

**Policy Department C  
Citizens' Rights and Constitutional Affairs**



**TRENDS ON REGULARISATION OF THIRD COUNTRY  
NATIONALS IN IRREGULAR SITUATION OF STAY  
ACROSS THE EUROPEAN UNION**

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**Directorate-General Internal Policies  
Policy Department C  
Citizens Rights and Constitutional Affairs**

# **TRENDS ON REGULARISATION OF THIRD COUNTRY NATIONALS IN IRREGULAR SITUATION OF STAY ACROSS THE EUROPEAN UNION**

## **BRIEFING PAPER**

### Résumé:

The number of immigrants settling illegally in Europe has increased largely. The European member states have developed different strategies of response. One is legalisation and regularisation politics. Between the European countries, the politics on regularisation varies widely. The documentation on „Trends on regularisation of third country nationals in irregular situation of stay across the EU“ is gathering together information and data on regularisation processes in Europe. Further, it presents available statistics and bibliography.

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# **TRENDS ON REGULARISATION OF THIRD COUNTRY NATIONALS IN IRREGULAR SITUATION OF STAY ACROSS THE EUROPEAN UNION**

## **EXECUTIVE SUMMARY**

Regularisation of third country nationals in the member states of the European Union is a policy area, which is rather widely undocumented. There are some comparative studies available, however, which are dealing with selected countries. An overall, documentation of legal and policy developments is not available. Reliable statistical data about illegal immigrants and about the multi-level and multi-area policy of regularisation in European states do not exist.

The documentation presented is based on the methods of investigation. Firstly, the literature was previewed, evaluated, and data and information were extracted. Secondly, telephone interviews were carried out with various experts and specialists known from other studies developed by the institution responsible for the present documentation. Thirdly, a questionnaire with the purpose to establish a systematised base of information was sent to academic and administrative experts. These information gathering by questionnaires was the main basis for the presentation of the final documentation.

With regard to statistical data, all available sources were under scrutiny and numbers extracted. However, it is still rather difficult to get these data due to the differences of procedures in each European country.

In terms of methodology, the main problem was the variety of definition and further the lack of any official definition of regularisation in the European context. Regularisation programmes are not only administrated by government institutions but by various non-governmental organisations as for example by the International Organisation of Migration as an international organisation but as a non-member of the United Nations system.

The central outcome of the study is that migration policy institutions in the European framework are at least aware of the necessity of regularisation processes in the area of migration management procedures. In many European countries, legalisation and regularisation processes are discussed at various political platforms. In some countries, traditions or histories of nation-state-building are influencing these discourses and institution building. Such institutions are legal frameworks and organisational, administrative establishments.

The main reason for the new debates about legalisation and regularisation is the rising number of illegal immigrants in the European states. This is a central feature of the widely discussed changes in immigration towards the European Union. Most European states are forced to develop political responsibilities for these illegal settlement phenomena. The main forces are obviously pressing European governments to deal with illegal immigrants and residents: Firstly, there is the number of illegal immigration and the necessity of a multi-sectoral policy. Return is one political solution but rather difficult to manage. The behaviour of illegal immigrants and the contested responsibility of the states of origin are limiting the number of returns. Secondly, in some countries, there is a rather widely propagated and openly discussed economic demand for the labour of illegal immigrants which forces governments to establish processes of regularisation.

In various states, there are still political and administrative refusals to deal with regularisation as one of the management solutions for illegal immigration. Even in countries, where debates about regularisation are not welcome, these issues are topics of political conflicts between

administrations and non-governmental organisations as well as issues debated in the mass media and at other platforms of political discussions. Another central clientele of regularisation and legislation efforts are vulnerable immigrants, people who are mentally and physically handicapped. Further, people living with families in short-term residence situations with children born in the country of immigration are considered in the frame of regularisation considerations. Various schemes of humanitarian protection and of toleration are to mention here. Both, the regularisation for vulnerable immigrants and the regularisation as toleration, should be covered by a general reflection of regularisation programmes in Europe. In many of such cases, international law is intervening into the national political debates of dealing with illegal immigration and with regards to the establishment of new regularisation programmes.

Regularisation processes can be established for certain population groups. Collective regularisation has been the case especially with regard to illegal immigration based on the demand for labour, as for example in Spain, where a large number of illegal immigrants got a regularised residence, due to having more or less a regular employment status. Other regularisation processes were defining groups just by their time span of settlement as immigrants, as for example in Italy where large numbers of illegal immigrants were regularised. In some new nation states, as for example Estonia, special groups were defined due to cultural divisions. In some countries with such group definitions the regularisation processes were pre-defined by quota policies.

One of the central issues in regularisation is how to deal with people who were staying for rather long periods in the country of immigration. Here, solutions were developed in countries like Germany. In this country, two interesting solutions can be identified: On the one side, there are group-oriented regularisations, where groups are defined by a certain time span. On the other side, there are individual procedures through hardship committees (*Härtefallkommissionen*). Another group-specific phenomenon based on cultural relationship is the diaspora programme in Portugal, the „Lula-Agreement“. Brazilians with irregular stay in Portugal were regularised but there is no data and analysis available.

The definition of regularisation differs from country to country despite the efforts of the European Commission to develop a European international protection, immigration and integration management system. The comprehensive essay on „Regularisation operations in Europe and criteria of eligibility“ of Joanna Apap contains a most interesting typology of criteria which have been developed for regularisation processes in Greece, France, Spain, Italy, the Netherlands, the United Kingdom and Belgium.<sup>1</sup> These criteria are extracted from argumentations in various regularisation policies and legal provisions. The first is geographical and refers to the stay in the country where regularization is demanded for. The second criterion is economic and refers to labour market demands and to the integration into labour markets. The third criterion is the humanitarian one, which refers to human rights considerations in the country of possible return. The fourth has to do with procedures related to problems of international protection. The fifth criterion has to do with health of the applicant and the sixth with family relations. The seventh has to do with quantitative problems and the eighth with nationality and the country origin. The other criteria, are related to social integration, professional qualification and to the national interest or threats to public order.<sup>2</sup>

The other type of regularisation processes is managed individually. In this frame, only personal efforts and applications are considered for a regularised form of residence. In many

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<sup>1</sup> Apap, Joanna: Regularisation operations in Europe and the criteria of eligibility, *Revue du droit public et de la science politique en France et à l'étranger*, (Review of Public Law and Political Science in France and Abroad) 1997, p. 1228).

<sup>2</sup> Joanna Apap (2005) – The conditions of regularisations in Europe, Lecture delivered at the Université Libre de Bruxelles, Odysseus Summer School.

countries, these forms of individual regularisation are part of a general group-oriented definition of who should be regularised or not. One of the main regularisation issues in this policy area is family reunification. This is based on international legal and European legal considerations.

Statistical data are rather scattered. Most of the data are related to estimations of illegal migrants and residents. Indicators are the number of people refused at the borders, apprehended by police authorities or removed by administrations to neighbouring countries or the countries of origin. These numbers are in themselves rather problematic and referring just to police and administrative activities, not to the migration flows themselves. They are not presenting tourists and asylum seekers. The numbers of illegal residents are more or less estimated in general, but these figures are presented in statistics. Even when trying to present data over time, as it was done in the European Report on Statistics of Migration and Asylum, the data shown as rather problematic: The numbers change for each category in each year. With some exceptions, most data available for regularisation processes are until now, only estimations.

For a national discussion of regularisation in Europe, two levels have to be distinguished. One level is the urgent necessity of regularisation processes for many undocumented migrants who are not in positions to be returned. Here, regularisation processes must be considered on two levels: One is based on regional and national necessities. Such necessities have to be discussed and developed on the regional and local level and then transferred to local, regional or national programmes. Even European frameworks might be based on comparison with these various local and regional procedures. The second area of urgent action is based on international law. Here, issues of health, family and vulnerability have to be discussed. The European Commission is dealing with these problems.

Political discussions and decision must be based on reasonable information. This information is still missing. The European and national policy makers urgently need comparable data and numbers with regard to the estimation of illegal residents and more so on regularisation processes of various kinds themselves. A convincing European policy needs an information background about national procedures, experiences and an overview of national procedures and projects in the area.

The diversity of national policies are contradicting a common European parliamentary policy. A European regularisation framework needs information about national policies which are more or less based on different circumstances of immigration and illegal residence as well as on traditions of integration and settlement policies in various states. Further, for a European regularisation policy debate an overview about the legal frameworks in the various European states and regions is still missing. The various legal codices are necessary. These codices have to be at least embedded in a wider contextual analysis.

Regularisation and legalisation are an obvious necessity for a European migration management policy. The aim of reducing the numbers of illegal residents in Europe is not solved just by return measurements. Solutions in the area of regularisations is an urgent policy area for the institutions of the European Union.

The documentation on „Trends on regularisation of third country nationals in irregular situation of stay across the EU“ is presenting country overviews and secondly statistical data. Bulgaria's and Spain's legal frameworks are annexed, it contains a bibliography and details with regard to interviews and written information from different countries.

The report is based on country studies. Each country study has been discussed with experts of the area and is based on the available literature as well as on the outcome of a formal questionnaire in experts and administrative communities of the related country. Each report is

divided into five main areas of investigation. First, the definition of illegal migrants of the respective country is presented. Second, there are information and data on the number of illegal immigrants or residents presented. Third, the definition of regularisation in the respective country is discussed. Fourth, the history of regularisation and legislation programmes is presented, the forms and criteria of these processes are shortly discussed. The fifth part of the report is dealing with current public and political debates and developments in the country.

We have reduced the information to the most necessary areas of regularisation processes. But even with respect to these rather restricted areas of research, we have not found enough data and information for all countries. The main outcome is that there is a general problem with common legal and sociological terminologies, with the common understanding of what illegal immigration and residence as well as regularisation might mean. Further, the regularisation programmes are so various that a common classification and categorisation for the European debate is not possible until now.

