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Regularization Campaign in Belgium: A Breakthrough

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Abstract:

The commentary describes the situation of undocumented immigrants in Belgium, the position of various political parties towards this issue and the latest developments in the regularization process in Belgium.

The ongoing debate in Belgium over the issue of undocumented immigrants remains hotly contested. Many undocumented immigrants in Belgium have been the subject of a debate that has lasted many years.

Various non-governmental organizations (NGOs) have claimed that the undocumented immigrants in question form a part of Belgian society: they work, they speak the language, they frequently participate in social and cultural activities, and they send their children to local schools. The social exclusion of these immigrants, therefore, places the social cohesion of the entire country in jeopardy. This is felt especially in the exclusion from all social assistance. Since they can't work legally, they have no access to the social security system, which provides unemployment benefits, or possible benefits in case of sickness or work accidents, etc. At the same time, they only receive urgent medical aid. The undocumented status of these people also seriously limits their freedom of movement, since they risk controls and repatriation.

In line with this thinking, the EU has advocated for the introduction of a legalized immigrant employment status¹. Since the majority of immigrants work illegally at present, legalizing

¹ During the Tampere European Council in 1999, the EU started the development of a common migration and asylum strategy. The Lisbon strategy put the migration issue into a more economic perspective. Migration had to be addressed in this strategy that aimed at making the EU the most competitive economy in the world. These ideas have been specified in the following communications of the European Commission:

- COM(2005)0184 final
- COM(2004)811 final.
- COM(2005) 669 final.

At the moment, the European Commission and the European Council are working on the following proposals in this direction:

- Proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of

their employment status would not only further the cause of social cohesion, but would also allow the Belgian state to collect taxes from the entire body of the population, which would in turn improve the Belgian economy.

The NGOs advocate for the well being of thousands of migrants and the support of several small organizations created among the undocumented immigrants. These NGOs operate on the local level as well as the national level and try to include other civil society organizations. Even though Belgian trade unions were initially not acting in favor of immigrant workers, they are now convinced of the importance of their solidarity.

The political pressure of these organizations gave rise to a first regularization campaign in 1999. Nevertheless, the criteria of that regularization were only temporarily applicable. The uncertain situation of undocumented immigrants remained the same.

During the following years, civil society requested clear regularization criteria. The public opinion was however divided. Flemish political parties in particular opposed a generalized regularization campaign.

The debate initially gave rise to false promises, but thereafter acquired a more concrete character with a government agreement on 18 March 2008. Nevertheless, it was not until July 2009 that the regularization campaign had begun.

Political Troubles

Due to current tensions between the Flemish and Walloon Regions, the federal elections of June 2007 created an impasse in Belgian politics. Only months after the elections, in March 2008, did the contestations cease. Eventually, a coalition of at least five parties was formed and a government agreement presented.

This agreement became one of compromises, since every party, Flemish against Walloons and liberals against socialists and Christian-Democrats, wanted their share of the benefits. In the context of the immigration debate, Walloon socialists and Walloon Christian-Democrats defended in particular a regularization based on humanitarian criteria. The Flemish liberal party sought regularization because of economic reasons, but accepted the humanitarian portion in order to maintain control over the issue, thereby nominating Mrs. Turtelboom, a member of their party, to become the Minister of Migration and Asylum Issues.

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- rights for third-country workers legally residing in a Member State {SEC(2007) 1393}
{SEC(2007) 1408
- Proposal for a Directive on the admission of highly skilled immigrants, also known as the Blue Card directive
 - Others: Proposal for a directive for seasonal workers, interns, or to promote circular migration

What directly followed this incident was a year of growing tension, during which Mrs. Turtelboom (The Flemish liberal party) made serious efforts to block the entire campaign. While the undocumented immigrants were hopeful after the government agreement, this hope was quickly converted into despair when it became clear that Mrs. Turtelboom would not change her position. During the course of the year Belgium was no stranger to regular hunger strikes, the occupation of cranes, and other desperate actions of the “*sans papiers*”.

It was not until the summer of 2009 that actual measures towards regularization were taken. Belgian politicians utilized the discretion that accompanied the summer recess in order to reorganize the government and to make some important decisions. The Walloons took over power on the immigration issue: Mrs. Milquet became Minister of Social Affairs, and thus became responsible for the migration and asylum file; Mr. Watelet became her Secretary of State for Migration and Asylum. Mrs. Turtelboom received, due to her efficient inactiveness, a promotion to the cabinet of internal affairs. This internal reorganization paved the way for a breakthrough on the immigration issue.

