been a special legislation allowing persons under temporary protection to obtain permanent residence in Slovenia. Since the beginning of the 1990s Slovenia received some 70,000 refugees from Bosnia and Herzegovina and Croatia and in 1999, some 4,000 from Kosovo. All of those refugees were granted temporary protection in Slovenia and at the end of the 1990s the vast majority of these refugees either returned or moved on to another country. At the beginning of 2002, around 2,300 Bosnian refugees remained in Slovenia for the tenth consecutive year under temporary protection. In July 2002 the Slovenian parliament passed the Amendment to the Law on Temporary Refuge, allowing the remaining Bosnians to obtain permanent residence and other rights, such as the right to integration assistance and the years under temporary protection were taken into consideration for the acquisition of the Slovene citizenship. Some 2,000 Bosnians obtained permanent residence under this legislation and around 200 opted for repatriation in 2002/2003 (UNHCR, 2004).

Additionally, there has been another kind of regularisation for the - upon mentioned - ‘erased’ persons. The programme/legislation is not to be seen as a conventional regularisation programme, as it addressed a certain group of persons and is connected to a certain period in the history of Slovenia, namely the state succession.

In 1999, Slovenia adapted a special law regulating the status of persons from other State Successors from the former SFRY who were permanent residents on the date of plebiscite for independence and sovereignty and actually lived in Slovenia, and who lived constantly in Slovenia irrespective of their status (Act on the Regulation in the Republic of Slovenia of the Status of the Citizens of Other Countries that Succeeded the Former Socialist Federal Republic of Yugoslavia). Around 12,000 persons obtained permanent residence on the basis of that law. Although this law was not a conventional regularisation programme, because it was connected to a certain complex situation of the country, it shows that regularisations as such are not completely alien to the Slovenian legal framework.

In 2002 it was again possible to obtain citizenship of the Republic of Slovenia under relaxed conditions for persons who were permanent residence in Slovenia on 23 December 1990 and who have lived in the country since then. The applicants were not obliged to prove means of subsistence. Out of 2,959 applicants 1,752 obtained Slovenian citizenship (Ministry of the Interior of the Republic of Slovenia72).

5. Regularisation mechanisms

According to the Ministry of the Interior, there is no regularisation mechanism in Slovenia. The International Protection Act of the Republic of Slovenia does not regulate the protection for humanitarian reasons (European Migration Network Ad-Hoc Query 2008: 112). Nevertheless, the number of persons who are granted a humanitarian stay (other than a recognised refugee status in accordance with the Geneva Convention) is very low in Slovenia. According to the UNHCR, in 2006, there were 8 persons who were

72 Information provided via email on 19 June 2008
granted a humanitarian stay (and one recognised refugee); however, the overall number of asylum applications is very low in Slovenia as well (UNHCR, 2008: Annex).

6. Conclusions

According to the Ministry of the Interior, there was no impact of other states' regularisation programmes on Slovenia and this (no impact of regularisations on other Member States) is assessed to be very important, although the Ministry admits that regularisation programmes and mechanisms seem to be necessary in certain Member States (Response SI).

For the Slovenian Ministry mutual information concerning the rationale, objectives and scope of programmes in other Member States are not provided sufficiently. A common EU policy regarding regularisations is strictly rejected by the Slovenian government because the government sees no need of it and is afraid that it could probably attract or increase level of illegal migrations in the territory of the EU. Furthermore, it is annotated that standardised approaches across the EU for such programmes and mechanisms are impossible, as programmes and mechanisms are different in Europe due to tradition and economic and geographical situations (Response SI: 13).

Since 2003, border control issues were publicly discussed within a larger EU framework and the question how to increase border control activities and Slovenia’s obligations towards other Member States. At the same time the issues of the ‘erased’ people was still publicly discussed as well as trafficking in human beings, ‘Muslims in Slovenia’73 and the issuing of work permits for citizens of successor states of former Yugoslavia (Andreev, 2005: 20 – 21).

To sum up, the Slovenian policy towards illegal migration is very strict and rejects regularisations (except regularisations in the special case of persons who had no regular status due to the state succession). Punishments against illegal migrants are considered as a more appropriate measure than regularisations, though the number of irregular migrants is considered to be very low in Slovenia. The position is justified through the assumption that regularisations could constitute a pull-factor for irregular migration.

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73 This discussion came up on the background of a planned building of a mosque in Ljubljana
7. References


Response SI, Questionnaire sent to the Slovenian government in the course of the REGINE project completed by the Ministry of the Interior of the Republic of Slovenia.