<b>Country</b>	<b>Definition of illegal migrants</b>	<b>Definition of regularization</b>	<b>Regularization programs – forms and criteria of regularization processes</b>	<b>Current debates and developments</b>
<b>Austria</b>	Yes	Yes	Individual	Yes
<b>Belgium</b>	Yes	No	Individual/Collective <i>(Belgium's large-scale regularization program was carried out in 2000)</i>	No
<b>Bulgaria</b>	Yes	No data available	Individual	No data available
<b>Cyprus</b>	No data available	No data available	No data available	Yes
<b>Czech Republic</b>	Yes	No	The current government rejects any kind of regularization	Yes
<b>Denmark</b>	Yes	Yes	Individual	No
<b>Estonia</b>	No	No data available	Individual	No
<b>Finland</b>	No data available	No data available	No data available	No data available
<b>France</b>	No data available	No data available	Individual/Collective <i>(Two programs were implemented: 1981-1982 and 1997-1998)</i>	Yes
<b>Germany</b>	Yes	Yes	Individual/Collective <i>(Eight programs were</i>	No



			<i>implemented: 1987-1990; 1993-1996; 1999- 2001; 2002-2006, 2007)</i>	
<b>Greece</b>	Yes	Yes	Individual/Collective <i>(Three programs have been implemented: 1998, 2001, 2006)</i>	yes
<b>Hungary</b>	Yes	No	No data available	No
<b>Ireland</b>	Yes	No data available	Individual/Collective <i>(The naturalization of children born in the country can be regarded as a certain form of regularization)</i>	Yes
<b>Italy</b>	No data available	No data available	Individual/Collective <i>(Programs have been enacted: 1986, 1990, 1995, 1998, 2002)</i>	No data available
<b>Latvia</b>	No	No data available	No data available	
<b>Lithuania</b>	No	No	Individual <i>(Regularizations took place in the years 1996, 1998 and 2004 in spite of the absence of actual programs)</i>	No
<b>Luxemburg</b>	No data available	No data available	Individual/Collective	No data available
<b>Malta</b>	Yes	No	Individual	No data available
<b>The Netherlands</b>	Yes	No	Individual	Yes
<b>Poland</b>	No data available	No data available	Individual/Collective <i>(The Aliens Act 2003 represents Poland's first regularization program for unauthorized migrants)</i>	Yes
<b>Portugal</b>	Yes	Yes	Individual/Collective <i>(The 'Lula Agreement' was implemented in 2003)</i>	Yes
<b>Romania</b>	Yes	No	No	No

<b>Slovakia</b>	No data available	No data available	No information on current regularization programs or processes could be identified	No
<b>Slovenia</b>	No data available	No data available	No information on current regularization programs or processes could be identified	No data available
<b>Spain</b>	No	No	Individual/Collective ( <i>arraigo social</i> ((art.45.2.b) RD 2393/2004); February 2005, and <i>arraigo laboral</i> ((art. 45.2.a) RD 2393/2004) August 2005)	Yes
<b>Sweden</b>	Yes	Yes	Individual/Collective ( <i>Recent program between November 2005 and March 2006</i> )	Yes
<b>UK</b>	Yes	No	Individual/Collective ( <i>Three programs were implemented: 1974-1978; 1977; 1998-1999</i> )	Yes

## ANNEX

### Trends on regularization of third-country nationals in an irregular situation of stay across the EU

#### AUSTRIA

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##### Definition of illegal migrants

Within the scope of Austrian law, an illegal immigrant is defined as a third country national without the documents necessary for residing in Austria (*Niederlassungs- und Aufenthaltsgesetz* (NAG) 2005, chapter 3).<sup>3</sup>

##### NUMBER OF ILLEGAL MIGRANTS

See: annex.

##### DEFINITION OF REGULARIZATION

Regularization measures are mostly concerned to illegal residents, illegal workers and apprehended migrants and enforced on national level. In this matter, Austria tries to act on the administrative front. The respective decrees are hidden in transition regulations, i.e. change of laws or legal practices, which lead to a backlog in unresolved cases.<sup>4</sup>

The government emphasizes that a residence permit can be granted on the basis of humanitarian reasons and is not a general legalization instrument. They are granted on an individual level and the motives refer to the fait accompli.

##### Regularization programs – forms and criteria of regularization processes

The Ministry of Interior adheres that neither a regularization program nor a general right of residence for illegal residents/ immigrants exists in Austria.<sup>5</sup>

However, prior to the Alien Law of 1992, Austria legalized the employment status of illegal workers, e.g. in 1989 through granting persons who had entered Austria before a particular point in time and worked illegally without a work license (*Beschäftigungsbewilligung*). This meant full social security coverage, which automatically allowed the legalization of the residence status. After the implementation of the Alien Law, similar activities took place in conjunction with the change of law in so called transition agreements (by decree).<sup>6</sup>

Another way of legalizing the illegal status without recourse to the employment is through granting settlement on humanitarian grounds.<sup>7</sup> This is an important tool for allowing family members, who are youth but not any longer of the age of dependence, to get settlement granted. It is also concerned to people who have been rejected as refugees but who may settle because one can not expect them to return home. In addition they should be well integrated

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<sup>3</sup> <http://www.bmi.gv.at/downloadarea/niederlassung/rechtsgrundlagen/NAG-eng.pdf>

<sup>4</sup> Information provided by Dr. Gudrun Biffl, Austrian Institute for Economic Research.

<sup>5</sup> Information provided by Michaela Mucha, Ministry of Interior.

<sup>6</sup> Information provided by Dr. Gudrun Biffl, Austrian Institute for Economic Research.

<sup>7</sup> §§ 72 and 73 Niederlassungs- und Aufenthaltsgesetz (NAG).

(employment being a good sign of integration). In 2006, 7.700 persons received the permanent residence on this basis. 2007 looks as if the same number will be granted.<sup>8</sup>

The criteria which play a relevant role in the procedure, could be identified as the following:

- Geographical location (presence of the applicant on the soil of the Austrian State);
- Economic reasons;
- Humanitarian reasons;
- Family.

### **Current debates and developments**

The most recent legalization program targets care workers<sup>9</sup> in private households. By the end of 2007, all care workers who work on an illegal basis (and who often also reside on an illegal basis) may have their status regularized.

Also, new provisions for asylum seekers whose applications had been rejected are being discussed. According to Biffel, legalization plays an important part in the current political and public discussions.

## **BELGIUM**

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### **Definition of illegal migrants**

In Belgium, there are several categories of undocumented migrants. Generally, these are persons who overstayed their visa, who held a regular status but then lapsed for some reason (e.g. asylum seekers whose claims have been denied), or who entered the country with false documents or without being detected.<sup>10</sup>

### **Number of illegal migrants**

No data available.

### **Definition of regularization**

There is no clear definition of regularization in Belgium legislation.

### **Regularization programs – forms and criteria of regularization processes**

Belgium's large-scale regularization program was carried out in 2000. However, Belgium's motivation did neither originate from economic reasons, nor did it have economic criteria as a requirement for regularization. Instead, it permitted regularization based on the condition that a migrant had received an unresolved asylum petition pending for four years (three years for families with children), or that the applicant was seriously ill or unable to return to his or her own country for humanitarian reasons, or had been in the country for longer than six years.<sup>11</sup>

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<sup>8</sup> Information provided by Dr. Gudrun Biffel, Austrian Institute for Economic Research.

<sup>9</sup> The estimated number of illegal care worker is 40.000 persons.

<sup>10</sup> European Migration Network. Belgium Contact Point. Illegally Resident Third Country Nationals in Belgium: State approaches towards them and their profile and social situation.

<sup>11</sup> See: Greenway, J. (2007): Regularisation Programmes for Irregular Migrants. European Council, Committee on Migration, Refugees and Population.

Congolese and Moroccans dominated the applications, with 17.6 percent and 12.4 percent of the applications, respectively. Rwanda, Burundi, and other countries in sub-Saharan Africa, as well as migrants from Algeria, Tunisia and Turkey were also strongly represented.

Between 1980 and 1999, Belgium granted regularization on a case-by-case basis under exceptional circumstances. For the one-shot regularization program which was implemented in 2000, the applicant had to fulfill the following eligibility criteria:

- to have entered Belgium before October 1999;
- to have had an asylum petition pending for a long period (4 years for individuals, or 3 years for families with minor children) without having been informed about the decision of their case;
- to not be able to return to their country of origin for humanitarian reasons;
- serious illness;
- to have lived in the country for six years without receiving an order to leave in the past five years.<sup>12</sup>

As a reaction concerning the success of the program, on the one hand, for instant, Belgium's Ministry of the Interior reported that the population was not positive about the program. As Levinson (2005) mentioned it was rather seen as a 'necessary harm: the regularization as a phenomenon of the past, which the government had let develop underground', meaning that the government saw fit to legalize those it considered 'lawbreakers' in hopes of starting over with a clean state.<sup>13</sup> Otherwise, the program was appraised by the European Commission Against Racism and Intolerance (ECRI) "as an important measure for speeding up the processing of handling asylum applications"<sup>14</sup> and recommended further activities in this direction.

## **BULGARIA**

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### **Definition of illegal migrants**

See: annex.

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

The Migration Directorate of the Ministry of Interior points out that there has not been any regularization programs in Bulgaria. The current legislation does not provide any framework for such programs, so the Ministry. However, some decisions on an individual basis took place during the last years.<sup>15</sup>

### **Current debates and developments**

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<sup>12</sup> Levinson, A. (2005): *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*. University of Oxford, p. 61.

<sup>13</sup> Ibid, p. 58.

<sup>14</sup> Ibid, p. 58.

<sup>15</sup> Information provided by the Migration Directory, Ministry of Interior of Bulgaria.

No data available.

## **CYPRUS**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal immigrants**

Cyprus is one out of five EU Member States where the majority of non-nationals are from other EU countries. Third-country nationals make up 5,7 percent of the total population.<sup>16</sup> According to the Cyprus Embassy, 5.287 illegal immigrants resided in Cyprus in the year 2004, and 5.175 in the year 2005. However, the quality of the data should be dealt with great care.

See also: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

No data available.

### **Current debates and developments**

In order to encounter the increasing number of illegal immigrants entering Cyprus, the Office of Combating Illegal Immigration was established in 2004.

