

Regularisation of Irregular Immigrants in Belgium

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1. Historical background and push factors to regularise irregular immigrants in Belgium

- Former Art. 9.3 of the Aliens' Act (1980) – permanent mechanism for regularisation on 'humanitarian grounds'
- 'Vershaeve-Case' 1997 which led to a law amendment of art. 77 of the Aliens' Act (BS 26/06/1999)
- Long-lasting asylum procedures
- Pressure from the civil society: church asylum, trade unions, NGO's – led to the founding of 'The Forum for Asylum and Migration' (FAM) – a platform of 120 different organisations
- Pressure from self-organisations of 'sans-papiers' itself
- Case 'Samira Adamu' (1998)



2. One-Shot programme 1999/2000

- Stipulated by the Law of 22 December 1999 ('Regularisation Law')
- Applications possible only in a time frame of 3 weeks
- Negative decisions automatically transferred to the 'Regularisation Commission'
- Regularisation on grounds of defined criteria:
 - *Long pending asylum procedure*
 - *Impossibility to return*
 - *Serious illness*
 - *Long stay without receiving 'order to leave'*
 - *Strong attachments to Belgium (families with children at school, integration, local ties),*

3. Regularisation between 1999 and 2009

- ▶ Consequences of the one-shot programme:
 - 32.662 cases - until 2005 about 40.000 regularised persons
 - Underestimated work load for the Regularisation Commissions
 - Dissent on the evaluation of the programme

- ▶ Ongoing case-by-case regularisation
 - Legal tools: art. 9.3, since 2007 art. 9bis and 9ter
 - Definition of criteria not by law but by discretionary jurisdiction
 - Since 2007: ID obligate to lodge application
 - Since 2006: new criteria '*parent of a Belgian child*'



4. Main principles for regularisation of irregular immigrants in Belgium

- Strong emphasis on humanitarian grounds
- Connected with the asylum system and return policy
- Emphasis on family ties
- Regularisation mechanism (art 9.3; art 9bis and *9ter*)
- “exceptional circumstances”
- Discretionary jurisdiction – regularisation remains a favour, not a right (*exception: one-shot programme 1999/2000*)

5. New instructions for regularisation, July 2009

- Implementation of regularisation measure by law vs. implementation by instructions – the decision of the Council of State vs. the Federal Government (December 2009)
- New criteria for regularisation via instruction to the ‘Immigration Office’
- New: criteria of ‘*sustainable local anchoring*’ and ‘*work*’ (*in both cases limited to applications lodged between 15 September and 15 December 2009; art. 2.8A and 2.8B of the instructions*)
- Exclusion criteria: fraud and/or threats to public security
- No ‘Regularisation Commission’



Table: Regularisations between 2006 and 2010 with regard to criteria (files not persons)

Criteria	2005		2006		2007		2008		2009		2010	
	#	%	#	%	#	%	#	%	#	%	#	%
Parent of a Belgian child	227	4.4	430	8.6	353	8.5	636	18.6	766	11.4	747	9.5
Long pending asylum procedure	4.604	88.8	3.613	72.3	2.849	68.6	1.469	43	1.336	19.9	1.348	9.4
Long pending asylum procedure incl. appeal									1.401	20.8	1.359	9.5
'Family measures' (March 2009)									955	14.2	547	3.8
'Local anchoring'									1.617	24	7.939	53.5
Labour									18	0.3	826	5.8
Other humanitarian	255	6.8	957	19.1	954	23	1.314	38.4	635	9.4	1.536	10.7
Total	5.186		5.000		4.156		3.419		6.728		14.302	



Table: Distribution ‘Humanitarian’ and ‘Medical’ reasons for regularisation

	2005		2006		2007		2008		2009		2010	
Decisions	10.971		13.399		18.957		22.531		15.152		28.216	
Positive decisions	5.422		5.392		6.256		4.995		7.194		15.426	
	<u>Med.</u>	<u>Hum.</u>	<u>Med.</u>	<u>Hum.</u>	<u>Med.</u>	<u>Hum.</u>	<u>Med.</u>	<u>Hum.</u>	<u>Med.</u>	<u>Hum.</u>	<u>Med.</u>	<u>Hum.</u>
	236	5.186	392	5.000	2.100	4.156	1.576	3.419	466	6.728	1.123	14.302
Percentage of positive decisions	2.2%	47.3%	3.4%	43.8%	13.7%	27%	8%	17.4%	3.5%	50.3%	4.8%	61.3%
Negative decisions	5.549		6.024		9.109		14.610		6.195		7.866	



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