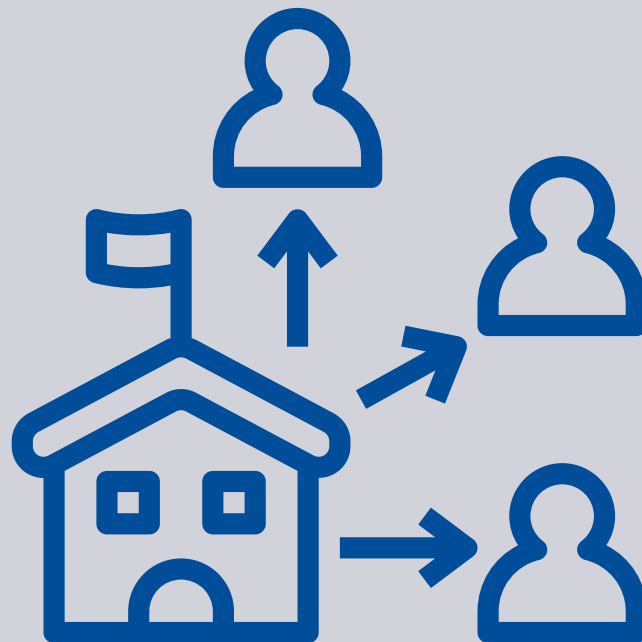


Inventory of existing alternative to return policies

Working Paper





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EXECUTIVE SUMMARY

At considerable economic and human cost, a large number of irregular migrants¹ currently live in a 'limbo' situation in Europe. According to the EU official statistics, less than 30 percent of all non-European nationals who receive an expulsion order return voluntarily or are deported. Those who do not return are given limited opportunities to regularise their stay, as states fear that regularisation will attract irregular migration and will not be supported by the electorate.

In this context, the Horizon-funded "FAiR" research project aims to bolster EU governance of irregular migration by addressing the legitimacy deficits that plague policies on return and alternatives to return. The project offers multidisciplinary expertise and a mix of voices of academic, policy research, governmental, and migrant advocacy organisations, spanning Europe, Africa, and the Middle East.

In the framework of the FAiR project, the University of Milan is leading the implementation of the project's Work Package 6 (WP6), which aims to illustrate and assess promising alternatives to return policies in 11 EU+ countries where return is not feasible due to various reasons. To that end, we combined intensive desk research on countries' existing policies, with focus groups and key informant interviews with public and private stakeholders, mainly from civil society organisations (CSOs).

As expected, civil society organisations' narratives of irregularity, return, and alternatives to return are very different from public ones. The official narrative highlights the importance of promoting legal entries, underlining potential difficulties of legitimacy and a potential pull effect of regularisations; conversely, civil society organizations point out how the political discourse on migration fails to capture (also intentionally) the complexity of the dynamics reproducing irregularity.

In light of these dynamics, in this working paper, we map alternatives to return policies in 11 EU+ countries and assess their political and administrative benefits and disadvantages, taking into consideration aspects such as limitations to public acceptance, human rights, efficiency of immigration enforcement, and better immigration incorporation. Relying on

¹ The official statistics indicate that in 2023, 1.27 million people were found to be irregularly present in one of the EU countries. For more information see: <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240506-1>



the data collected from focus groups and interviews with key experts, we also analyse how irregularity is represented by civil society organisations that deal with irregular migrants on a daily basis and by policy-makers.

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INTRODUCTION

In *practice*, irregular migration governance differs significantly from official policies on *paper*, resulting in more tolerance toward irregularity and less efficiency in policymaking (Hollifield et al., 2014; Ambrosini, 2017). Just as the effectiveness of immigration policy is highly contestable (Czaika & De Haas, 2013), the effectiveness of return migration policy is similarly characterized by a wide implementation gap. That is, not all return orders are actually enforced: in 2023, less than 30% of those with an order to leave returned to their country of origin or to a third country (Eurostat, 2024). In addition, policy incentives to encourage voluntary returns do not outweigh the costs of returning to unsafe countries (Koser & Kuschminder, 2015). Lastly, also where return occurs, it is not always the last step of the migration circle of returnees. Research has shown that return can also lead to a re-immigration experience, recreating the vicious cycle of irregularity (Schuster & Majidi, 2013; Ambrosini & Hajer, 2023). Thus, as a supposedly effective solution to irregular migration, return, in its different forms, seems to achieve primarily unsatisfactory results in policymaking. In this context, while lacking formal authorization to reside, those who cannot be returned continue to live in the country of settlement, periodically exposed to the risk of detention and “deportability” in their everyday life (De Genova, 2002).

There are several reasons for this policy implementation gap:

- institutional and administrative reasons: difficulties in identifying the nationality of irregular migrants and in their recognition as citizens of their respective countries, a lack of readmission agreements with sending countries;
- labor-related reasons: demographic decline and low-skilled workforce shortage in different sectors);
- moral reasons: the vulnerability of minors, sick people, and women, and the backlash caused by returning ‘well-integrated’ migrants;
- human rights-related reasons: liberal and democratic states’ commitment to respect human dignity, regardless of the legal status;
- economic costs: each phase of the return procedure—from identification to detention and flight—incur substantial financial costs for public spending, considering also that returnees often attempt to re-immigrate.

In the implementation of return migration policies, the above-mentioned intervention areas often overlap with contrasting interests. For example, business lobbies may push



governments for more liberal entry policies and for more rights for those already in the country, facilitating the entry of low-skilled workers to reply to workforce shortages. On the other hand, tourism, entertainment, and education sectors may demand softer rules for entrance and sojourn; while the Ministry of Interior may align with more security-based approaches, increasing controls and restrictions on entries and settlement (Czaika & De Haas, 2013). In such clashes, grey zones appear, making the permanence of irregular migration possible for considerably longer times. A visible example of this protracted limbo state is the situation that prompted the UK's "20-Year Rule", a long-term residence permit applicable after 20 years of irregular stay in the country.

Besides competing interests, another reason why addressing irregular migration is quite difficult is the networks in which it is embedded at all stages. Contrary to what is portrayed in the media and political debates at both national and European levels, irregular migration is not only a sphere representing criminal networks and employers; rather, it crosses various interests, values, and actors well inserted and publicly accepted in receiving societies (Ambrosini, 2017).

Regulatory and implementation issues in the management of irregular migration also need to be scrutinized within a theoretical framework of sociological legitimacy. Sociologically speaking, legitimacy consists of socially constructed and shared values and norms through which actors evaluate actions as collectively right and valid (Tyler, 2001; Zelditch, 2001). Weber (1918, 1968) makes a distinction between collective (validity) and individual (property) legitimacy. Here, the social and collective dimension of legitimacy is crucial since actors may disagree with the same actions in the private dimension while considering them legitimate publicly in accordance with other members of the society (ibid.).

There are abstract and concrete dimensions of relationships and values, and each dimension has its own moral and political principles. People can form social relationships with irregular migrants in the private sphere while at the same time supporting the criminalization of irregularity promoted by the political debate. Legitimacy, then, "is a process that brings the unaccepted into accord with accepted norms values, beliefs, practices, and procedures (...) it therefore depends on consensus" (Zelditch, 2001: p. 9). While the conventions of a given society determine from whom it is necessary to confer legitimacy on those in power, the need to 'bind' the most significant members of the community through acts or ceremonies that publicly express consent is common to legitimate power everywhere (Beetham, 2013/1991).

In line with this, although with varying degrees of intensity, policies of liberal and democratic states must be legitimized in the eyes of their citizens in order to be publicly



supported, particularly with regard to immigration issues that carry significant political weight. This is also because in the global arena, goods and trade move freely, and in the economic realm, national borders have become less important. In this context, policies seek to regain consensus and demonstrate to citizens their ability to protect their security alongside state sovereignty by strengthening borders and control against ‘unwanted’ mobility. In line with this, the political debate on irregular migration in many European countries has been directed towards externalizing borders and shifting control to transit countries (for example to Turkey, Libya, Morocco, Niger), promoting more restrictive regulations that block arrivals on the one hand, and financing return migration as an instrument and desired outcome of policy on the other². However, where return does not occur due to practical and administrative obstacles is where irregularities are consistently reproduced. This would be also where the failure of immigration policy is highest and where legitimacy is at stake.