## **CZECH REPUBLIC**

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### **Definition of illegal migrants**

An illegal immigrant/ resident is an alien who illegally entered or stays in the territory of the Czech Republic. Individual types of illegal entry or stay are defined in section 119 of the Alien Act no. 326/1999 Sb.<sup>17</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

According to the information provided by the International Organization for Migration (IOM) Prague, there is neither an official definition of regularization in the Czech legislation, nor are there any regularization programs or forms of regularization.<sup>18</sup>

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<sup>16</sup> Country Profile Cyprus. Migrant Integration Policy Index 2007, <http://www.integrationindex.eu/integrationindex/2319.html>

<sup>17</sup> [Act No. 326 of November 30th, 1999 on Residence of Aliens in the Territory of the Czech Republic \(Unofficial version as of 28 April 2006\)](#)

## **Regularization programs – forms and criteria of regularization processes**

As mentioned above, no regularization program could be identified in the Czech Republic. Sladkova, Head of the Office of IOM Prague, states that the current government is totally against any kind of regularization. NGOs which are involved in the regularization issue, however, try to broach the issue in the mass media and to initiate public discussions.

## **Current debates and developments**

As Sladkova reports, one main goal is to find systemic solutions for illegal migration in the Czech Republic. One of the possibilities which have been discussed between NGOs and state institutions (mostly the Ministry of Interior, the Ministry of Labor and Social Affairs, and the Ministry of Education, Youth and Sports) refers to regularization measures. The discussion about regularization between NGOs and state institutions (Ministry of Interior) has started only a few years ago and is still in progress.

One regularization project was carried out by a NGO in 2005. The main goal of the project was to lobby for legislative changes in order to improve the situation of irregular migrants living in the Czech Republic and ultimately to reduce the flow of irregular migration.

Furthermore, the Counseling Centre for Refugees and the Organization for Aid to Refugees realized a campaign called *Amnesty for Foreigners* in the beginning of 2005. The primary aim was not to support irregular immigrants who had crossed the borders illegally but to help those foreigners who were affected by the change of legislation in the 2000. The amendment of the Alien Act includes more strict entrance and stay conditions for foreigners. Many foreigners lost their legal status (in most cases a long-term status). Some of them left CR, others tried to solve this situation by entering the asylum procedure and finally a lot of them refused to leave the Czech Republic and remained on the Czech soil as illegal aliens. The original aim for such amnesty was to enable the foreigner to regain the type of status he or she had prior to the 2000 amendment. The secondary aim of the project was to heighten the awareness of migration problems among the Czech public. The Counseling Centre for Refugees and the Organization for Aid to Refugees suggested at least partial solutions in form of legislative regulations that in their final impact should show the same result as limited special regularization. Unfortunately, these attempts remained without results.

The campaign called *Regularization of Illegal Migration* was continued by a follow-up campaign *Regularization of Illegal Migration II*. Sladkova states that both were realized by the Counseling Centre for Refugees, the Organization for Aid to Refugees, People in Need, the Multicultural Centre Prague and the Counseling Centre for Citizenship, Civil and Human Rights. The campaign was aimed at the public as well as the representatives from the state sector, politicians and experts. The topic became further known during a public hearing in the Senate on 8 November 2005. According to Sladkova, the hearing was perceived with great interest by experts on migration, foreigners themselves and journalist (articles were published).

The main and most recent success of *Regularization of Illegal Migration II* was the amendment of the Education Act by the Parliament. IOM Prague hopes that irregular migrants will thus soon reach access to primary education as granted by the Convention on the Rights of the Child, article 28. Until now, this has not been the case.

Currently, the campaign *Regularization as one of the instruments used to combat illegal migration* has been initiated by the Counseling Centre for Refugees, the Organization for Aid

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<sup>18</sup>

Information provided by Lucie Sladkova, Head of the Office of IOM Prague.

to Refugees, the Multicultural Centre Prague and People in Need. The campaign is financed by EAA and administered by the Civil Society Development Foundation (NROS). Among others, the aim is to raise the awareness of the general public and to open public discussion about regularization of illegal migration as a working tool for combating problems directly attributed to illegal migration in the European and Czech society. It is particularly aimed at strengthening rights, especially concerning access to health care, the right of family and private life of irregular migrants residing in the Czech Republic through proposing system and particular changes of migration policy and legislation.

## **DENMARK**

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### **Definition of illegal migrants**

According to the national law, an illegal immigrant/ resident is defined as a person who either entered the country without the required permit and/ or a person who overstayed their temporary permit (study or tourist visa).<sup>19</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

As far as the Academy of Migration Studies (AMID) reports, in Denmark, the term regularization is usually used in cases where a foreign national employee may be allowed to convert his or her immigration status from a visitor status to a work status while remaining on Danish territory. Once, the person has received a work permit, she or he is allowed to submit an application to regularize her or his status in order to obtain a work and residence permit. Therefore, according to the Danish migration authorities, regularization relates to the process of giving a permit of residence as well as an adequate status to person already residing legally in the country.

### **Regularization programs – forms and criteria of regularization processes**

According to information provided by the Danish Ministry of Refugee, Immigration and Integration Affairs, Denmark does not use or consider to introduce any type of regularization programs. Bak Jorgensen from the Academy of Migration Studies in Denmark (AMID) points out that the Danish State is against any forms of regularization. In this sense, Denmark has also considered regularization programs in other EU-countries critically.

Due to this fact, third-country nationals in irregular situation of stay are not eligible to apply for a work and/ or residence permit. In principle, residence permits should be obtained before entering the Danish territory. In cases where the application must be submitted in Denmark, the applicants are granted a procedural residence (e.g. asylum seekers).

Only on ad-hoc basis and on individual level, cases of regularizations have taken place in Denmark. Most of these cases concern women who lost their legal permit to stay in consequence of a divorce to a Danish man. Also, the Danish authorities issue regularizations for mental and physical diseased applicants. In 1993, a number of Ex-Yugoslavians were granted a long-term but still temporary residence permit.

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<sup>19</sup> Information given by the Academy of Migration Studies Denmark (AMID).



## **Current debates and developments**

A political debate on whether or not to have regularization programs is not taken place. According to the Danish Ministry of Refugee, Immigration and Integration Affairs Some discussion can be observed with regards to rejected asylum seekers (esp. Iraqis) who cannot be returned. Instead of a discussion about the use of regularization programs, the emphasis is currently attached on whether the legal framework and administrative practice is too restrictive or not.<sup>20</sup>

There was heavy criticism in the Danish media as a result of using 'motivation measures' towards asylum applicants even when it was not possible to return them. This also applied to cases when they had given consent and co-operated, and in cases where voluntary return was not supported by the UNHCR.<sup>21</sup>

## **ESTONIA**

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### **Definition of illegal migrants**

According to the Citizenship and Migration Policy Department/ Ministry of the Interior of the Republic of Estonia, the Estonian legislation does not 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.<sup>22</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

According to the *Obligation to Leave and Prohibition on Entry Act* there is only one possibility to legalize a person's status. A residence permit pursuant can apply for legalizing his or her stay in Estonia if he or she is staying in Estonia without a basis of stay and who is of Estonian origin; or settled in Estonian 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 regulation to legalize includes a warning to impose penalty payment on the alien upon failure to comply with the precept.

Regularizations are processed individually and case-by-case. The regularization norms are stated in the law and are therefore permanent.

Despite some existing legalization frameworks for aliens (as mentioned above), the Citizenship and Migration Policy Department reports that Estonia does not have any specific regularization program.

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<sup>20</sup> Information given by the Danish Ministry of Refugee, Immigration and Integration Affairs.

<sup>21</sup> European Migration Network (2006): Report Denmark on Migration and Asylum 2003.

<sup>22</sup> See also: Obligation to Leave and Prohibition on Entry Act.

As the Department informs, regularization measures also applied in the following cases:

- Residents of the former Soviet Union<sup>23</sup> were allowed to apply for a residence permit in Estonia (persons who settled in Estonia before 1 July 1990 and had not left Estonia to reside in another country). These measures took place from 12 July 1993 to 30 April 1996 and was considered a form of regularization. (fait accompli)
- The possibility to submit an application for a residence permit *in* the country has been considered initially as one form of regularization. It started 01.10.1999 and was targeted to illegally staying persons in Estonia. Though, it has expanded to other migrant groups now. It can not be considered purely as a form of regularization anymore, once it is becoming more a privilege of some migrant groups. (protection)

Furthermore, economic and humanitarian reasons, health (the effects to the person's health when the application is rejected), established long-term family relationships, level of integration, and academic or professional qualification of the applicant are relevant criteria in the regularization process.

A residence permit will not be given if by the time of decision the immigration quota is full.

Residents of the former Soviet Union who intended to stay in Estonia had to submit their applications for residence permits before 12 July 1994. Once it was discovered that about 90 percent of aliens had failed to submit their application on due time, the deadline was prolonged for one year and then again until 30 April 1996. The Citizenship and Migration Policy Department regards the program as successful considering the high number of aliens who were documented during this procedure.

### **Current debates and developments**

The Citizenship and Migration Policy Department points out two changes on legislative level. Firstly, since 30 September 1999 the applicant can submit his or her application for a residence permit in Estonia, whereas he or she previously had to do so in an Estonian representation abroad.

Secondly, while an approval from the Minister of Interior was required, the Citizenship and Migration Board is now also allowed to give the approval following an amendment in the year 2000.

Currently, there is no regularization program in progress nor is there any public discussion about regularization programs in Estonia.

## **FINLAND**

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### **DEFINITION OF ILLEGAL MIGRANTS**

No data available.

### **Number of illegal migrants**

See: annex.

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<sup>23</sup> Most legally-residing non-Estonian nationals are not immigrants who crossed Estonia's international border, but Russians and their descendents who migrated inside the former Soviet Union. See: <http://www.integrationindex.eu/integrationindex/2347.html>

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

No data available.

### **Current debates and developments**

No data available.

## **FRANCE**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal migrant**

See: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

According to the Committee on Migration, Refugees and Population<sup>24</sup>, two large-scale regularization programs have been implemented since 1981. Both programs provided permanent legal status to large numbers of immigrants. An explicit goal of these programs, and of French immigration policy in general, has been to facilitate the economic and social integration of immigrants in France. The 1997 Chevenement laws also aimed to provide legal status to those seeking family reunification and to families with children.

