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Policy Brief - GERMANY

CLANDESTINO PROJECT OVERVIEW

The project aims

The CLANDESTINO research project was designed to support policy makers in developing and implementing appropriate policies regarding undocumented migration. **The project aims** were to (a) provide an inventory of data and estimates on undocumented migration (stocks and flows) in selected EU countries, (b) analyse these data comparatively, (c) discuss the ethical and methodological issues involved in the collection of data, the elaboration of estimates and their use, (d) propose a new method for evaluating and classifying data/estimates on undocumented migration in the EU.

The countries studied

The project covered twelve EU countries (Greece, Italy, France and Spain in southern Europe; Netherlands, UK, Germany and Austria in Western and Central Europe; Poland, Hungary, Slovakia and the Czech Republic in Central Eastern Europe) **and three non EU transit migration countries** (Turkey, Ukraine and Morocco) have been under study in this project.

Methods, Data and Period of Reference

Country reports. Individual country reports review all relevant data sources on irregular migration, assess the validity of the different estimates given and where appropriate produce a new estimate for the country studied. The country reports cover the period between 2000 and 2007. This quantitative analysis is complemented by a critical review of qualitative studies and by interviews with key informants with a view to exploring the pathways into and out of undocumented status in each country. It is noted that the non-registered nature of irregular migration makes any quantification difficult and always produces estimates rather than hard data.

Classification of data & estimates

The main output of the project is a **database** (<http://irregular-migration.hwvi.net/>) which presents and classifies (as low, medium or high quality) estimates and data on irregular migration in the European Union and in selected member states. The presentation is innovative in its consistent structuring and its carefully developed quality classification, which indicates whether estimates are more or less trustworthy. Quantitative information is accompanied by substantial background materials, both on issues of general concern and on the situation in individual countries. In addition, the database provides aggregate EU level estimates for the years 2002, 2005 and 2008.

Terminology

The terms irregular (with no regular/legal status), undocumented (without the appropriate papers) and unauthorized (without legal permission for entry, stay or work) migration denote different facets of the wider phenomenon of irregular migration. These terms are accepted and used by the Clandestino consortium as synonyms. The term illegal is accepted by the consortium when referring to a condition (e.g. illegal work or illegal entry) but not in relation to a person (illegal migrant).

Definitions

For this project, **irregular or undocumented residents** are defined as residents without any legal resident status in the country they are residing in, and those whose presence in the territory – if detected – may be subject to termination through an order to leave and/or an expulsion order because of their status. **Irregular entrants** are persons who cross an international border without the required valid documents, either un-inspected over land or sea, or over ports of entry. For more information see: <http://clandestino.eliamep.gr/category/irregular-migration-ethics-in-research/>

Trafficking & Asylum Seeking

The Clandestino project is not concerned with Trafficking in Human Beings because it considers this as a separate even if related phenomenon. But in some countries it touches upon asylum seeking and asylum processing issues as they are related to irregular migration issues.

IRREGULAR MIGRATION IN GERMANY

Background of migration situation in Germany

The current immigrant population in Germany is a result of various migration flows: foreign workers recruited between 1955 and 1973 and the subsequent immigration of their relatives since 1973; ethnic Germans since 1950s; Jewish quota refugees that came exclusively from the area of the former Soviet Union since 1990; the (often reluctant) reception of asylum seekers and civil-war-refugees since late 1970s; temporarily admitted migrant workers and students. Currently, the share of foreign population is 9% in a total population of 82,400,000.

German governments so far have been in favour of strict migration control and the rejection of regularization programmes. In spite of a tough political rhetoric, Germany hosts a considerable number of irregular migrants. Their marks are evident not only in special reports dealing with social and political issues but also in public statistical accounting. The most recent expert estimate stems from 2004 after the accession of ten new EU member states. According to this estimate, the population of irregular foreign residents in the country ranges between 500,000 and 1,000,000.

Data sources used for estimating size & features of irregular migration

The knowledge on the size and composition of irregular immigration in Germany is still fragmented. In particular, publications from public authorities (State Police, Federal Police, Federal Customs) and charity organisations provide information on irregular immigrants in an open and transparent form. However, the quality of quantitative data is often poor because circumstances of collection are not transparent, the definition of categories remains fuzzy, the distinction between data referring to cases and data referring to persons is not always clear, and data exchange between authorities causes multiple registrations. As a result, it is difficult to draw a reliable picture of the extent and characteristics of the phenomenon of irregular migration.