Hence, it is important to consider promising alternatives to return policies and how (and whether) such policies strike a balance between human rights and state sovereignty, resulting in legitimacy for citizens in a political context where return is seen as the preferred policy outcome.

² Some reading suggestions on “voluntary” returns from Europe, but also from transit countries such as Morocco and (until recently) Niger, where IOM’s Assisted Voluntary Return and Reintegration (AVRR) programmes play a central role in the EU’s border externalisation strategy and imply an even greater concern for migrants’ rights, can be listed:

MOROCCO & NIGER:

Maã, A.(2020). Manufacturing collaboration in the deportation field: intermediation and the institutionalisation of the International Organisation for Migration’s ‘voluntary return’ programmes in Morocco, *The Journal of North African Studies*, 26(5), 932-953.

de Blasis, F., Pitzalis, S. (2023). Externalising migration control in Niger: the humanitarian–security nexus and the International Organization for Migration (IOM). *The Journal of Modern African Studies*, 61(3), 367–387.

EUROPE:

Leerkes, A., Van Os R., Boersema E. (2016). What drives ‘soft deportation’? Understanding the rise in Assisted Voluntary Return among rejected asylum seekers in the Netherlands, *Population, Space and Place*, 23(8), 1-11.

Lietaert, I., Broekaert, E., Derluyn, I. (2017). From Social Instrument to Migration Management Tool: Assisted Voluntary Return Programmes – The Case of Belgium, *Social Policy & Administration*, 51(7), 961-980

Vandevoordt, R. (2016). Between humanitarian assistance and migration management: on civil actors’ role in voluntary return from Belgium, *Journal of Ethnic and Migration Studies*, 43(11), 1907-1922.

Kalir, B. (2017). Between ‘voluntary’ return programs and soft deportation. Sending vulnerable migrants in Spain back ‘home’, in Vathi, Z., King, R. (Eds.), *Return Migration and Psychosocial Wellbeing*, London, Routledge, pp. 56-71.



Drawing on desk research and different perspectives from a range of public stakeholders and civil society representatives in 11 EU+ countries, this working paper explores existing alternatives to return policies implemented and practiced where return does not occur, due to various reasons, and migrants continue to live irregularly. A particular focus will be placed on labour market-driven regularisation programs and mechanisms aimed at promoting the formal labour market, while tackling the informal economy, as well as labour exploitation. Considering the role of employers and labour markets needs in light of labour shortages in some specific sectors, these programmes and mechanisms will be analysed to evaluate the nexus between labour force needs and irregular migrants' aspirations for legal residence and regular employment. Each country profile is structured as follows: First, a brief context description is presented. Next, the main policies toward irregular immigrants are outlined. Subsequently, alternative to return policies as forms of internal control are illustrated. Finally, the last section is dedicated to pathways to the regularisation procedure.

Definitions

The definitions of the terms used in this working paper are given below in alphabetic order. The main source is the European Migration Network's Asylum and Migration Glossary. Where another source is used, it is indicated.

Alternative to return policy³: All implicit and explicit policies implemented in receiving countries for those who cannot be easily returned.

Detention: In the global migration context, non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented.

Forced return: In the global context, the compulsory return of an individual to the country of origin, transit, or third country (i.e., country of return) on the basis of an administrative or judicial act.

³ Definition we adopted in this working paper.



Informal economy: All economic activities by workers and economic units that are -in law or in practice -not covered or insufficiently covered by formal arrangements.

Irregular migration: Movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit, and receiving countries.

Irregular stay: The presence on the territory of an EU Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.

Regularisation: In the EU context, state procedure by which irregularly staying third-country nationals are awarded a legal status.

Return: The movement of a person going from a host country back to a country of origin, country of nationality, or usual residence, usually after spending a significant period of time in the host country, whether voluntary or forced, assisted or spontaneous.

Voluntary return: The assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

Research Methodology

This working paper is drafted in collaboration with all partners of the Work Package task (University of Rotterdam, ICMPD, MPG, and PICUM). The analysis in this working paper is based on

- desk research
- 4 focus groups with experts representing both civil society organisations dealing with irregular migration and public stakeholders.

In some cases where availability was not otherwise possible, key informant interviews (KII) were conducted with officials (particularly in Austria, Germany, and the Netherlands). The focus groups with civil society organizations operating in the countries analysed in this paper were conducted in partnership with PICUM between March and May 2024. The focus groups and KIIs with representatives of public authorities were conducted in



partnership with ICMPD. The focus groups and KIs provided important information on how irregularities are experienced, reproduced, and dealt with from different perspectives, particularly regarding the legitimacy of ‘irregularity’ and the perception of regularisation procedures as pull factor.

Below is the list of organisations that participated in the focus groups as well as key informant interviews:

Country	Focus groups with CSOs	FGs and expert interviews with policymakers
Switzerland	1) APDH (Association pour la promotion des droits humains) 2) Centre de Contact Suisses-Immigré	
Austria	Austrian Red Cross	Federal Ministry of the Interior (expert interview)
The Netherlands	1) Defence Children 2) Stichting Los	Ministry of Social Affairs and Employment, Legal Affairs Department (expert interview)
Sweden	Caritas Sweden	
Spain	CEPAIM (Consortium of Entities for Comprehensive Action with Migrants)	
Italy	1) ASGI (Association for Legal Studies on Immigration) 2) SIMM (Italian Association of Medicine & Migration)	Ministry of Labor and Social Policies
Germany	Catholic Forum "Living in "Illegality" and Working Group against Trafficking in Human Beings	Federal Ministry of the Interior (expert interview, written responses)
France	GISTI (Immigrant Information and Support Group)	
Greece	Solidarity Now	The Greek Ombudsman
Poland	Association for Legal Intervention	
The UK	JCWI (Joint Council for the Welfare of Immigrants)	



For the desk research, the distribution of country analysis among task partners is as follows:

Milan University	Spain, the UK, and Greece
Rotterdam University	Sweden, the Netherlands
ICMPD	Austria and France
MPG	Italy, Switzerland, Germany, and Poland

Subsequently, the work package leads (the first two authors) have revised the country reports based on the data collected during the fieldwork. The desk research for the country reports has been conducted between December and February 2024.

Methodological challenges

In a political context characterised by high policy implementation gaps, and where (voluntary) return is the preferred European policy response to irregular stay, expressing ideas on alternatives to return was quite challenging. This was especially the case for representatives of public authorities, although anonymity was guaranteed. In particular, state officials have been quite reluctant to participate in both collective and individual meetings. We have not observed such reluctance on the part of civil society organisations that work with irregular migrants, providing them access to services and helping them to regularise. In fact, we had in some cases more than one expert representing civil society organisations in each of the countries analysed.



AN INVENTORY OF EXISTING ALTERNATIVE TO RETURNS POLICIES

AUSTRIA

Context description

Austria's migration policy framework is articulated around four priorities: cross-border cooperation and externalisation of migration control, acceleration of voluntary and forced returns, pre-emptive prevention of irregular migration in countries of origin and negotiation of readmission agreements with countries of origin. Accordingly, recent policy development has focused on limiting access to protection for asylum-seekers and raising the threshold for lawful residence. These measures have fuelled migrant precarity and fluidity between regular and irregular residency.

The Federal Office for Immigration and Asylum is responsible for delivering first-instance decisions on international protection applications. In 2022, 39,000 first-instance decisions on asylum and international protection have been delivered. 22,000 applications have been rejected, amounting to approximately 43 percent recognition rate (versus roughly 50 percent at the EU level)⁴.