This was followed by a 1998 law that allowed third-country nationals, who had been in the country for 10 years or longer, to apply for legal status on a case-by-case basis. However, France's new immigration law, adopted in July 2006, abolished this system, and seeks a new approach to managing migration. It explicitly favors the recruitment of skilled migrants, limits access to residence and citizenship and puts strict limits on immigration for the purpose of family reunification. In addition, the government has recently deported thousands of people, including many families with school-aged children, for not having the required documents.

	<b>Regularization program- eligibility criteria<sup>25</sup></b>
<b>1981-1882</b>	<ul style="list-style-type: none"><li>• Initially restricted to those who could prove stable employment or a work contract valid for a year.</li><li>• Later the program was extended to include many categories of irregular migrants.</li></ul>

<sup>24</sup> Greenway, J. (2007): Regularisation programs for irregular migrants.

<sup>25</sup> See: Levinson, A. (2005): The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies. University of Oxford, p. 43ff.

Although, the 1981 legalization program had a number of unforeseen complications, the program promoted a dialogue between the French government and immigrant communities. According to a study by SOPEMI (1989), the government conducted a successful advertising campaign in cooperation with immigrant organizations as well as a research program to allow the government to understand the characteristics of the irregular population.

While the 1997-1998 program has been praised for providing an avenue for permanent regularization on an on-going basis (and those regularized under a permanent regularization program are apparently beginning to increase), its limited scope and lengthy residence requirements have not solved the issue of irregular migration to France.

### **Current debates and developments**

The Committee on Migration, Refugees and Population reports that on the one hand, some social researchers challenge that the French State could be able to regulate the unauthorized migration phenomena. Others regard regularization schemes as important instruments, but argue, that the program effectiveness is reduced by restrictive policies.<sup>26</sup>

## **GERMANY**

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### **Definition of illegal migrants**

In German law, there is no definition which specifies an illegal immigrant. The Ministry of Interior determines an illegal immigrant as „... a foreigner who has no residence title, no toleration and who did not inform the German authorities about his/ her detention in Germany (Ministry of Interior, 2007: 6).“<sup>27</sup>

Generally, any third-country national who does not fulfil, or no longer fulfils the conditions for stay or residence in Germany is considered an illegal resident. If an immigrant does not submit an asylum application, remains in the country subsequent to his or her rejection as an asylum applicant or overstays his or her permit, the status of the person is regarded as undocumented or illegal.

Even though an immigrant may have entered the German territory illegally, he or she is still eligible to seek for asylum. In this case, the illegal status will immediately be replaced by a permission to reside (*Aufenthaltsgestattung*), a temporary permit to stay for the duration of the application process. Is the applicant rejected, he or she will maintain the tolerated status until he or she is forced to return or will leave voluntarily.

### **Number of illegal migrants**

In the years 2004 and 2005, the number of undocumented migrants in Germany was estimated between 500.000 and 1 000.000 persons.

See also: annex.

### **Definition of regularization**

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<sup>26</sup> Ibid, p. 44.

<sup>27</sup> See also: Art. 14 § 1, Art. 95 §§ 1, 2 of the German Residence Act.

In a broader sense, obtaining a toleration (*Duldung*), i.e. a temporary permit to stay, is sometimes regarded as a regularization without granting a perspective of residence.<sup>28</sup>

A special kind of right of residence (*Altfall- und Bleiberechtsregelungen*) allow an extension of stay for tolerated rejected asylum seekers in Germany. Ten such cases were realized between 1991 and 2000. Some social researcher argue that these multi-phase processes can be interpreted as individual and permanent regularization.<sup>29</sup>

### **Regularization programs – forms and criteria of regularization processes**

In Germany, no official regularization program has been realized so far. However, procedures in individual cases have been realised and a number of programs which processed actions comparable to regularizations have been carried out.

Until now, eight programs were implemented (1987, 1990, 1993, 1996, 1999, 2001, 2002, 2006, 2007) which mainly target the group of tolerated residents.<sup>30</sup> The most recent program is the so called regulation of the right of residence which can be granted to tolerated and rejected asylum seekers (*Bleiberechtsregelung*) (§§ 104 a, 104 b Residence Act) and began 28 August 2007. The program's legislation is based on the Alien's Act established 1990 and on the latest amendments of the Residence Act (*Aufenthaltsgesetz*) in 2007<sup>31</sup> On the institutional level, the emergence of an increased public-political discussion is often connected to the growing number of tolerated residents.

Even though no regularization programs or amnesty campaigns for undocumented migrants have been initiated in Germany, decisions on regularization have been made in individual cases (*Altfall- und Bleiberechtsregelungen*) focusing on hardship cases<sup>32</sup> as well as on victims of trafficking. These measures were restricted to specific nationalities or groups with a certain status of stay in conjunction with special requirements which the applicant had to fulfil, e.g. no criminal offences, economic autonomy. The motives of these actions are for humanitarian reasons.

The jurisdiction of regularization programs lies with the national government. Prior to the implementation of the new Alien's Act in 1990, also the governments of the Federal States were authorised to proceed in matters of regularization.

The mentioned programs can be characterized as one-off regularizations whose intention was primarily the reduction of the number of people with a tolerated status. However, in 1993, the shortening of the asylum procedure had taken centre stage, and, in 2002, Bosnian refugees were regularized for humanitarian reasons.

With regards to the most recent regularization program, a third-country national in irregular situation of stay has to submit his or her application to the local administration (*Ausländerbehörde*), if he or she fulfils the following criteria:

- Presence since more than six years (family)/ eight years (singles and couples without children);
- Financial-economic independency from the State (except mothers with children under three years).

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<sup>28</sup> See: expertise for the expert advisory board written by Cyrus (2004).

<sup>29</sup> Information provided by Norbert Cyrus, University of Oldenburg, Germany.

<sup>30</sup> More details are provided in the report of Udo Moerschen who did a presentation about regularization in Germany at the Council of Europe, October 1<sup>st</sup>, 2007.

<sup>31</sup> Art. 25 § 5 of the German Residence Act provides the possibility to get a residence permit for persons holding a temporary leave to remain/ toleration.

<sup>32</sup> Art. 23a of the Residence Act.

## **Current debates and developments**

There seems to be no relevant public-political debate concerning the regularization of illegal immigrants. Only a political minority calls for legalisation measures with regards to third-country nationals in irregular situations of stay.

## **GREECE**

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### **Definition of illegal migrants**

The definition of illegal immigrants/ residents is geared to the EU definition. Therefore, an illegal immigrant or resident is any third-country national who does not, or can no longer fulfill the conditions for entry to, presence in, or residence in the territory of Greece.

### **Number of illegal migrants**

As a new country of immigration, Greece does not systematically collect data on its third-country nationals or flows of irregular migrants. The IOM estimated that in 2003, up to 95.000 Albanians, Romanians and Iraqis entered the country illegally.<sup>33</sup>

See also: annex.

### **Definition of regularization**

In national legislation, regularization is understood as the process through which illegal immigrants become legal in the sense that they can acquire a permit of stay which is also valid for work.<sup>34</sup>

### **Regularization programs – forms and criteria of regularization processes**

In 1997, Greece set up a *Committee for the Regularisation of Illegal Immigrants* which received statements from ministries, trade unions, employer associations and other groups.

Until now, three regularization programs have been implemented (1998, 2001, 2006). The most recent regularization program targeting illegal immigrants, illegal residents and overstayers is based on the Law 3386/2005.<sup>35</sup>

These regularization programs were organized (by law) on national level and provided one-off specific dates for submitting the regularization applications with regard to individual cases.

The main reasons for the implementation of the programs can be identified as the following ones:

- To 'squeeze' the presence of illegal immigrants;

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<sup>33</sup> See: Levinson, A. (2005): *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*. University of Oxford, p. 34.

<sup>34</sup> Information provided by the Center of Planning and Economic Research, Greece.

<sup>35</sup> Ibid.

- To fight against the exploitation of illegal migrant workers in the informal economy;
- To regularize the labor market;
- To increase the public revenues;
- To integrate immigrants into society and the labor market (the regularization is understood as the first step to his or her integration into Greek society).<sup>36</sup>

The motives underlying these processes can be described as fait accompli.

With regards to the criteria framing the process of regularization, it is important to mention that, firstly, only rejected asylum applicants are covered by the national regularization programs. Secondly, the applicant has to verify that he or she is working. This is usually done either by providing proof of a work offer or by independently paying the contributions to the National Social Security System. Thirdly, a serious/ critical state of health constitutes a relevant appraisal criterion and, fourthly, the geographical location, i.e. the presence of the applicant on the soil of the State.<sup>37</sup>

For processing the regularization, the applicant has to undergo a health check. Additionally, illegal residents that apply to legalize their stay have to provide evidence of the duration of their stay as well as evidence for the intention to continue their life in Greece.

Humanitarian arrangements are managed within another legal framework. Economic criteria are not relevant in the process of regularization unless the illegal immigrant should pay certain social security contributions. According to the Hellenic Migration Policy Institute, criteria concerning family, the status of integration of the applicant, the number of regularizations granted or the nationality/ country of origin do not play any role.

Currently, a limited regularization process is still in progress aiming at very specific groups of immigrants:

- Illegal immigrants who entered Greece before 31 December 2004 and who are able to provide evidence for that by means of official documents, e.g. birth certificates/ marriages conducted in Greece before the end of 2004.
- Young immigrants who have completed their studies in a public educational institution.

Considering the institutional level, the regional authorities have to account for the implementation of the programs. On the legislative level, the Center of Planning and Economic Research explains that the strict cut off (past) date of entry to the country serves to prevent new waves of illegal immigrants from entering the country. Further, the evidence required to prove the date of entry is based on documents difficult to forge.

The Center of Planning and Economic Research estimates that the size of the programs' target group is about thirty percent higher than the number of the actual applicants.

The success of the programs has usually been measured by the number of illegal migrants regularized, i.e. the higher the number of regularization, the greater the success of the program. The Hellenic Migration Policy Institute commented that the goal of the Greek authorities in implementing such programs is to regularize the largest possible number of illegal residents/ immigrants.

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<sup>36</sup> Information provided by the Hellenic Migration Policy Institute, Greece.