Sweden

Albert Kraler & David Reichel

1. Introduction

At the end of 2007 there were more than 9 million people living in Sweden. More than half a million of those were foreign citizens and some 270,000 were not citizens of the European Union, including some 35,500 Norwegians and some 1,800 Swiss citizens (Statistics Sweden).

<table>
<thead>
<tr>
<th>Basic information on Sweden</th>
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<tbody>
<tr>
<td><strong>Total population</strong></td>
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<tr>
<td><strong>Foreign population</strong></td>
</tr>
<tr>
<td><strong>Third Country Nationals</strong> (non EU citizens)*</td>
</tr>
<tr>
<td><strong>Main countries of origin</strong></td>
</tr>
<tr>
<td>Finland</td>
</tr>
<tr>
<td>Iraq</td>
</tr>
<tr>
<td>Denmark</td>
</tr>
<tr>
<td><strong>Net migration</strong>**</td>
</tr>
<tr>
<td><strong>Asylum applications</strong>**</td>
</tr>
</tbody>
</table>

* 31 December 2007 ** 2007


2. Irregular Migration in Sweden

According to Blaschke (2008), the Swedish Migration Board defines illegal migrants as person without a formal permit to reside in the country. They are either unknown to the authorities or have a formal obligation to leave the country.

Compared to other European countries irregular migration is not seen as a significant issue. This said, the topic has recently received more attention notably in connection with failed asylum seekers who abscond or cannot be returned. The focus of public debates has been on access to healthcare for failed asylum seekers. There is no indicator for large scale irregular migration to Sweden and no good estimates on the size of the undocumented migrant population exist.\(^{74}\)

According to Blaschke (2008), 7,743 persons of a total number of 11,358 migrants had disappeared from the supervision system of the Swedish Migration Board in 2003. In addition, some 7,400 rejected asylum seekers had not (yet) returned to their country of origin. Blaschke cites an estimate of the National Confederation of Trade Unions that some 60,000 non-nationals were illegally working. According to Blaschke, thus up to 80,000 illegal immigrants can be estimated to live in Sweden, although this estimate is probably too high.\(^{75}\)

\(^{74}\) Information provided by a Swedish trade union via REGINE questionnaires.

\(^{75}\) The trade union estimate of irregular employed foreigners is likely to include a large share EU citizens and other persons with a secure residence status who would not be liable to deported if detected.
3. National policy on illegal migrants in regard to regularisation

Generally, irregular migration has not been a big issue in public debates in Sweden. However, in the 1990s, asylum seekers from the former Yugoslavia who did not qualify as refugees under the Geneva convention gave rise to some debates and policy measures. Around 2004/2005 and partly in the context of debates on access of rejected asylum seekers to healthcare, various NGOs and religious organisations started a campaign calling for a regularisation programme for rejected asylum seekers (see Picum newsletters 2004-2006, various issues).

4. Regularisation programmes

In November 2005 the Aliens Act 1989 was temporarily amended (until the new act came into force in March 2006). With this amendment a new procedure granting residence permits was introduced and created an additional legal remedy for asylum seekers against whom a final refusal of entry or expulsion order was issued. According to this temporary amendment, the Swedish Migration Board may grant residence permit under consideration of certain circumstances such as possible problems of returning migrants, health conditions, or other humanitarian issues. Additionally, when assessing the humanitarian situation, length of residence, situation in the country of origin, committed crimes of the aliens, age (children were treated privileged), public order and security were important issues to be considered (EMN, 2005: 9).

The main target group were families with children who had been waiting for a decision from the Migration Board and established themselves in Sweden and, as already mentioned, persons subject to removal (EMN, 2006: 9).

Under this programme, 17,000 rejected asylum seekers were regularised and in the majority of cases, received a permanent permit to reside (13,000 permanent and some 4,000 temporary). 8,000 of the processed cases concerned persons whose asylum application was discontinued.

A total number of 31,000 applications were processed (including around 1,000 duplications), and the reported granting rate was 95 per cent for families with children and 72 per cent for persons with impediments to enforcements of expulsion (EMN, 2006: 10; Migrationsverket 2008).

The main countries of origin were Iraq, Somalia, Palestine, Afghanistan and Serbia (Blaschke, 2008).

Blaschke (2008) also reports that rejected asylum seekers are occasionally regularised on an individual basis.

5. Regularisation mechanisms

Chapter 2, Section 4 and 5 of the Aliens Act 1990 (Utlänningslagen) and several provisions of the Aliens Ordinance 1989 (Utlänningsförordningen) specified conditions under which aliens could apply for residence permits after arrival in Sweden. Several of categories eligible for in-country applications relate to family reunification. Provisions

for several other categories, including humanitarian cases and persons with ties to Sweden, were more closely connected to regularisation. In addition, the Aliens Act also provided for exceptional extensions of residence permits in case conditions for residence were no longer met, but strong humanitarian grounds for renewing a permit existed.