Migrants who do not meet the legal requirements for residence in Austria (including overstayers) and whose claim for asylum or international protection has been rejected (in the final instance) are subject to an administrative return decision (also called an order to leave). The Federal Office for Immigration and Asylum is responsible for delivering return decisions to asylum seekers following a negative asylum decision or to third-country nationals not meeting the requirements for legal stay in Austria (overstayers, persons subject to an entry ban, irregular entry, etc.). The return decision must provide for a reasonable period (14 days in principle) for the decision to be executed voluntarily⁵. Indeed, voluntary return is indicated the most preferred policy outcome of irregular migration management:

⁴ Eurostat : https://doi.org/10.2908/MIGR_ASYDCFSTA

⁵ Freiwillige Rückkehr und Ausserlandesbringung, Bundesministerium Inneres.



“In Austria, as it should be in all European states, the priority is on voluntary return. This is an EU policy and the most important part of our policy, too (...). Every person has a chance to get voluntary return counselling from the beginning of the asylum application.” Key informant interview with public stakeholder

However, in practice, due to procedural and legal hurdles pertaining to return procedures, an important share of return decisions are delayed, suspended, or not enforced. 24,755 third-country nationals were ordered to leave in 2022⁶. 5,260 individuals were returned effectively following a return decision⁷. The “return rate”⁸ amounts to 21 percent, almost 10% below the European rate.

Combined with high barriers to protection, this situation forces many irregular migrant into a situation of legal and material limbo. Approximately 105,000 third-country nationals were “found to be illegally present” in Austria in 2022⁹. The number of irregular residents in Austria was last estimated by the Integration Advisory Board Austria for 2015 to be between 95,000 and 254,000 persons¹⁰.

Policies toward irregular immigrants

When legal and practical obstacles prevent deportation measures to be executed, the person ordered to leave may be considered “tolerated”. Toleration does not amount to a right to residence and the migrant is still at risk of deportation. Nonetheless it reflects an inability for authorities to organize the return operation under the current conditions.

Broadly speaking, Austrian regulations¹¹ foresee “tolerance” when:

- The third-country national is not provided with adequate travel documentation by the origin country (“uncooperative” sending state)
- The third-country national is exposed to danger/threat to life if returned to his/her country of origin or third country (in line with principles of non-refoulement)¹².

Provided one of the conditions above is fulfilled, the Federal Office for Immigration and Asylum may grant the migrant a “toleration card”. The card is valid for one year. The card

⁶ Eurostat : https://doi.org/10.2908/MIGR_EIORD

⁷ Eurostat : https://doi.org/10.2908/MIGR_EIRTN

⁸ Share of enforced returns amongst total return decisions

⁹ Eurostat (https://doi.org/10.2908/MIGR_EIPRE)

¹⁰ Ministry for European and External Affairs, [Integration report 2018](#).

¹¹ Alien police Law article 46 a)

¹² The exact scope of this provision and relevant primary source law is outlined in art. 50 of the Aliens Police Act.



may be extended for another year, provided factual and legal obstacles to deportation persist. The migrant is bound by a duty to cooperate: S/he must prove that all steps have been taken to obtain the necessary documents and that obstacles cannot be ascribed to him/her. However, it is not a widely used policy tool, and the rights this card grants to holders are very limited:

“The application of this policy is very rare (...) This card is not among the rights of immigrants; it may be granted or not (...)” Key informant interview with public stakeholder

In addition to being rarely applied, the issuance of the card does not amount to a safeguard from deportation as the return order remains in effect. Tolerated individuals may be forcibly returned if underlying conditions substantially evolve. The toleration ends if and when “obstacles” to deportation are lifted (travel documentation issued, end of the conflict in the country of origin, etc.).

After one year of toleration, the beneficiary may apply for a “special protection” permit. This permit is also accessible for victims (and witnesses) of human trafficking or cross-border prostitution (see below). This special protection permit grants the holder a temporary right to residence (1 year), removing the threat of deportation.

The federal office does not publicly comment or report on the issuance of tolerance cards. For this reason, it is difficult to highlight settings in which the tolerance regulation is consistently applied or if some particular migrant groups tend to benefit from its application. According to parliamentary inquiries, approximately 200 to 300 toleration cards are issued per year. Research on the topic¹³ underscores the Federal Office's discretionary power and the regulation's restrictive application. As with all evidence, almost all irregular immigrants remain in the territory outside the framework of the tolerance card.

Alternative to return policies: Forms of internal control

The Federal Office for Immigration and Asylum is responsible for terminating the residence of migrants not meeting conditions for lawful stay. This includes issuing return orders and, possibly, the imposition of mobility restriction or detention measures pending deportation.

Detention or territorial restriction may be resorted to in cases where authorities are led to question an individual's compliance with a return decision. This may be the case when a

¹³ MIRREM, forthcoming 2024.



person does not leave voluntarily, fails to cooperate, or is unable to provide proof of such cooperation. Failure to attend return counselling sessions or to notify authorities of an address change, as well as attempts to deceive the administration are reported as justifying the imposition of territorial restriction. The person may be obliged to take up accommodation in one of the federal accommodation centres (“return centres”) and may be subject to a territorial restriction. Wherever accommodation centres are imposed, mobility is limited to the district area where the accommodation is located. Territorial restrictions cannot be imposed on tolerated migrants.

Irregular migrants’ access to basic support, including housing and health services, is severely restricted. The 2004 Basic Support Agreement¹⁴ tasks provinces with the responsibility to provide basic support to migrants “in need of assistance” (including asylum-seekers, persons in need of protection, non-deportable migrants). Migrant that are “deportable” (whereby no legal or practical obstacle to removal exist) are excluded from the scope of the Basic Support Agreement.

Furthermore, in practice, the agreement is not implemented uniformly across the country. Some provinces have adopted a narrow interpretation of the agreement, restricting tolerated migrants’ access to state-sponsored accommodation or social insurance, for example. This situation drives migrants towards provinces where benefits are more accessible (e.g Vienna).

Different firewall community-led initiatives implemented at local levels in medical services and in other institutions, like schools, can be mentioned here. A particular reference is to AmberMed in Vienna and the Caritas-run Marienambulanz in Graz, which provide essential, free-of-insurance medical services for people with migration background, the FemSüd which focus on women and reproductive health in Vienna and Neunerhaus, which offers different services including accommodation, counselling and financial support for vulnerable groups, irrespective of status (Rössl et al., 2023).

However, the fact that most irregular migrants subject to return orders lack the identification to apply for tolerated status, in addition to the administration’s reluctance to streamline recognition, represents an additional impediment for a long-term regularisation.

¹⁴ [Grundversorgungsvereinbarung](#) (2004)



The Fundamental Act on Social Assistance¹⁵, enacted in 2019, specifies that irregular migrants subject to a return order are not eligible for basic support. Because, in practice, deportation is very often suspended due to external factors (deliverance of travel documentation by origin country, application to toleration status, etc), the act has been criticized for depriving “deportable” and non-deportable migrants of vital safety nets (e.g medical treatment, etc). Although the Fundamental Act on Social Assistance is not yet implemented throughout the country, it may be associated with efforts to “incentivize” irregular migrants to return.

Pathways to regularisation

The Settlement and Residence Act (NAG) outlines conditions under which permits for humanitarian reasons may be delivered. Due to an overarching focus on controlling irregular entrance and residence, pathways from irregularity to lawful residency are scarce and complex to navigate for people in precarious situations. It is also a matter of how the political debate and state policies match regularisation with a potential pull factor. Indeed, such bureaucratic complexity and right-related precariousness are also reflected in how the transition from irregularity to regular status is officially conceptualised:

“On the one hand, it is logic to think that it would be better for all to not have this limbo situation; on the other hand, they (alternative to return policies) may easily become a sort of pull factor” Key informant interview with public stakeholder

However, different interests, in particular concerns about human rights, the impact on public opinion and labour market needs, collide in the management of irregular migration. Indeed, despite this political concern about the unintended effects of regularization programs, Austria also implemented several regularisation policies in the 1990s and 2000s that regularised about 40,000 workers placed in the informal economy with particular attention to care workers (Chauvin et al., 2013).