<sup>37</sup> Ibid.

However, the success of the first regularization program was rather limited since, firstly, many immigrants were excluded from the application process, and, secondly, immigrants who had received the white card often fell back to an irregular status after half a year.<sup>38</sup>

In comparison to its predecessors, the most current regularization program shows an increase of flexibility. When some of the initial criteria of application could not come up to the legalization of illegal immigrants, the possibility of substituting others for these criteria had been existing. Also, the deadline for the application was extended several times in order to include as many different categories of illegal immigrants as possible.

### **Current debates and developments**

Recent policy debates have centered on the need for an efficient migration management and residence permit system, migrant integration policies, and on introducing further regularizations. Questions have been raised over whether integration efforts on paper are matched by implementation.

## **HUNGARY**

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### **Definition of illegal migrants**

According to the Hungarian national law, every person is defined as an illegal migrant against whom the immigration authority may order expulsion and impose an entry ban, or an entry ban shall be imposed in itself in connection with a third-country national whose whereabouts are unknown or who resides outside the territory of the Republic of Hungary. The legal background is given by the Act II of 2007 on the Entry and Stay of Third-country Nationals.

Further on, a person is considered as an illegal immigrant when he or she:

- has crossed the frontier illegally or has attempted to do so;
- has failed to comply with the requirements set out in the Act II of 2007 for the right of residence;
- has failed to comply with the order to leave the territory within the prescribed time limit;
- was engaged in any employment in the absence of the prescribed work permit or any permit prescribed under statutory provision;
- has failed to repay the refundable costs of his or her previous return advanced by the State of Hungary;
- whose entry and residence represents a threat to national security, public security or public policy;
- whose entry and residence represents a threat and is potentially dangerous to public health;
- was returned under international treaty without expulsion to the authorities of another State;
- has failed to pay any fine in conclusion of a misdemeanor proceeding within the prescribed deadline, and it cannot be recovered or collected.<sup>39</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

The Hungarian Office of Immigration and Nationality states that there is no definition of regularization in the current legislation.

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<sup>38</sup> Levinson, A. (2005): *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*. University of Oxford, p. 36.

<sup>39</sup> Information provided by Ilona Szuhai, Office of Immigration and Nationality, Ministry of Interior.



## **Regularization programs – forms and criteria of regularization processes**

Until now, no regularization programs have taken place in Hungary.

### **Current debates and developments**

In recent years, Hungary has perceived itself as a country of transit for asylum seekers and irregular migrants on their way to other Europe countries. Nevertheless, Hungary has also received some asylum seekers and migrant workers from Eastern and Southern Europe. The flows have been dominated by returning ethnic Hungarian minorities from neighboring countries.

Recent policy debates have focused on simplified visas procedures and on facilitated naturalization for returning ethnic Hungarian minorities. When Hungary joined the EU, its southern and eastern border became one segment of the EU's external border, prompting the development of a migration strategy. Although Hungary still lacks a declared integration policy, the current government initiated some debate on a legal and institutional framework, but later withdrew the proposal.

## **IRELAND**

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### **Definition of illegal migrants**

In Ireland, an illegal immigrant is defined as a non-national who enters/ seeks to enter/ has entered the State unlawfully (Illegal Immigrants (Trafficking Act, Section 1(1), 2000). The Immigration Act 2004, Section 5 states that all non-national persons who are in Ireland without permit are unlawfully present. Exceptions exist for asylum seekers, convention refugees, their families and program refugees<sup>40</sup>.

### **Number of illegal migrants**

See: annex.

### **Definition of Regularization**

No data available.

## **Regularization programs – forms and criteria of regularization processes**

The number of illegal immigrants in Ireland has always been low in comparison to estimated levels concerning this matter in other EU-Countries. These low figures underline the reason why legislation and policy around immigration only started to emerge at the end of the 1990s. Besides, the parliament has attached its emphasis on trafficking rather than on the status of illegal immigrants in the State.

The naturalization of children born in the country can be regarded as a certain form of regularization which had been realized in Ireland. These children, irrespective whether their parents resided in Ireland legally or illegally, had an entitlement to Irish citizenship and therefore all the entitlements associated with citizenship. At the beginning of 2005, this

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<sup>40</sup> Quinn, E./ Hughes, G. (2005): Illegally Resident third Country Nationals in Ireland: State Approaches towards their Situation. European Migration Network, p. 12.

handle stopped. Consequently, the family related basis, on which (illegally residing) immigrant parents of Irish children born in Ireland could have claimed residence permits, was deposed.

In recent years, Ireland has passed a number of laws aimed at combating illegal immigration without having established any kind of regularization program.<sup>41</sup>

### **Current debates and developments**

Legislation tendencies are not observable at the present time.

In 2003 and 2004, the Coalition Against Deportation of Irish Children (CADIC) initiated a campaign to promote the regularization of the non-national families of Irish citizen children. Furthermore, the National Consultative Committee for Racism and Interculturalism (NCCRI) recommended regularization measures for these families.<sup>42</sup> Non-national parents of Irish children who were born before January 2005 were invited to apply for residency in Ireland between January and March 2005. Approximately 18.000 applications were submitted and by 12 April 2005 approximately 3.000 of that number had been granted leave to remain.<sup>43</sup>

Also, in 2000, the Catholic Bishops supported the claim for regularization of the status of asylum seekers who had to cope with long delays in the processing of their application. The former Minister for Justice, Equality and Law Reform, O'Donoghue, rejected this attempt.

Quinn/ Hughes state that in 2005 a roundtable was organized to discuss the advantages and disadvantages of regularization programs. Basically, regularization was characterized as an important instrument of migration management.<sup>44</sup>

The policy priorities for 2008 were recently published by the Minister for Justice, Equality and Law Reform, Lenihan T.D., who regards illegal immigration to Ireland as one of the central political arena. The focus will shift more towards the problem of trafficking as well as tackling illegal immigration in general.<sup>45</sup>

## **ITALY**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal migrants**

Italy is a country that is very exposed to migratory flows due to its geographic location. In 2006, 124.383 illegal residents were designated by the police, of whom 36,5 percent (45.449) were effectively repatriated (64,1 percent in 1999). Illegal residents originating from Bulgaria

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<sup>41</sup> Ibid, p. 39

<sup>42</sup> Ibid, p. 39.

<sup>43</sup> Ibid, p.39.

<sup>44</sup> Ibid, p. 40, see also: Immigrant Council of Ireland (2005): Roundtable Discussion on Irregular Migration in Ireland. Carmelite Centre, February 25<sup>th</sup>, 2005.

<sup>45</sup> Garda & Policing: Minister Lenihan publishes Policing Priorities for 2008:

<http://www.justice.ie/en/JELR/Pages/Minister%20Lenihan%20publishes%20Policing%20Priorities%20for%202008>

and Romania were removed (their number decreases to under 100.000 (84.245)).<sup>46</sup> Generally, the total number of illegal immigrants residing in Italy is varying by estimations of different organizations active in the field:

- 200.000 persons according to the ISMU Foundation (Multi-ethnic Initiatives and Studies), an organization with offices in Milan that has been publishing an annual immigration report since 1995;
- 600.000 persons according to the three largest Italian trade unions (CGIL, CISL and UIL); and
- 800.000 according to Eurispes, a research institute that publishes an annual report on the situation in the country.<sup>47</sup>

See also: annex.

### **Definition of regularization**

No data available.

Regularization programs – forms and criteria of regularization processes

Until now, five regularization programs have been enacted.<sup>48</sup> Each of them granted one-off regularizations on the ground of *fait accompli*.

The most frequent eligibility criterion represents the evidence for having resided in the country for a certain period before the date of application. Besides, with regard to the particular regularization programs, the following important criteria had been identified:

	<b>Regularization Programs – eligibility criteria</b>
1986	<ul style="list-style-type: none"> <li>• residence prior to the application date</li> <li>• employer sponsor</li> <li>•</li> </ul>
1990	<ul style="list-style-type: none"> <li>• residence prior to the application date</li> <li>• employer sponsor/ verification for matriculation in an Italian university</li> </ul>
1995	<ul style="list-style-type: none"> <li>• residence prior to the application date</li> <li>• verification for already taken up employment/ for employer sponsor</li> <li>• contribution to the social security system for at least three months</li> </ul>
1998	<ul style="list-style-type: none"> <li>• residence prior to the application date</li> <li>• housing</li> <li>• tax payment on the wages of the applicant by the employer</li> </ul>
2002	<ul style="list-style-type: none"> <li>• Documentation of three months of pension contributions</li> <li>• Verification of continued employment</li> </ul>

<sup>46</sup> Immigration in Italy: Recent Findings. Dossier Statistico Immigrazione Caritas/Migrantes 2007.

[http://www.chiesadimilano.it/or/ADMI/pagine/upload/immigrazione\\_inglese.pdf](http://www.chiesadimilano.it/or/ADMI/pagine/upload/immigrazione_inglese.pdf)

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<sup>47</sup> EMN. Italy Contact Point (2005): Illegally Resident Third Country Nationals in Belgium: State approaches towards them and their profile and social situation.

<sup>48</sup> Levinson, A. (2005): The Regularization of Unauthorized Migrants: Literature Survey and Country Case Studies. University of Oxford, p. 78ff.

Fig. according to Levinson (2005)

According to Levinson (2005), each regularization program has been an „corrective mechanism for the failures of the previous one“.<sup>49</sup>

Further, Levinson points out that the economic importance of irregular immigrants/ residents in the informal sector refers to the most relevant motive for undertaken regularizations. These persons represent potential taxpayer. Therefore, the State has been interested in the establishment of a regulation system to retain check on the irregular workforce in Italy.

Many of the regularized immigrants returned into the underground after their residence permits had been expired. The bondage of a granted residence permit to employment provoke an adverse effect: the encouragement of illegal labor as well as the issuance of false labor contracts.<sup>50</sup>

### **Current debates and developments**

No data available.

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<sup>49</sup> Levinson, A. (2005): The Regularization of Unauthorized Migrants: Literature Survey and Country Case Studies. University of Oxford, p. 39.