The Aliens Act was amended in 2005 (in force since 2006). Although the act does not contain provisions on awarding residence permits on 'humanitarian grounds', the new act provides provisions which follow a roughly equivalent rationale. Thus, residence permits may be granted on "exceptionally distressing circumstances" (Chapter 5, Section 6 of the Swedish Aliens Act). This means that overall assessments of the situation of persons to whom none of the main grounds for residence permit are applicable must be made. This assessment should particularly consider the person's health, adjustment to Sweden, and the situation in the country of origin of the applicant. According to the new act, children shall not be treated as strict as adults (EMN, 2005: 9). As a rule, persons granted a residence title under these provisions are awarded a permanent residence permit. Since 2005 the following number of people benefited from permit on exceptionally distressing circumstances: in 2005 – 4,997 (of which 2,487 under the temporary law); in 2006 – 18,480 (of which 14,823 under the temporary law) and in 2007 – 3938 (EMN 2008: 112)\(^7\)

6. Conclusions

In the Swedish context, where irregular migration, notably in the form of illegal entry or overstaying is considered only a minor problem, regularisation seems to be mainly used as a corrective instrument to deal with persons who are not outright illegally staying (as for example, rejected asylum seekers) and legal migrants who otherwise do not meet the conditions of residence. Over the past decade or so, Sweden has followed a consistent policy of use regularisation as a flexible tool to respond to humanitarian situations.

\(^7\) This information has become available after the finalization of the main report and thus is not reflected in our comparative analysis.
7. References


United States

Alfred Wöger

1. Introduction

In 2006 the total foreign-born population of the United States of America was estimated at 37,5 million, representing 12,5 percent of the total population of almost 299 million.

2. Irregular Migration in the US

Based on analysis of Census 2000 and the monthly Population Surveys using the so-called residual method, the Pew Hispanic Center estimated that in 2006 there were about 11,5 to 12,3 million unauthorized migrants living in the country. 4,2 million of them have entered the U.S. in 2000 or later and almost forty percent of the total unauthorized migrants lived in just two states: California 25% and Texas 14%.

Compared to the estimate of 8,4 million in the year 2000 there was evidence to suggest that the annual growth of unauthorized migrants was around 500,000. Furthermore, it was estimated that about 4,5 to 6 million were unauthorized migrants because of visa violations, while more than the half entered the U.S. illegally (Passel 2006).

Most of the legal immigration into the USA, typically totalling 600—900,000 each year, consists of family reunification, with a smaller share for employment reasons, and very small numbers for humanitarian reasons (Batalova 2006) Thus, illegal migration to the US is comparable in size to the annual legal flows. Table 1 shows the sharp increase of the estimated size of the irregular population in the US since the 1990s.

Table 1: Estimated unauthorized population of the United States by year

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimated unauthorized population (in million)</th>
</tr>
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<tbody>
<tr>
<td>1980</td>
<td>2-4</td>
</tr>
<tr>
<td>1990</td>
<td>1,7-2,9</td>
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<tr>
<td>2000</td>
<td>8,4</td>
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<tr>
<td>2002</td>
<td>9,3</td>
</tr>
<tr>
<td>2004</td>
<td>10,3</td>
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<tr>
<td>2006</td>
<td>11,5-12,3</td>
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</table>


78 The US Census Bureau uses the term foreign-born to refer to anyone who is not a U.S. citizen at birth. This includes naturalized U.S. citizens, lawful permanent residents (immigrants), temporary migrants (such as foreign students), humanitarian migrants (such as refugees), and people illegally present in the United States.

79 Migration Policy Institute: http://www.migrationinformation.org/datahub/ascensus.cfm

80 US Census Bureau: www.census.gov

81 Unauthorized migrants are persons who live in the USA, but are neither U.S. citizens nor have been admitted for permanent residence or have a temporary status. Most of them enter the U.S. without authorization e.g. with invalid documents, overstay their visas or violate the terms of their admission.
While an estimated 8.3 million unauthorized migrants residing in the United States were from the North America and Central America region, 1.4 million people were from Asia and 970,000 from Latin America. According to the estimates Mexico is the main source country of unauthorized migrants in the United States, followed by El Salvador, Guatemala and the Philippines (see Table 2). In 2006 6.5 million unauthorized migrants or 57% of the total, were from Mexico (Höfer et al. 2007). For the past ten years the Mexican-born population including legal and also unauthorized migrants has grown annually by 500,000 persons. In 2006 about one million unauthorized immigrants residing in the U.S. were born in Europe or Africa (Passel 2006).