Beyond this, the Federal Office for Immigration and Asylum is entitled to grant a residence permit to irregularly residing third-country nationals for humanitarian reasons, except in the case of a residence ban. Eligibility to these permits is rigidly defined and scarcely recognised if not to safeguard against fundamental rights interference. These permits

¹⁵ [Sozialhilfe-Grundsatzgesetz](#) (2019)



represent the most prevalent form of regularisation of stay for irregular migrants in the Austrian context.

In addition to the “special protection” permit, the 2009 Reform on the Right to Stay¹⁶ has introduced two categories of residence permits based on humanitarian grounds: a) residence permit for reasons related to article 8 of the European Convention on Human Rights (ECHR) and b) residence permit for “exceptional circumstances”.

Following this reform, Austrian law foresees three types of residence permits based on humanitarian reasons:

➤ “Special protection” permit¹⁷

The special protection permit is primarily intended for victims and witnesses in contexts of Trafficking in Human Beings (THB), victims of cross-border prostitution networks and victims of gender-based violence. The law stipulates that charges must have been pressed by the victim for the residence application to be positively assessed. The deliverance of a special protection permit for victims of trafficking is also conditioned to a positive assessment on the application from the police department.

Importantly, migrants who have been “tolerated” (cf above) for more than one year and who cannot be deported for reasons outlined in the Alien Police Law¹⁸ are also eligible to the special protection permit.

If approved, the beneficiary is granted a standard residence permit which grants access to the labour market without requisite for prior screening in principle¹⁹ (in alignment with article 54 of the Asylum Law).

The standard residence permit is valid for one year. The applicant has to lodge an extension request himself or through a representative (article 58 and 59 of the Asylum Law). The extension request has to be submitted before the expiration of the first permit. If conditions related to income, health insurance and language tests are met, the holder may apply for a “red-white-red card” which is a two-year residence permit including employment rights for individuals residing in Austria for more than 6 months²⁰.

¹⁶ Bleiberechtsnovelle (BGBl I 29/2009)

¹⁷ In German: Aufenthaltsberechtigung besonderer Schutz (Art. 57 of the Asylum Law)

¹⁸ [Aliens Police Law article 46 a\)](#)

¹⁹ Beschäftigungsbewilligung – besonderer Schutz, Unternehmensservice Portal

²⁰ Types of immigration,



➤ “Residence permit for reasons of Article 8 ECHR”²¹

This permit is meant to cover situations where deportation might infringe on the right to family life (article 8 ECHR). Article 8 of the ECHR involves weighing the private and/or family interests of the person in remaining in Austria against the interests of Austria in removing the person from the country. The type, duration and lawfulness of the residence, the actual existence of a family life, the worthiness of protection of the private life, the degree of integration, the ties to the home country and the criminal record are factors which may be taken into account.

If the application is approved, the beneficiary is granted a “residence permit plus” which provides unrestricted access to the labour market. The beneficiary is entitled to both employed and independent work (as per article 54 of the asylum law).

This permit is valid for 1 year and is non-renewable. Holders of this permit need to apply for a “red-white-red” card after one year. After 5 years of uninterrupted residence individuals may apply for permanent EU residence.

➤ Residence permit in case of “exceptional circumstances”²²

This permit grants temporary residence to its beneficiary in case of individuals attesting of *over 5 years of residence* (including 3 years in a regular situation) in Austria and fulfilment of integration tests. Authorities may also consider other factors including the person’s integration record, his or her German proficiency, “self-preservation” ability, access to regular income, etc.

This permit entails the same benefits and restrictions as the residence permit related to reasons of article 8 ECHR. If the application is approved, the beneficiary is granted a “residence permit plus” which provides unrestricted access to the labour market, covering both employed and independent work (as per art. 54 of the asylum law).

This permit is valid for 1 year and is non-renewable. Holders of this permit need to apply for a “red-white-red” card after one year. After 5 years of uninterrupted residence individuals who have completed the compulsory integration tests may be eligible for permanent EU residence.

Asylum statistics show that in 2022, 1,200 positive and 5,400 negative decisions on exceptional circumstances had been delivered, underscoring the restrictive interpretation

²¹ In German: Aufenthaltstitel aus Gründen des Art. 8 EMRK (Art. 55 of the Asylum Law)

²² In German: Aufenthaltstitel in besonders berücksichtigungswürdigen Fällen (article 56 of the Asylum Law)



and application of humanitarian “regularisation”. In total 2,500 permits were in circulation in 2022, with Iraqi, Russian and Serbian nationals amongst the most represented²³

Importantly, applicants to the above-mentioned residence permits are not formally protected from deportation except when a) an application for an exceptional circumstances permit has been filed prior to the deportation proceedings and b) the nature of the application makes the positive outcome of such an application likely²⁴.

Since a constitutional court ruling in 2009, migrants are entitled to apply for the above-described residence permit in person (or through a mandated representative). The above-described residence permits are only valid for one year. After 12 months, beneficiaries of these permits are required to apply for standard residency (Red-White-Red card²⁵) or, alternatively, for a renewal in the case of a special protection permit. After 5 years on uninterrupted residence, migrants may apply for permanent EU residence.

The relatively low volume of residence permits for humanitarian reasons in circulation (compared to estimates of irregular migrants) and the restrictions applied underline the lack of legal alternatives available for migrants in irregular situations in Austria as well as the precarious living conditions arising from it. It may also point to low awareness of these options amongst the migrant population “which hampers the potential of these provisions and hence their practical impact on the irregular migrant population” (Rossl, 2023).

²³ [Asylstatistik 2022](#)

²⁴ Article 58 of the asylum law

²⁵ It offers a residence permit for skilled third-country nationals aiming to stay and work in Austria on a permanent basis.



SWEDEN

Context description

Sweden has a longstanding tradition of embracing migration, especially the one concerning asylum, exemplified by its progressive policy since 2006, which allowed rejected asylum seekers to join the labor market upon securing employment (OECD 2011, Emilsson 2014, Borevi and Shakra 2019). Traditionally, Sweden has distinguished itself through its welfare state inclusion policy which ensures that all citizens should enjoy equal rights to facilitate their integration (Borevi 2014, 2017). Following this policy, Sweden used to give immediate permanent residence permits to those who receive asylum protection, distinguishing itself from other European countries. However, in response to the broader European trend following the migration policy crisis in 2015, Sweden enacted the Temporary Law in 2016, restricting its migration policies and creating greater challenges for refugees seeking permanent settlement and family reunification (EMN 2020). The policy shift in the conceptualisation of asylum and asylum-related rights is also highlighted by stakeholders who also note a shift in public debate towards a more negative and punitive perspective:

“The situation in Sweden has changed drastically over the last few years. It used to be one of the most open countries in Europe in terms of asylum and migration issues, with a very positive attitude towards migrants. There has been a drastic change in public opinion, and the narratives about migration are now very negative. We can call it a criminalisation of migration” Swedish Civil Society Organization

Given these dynamics, access to education is a useful area in which to monitor policy changes. Access to education for irregular children was introduced in 2013, along with the right to health (Spencer and Hughes 2016). Since then, children with an irregular status have had the right to pre- and primary school as well as special schooling. Upper secondary education is open for those who studied in Sweden before the age of 18 (EMN, 2021). Prior to 2013, municipal schools had an obligation to report the presence of irregular children. However, the latest Tidö agreement²⁶ presented by the majority parties proposes to take a step backward and oblige municipalities and other authorities that come into contact with irregular people to inform the Swedish Migration Agency and/or the police, putting the school attendance of irregular minors at risk (Lind et al., 2023).

²⁶https://crd.org/wp-content/uploads/2022/12/Analysis-of-the-Tido-Agreement_Civil-Rights-Defenders_221024.pdf



In line with this shift, the Temporary Law (2016) aimed to address the increasing arrival of asylum seekers by replacing permanent residence permits with temporary ones for asylum seekers and those in need of protection (Borevi and Shakra 2019). In June 2016, Sweden also suspended accommodation assistance for adults who did not depart within the voluntary period (usually 4 weeks)²⁷ as a way to pressure them towards return (EMN 2021). Simultaneously, the Swedish government is considering introducing more stringent conditions for acquiring Swedish nationality (Swedish Ministry of Justice, 2023).