<sup>50</sup> See: Miraglia, Filippo (2002): New Law on Immigration in Italy. [www.noracism.org/news01.htm](http://www.noracism.org/news01.htm)

## **LATVIA**

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### **Definition of illegal migrants**

According to the Office of Citizenship and Migration Affairs 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 fulfill the requirements regarding the entering and/or residence in Latvia.<sup>51</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

Following the statement of Iveta Muceniece, Director of European Affairs and International Cooperation of the Office of Citizenship and Migration Affairs, no regularization programs exist in Latvia. Regularizations are examined and decided only on a case-by-case basis. The term 'regularization program' has never been used for these measures as the Director points out.

The Minister of Interior envisions the possibility within the Latvian Immigration Law to grant a residence permit to persons who are not entitled to receive a residence permit in accordance with other regulations of Immigration Law.

### **Current debates and developments**

Newcomers to Latvia encompass mostly family members of Latvian non-nationals who come from CIS countries. In light of a shrinking population and labor market shortages, a handful of studies and conferences have looked at the experiences of Latvian emigrants in Ireland to learn from its transformation into a country of labor immigration. The program for Development of a Comprehensive Migration and Asylum Management System 2005-2009 aimed to align EC migration requirements with Latvia's national interests. Contentious debates erupted over the transposition of EC anti-discrimination Directives.<sup>52</sup>

## **LITHUANIA**

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### **Definition of illegal migrants**

There is no concrete provision describing an illegal migrant. However, the Alien's law points at the difference between being 'illegally present' and 'illegally resident'.

An alien is illegally present if his or her stay exceeds the allowed period of staying without visa; if he or she is still in Lithuania after his or her visa expired; if his or her visa is annulled and he or she did not leave the country; if he or she has a forged travel document; if he or she has a forged visa; if he or she is staying without visa; is staying without any travel document; or illegally arrived to Lithuania.

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<sup>51</sup> Information provided by Iveta Muceniece, Director of European Affairs and International Cooperation, Office of Citizenship and Migration Affairs.

<sup>52</sup> <http://www.integrationindex.eu/topics/2419.html>

An alien is illegally resident if he or she resides without a residence permit; resides with an expired residence permit; has a residence permit which was annulled; has a forged residence permit; or has a forged travel document.<sup>53</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

There is no specific definition of regularization in the national legislation.

### **Regularization programs – forms and criteria of regularization processes**

According to the Ministry of Interior, regularization was possible only after new laws on aliens entered into force. The laws provided the possibility for aliens, who were illegally present in Lithuania, to register in a competent authority and to obtain necessary documents. This law also provides the possibility to obtain permanent residence permits for those aliens, who reside permanently in Lithuania but who are not in the possession of a permanent residence permit. Thus, regularizations took place in the years 1996, 1998 and 2004 in spite of the absence of regularization program.

### **Numbers of the regularizations**

- 51 alien used the possibility of regularization between 17 April 1996 and 31 December 1996.
- 385 aliens registered between 01 January 1999 and 31 March 1999.
- 103 aliens registered between 01 May 2004 and 07 May 2004.

### **Current debates and developments**

There are currently no public discussions on regularization programs within the socio-political scope.

## **LUXEMBURG**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal migrants**

No data available.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

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<sup>53</sup> Data provided by Evelina Gudzinskaite, Ministry of the Interior of the Republic of Lithuania.

During the 1990s, approximately 2.000 Bosnian<sup>54</sup> refugees arrived in Luxembourg, a State with no immigration policy up to that time. Therefore, the refugees were allowed to remain as permanent migrants eligible for naturalization after five years as long as they could find an accommodation and an employment in Luxembourg.

In 1996, when a new crisis flared in the Balkans and the country received refugees from Kosovo, Luxembourg's parliament passed the country's first law regulating asylum and outlining the procedure for application.

In spring 2001 (15 May to 31 July 31 2001), Luxembourg's government launched a regularization campaign to legalize asylum seekers who had remained in the country even after their applications were rejected – not at least because the government had been browbeaten by NGO's and trade unions.<sup>55</sup>

As a one-shot experiment, the regularization campaign was aimed towards two groups of people: Illegal immigrant and (rejected) asylum seekers. The applicants should have resided in the country before 1 July 1998 and have been employed illegally since 1 January 2000. With regard to refugees from Kososvo, these persons should verify that they had stayed in Luxembourg before 1 January 2000.<sup>56</sup>

Until the end of December 2003, the number of 1.554 regularizations (particularly from the former Yugoslavia) in proportion to 2.894 applicants represents the result of this organized procedure.<sup>57</sup> Some asylum seekers were excluded from the regularization, including many from Sandjak, a majority Muslim area in southern Serbia and northern Montenegro.<sup>58</sup>

Literature research revealed neither comprehensive data nor an analysis regarding the criteria which played important roles in these procedures. However, Waringo, social researcher, stats that NGOs considered the operation as primarily beneficial to illegal labor immigrants.<sup>59</sup> The consulting interaction to the economic sectors, which exhibited a huge labor shortage, has been considered as the innovative characteristic of this regularization program in 2001. Thereby, regularized persons could have get an employment much easier in certain industries. But in reality, only a small number of undocumented immigrants could find a job.<sup>60</sup> The country still has no official law that allows non-EU workers to bring over their immediate family members. Consequently, the Ministry of Immigration has significant discretion and can decide whom to let in on a case-by-case basis.<sup>61</sup>

### **Current debates and developments**

No data available.

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<sup>54</sup> See: Kollwelter, S. (2007): Immigration in Luxembourg: new Challenges for an old Country.

<http://www.migrationinformation.org/Profiles/display.cfm?id=587>

<sup>55</sup> Ibid.

<sup>56</sup> See also: Levinson, A. (2005): The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies. University of Oxford, p. 60ff.

<sup>57</sup> Ibid, p. 61.

<sup>58</sup> Kollwelter (2007).

<sup>59</sup> Waringo, K.: Politics of Asylum and Refugee Protection in Luxembourg.

[http://www.emz-](http://www.emz-berlin.de/projekte_e/pj32_1pdf/RefPol/RefPol_Luxembourg.pdf)

[berlin.de/projekte\\_e/pj32\\_1pdf/RefPol/RefPol\\_Luxembourg.pdf](http://www.emz-berlin.de/projekte_e/pj32_1pdf/RefPol/RefPol_Luxembourg.pdf)

<sup>60</sup> Levinson (2005), p. 61.

<sup>61</sup> Kollwelter (2007).





## MALTA

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### **Definition of illegal migrants**

According to the Ministry of Justice and Home Affairs, the Maltese national law defines illegal immigrants, also named 'prohibited immigrants' as any person, who is refused entry because he or she does not have the right of entry or/and residence or of a movement or transit.

Although a person may have been granted permission or a residence permit, that person may still be considered a prohibited immigrant. A person may be considered a prohibited immigrant:

- if he is unable to show that he has the means of supporting himself and his dependants (if any) or if he or any of his dependants is likely to become a charge on the public funds; or
- if he is suffering from mental disorder or is mentally defective; or
- if, having landed in Malta in relation to the Prevention of Disease Ordinance, he is still in Malta after the lapse of the period of fifteen days from the day on which the Superintendent of Public Health certifies in writing that the stay of such person in Malta is no longer required under and for the purpose of such regulation; or
- if he is found guilty by a court of criminal jurisdiction in Malta of an offense against any of the provisions of the White Slave Traffic (Suppression) Ordinance or of the Dangerous Drugs Ordinance or of a crime, other than involuntary homicide or involuntary bodily harm, which, in the case of a first crime committed by such person, is punishable with imprisonment for a term of not less than one year or, in the case of a second or subsequent crime committed by such person, is punishable with imprisonment for a term of not less than three months; or
- if he is in contravention of the provisions or regulations of the Immigration Act
- if he does not comply or ceases to comply with any of the conditions, under which he was granted leave to land or to land and remain in Malta or was granted a residence permit; or
- if any circumstance which determined the granting of leave to land or to land and remain in Malta or the extension of such leave or the granting of a residence permit ceases to exist; or
- if such person is in Malta for the purpose of prostitution or
- if she he is a dependant of a person who is a prohibited immigrant.<sup>62</sup>

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

Until now, there have been no provisions in respect of the regularization of aliens defined in the legislation as prohibited immigrants.

### **Regularization programs – forms and criteria of regularization processes**

Regularization measures took place on an individual basis. Illegal immigrants who came from (African) 'conflict-stricken countries'<sup>63</sup>, could receive a humanitarian status. Thus, in 2003, 186 applicants obtained a positive response.

### **Current debates and developments**

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<sup>62</sup> Information provided by Mario Azzopardi, Ministry of Justice and Home Affairs.

<sup>63</sup> European Migration Network (2006): Report Malta on Migration and Asylum 2003.

No data available.

## **THE NETHERLANDS**

### **Definition of illegal migrants**

The Dutch Ministry of Justice characterizes an illegal immigrant/ resident as a third-country national without a legal stay as described in Dutch Alien Law 2000.<sup>64</sup>

It is possible to distinguish between at least three different categories of illegal alien: The first category is that of aliens who entered the Netherlands illegally, for example by passing unnoticed through border controls or by using false or falsified travel or identity documents. The second category is that of aliens who entered the Netherlands in a legal manner and for this reason are in possession of the required valid travel documents and visas. After entering the country, they exceed the permitted duration of stay or they lose their legal right to residency by undertaking illegal work or by committing a punishable offence. The third category is that of asylum seekers who have exhausted all legal remedies, whose application for a residence permit has been refused and who subsequently do not (immediately) leave the Netherlands but continue to reside in the country illegally for a shorter or longer period.<sup>65</sup>

### **Number of illegal migrants**

In all Member States, the main common problem is the disclosure of an illegal resident's status through educational establishments or police departments. In the Netherlands, such disclosures are prohibited and data are thus unreliable.

See also: annex.

### **Definition of regularization**

The Ministry of Justice reports that regularization is not defined in the Dutch legislation relating to aliens. The Dutch Alien Law allows for generic measures to give legal stay.

### **Regularization programs – forms and criteria of regularization processes**

In general, no official provision for illegal aliens exists to obtain a residence permit, apart from regularization rulings.