A Regularization Campaign

Whereas all undocumented immigrants could previously request for the introduction of regularization, the conditions under which an approval would be granted were unclear and provided the Foreigner Office with a broad power of interpretation. In practice, this Office created very restrictive and vague criteria lacking transparency, limiting significantly the number of regularized immigrants.

The instructions of 19 July 2009 concern new criteria for regularization that the Foreigner office will be charged with implementing in the future.

Between 15 September 2009 and 15 December 2009, two groups of immigrants will thus be able to apply for regularization.

The first group is those immigrants who have lived in Belgium for at least five years and have submitted, before 18 March 2008, a request to obtain a residence permit or those who have lived legally in Belgium for a while before that date. The other group of immigrants constitutes those who have lived in Belgium since at least 31 March 2007, and who are in a position to present a contract of employment.

Applicants for both categories must prove that they are well-integrated into the Belgian community. Such integration can be demonstrated by the knowledge of one of the national languages, by employment efforts, children at school, and other sustainable local social ties.

Alongside this temporary regularization campaign, the instructions also provided some general criteria which will, following 15 December 2009, enhance regularization. Thus, the instructions have extended the situations in which asylum seekers are considered for regularization. Furthermore, mixed couples and parents with either Belgian or European children, will be at liberty to submit a regularization request.

The new criteria provide access to long term residence. In this context, an exception was made for immigrants who obtain a residence permit through their contract of employment. Therefore, the annual renewal of the card will be dependent on evidence of employment.

Risk Factors

The new regulations have made the same mistakes as the former Belgian regularization campaign of 1999. Most of the criteria will only be applicable during the limited delay of three months. The general regularization criteria, however, remain extremely vague. The uncertainty of undocumented immigrants will remain after 15 December 2009, forcing the immigrants in question to try out one procedure after another with or without success. The new regulations are, as such, simply not a structural solution for this seminal social problem.

Many questions can be asked of the regularization through employment. Legally, this procedure is a complicated exercise, since different factors are responsible for the acquisition of a residence permit as compared with those responsible for the work permit. Applicants can submit their request for a residence permit at the Foreigner Office, which is a federal institution. However, this request may only be approved if a work permit is provided, a matter which falls within the regional scope. On the date of publication, 18 September 2009 (three days after the official start of the campaign), the position of these regions remains unclear. It can be expected, however, that the Flemish region will be more restrictive in delivering work permits than the region of Brussels or the Walloon region. Immigrant workers may for this reason be more successful seeking a job in Brussels or Wallonia, rather than Flanders.

This will also have an important impact on the social position of immigrant workers. Immigrant workers' residence will be dependent on their employers. When an immigrant cannot present evidence of employment at the end of his first year, a renewal of his or her residence card will be denied. Such workers will thus easily fall victim to many kinds of abuse. This problematic dependency could already be observed with workers in the new EU Member States. During a transitional period, their residence also depended on the existence of employment. Practice proved that these workers did not dare to submit complaints against their employers for fear of losing their immigration status entirely.

As a matter of fact, abuses have already been reported. Immigrants claim that they were requested to pay up to 15,000 euros in order to obtain a job contract. Others have had to work one year for free, and still others have been requested to pay the contribution to social security themselves.

The campaign rewards those foreigners who have previously initiated a procedure to obtain a residence permit, e.g. an asylum- or regularization request, even if this procedure was at that particular moment unnecessary. Over the past ten years, lawyers of undocumented immigrants have been accused by both the legislature and the press of presenting superfluous appeals and requests. Nevertheless, those that have done so are now being rewarded. Lawyers who advised undocumented immigrants to wait until the situation changes are now being blamed. The requirements of this past procedure are especially severe for certain communities, such as Latin Americans or Moroccans, who didn't have any reason to introduce an asylum procedure or a regularization request before now.

The number of immigrants who will be in a position to enjoy this regularization is a well kept secret. It is remarkable to encounter the contradictory reports communicated on both sides of the language boarder. Flemish politicians attempt to minimize the impact of the campaign whereas Walloons are far more optimistic.

Nevertheless, the present campaign is a positive end to a long and tragic story. Thousands of people, until now uncertain about their fate and that of their children, can breathe again. Belgium welcomes some new enthusiastic citizens.

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