Contrary to these restrictions that target asylum migration, the Swedish government has emphasized the promotion of labor migration. For example, the Swedish Migration Agency has actively facilitated labour migration by developing a certification system for trusted employers that streamlines the application process for labor migration. This system prioritizes occupations critical to the country's labour market, including IT architects, civil engineers, engineers, and technicians. Furthermore, Sweden has established international agreements with third countries to facilitate cultural exchange among young adults, allowing them to work in Sweden for up to one year (EMN 2020).

The current alternatives to return policies in Sweden align with this migration policy shift, emphasizing limitations on protection for refugees on humanitarian grounds while underscoring the importance of economic considerations for the integration of rejected asylum seekers in Sweden.

Policies toward irregular immigrants

Sweden does not have Schengen-external borders. Nevertheless, during the migration policy crisis of 2015 and in subsequent years, Sweden implemented temporary border controls at its land and maritime borders with Norway, Finland, Denmark and Germany. This measure aimed to prevent irregular migrants from moving between Schengen countries and placing undue pressure on Swedish institutions (Borevi and Shakra 2019). Following the migration policy crisis, the government justified the continuation of these controls by citing concerns about terrorism (Borevi and Shakra 2019, EMN 2021a). From 2016 to 2017, Sweden enforced ID checks on cars, ferries, and trains to prevent refugees from moving between Schengen countries. Although these checks have been lifted, Swedish authorities now conduct sporadic border checks. As far as controls are

²⁷ <https://www.migrationsverket.se/English/Private-individuals/Leaving-Sweden/Rejection-of-application-for-asylum.html>



concerned, one of the latest policy proposals (Tidö agreement) suggests reporting irregular status to relevant authorities.

Sweden conducts internal controls, including random individual checks where the police can request individuals to present their passports or provide information about their stay in Sweden (Aliens Act, Chapter 9, Section 9). Additionally, a law introduced in 2013 enforces sanctions against those employing irregular migrants (Borevi and Shakra 2019). Since 2018, the Swedish police have been authorized to carry out unannounced inspections in workplaces if there are suspicions of employing irregular migrants (Aliens Act, Chapter 9, Sections 14-16).

Alternative to return policies: Forms of internal control

Detention

In Sweden, detention is not employed for individuals who cannot be returned (EMN 2014). Instead, Sweden provides residence permits for those encountering obstacles to return that are beyond the migrant's control. These permits can be either temporary or permanent, depending on the expected duration of the obstacle.

Detention can be used for purposes of enforcing an expulsion order. According to the Swedish Aliens Act, detention is allowed if there is a risk that the person will go into hiding or pursue criminal activities in Sweden (Aliens Act, Chapter 10, Section 1 and 2).

Detention with a view to deportation cannot exceed 2 months unless there are exceptional grounds justifying an extended detention period (Aliens Act, Chapter 10, Section 4). The decision on detention must undergo periodic reexamination and can be renewed for up to 12 months (Migrationsverket 2023a).

Available statistics show that detention is used in Sweden. For instance, in 2013, only 1,450 detentions of rejected asylum seekers occurred, a relatively small number when compared with the 54,000 refugee applications received that year (EMN 2014). Furthermore, by 2019, the capacity of Swedish detention centers was limited to 528 beds (EMN 2020). This data collectively underscores that both detention and supervision are applied selectively, typically reserved for exceptional cases.

As an alternative to detention, the third-country national can be placed under supervision, which means that the person should report periodically and that must surrender their passport and identity documents to the authorities (Aliens Act, Chapter 10, Sections 6 and 8).



Social services

Before the turn of the century, irregular migrants in Sweden did not enjoy social rights, as these were intricately tied to their legal status (Nielsen 2016). The reform introduced in the early 2000s marked a significant shift, granting *health rights* to the children of rejected asylum seekers. Subsequently, in 2013, this entitlement was expanded to encompass all children, irrespective of their legal status. Since then, children with an irregular status enjoy the same healthcare rights as any Swedish child; adults in situation of irregularity are given emergency care and non-deferrable health and dental care (EMN 2021). The evolution of this policy can be attributed to a confluence of factors, including the need to safeguard the rights of migrants but also to protect medical professionals who found themselves in ethically challenging positions (Nielsen, 2016).

In addition to health and education, irregular migrants who have received a return decision are entitled to *accommodation* if they are responsible for children under the age of 18 (EMN 2021). This entitlement also extends to unaccompanied minors residing alone in Sweden.

A legislative amendment in June 2016 cut accommodation assistance for adults without children who fail to return during the voluntary departure period. Exceptions were recognized, such as cases when departure is not feasible due to exceptional circumstances, i.e., health reasons. Additionally, the right to accommodation can be regained if the return decision is suspended due to new circumstances, such as the deteriorated situation in the country of return (EMN 2021).

Rejected asylum seekers are *entitled to work* in Sweden if they receive an exemption from a work permit by the time they apply for asylum. For purposes of this entitlement, they should disclose their identity and cooperate with return in case they have received a return decision (EMN 2021). Such work possibility extends until the period of voluntary departure and can be regained if the return decision is suspended.

Financial support is granted only to adults with a return decision living with children under 18 and unaccompanied minors until the day they leave the country. Since the financial support is administered by the local governments, they are free to expand the financial support for irregular migrants (EMN 2021).

Pathways to regularization

Track change

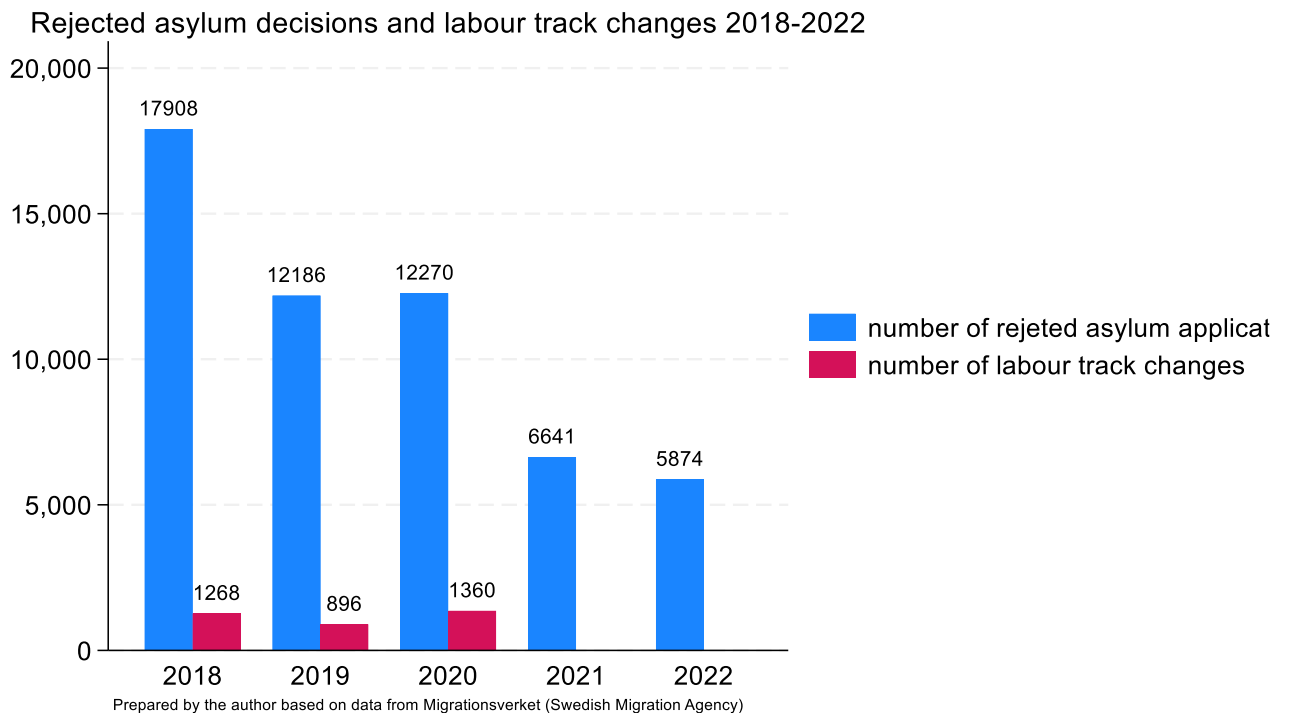


In 2008, when Europe grappled with an economic crisis, Sweden stood out with one of the most progressive migration systems. While many EU states were focused on reducing migration, Sweden pioneered a legal pathway for rejected asylum seekers to stay in the country (OECD, 2011; Emilsson, 2014;). Sweden introduced a policy enabling rejected asylum seekers to transition from the “asylum track” to the “work track”. Lindberg (2020) aptly describes this policy as “A no that isn’t always a no” (p. 146), signalling that a return decision is not necessarily final and rejected asylum seekers may be permitted to legally remain in the country.