<table>
<thead>
<tr>
<th>Country of birth</th>
<th>2006</th>
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<tbody>
<tr>
<td>All countries</td>
<td>11,550,000</td>
</tr>
<tr>
<td>Mexico</td>
<td>6,570,000</td>
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<tr>
<td>El Salvador</td>
<td>510,000</td>
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<tr>
<td>Guatemala</td>
<td>430,000</td>
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<tr>
<td>Phillipines</td>
<td>280,000</td>
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<tr>
<td>Honduras</td>
<td>280,000</td>
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<tr>
<td>India</td>
<td>270,000</td>
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<tr>
<td>Korea</td>
<td>250,000</td>
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<tr>
<td>Brazil</td>
<td>210,000</td>
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<tr>
<td>China</td>
<td>190,000</td>
</tr>
<tr>
<td>Vietnam</td>
<td>160,000</td>
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<tr>
<td>Other countries</td>
<td>2,410,000</td>
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</table>


3. National policy on illegal migrants in regard to regularisation

In US federal system, adopting immigration legislation is not unproblematic. In recent years, a number of legislative proposals have been tabled, none of which however have been passed. (Numbers USA 2008) The following two acts failed:

*Immigration Reform Act of 2004*

The bill would have granted permanent residency to authorized immigrants who are in the U.S. for at least five years and have worked at least four of those. Moreover they would have needed to pass national security and criminal background checks, pay all federal taxes and demonstrate knowledge of English and American civic requirements. The filing fee would have been $ 1000.82

*Unity, Security, Accountability and Family Act*

This legislation would have extended permanent residency to undocumented immigrants who have been in the U.S. for at least five years, and would have provide conditional residency to those who have lived in the U.S. for less than five years.83

The following regularisation proposals are currently being debated by the U.S. Congress:

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H.R. 371 AgJOBS Act of 2007
The proposed legislation is a slight modification of the AgJobs Act of 2003 which did not become law. It would allow unauthorized alien farm workers to obtain a blue card, which would grant temporary legal status for themselves and their families if they have worked in the United States at least 863 hours or 150 work days during the last two years and furthermore have not been convicted of any felony. Subsequently they can apply for legal residency if they have worked 100 work days per year each of the first five years following enactment or 150 work days per year each of the first three years following enactment in agriculture in the United States.84

H.R. 454 HRIFA Improvement Act of 2007
The bill would allow Haitians whose amnesty was denied within the Haitian Refugee Immigration Fairness Act (HRIFA) 1998 to reapply for amnesty. Moreover it would grant amnesty to children whose parents applied for amnesty for them when they were minors, but who have since become adults.85

S. 330 Border Security and Immigration Reform Act of 2007
The proposed legislation would create a new ‘guestworker nonimmigrant visa program’, under which unauthorized immigrants who are unlawfully employed as of January 1, 2007, would have one year following the implementation date to be fingerprinted and registered.86

S. 2205
A bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes. The legislation would permit unauthorized immigrants who have been in the U.S. for five years, where younger than 16 years old at initial entry, have not reached the age of 30 years and have graduated from a U.S. high school to obtain a six-year temporary status. During the 6-year period, the student would be required to graduate from a 2-year college.87

4. Regularisation programmes
The most important regularisation programme is the Immigration Reform and Control Act (IRCA) of 1986, which was a response to the increased numbers of unauthorized immigration from Mexico to the United States since the end of the Bracero Programme in 1964. The Programme set up in 1942 during World War II by U.S. and Mexican governments should compensate the growing demand for labour in the United States. On average 200,000 Mexicans labourers were recruited annually to work in the U.S. industry on a temporary basis (Bean et al. 1990). Civil wars in Central and South America in the 1970s and 1980s brought also an increasing number of refugees to the United States. In 1977 the Select Commission on Immigration and Refugee Policy was founded. The committee’s final report, which indicated the urgency of tackling unauthorized immigration, was the basis for the IRCA (Levinson 2005). The IRCA included legalization for two categories of unauthorized migrants:

- Unauthorized immigrants who could show that they have been living illegally and continuously in the U.S. since at least January 1, 1982 could apply to the

85 http://www.govtrack.us/congress/bill.xpd?bill=h110-454
87 http://www.govtrack.us/congress/bill.xpd?bill=s110-2205&tab=summary

- Unauthorized immigrants who had worked for at least 90 days as agricultural workers during the past three years could apply to the Immigration and Naturalization Service for legal resident status between June 1, 1987 and November 30, 1988.