According to the Ministry of Justice, third-country nationals who submitted an application for asylum within the scope of the former Aliens Act (1 April 2001) and are still in the Netherlands, will be granted a residence permit under certain conditions by means of the Settlement of the Estate of the Old Aliens Act Scheme (pardon) (*De Regeling ter afwikkeling van de nalatenschap van de oude Vreemdelingenwet (pardon regeling)*). The time span of this program's implementation is from 2007 until 2008 (including housing until 2009).

### **Current debates and developments**

In 1999, the Secretary of State for Justice proposed a scheme for illegal aliens in employment to pay regular taxes. This scheme is partly based upon the findings of a committee of mayors of four cities in the Netherlands.

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<sup>64</sup> Information provided by the Ministry of Justice, Netherlands.

<sup>65</sup> Information provided by the Ministry of Justice, Immigration and Naturalisation Service/ Staff Directorate for Implementation and Policy/ Immigration and Naturalisation Service Information and Analysis Centre (INDIAC) (2005): Illegal Resident Third Country Nationals in the EU Member States: State Approaches towards them and their profile and social situation. Contribution by the Netherlands. European Migration Network.

In 1998, *Koppelingswet* (Benefit Entitlement (Residency Status) Act) has been implemented, which makes legal residency status in the Netherlands a pre-requisite in order to receive all manner of community services.

The most important policy developments to have influenced the status of illegal aliens are formulated in the *Terugkeernota* (Ministry of Justice, Policy document on Return of Aliens to the country of origin, 2003) and the *Illegaleennota* (Ministry of Justice, Policy Document on Illegal Aliens, 2004).

## **POLAND**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal migrants**

The Office for Repatriation and Foreigners estimated the total number of irregular migrants/residents to be 45.000 to 50.000 persons. In 2003, the largest number of irregular migrants/residents encompassing 30.000 persons were of Vietnamese origin.<sup>66</sup>

See also: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

Poland is one of the very few European countries which have little problem with mass immigration. While the continent is preoccupied with integration of immigrants to the societies and the labor market, Poland is being still more worried about emigration of its own nationals.

Immigration policy understood in terms of migration management, does not exist.

In 2003, Poland implemented two legislative act which were the Act on aliens and the Act on granting protection to aliens on the territory of the Republic of Poland. Connected to the imminent accession to the EU, on 1st October 2003 Poland has introduced visa obligation for citizens of Russia, Belarus and the Ukraine. The Act on granting protection to aliens within the territory of the Republic of Poland provides with four types of protection which may be granted to an alien: refugee status; asylum; permit for tolerated stay; temporary protection.

According to the Center for International Relations in Warsaw, the Aliens Act 2003 represents Poland's first regularization program for unauthorized migrants. Ex post, this program was regarded as a failure by the authorities (an evaluation of the program could not be realized due to missing written formal details).<sup>67</sup> In any case, only a minority of the irregular immigrants/residents had been informed about the regularization option. Eventually, only 3.508 persons applied (1.626 Armenians and 1.341 Vietnamese). At the end of the year

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<sup>66</sup> Iglicka, K. (2005): EU Membership highlights Poland's Migration Challenges. <http://www.migrationinformation.org/Profiles/display.cfm?ID=302>

<sup>67</sup> Ibid.

2004, approximately 70 percent of the cases had been processed. In total, 1.052 Armenians and 1.001 Vietnamese received a legal status.<sup>68</sup>

### **Current debates and developments**

There is still no comprehensive concept within the current Polish immigration policy. Generally, the debate concentrates on repatriation and asylum issues rather than discussing regularization processes. As the Center for International Relations points out in 2005, the political debate on migration policy has attached – not at least by the need to comply with EC Directives or to keep up with EU priorities on refugee protection and border control - its main focus on the following issues:

- protection of the national interest;
- human rights protections;
- refugee protection;
- repatriation.<sup>69</sup>

## **PORTUGAL**

### **Definition of illegal migrants**

According to the Portuguese national law, an illegal immigrant/ resident is any third-country national without a visa or residence permit.

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

In the Portuguese nation law, regularization is defined as an attribution of a Portuguese legal document to a third-country national issued in accordance to the rules and the adopted common form in the European Union.<sup>70</sup>

### **Regularization programs – forms and criteria of regularization processes**

According to the Jesuit Refugee Service, a specific legal framework for immigrants from Portuguese Speaking African Countries (PALOP) exists in Portugal. The so called 'Lula Agreement' was implemented in 2003 and was first restricted to Brazilian immigrants only. Following amendments, it now targets all immigrants from Portuguese Speaking African Countries (valid until July 2008, in spite of the new legislation).

In most cases, the government adopted a reactive posture recognizing that former regulation mechanisms had failed. As a consequence, extraordinary regularization processes or amnesties to legalize undocumented migrants were advanced. Portugal enacted such programs/ campaigns in 1992, 1996, 2001, 2003 and 2004.

The 'Lula Agreement' is realized on national level and represents a permanent regularization. Furthermore, most forms of regularization are organized and based on *fait accompli* criteria (mainly economic). Decisions are reached only with regard to each individual case.

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid, see also: Country Profile: Poland, <http://www.integrationindex.eu/integrationindex/2611.html>

<sup>70</sup> The following information were provided by Camila Rodriques, social researcher, Jesuit Refugee Service, Portugal.

Among the criteria which influence the regularization process, the geographical location, i.e. the presence of the applicant on the soil of the State, is of central importance. To initiate a legalization process through the 'Lula Agreement', the immigrant must already reside on Portuguese territory. Economic, humanitarian and health criteria are also covered by this program.

The success of the 'Lula Agreement' program was neither evaluated nor were its effects and outcomes measured.

### **Current debates and developments**

The Jesuit Refugee Service highlights that several changes or innovations aimed at immigrants can be identified in the current socio-political sphere:

On institutional level, the objective is to solve the problem of undocumented migrants through extraordinary legalization processes, and concurrently to adopt a restrictive legislation to stop the migration flux to Portugal. However, the current priority is to promote the creation of channels for legal migration and to efficiently manage migratory fluxes by means of a more flexible law. Also, it was officially recognized that the Portuguese employment sector requires migrant workers and that the existing approach to manage migration flows was inefficient.

On legal level, a restrictive legislation is combined with several extraordinary regularization measures that took place since the early 1990s.

## **ROMANIA**

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### Definition of illegal migrants

According to the Romanian Immigration Office: Research, Analyses and Prognosis Center, Romania has become a more attractive migratory destination for foreigners during the last decade. Even though Romania's features as an immigration country are increasingly defined, the legal framework does not provide a formal definition of an illegal immigrant and/ or an illegal resident.<sup>71</sup> In administrative practice, however, a differentiation of these two types is observable:

- An illegal immigrant is a third-country national, who either has entered the country illegally or overstayed his or her visa and does not justify his presence within the territory.
- An illegal resident is a third-country national, whose permit to stay is expired but he or she would fulfill the conditions to receive the extension of the permit to stay.<sup>72</sup>

### **Number of illegal migrants**

In case of irregular migration, there are no specific statistics as such, but an assessment of this phenomenon is made (at least yearly) by the bodies in charge of foreigners' evidence in Romania. This assessment is based on reports presenting numbers of foreign citizens, who

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<sup>71</sup> See: European Institute of Romania (2004): The Migration Phenomenon of the Perspective of Romanians Accession to the EU.

<sup>72</sup> Information provided by Emil Niculescu, Romanian Immigration Office, Research, Analysis and Prognosis Center.

attempted to illegally cross Romania's border or whose irregular staying on Romania's territory was identified on the occasion of controls carried out inside the country.<sup>73</sup>

See also: annex.

### **Definition of regularization**

The Romanian Immigration Office states that while the Romanian law does again not include a definition of regularization, the administrative practice shows some central assessment criterion. Accordingly, regularization in the sense of extending the residence permit is possible in cases of illegal residents (see above, category (b)). Also, if a student with an expired temporary stay permit for a short period of time is able to prove that he or she is still a student and fulfills the other conditions specified by law, the right to stay will be extended. However, these processes are identified as legalizations and not as regularizations.

### **Regularization programs – forms and criteria of regularization processes**

According to the Immigration Office, Romania has no regularization program at this stage.

### **Current debates and developments**

As a new Member State of the European Union, Romania considers the harmonization of the national immigration policy with the EU legislation (*aquis communautaire*) as well as internal national policy regulation as among the most important goals. Nevertheless, no information on intentions to develop regularization program could be identified.

## **SLOVAKIA**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal migrants**

See: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

No information on current regularization programs or processes could be identified.

Generally, Slovakia considers itself less a country of immigration or emigration, and more a country of transit and cross-border mobility. Negligible immigration flows have doubled since 2003, whilst irregular migration and asylum applications continue to decline.<sup>74</sup>

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<sup>73</sup> See: European Institute of Romania (2004): The Migration Phenomena of the Perspective of Romanians Accession to the EU.

<sup>74</sup> Country Profile Slovakia: <http://www.integrationindex.eu/topics/2510.html>

The Slovak government has few problems with immigration, and believes that a key problem to integration is a lack of interest amongst refugees and immigrants to settle in the country. Nevertheless, the Slovak government adopted the 'Concept of Migration Policy' in 2005.<sup>75</sup>

### **Current debates and development**

No information on current public discussions or socio-political developments regarding regularization programs could be identified.

## **SLOVENIA**

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### **Definition of illegal migrants**

No data available.

### **Number of illegal migrants**

According to the Country Report Slovenia 2003, the number of irregular migrants has been increasing during the last 15 years. In 1991, approximately 4.000 to 5.000 irregular migrants had been registered at the Slovenian border. Two years later, this number had already doubled - not least because of the crisis in Croatia and Bosnia and Herzegovina. In the following years, the number of irregular migrants remained constant on an annual level of 4.000 persons. A rapid increase in numbers commenced in the second half of the 1990s. In 1998, the number of irregular migrants was four times higher than two years before. In most cases, the irregular migrants originated from Iran, Iraq, Pakistan, China, Bangladesh, Algeria and Sierra Leone. Slovenia is regarded as a transit country which is crossed by migrants on their way to other EU Member States.<sup>76</sup>

See also: annex.

### **Definition of regularization**

No data available.