The track-change option allows rejected asylum seekers to apply for a residence permit under specific conditions outlined in the Aliens Act, Chapter 5, Section 15a. These conditions include:

- Obtaining an exemption from the work permit requirement during the asylum application process. This means that rejected asylum seekers are allowed to bypass the usual requirement of obtaining a work permit. The exemption is granted for potentially successful applications and contingent upon the individual revealing their identity, a crucial factor for securing eventual return (Kraler 2019, Migrationsverket 2023b).
- Having worked for at least 4 months with the same employer under employment conditions that align with Swedish collective agreements or industry standards, which includes a minimum salary and insurance coverage.
- Having secured a contract for a minimum of 12 months.
- Applying for the track-change within 2 weeks after receiving the return decision.
- Receiving a minimum salary, constituting at least 80 percent of the median salary published by Statistics Sweden (SCB) at the time of application (Migrationsverket 2023d).

While this track change presents an opportunity to improve the situation of rejected asylum seekers, the rate of rejection for track change applications remains substantial (EMN 2021, OECD 2011; Quirico 2012). As seen in the figure below, in 2018, out of 17,908 rejected asylum applications, only 1,268 were allowed to change to the labour track. This constitutes merely 7% of the total rejected decisions. This percentage remained constant in 2019 and experienced a slight increase to 11% in 2020. Several factors contribute to this, such as the challenge of proving the minimum required salary, particularly as asylum seekers may be more susceptible to exploitative working conditions. Additionally, the failure to meet the specified two-week application timeframe is often linked to a lack of information about the process.



The track change gives the rejected asylum seeker the possibility of obtaining a temporary resident permit, which can be later turned into a permanent one after 5 years of continuous residence in Sweden (Migrationsverket, 2024). It is important to note that by the time the track change is being assessed, the applicant has the possibility of continuing working (Migrationsverket, 2023d).

Suspension of enforcement of a return decision

When an individual receives a return decision but experiences a suspension of enforcement, the potential for staying legally in Sweden arises, contingent upon whether the obstacle to enforcing return is temporary or permanent. Various factors, such as health concerns, humanitarian grounds, adherence to the principle of non-refoulement, or the third state's unwillingness to readmit the person, can serve as impediments to enforcement (Alien Act Chapter 12, sections 1, 2, 3, 10 and 18).

During the re-examination of the application, there is no automatic entitlement to aid. However, the third country national has the possibility to work, contingent upon the application for AT-UND²⁸ (Arbete och Tillvaro - Utanför ordinarie mottagning, which

²⁸ This is the exemption for work that was referred to above. With this exemption, asylum seekers are allowed to work without the need for a working permit.



translates to Work and Existence - Outside Regular Reception) (Migrationsverket 2022; 2023b).

It is important to note that the process towards the return continues even when the enforcement of the decision has been suspended, except for those granted a permanent stay, reserved for impediments of a lasting nature. Upon acceptance of the suspension of enforcement, the individual becomes eligible for accommodation and financial support and has the option to work after applying for AT-UND.

Residence permits based on particularly distressing circumstances

In December 2023, Sweden passed a reform altering the criteria for granting residence permits based on exceptionally distressing circumstances (Aliens Act chap. 5, section 6 and section 9) (Löfgren 2023; Migrationsverket 2023c). According to Chapter 5, section 6, for purposes of assessing such exceptionally distressing circumstances, the authorities will pay particular attention to: “the alien’s state of health, his or her adaptation to Sweden and his or her situation in the country of origin.” According to the same legal provisions, this assessment will be relaxed in the case of children (EMN 2019).

Before this reform, protection against particularly distressing circumstances was contingent upon the expulsion violating a “Swedish Convention obligation”, this means Sweden’s obligations under international treaties or conventions that it has ratified, which require it to provide certain protections or rights to individuals facing distressing circumstances. The reliance on this convention obligation brought about uncertainties and heightened risks, as noted by the Swedish Red Cross, due to the lack of clarity, higher risk of uncertainty, and poor attention to personal circumstances (Swedish Red Cross).

The implications of the recent reform are still under evaluation, and it remains unclear whether it signifies an improvement or a retrocession in access to residence permits. On the one hand, eliminating the “Swedish Convention obligation” can be seen as a positive step as it simplifies the requirement of the applicants to assess if Sweden has an international obligation and could center the assessment on the applicant's personal circumstances. On the other hand, the use of the term “exceptional” raises concerns about the potential restriction of protection.

As additional information, the application of the provision that existed before this recent reform and that made reference to the “Swedish Convention obligation” was highly restrictive, placing a significant burden of proof on the applicant (EMN 2021, Johansson 2014). Over the period 2015–2020, only 290 third-country nationals were granted



temporary residence permits, while 84 received permanent residence permits (EMN 2021). The Deputy Legal Director at the Swedish Migration Agency considers that the recent reform would allow Sweden to return to what existed before 2015, which was a protective system where the grounds for protection included even cases of gender and sexual orientation (Migrationsverket 2023c, Johannesson 2017; Emilsson 2018).

To sum up, Sweden has undergone a significant policy shift regarding the protection and rights of irregular migrants. Recent reforms have introduced stricter measures, reducing welfare benefits for irregular migrants and conditioning their access to support on their cooperation with the return process. It is important to note that the track-change policy has remained unchanged. This policy permits asylum seekers to work in Sweden while their applications are being processed and allows rejected asylum seekers to remain in Sweden if their working conditions meet certain standards. This is a notable exception, as it represents one of the few pathways to regularization in a country where the overall trend over the past decade has been towards more restrictive migration policies.

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[Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2023/2023-11-10-Skarpta-villkor-for-anhoriginvandring.html](https://www.migrationsverket.se/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2023/2023-11-10-Skarpta-villkor-for-anhoriginvandring.html)

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FRANCE

Context description

France is host to approximately 14 million people with a migration background²⁹, drawing back primarily to the country's status as a former colonial power and period of vast economic growth experienced in the post-war years. Its central position in Europe as well as domestic labour market dynamics arising from ageing demographics make it today an important hub for third-country nationals, either transiting to other destinations in western Europe or seeking to settle on the longer term.

The domestic debate on migration has been led to focus on external border control and irregular crossings. Yet little attention is paid, on the one side, to the growing workforce gap and, on the other, to the precarious conditions asylum seekers and irregular migrants are facing as a result of a complex set of requirements and rules applying to residency.

France's policy on immigration may be qualified as ambivalent as it strives to weave into a coherent set of rules the country's past and present migration dynamics while striking a balance between promoting integration, combatting irregular entry, and accelerating returns of those not eligible to stay. In the past 35 years, the country has undergone a total of 21 reforms pertaining to immigration and asylum law. Constant changes in the regulatory frameworks pertaining to asylum processes and legal residency – including the roles and functions assigned to public bodies – have impaired the system's effectiveness and its overall coherence.