To prove continuous residence, unauthorized migrants were allowed to use different documents such as driver’s license, gas, electric or telephone bills, bank statements, etcetera. They also had to demonstrate that they had not been convicted of any felony, or of three or more misdemeanors in the United States (Amuedo-Dorantes 2008). Filing fees were approximately $185 (Cooper/O’Neil 2005), but poor families were eligible for fee waivers to obtain a temporary legal status. During an additional eighteen months migrants could apply for long permanent residence status by proving basic citizenship skills, such as a minimal understanding of English and of U.S. history and government. To this end, they had to pass a test or provide proof of having satisfactorily pursued a course of study, e.g., English and U.S. History/Government courses in a certified institution (Amuedo-Dorantes 2008).

About 3 million undocumented immigrants, the majority of whom were Mexicans, applied for legal resident status under both categories. 1.6 million undocumented immigrants obtained general amnesty and 1.1 million were regularized as Special Agriculture Workers. Several studies conducted after the IRCA concluded that the regularization program had no impact on the size of the unauthorized immigrants entering the U.S. and particularly asserted that the programme did not include all unauthorized migrants. For example those who entered the United States after 1982 were not covered (Levinson 2005). The average regularisation process lasted two years. More than 95 percent of legalizations took place between 1989 and 1991, and had a high rate of success — about 9 out of 10 applicants obtained LPR status (Rytina 2002).

In 1994, Congress added Section 245(i) to the immigration law. This clause permitted adjustment of the status of aliens who had either entered the US illegally or overstayed the term of their visa. This ‘de facto amnesty’ initially ran from 1995 early 1998. By the end or 1997, more than half a million aliens had been granted a status adjustment. The ‘Life Act’ of 2000 reinstated the regularization procedure under Section 245(i). Applications could be filed until 30 November 2002, by aliens who were present in the US on 21 December 2001 and who were sponsored either by their employer, or by an adult relative who was a US citizen or a legal permanent resident. (Numbers USA 2008)

In 1997 the Nicaraguan Adjustment and Central American Relief Act (NACRA) gave Nicaraguans and Cubans, who were illegally residing in the U.S. at least since 1 January 1995 as well as their spouses and children the opportunity to apply to the Immigration and Naturalization Service for legal resident status before April 1, 2000. Almost 1 million undocumented immigrants obtained general amnesty.

In 1998 as part of the Haitian Refugee Immigration Fairness Act (HRIFA) all Haitians, who were living illegally in the U.S. at least since December 1, 1995, their spouses and children could apply to the Immigration and Naturalization Service for legal resident status before April 1, 2000. It is estimated that about 125,000 undocumented immigrants were regularized under HRIFA. (Numbers USA 2008)
Under the Late Amnesty of 2000 legal resident status has been granted to about 400,000 unauthorized immigrants, who claimed that they should have been illegal in the country since before 1982 and should have been amnestied under the IRCA of 1986.

In 2004, President Bush presented the Fair and Secure Immigration Reform, a proposal for a guest worker program whereby three-year temporary permits, renewable once, would be offered to undocumented migrants in the USA as well as potential migrants abroad. Upon expiration of the visa, the worker would be required to return to his or her home country permanently. Also in 2004, the Immigration Reform Act was proposed, offering permanent residency to those who could meet all of six requirements: (1) presence in the USA for more than 5 years; (2) employment for at least 4 years; (3) passing security and criminality checks; (4) no outstanding tax debts; (5) demonstrated knowledge of English and understanding of American civic citizenship; (6) payment of a fine of $1,000. Neither of these bills was passed, nor any of nine other detailed proposals made since 2003 and dealing directly or indirectly with regularisation of irregular migrants. (Levinson 2005: 19-22)

5. Conclusion

With an estimated 12 million illegal immigrants, and an estimated annual irregular inflow of 500 thousand, illegal immigration is a salient political issue in the United Status. Nonetheless, none of the policy measures proposed since 2000 to address this situation have made it through the legislative process successfully.
6. References


Legislation

H.R. 440 Security, Accountability and Family Act 2004, Available at: 
H.R. 454 HRIFA Improvement Act of 2007, Available at: 
S. 330 Border Security and Immigration Reform Act of 2007, Available at: 
S. 2205 A bill to authorize the cancellation of removal and adjustment of status of 
certain alien students who are long-term United States residents and who entered 
the United States as children, and for other purposes, Available at: 
S. 2010 Immigration Reform Act 2004, Available at: 