### **Regularization programs – forms and criteria of regularization processes**

When Slovenia was increasingly characterized as a transit and destination territory for irregular migrants (this started around the year 2000), two phenomena became prominent within the Slovenian political discourse: the so called 'refugee crisis' and the 'illegal immigration crisis'.

The following resolutions represent the respective basis of immigration legislation in Slovenia:

- Resolution on the Immigration Policy of the Republic of Slovenia (1999);
- Resolution on the Migration Policy of the Republic of Slovenia (2002).<sup>77</sup>

However, neither data on the existence of regularization programs nor information on general regularization processes could be identified.

### **Current debates and developments**

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<sup>75</sup> Ibid.

<sup>76</sup> European Migration Network (2006): Report Slovenia on Migration and Asylum 2003.

<sup>77</sup> Ibid.

No data available.



## SPAIN

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### Definition of illegal migrants

In Spanish national law, there is not such definition. However, Asociacion Comision Catolica Espanola de Migracion (ACCEM) points out that, generally, an illegal or irregular immigrant is a person who remains in Spain without having the entry requirements, or who is not holding a stay or a residence permit/ authorization.<sup>78</sup>

### Number of illegal migrants

See: annex.

### Definition of regularization

There is no definition of regularization in the current Spanish Aliens Act. However, the national law makes reference to a regularization or normalization process linked to the labor market, and provides a regular case-by-case regularization formula known as *arraigo* (i.e. 'to take root') for those who fulfill certain requirements.

### Regularization programs – forms and criteria of regularization processes

Two regularization programs can be identified in Spain: Firstly, *arraigo social* ((art.45.2.b) RD 2393/2004), which came into effect on 7 February 2005, and, secondly *arraigo laboral* ((art. 45.2.a) RD 2393/2004) which came into effect on 8 August 2005. Both programs entitle the immigrant to a temporary residence permit, which can be renewed.

The undocumented migrants has to fulfill the following eligibility criteria in order to receive regular status:

- *Arraigo laboral* requires the immigrant to have been in Spain for a minimum of two years and to be able to prove that an employer has contracted him illegally for at least one year. The means of evidence are either a Labor Judicial decision or a violation certificate issued by inspections services.
- *Arraigo social* requires the immigrant to have stayed at least three years in Spain and that he or she has a labor contract proposal, as well as either a proved relationship with resident family members or a favorable certificate of social insertion issued by the local municipality.

Minors may also gain residence status if they have been in Spain for two years and if one of the parents has a resident or work permit.

Other exceptional ways of obtaining residence for undocumented migrants are the following:

- Reasons of International Protection; or
- Humanitarian reasons (victims of trafficking, victims of racism, discriminatory crimes, or domestic violence, and serious medical illness supervened).

According to ACCEM, regularization programs were carried out on national level. The last one-off program took place from February to May 2005 (this was the most recent of six regularization program since 1985) and was linked to different reasons (employment, families ties, length stay). The programs' main goal was to end illegal employment of migrants and to

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<sup>78</sup> All information of this abstract were provided by Marta Sainz de Baranda, advocate, Asociacion Comision Catolica Espanola de Migracion (ACCEM).

control the black market. In some regularization processes, family members were allowed to likewise obtain resident permits.<sup>79</sup>

### **Current debates and developments**

During the last five years, the regularization program situation underwent some changes. ACCEM states that the most recent regularization process (2005) at institutional level was conducted better than previous campaigns since there had been a desire to tackle both, employment issues and migration management issues:

- From an employment perspective, the program has sought to tackle the underground economy, bringing workers from the informal into the formal working sector and as a result tackling unfair competition, increasing tax receipts and social security contributions and furthermore encouraging integration of irregular migrants through employment.
- From a migration perspective, the program has been accompanied by measures to widen the front-door to migration in order to feed the economy's need for workers while at the same time increasing border controls. According to ACCEM, the used term *normalización* and not *regularización* indicates a shift in the way the government attempts to publicly frame the regularization of immigrants, i.e. by using the less threatening term normalization.<sup>80</sup>

## **SWEDEN**

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### **Definition of illegal migrants**

The Swedish Migration Board, the central governmental authority for aliens affairs, considers illegal migrants as persons without a formal permit to reside in the country. Illegal migrants are either unknown to the authorities or their asylum application was rejected and, thus, they are expected to return to their country of origin.<sup>81</sup>

### **Number of illegal migrants**

During the year 2003, 7.743 persons of a total number of 11.358 migrants left the supervision system of the Swedish Migration Board and were searched by the National Police.<sup>82</sup> Assumedly, a bulk of these persons have remained illegally in Sweden. In addition, 7.400 rejected asylum seekers had not returned to their country of origin.<sup>83</sup> Two further types of illegal migrants are relevant in Sweden: firstly, the victims of trafficking (200-500 persons per year) and, secondly, approximately 60.000 illegal workers.<sup>84</sup> Up to 80.000 illegal immigrants are estimated to live in Sweden.

See also: annex.

### **Definition of regularization**

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<sup>79</sup> See annex for more details.

<sup>80</sup> See annex for more details.

<sup>81</sup> Information provided by Krister Isaksson, the Swedish Migration Board/ Governmental Authority for Aliens Affairs.

<sup>82</sup> The data derive from the National Police Board and were mentioned in: European Migration Network. Sweden Contact Point (2005): Illegally Resident Third Country Nationals in Sweden: State approaches towards them and their profile and social situation.

<sup>83</sup> The data derive from the Swedish Red Cross and were mentioned in: European Migration Network. Sweden Contact Point (2005): Illegally Resident Third Country Nationals in Sweden: State approaches towards them and their profile and social situation.

<sup>84</sup> The data derive from the National Confederation of Trade Unions and were mentioned in: European Migration Network. Sweden Contact Point (2005): Illegally Resident Third Country Nationals in Sweden: State approaches towards them and their profile and social situation.

Regularization means the grant of a residence permit according to a specific temporary amendment within the scope of the National Alien Act.<sup>85</sup>

### **Regularization programs – forms and criteria of regularization processes**

Until now, one temporary regularization program took place on national level from November 2005 to March 2006. The main target group covered by this program were rejected asylum seekers in the reception system who were enabled to submit an application for one-off regularizations. From time to time, regularizations take also place as political interventions into the asylum procedure.

According to the Swedish migration authorities, the dominating motives for the enforcement of regularizations constitutes both, fait accompli as well as protection reasons. Furthermore, all decisions in this matter are based on the assessment of the respective individual circumstances and are mostly organized than informal ones. With regard to humanitarian reasons, these regularizations can be primarily seen as obligations.

Important criteria which characterize the regularization process are the following ones:

- Geographical location (presence of the applicant on the soil of the State);
- Humanitarian reasons (focus on children and families);
- Health;
- Family.

Economic criteria seem to have no significance.

Within the scope of the mentioned regularization program, approximately 17.000 rejected asylum seekers (particularly persons from Iraq, Somalia, Palestine, Afghanistan and Serbia) received a residence permit – in most of these cases a permanent one. A total number of 31.000 applicants were processed.<sup>86</sup>

### **Current debates and developments**

From time to time, political discussions take place which are often promoted by NGO's, media institutions and representatives of churches.

According to the Swedish Migration Board, there are currently no regularization programs in progress.

## **UNITED KINGDOM**

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### **DEFINITION OF ILLEGAL MIGRANTS**

According to the House of Lords (2002), irregular migrants are:

- people who have entered the country legally but who have overstayed those conditions (students, tourists, work-permit holders, asylum seekers);
- people who have permission to be in the country but who are in violation of those terms;
- asylum applicants who have been refused and had have appeals rejected;
- people who entered the country illegally.<sup>87</sup>

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<sup>85</sup> Information provided by Krister Isaksson, the Swedish Migration Board, Governmental Authority for Aliens Affairs.

<sup>86</sup> Information provided by the Swedish Migration Board.

<sup>87</sup> See Levinson, A. (2005): The Regularisation of Unauthorized Migrants: Literature Survey and

## Number of illegal migrants

See: annex.

## Regularization programs – forms and criteria of regularization processes

According to Levinson (2005), three domestic worker regularization programs took place during the last decades:

Period	Category of irregular migrants	Realized regularizations
1974-1978	citizens of the Commonwealth and former colonies	1.809 regularizations of 2.430 applications
1977	citizens of the Commonwealth and former colonies	462 regularizations of 641 applications
1998-1999	Domestic workers in UK	200 regularizations

Fig. according to Levinson (2005)

With regard to the most recent program (1998-1999), the requirements to become regularized can be identified as the following ones:

- valid passport;
- admission to the country before July 1988;
- evidence of a current employment and economic independence.

Prior to the implementation of this regularization program, a domestic worker would become an irregular migrant if he or she changed employer. The beneficiaries of these organized actions were granted a residence permit for 12 months and, thenceforward, were allowed to change employers. The regularization program thus purposed to expand the rights of domestic workers in the UK.

Among others, Anderson (1999) suggests that the small number of realized regularizations – particularly with regard to the recent program 1998-1999 - can be traced back to the difficulties of the applicants to obtain a valid passport, to promotion lacks on the part of the State as well as to the financial costs which had to be overtaken by the applicants themselves.

Apart from these program of regularization, the government also grants permanent regularizations to:

- migrants who have resided in the UK for 14 years or longer regardless of legality;
- migrants who have been living in the UK for 7 years or longer regardless of legality.

A refusal is only issued in cases of a criminal history or other serious/ disqualifying characteristics of the applicants.<sup>88</sup>

## Current debates and developments

Although group regularizations have been discussed in the case of rejected asylum seekers, the focus and the goodwill of the current government rely on small-scale programs on a case-by-case basis.

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Country Case Studies. Centre on Migration, Policy and Society, University of Oxford, p. 27f. See also: Black, R./ Collyer, M./ Skeldon, R./ Waddington, C. (2005): A survey of the illegally resident population in detention in the UK. Research, Development and Statistics Directorate, <http://www.homeoffice.gov.uk/rds/pdfs05/r224.pdf>

<sup>88</sup> Anderson, B. (1999): The Devil is in the Detail: Lessons to be drawn from the UK's recent exercise in regularising undocumented workers. Working Paper, University of Warwick.