In general, observers argue that in matters relating to residency rights, discretionary powers granted to the administration represent a key feature of the system. The police are tasked with issuing return orders (*Obligation de Quitter le Territoire Français, OQTF*) to foreigners not eligible to legal stay, in line with the EU's return directive. Law enforcement is also required to consider the individual's situation and assess the applicability of the decision in light of existing safeguards (right to family life, non-refoulement, etc). Detention may be imposed in case the period for voluntary departure (30 days) is exceeded or if the individual presents a threat to public order.

“Deportation orders” (*arrêté d'expulsion*) represent a special (and more controversial) category of removal orders: Applying also to documented migrants, they may be issued

²⁹ Author's own calculation, compiled from: *Immigrés et descendants d'immigrés*, Édition 2023, Institut National de la Statistique et des Etudes Economiques.



individuals presenting particularly severe threats to public order (terrorism charges, criminal acts, etc). They differ from the standard OQTF in that they lead to the immediate execution of the deportation measure or, alternatively, to detention in the case no travel documents may be secured.

Migrants subject to a return order may appeal the decision based on principles enshrined in the article 8 of the ECHR (Right to Family Life) or if they meet certain long-term residence requirements (see Q4 below for more details).

There is no accurate statistical base on irregular migrants in France. Stakeholders point to the number of AME beneficiaries (healthcare subscribers) as providing the most reliable estimate of irregular migrants publicly available. The AME covered over 460,000 individuals in 2023 (see Q3 below for more details)³⁰

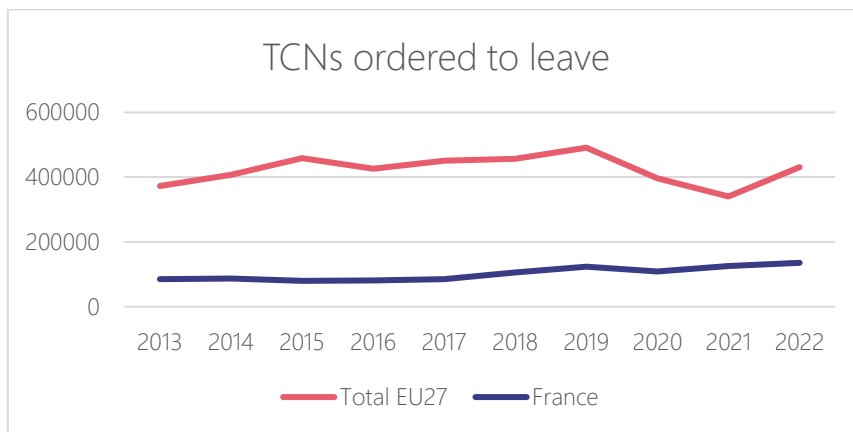
Policies toward irregular immigrants

With over 120,000 orders to leave issued in 2022, France accounts for almost a third of all return orders issued at the EU level. The table below depicts an increasing trend since 2013. However, the multiplication and popularity of Orders to Leave (OTL) are not matched in effective returns. Since the post-COVID period, the country's return rate has hovered around 10 percent. This "ineffectiveness" in France's return policy is a prominent topic in the media and is subject to conflictual interpretations. Rather than reflecting an alleged tolerance vis a vis irregular migrants, NGOs have argued this disconnect is better explained by an overreliance on the issuance of return orders irrespective of procedural and legal safeguards applying to returns (although this step is required by law)³¹

Foreign nationals who are required to leave have a period of 30 days to do so voluntarily. Extensions may be granted on account of the individuals' links with the country, family situation or healthcare needs.

³⁰ This could reasonably be seen as an under-estimate given the conditions of access to the AME which have regularly been criticized for deterring potentially eligible applicants.

³¹ [Centres et locaux de rétention administrative](#), Rapport national et local, 2022, La Cimade. Page 14. OQTF – A merely legal instrument? EU MO MI, Beine, P-L, 2022; « Contentieux des étrangers et vague managériale au tribunal administratif de Paris », *Droit et société*, vol. 84, no. 2, 2013, pp. 313-338. El Qadim, Nora.



In the context of border apprehensions, law enforcement authorities are required to give irregular migrants sufficient time to register in the asylum system and submit applications for international protection (the law specifies one day). Given the absence of external land borders, a significant proportion of asylum applications are transferred to “frontline” EU Member States under the Dublin regulation mechanism. The island of Mayotte is exempted from this obligation. Return operations to neighboring Comoros where most migrants come from are reportedly organised within hours from migrants’ initial apprehensions (more on Mayotte under Q3).

Alternative to return policies: Forms of internal control

A migrant subject to a return order may be put under house arrest by decision of the prefect or minister under the condition that “reasonable prospects” of removal exist. In other terms, house arrest should be ruled out if conditions (material or legal) are not met for the return decision to be executed, for example in case of non-cooperation from the country of origin or if enforcing the return decision violates principles of non-refoulement. NGOs working with migrants in detention argue that removal prospects are often not considered when house arrest orders are issued (or prolonged) therefore violating the principles of lawful detention.

In 2022, 40,000 third country nationals were put under house arrest and placed in detention centres (called Centre de rétention administrative, CRA) for contravening rules related to residency: non-compliance with a return order, violation of entry ban, etc. Irregular migrants may be incarcerated for up to 45 days and house arrest may be renewed once, amounting to a maximum period of 90 days.

In mainland France, 16,000 migrants were detained in 2022 for contravening residency rules. They remained in custody for an average duration of 23 days. Although provisions in law require detention orders to be conditioned to realistic prospects of removal, about a



quarter of migrants remained in custody for over a month. This situation has led to a saturation of detention capacities (over 90 percent occupancy) and requires constant budgetary support to increase the infrastructure.

Importantly, only 26 percent of migrants put in custody in 2022 have ultimately been effectively returned to a third country. Half of the migrants detained were subsequently released by court orders, primarily on account of flaws in detention procedures. This raises important questions related to the proportionality and legitimacy of detention practices in France³²

the Island of Mayotte accounted for 65 percent of cases of detention (26,000 out of a total of 40,000), amongst them 3,000 children (versus less than 100 detained children in mainland France).

Mayotte, off the coast of East Africa, is subject to a specific regime, primarily on account of its overseas territory status (*outré mer*): Unlike in the rest of French territory, appeals against return orders do not carry suspensive effects. This means third-country nationals contesting return decisions (OQTF) are not protected from the decision's execution, except in very specific cases. Yet the legal basis of return operations is very often put in doubt and challenged *ex-post*. In these conditions, accessing appeal mechanisms is a considerable challenge. This practice has been repeatedly condemned and return decisions (and the validity of the operations) have been struck down in several instances³³.

In addition, the police in Mayotte are empowered to conduct discretionary and generalised identity checks throughout the island, whereas in the rest of the territory "random" identity checks are only justified in proximity to border areas. Residence permits for third-country nationals – about half the population– are restricted to the territory of the island (no freedom of circulation to mainland France or Europe). Mayotte's numerous derogations and system of exceptions regularly draw criticism from legal experts and fundamental rights advocates as infringing on the rule of law.

Irregular migrants enjoy limited access to social services. The State Medical Assistance (Aide Médicale d'Etat – AME) is generally accessible for irregular migrants. The AME is not

³² [Centres et locaux de rétention administrative](#), Rapport national et local, 2022, La Cimade. Page 12.

³³ https://www.lemonde.fr/societe/article/2023/05/07/a-mayotte-la-justice-contraint-l-etat-a-organiser-le-retour-de-sans-papiers-apres-des-expulsions-illegales_6172435_3224.html

³³ [Centres et locaux de rétention administrative](#), Rapport national et local, 2022, La Cimade. Page 12.