With respect to available flow data, until 1998 Germany faced an increase in cases of irregular entries, with a peak of 40,201 apprehended irregular immigrants in this year. Border enforcement has increased significantly since then. Yet the number decreased to 17,000 detected irregular entries in 2007. Official data on irregular stays indicate a similar trend. The figure of apprehended foreigners lacking legal residence documentation increased to a peak of 140,779 persons in 1998 and has decreased since to 64,605 persons in 2006. Both flows and stocks data indicate that irregular immigration reduced since 1998 and stabilized on a rather modest level (compared to other EU countries).

Social & demographic features of irregular migration

The knowledge on the national composition of irregular migration is rather poor and inconsistent. Since the main nationalities shown in table 2 concern citizens from EU member states (Bulgaria, Romania) these figures reflect a snapshot picture of the situation. that changes with the amendments of law and the political and economic situation in origin regions. Figures on irregular entry indicate that irregular migrants increasingly come from countries of origin facing (local or regional) violent conflicts and political unrest. Furthermore, qualitative research studies show that, in addition to nationalities mentioned in official statistics, irregular immigrants from certain Latin-American countries (Brazil, Ecuador), Africa (Ghana, Cameroon) and Asia (Philippines) are also living in Germany.

As regards age composition, all available data indicate that the majority of irregular immigrants are between 20 and 40 years old, but also that there is a considerable number of children and elderly people living in Germany without a regular residence status. Most irregular immigrants work in the shadow economy and work in informal and unattractive to natives' jobs, the arduous, dirty or unhealthy character of which is not compensated by the pay offered. Nevertheless, the share of irregular migrant workers is relatively low compared to the volume of undeclared employment performed by legally resident workers.

Due to the close exchange of data between public services irregular migrants cannot be registered with the social security system or tax authorities. Irregular migrant workers are, therefore, vulnerable to abuse. Employers often undercut local standards of pay and working conditions and sometimes withhold the wage for the work done. Duped workers refrain from going to court for fear that their irregular residence status will be reported to police. Also access to health care is difficult because irregular immigrants cannot enroll for health insurance. In case of accidents or sickness they have to either rely on charity or disclose their irregular residence status to public services. As a result many sick irregular immigrants delay a visit to the doctor/hospital and run the risk of letting initially minor health problems grow into life-threatening ones that require much more expensive medical treatment. In most Fed-

-eral states, school enrolment of irregular immigrants' children is possible only with intervention of a charity and the readiness of a school headmaster to bypass administrative orders and school law, and refrain from recording the pupil's data in case they come into the hands of the police.

Table 1 *Apprehensions by point of entry according to Federal police data*

Apprehensions at the	2004	2005	2006
Polish border	2,277	1,111	957
Czech border	1,651	858	878
Austrian border	4,467	3,755	3,888
Danish border	180	212	234
Schengen borders total	10,884	9,497	10,445
Swiss border	935	811	1,515
Sea borders	497	545	287
Total	18,215	15,551	17,992

Table 2 *Apprehensions by country of origin according to police criminal statistics*

Country of origin	2005	2006
Turkey	4,982	4,771
Romania	4,360	4,666
Bulgaria	2,732	2,731
Serbia and Montenegro	2,718	2,136
Russia	2,215	2,023
Ukraine	2,197	1,690
China	1,597	1,483
Vietnam	1,481	1,450
Iraq	719	959
India	958	941
Total	39,972	39,287

Main Pathways into and out of Irregular Status

Pathways into Irregular Status

Knowledge on the trajectories of irregular immigrants is still fragmented. Unauthorized stay and undeclared employment after visa-free entry was, until 2004, the most important pathway into irregularity, while other pathways like visa-overstaying or irregular entry without documents have gained significance in relative terms since.

The German residence law stipulates that entry and stay of third-country nationals is subject to reservation of permission. According to German law the authorized entry, stay and employment of foreign nationals depend on compliance with the provisions of the residence law. Certain nationalities are allowed to enter without a visa requirement for tourist purposes; others enter through the granting of a (Schengen) visa for tourist purposes; or through the granting of a residence permit for special purposes, namely obtaining higher education, (temporary) employment or family unification and formation.

The main pathway into irregularity is the use of visa-free entry regime with a subsequent undeclared employment. Due to tight residence law and strict naturalisation law, long-term resident foreign nationals may lose their residence status and also become irregular migrants if they do not leave the country.

Pathways out of irregular status

After unauthorized entry (*see apprehensions by point of entry in table 1*), immigrants may obtain a regular residence status through an asylum application. However, the relevant acceptance rates are very low. Nevertheless, immigrants subject to the order to leave the country may be granted a so-called toleration status if the expulsion or deportation cannot be realized due to practical obstacles or legal ones such as the non-refoulement provision or

humanitarian concerns.

Responsible German policy makers strictly oppose to regularization programs under the rationale that illegal behaviour should not be rewarded and that regularization creates pull effects. Irregular entry and stay and its support is a criminal offence to be punished with a sentence of up to one year's imprisonment. Employees of most state services are obliged by law to report irregular immigrants to immigration services or the police.

Key Messages for Policy Makers

Irregular immigration has been for about three decades a publicly debated political issue. Until the mid-1990s the debate focused mainly on irregular entries of refugees and asylum seekers. Only during the last decade the protection and rights of migrants in an irregular situation were brought to light. However, German governments follow a strict stance on irregular immigration. Social and humanitarian issues are acknowledged but are simultaneously treated as the responsibility of civil society including churches and charity. These organizations partly accept the responsibility but complain that the state tries to dispose of its human rights obligations. Civil society organisations demand:

- a more liberal policy in the areas of family migration, refugee reception and labour migration in order to reduce irregular entries;
 - the abolishment or mitigation of regulations that increase vulnerability and impair the social and legal situation of irregular migrants (such as the obligation of state health, education and social services to report irregular migrants);
 - stop the classification of irregular migration as criminal offence;
- stop treating the humanitarian help for irregular migrants as punishable.

The humanitarian situation of irregular immigrants was the subject in parliamentary expert hearings at the federal and state level. At federal level at least, the question of education for children without residence status was accepted as an issue that requires a solution. Until now, the responsible ministries of the federal state of North Rhine-Westphalia and Hamburg explained in a circular that according to state law school directors are not allowed to ask for a residence document from school attendants or report such information to immigration services. However, these are the only federal states with such a clarified legal arrangement. Most other federal states oblige schools to survey and report an irregular residence status. Some cities like Munich, Cologne and Bremen have commissioned research into the social and humanitarian situation of citizens without a residence status and introduced steps in order to mitigate their plight, as well as arrangements towards health care provision and legal protection.

In Germany, irregular immigration is a constantly pressing issue, yet it is not at the top of the political agenda. Currently, the impression is that the German state and society merely tolerate irregular migration. Public policy follows a restrictive and control approach while civil society actors are concerned about its failure and side-effects. Against the background of demographic developments, labour market demands and increasing transnational family life patterns the ongoing trends in irregular migration must inform the design of immigration policy.

If responsible politicians proceed with a restrictive line and do not open channels for legal immigration in spite of the increasing demand, Germany will be confronted with increasing irregular immigration. As a consequence, the gap between a declared restrictive immigration policy and its apparent failure would fuel a heated debate likely to give vent to xenophobic resentments.

A more enlightened migration policy should not always prioritize migration control but answer to the interests of the different actors involved in immigration. The search for pragmatic solutions including tailor-made status adjustment schemes would be more beneficial to migrants and the receiving society. The future findings of further and intensified research on irregular migration could contribute to this target.

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All Project Reports and Policy Briefs as well as the Database are available through the project's web site <http://clandestino.eliamep.gr>. For more information on the case of Germany, please contact, the author of this Brief, Dr. Norbert Cyrus, Research Fellow, Hamburg Institute for Social Research, at Norbert.cyrus@his-online.de. For general information on the Project please contact Prof. Anna Triandafyllidou, Project Coordinator, at anna@eliamep.gr.



CLANDESTINO [index_en.html](http://clandestino.eliamep.gr).

You may also visit the Social Sciences and Humanities Research Programme of the European Commission: <http://ec.europa.eu/research/social-sciences/>