³³ Responses to long-term irregularly staying migrants: practices and challenges in France, EMN France.



available in Mayotte. The AME is allocated on conditions of uninterrupted residence for at least three months (since the expiration of last residence permit), and limited resources (maximum income of about 10,000 EUR annually)³⁴. The application for the AME card is to be submitted directly to social security providers. Holding an AME card provides 100 percent elementary healthcare coverage. The card is only valid for one year and is renewable. NGOs have reported that many migrants face high barriers to accessing the AME card notably because in-person counselling is not available. 466,000 people were covered under the AME in 2023³⁵

In principle, irregular migrants in situation of vulnerability may access emergency accommodation in line with provisions from the Code on Social Action and Families (CASF³⁶). Emergency accommodation is provided without distinction on grounds of nationality or status.

Access to services such as education or emergency housing is not conditioned to one's migration status and responsible authorities do not screen for this. Indeed, children education is compulsory in France, regardless of their (or parents') status. There is no exception to this rule and all children between the ages of 6 and 16 need to be registered in the schooling system. Apart from this, irregularly staying third country nationals do not have access to social benefits in France.

Considered a "hotspot" for migrant smuggling, the area around Calais in northern France represents a special case. Because of the proximity to the UK border (accessible via train), heavy-handed police operations are routinely conducted to dismantle makeshift migrant settlements (often referred to as the Calais "Jungle"). In these locations, distribution of food and other essential services by NGOs is disrupted by authorities (imposition of local bans on NGOs work, etc).

Pathways to regularization

Regularisation pathways for irregular migrants are very seldom discussed in French politics or public debates. For many reasons, this represents a severe legal blind spot in the French framework, which exacerbates migrants' exposure to exploitative work and precarious living while weighing heavily on an already overburdened detention and judicial systems.

³⁴ Responses to long-term irregularly staying migrants: practices and challenges in France, EMN France.

³⁵ <https://www.lacimade.org/obstacles-a-lacces-a-laide-medicale-detat-la-cimade-et-ses-partenaires-associatifs-publiant-une-enquete-inedite/>

³⁶ Article L 345-22.



Unlike other countries (e.g Austria), the principle of tolerance for non-deportable migrants is not explicitly recognised in French Law. The law specifies that if the deportation is materially impossible (lack of travel documents, for example) but reasonable prospects for deportation continue to exist, competent authorities might apply “house arrest regimes” (assignation à résidence). This regime applies either for 45 days or 6 months and includes specifications on the perimeter of mobility restriction. The migrant is forbidden from travelling outside the designated area (commune or département) except to visit his/her consulate³⁷. Longer-term house arrests may be renewable once, amounting to a period of one year. Past this one-year period, it is unclear what kind of legal provisions apply to migrants who can justify they are unable to leave the country. This legal vacuum results in a situation of limbo and leads to house arrests lasting several decades³⁸.

A return order is considered void (and does not apply) if the individual attests to one of the following:

- 10 years+ of regular residence in France;
- Residence since age 14 (or earlier);
- Minor children in the schooling system;
- Health condition requiring specific treatment not available in country of origin.

The return order may be contested on the grounds highlighted above. The individual has 15 or 30 days to challenge the order. The appeal suspends the order’s enforceability (except in Mayotte).

It is important to note that applications for international protection also suspend the enforceability of a return order unless the applicant is from a so-called safe country. Asylum applicants from safe countries may be deported before the ruling from the appeal’s court (Cour Nationale du Droit d’Asyle).

Despite advocacy work conducted by NGOs, pathways for the regularization of irregular migrants remain largely overlooked. The Covid crisis has brought to the fore irregular migrants’ disproportionate contribution to the French economy, especially in construction, cleaning, personal care, security services and agriculture. Existing research shows sectoral

³⁷ [Assignation à résidence d'un étranger renvoyé de France | Service-Public.fr](https://www.service-public.fr)

³⁸ <https://www.lemonde.fr/societe/article/2024/02/14/garbis-dilge-67-ans-probable-doyen-des-assignes-a-residence-et-figure-de-la-diagonale-du-vide>



reliance on this workforce is set to keep increasing in line with demographic projections for the country³⁹.

In light of these dynamics, the government's draft reform bill in 2023 (which is mentioned in the focus group as speeding up the deportation decision and lengthening detention time) included a right to regularization for workers employed in “bottlenecks” sectors. The bill paved the way to a one-year residence permit “working in professions in shortage” issued automatically under certain conditions. The bill was nevertheless stripped of the regularization provisions in the parliamentary process, resulting in a status quo on the question of irregular workers.

Accordingly, the 2012 “Valls” act⁴⁰ allows regularisations on an individual and discretionary basis. It introduces a discretionary mechanism under which persons in an irregular situation can obtain a residence permit for “exceptional reasons,” either on the basis of employment or on the grounds of private and family life. The 2023 immigration reform brings modifications on the application procedure: TCNs are free to apply for residence independently or via migrant groups, trade unions, etc and the employer’s authorization is no longer a requirement.

Despite attempts by lawmakers to introduce a legal claim towards regularisation, the new immigration law reaffirms the discretionary nature of the “Valls” act. Regularisation based on employment is intended for persons who have been present in France for at least five years⁴¹, and who either have an employment contract or a promise of future employment in sectors affected by occupational shortages. Persons residing in France for only three years but who have worked a minimum of two years are also eligible. If the applicant fulfils all requirements, a renewable residence permit may be issued with a maximum validity of one year.

However, proving with documents the employment in the irregular period is not always easy and feasible:

³⁹ [Quels sont les métiers des immigrés?](#) DARES Analyse, République Française, Juillet 2021.

⁴⁰ <https://www.legifrance.gouv.fr/circulaire/id/44486>

⁴¹ The adopted version of the 2023 immigration law makes no modification to the principles for regularisation for employment – except dropping the requirement for employers’ authorisation. The law entered into force on 24 January 2024 yet the ‘possibilities’ of the law are not yet exploited. For more information, see: https://www.lemonde.fr/societe/article/2024/06/03/loi-immigration-la-laborieuse-mise-en-place-des-regularisations-metiers-en-tension_6237001_3224.html



“It remains still very difficult to be regularised for work because most of the time undocumented people work hidden (but, to be regularised), they have to prove that they were working while they are undocumented, and they don't always have the paper to prove that they were working” French Civil Society Organisation

Regularisation based on reasons of private and family life also lead to a temporary residence permit that allows the holder to work. They are intended for parents of school-going children; the spouse or partner of a regular migrant (based on Art. 8 ECHR); and minors turning eighteen who have family links or are following an education in France. Residence permits for private and family life may also be issued to foreigners based on humanitarian considerations. Special attention is paid to victims of trafficking in human beings who cooperate with authorities, and victims of domestic violence. To these two groups, a renewable residence permit of one year is issued⁴² Almost 8,200 permits were delivered in 2018, up from 3,000 in 2012.

According to principles outlined in the Valls act, regularisation for employment reasons is not automatic and awarded only on a case-by-case basis after review by competent authorities. This situation is criticised for falling short of a) tackling exploitation at work and meeting the needs of the economy; b) respecting principles relating to non-discrimination and legitimacy of public action. It is argued that the large discretion granted to authorities (“prefets”) in delivering residence permits for employment or family life reasons leads to widely different practices and outcomes between regions. Furthermore, this discretionary power and the lack of clear mechanisms related to residency pathways also exacerbate migrants’ uncertainty regarding their future, adversely impacting their integration into society and living conditions.

⁴² [Markus González Beilfuss, Julia Koopmans, Legal pathways to regularisation of illegally staying migrants in EU Member States, ADMIGOV, 2021](#)



GERMANY

Context description

Germany is a federal republic consisting of 16 federal states (Länder) and, since the 1970s, has experienced a rising influx of migrants, consolidating its position as a popular destination within Europe. Decisions regarding asylum, returns, and stay are primarily handled by administrative bodies at the municipal, state, and federal levels. Furthermore, temporary political decisions can also be adopted by governmental agencies at the state and federal levels; the Conference of Ministers of the Interior takes the most frequent political decisions on the implementation of the Residence Act. (Kirchhoff et al., 2018).

In the present scenario, Germany is generally considered to be a 'targeted regime' with a strong capacity to enforce return, which is, in practice, implemented in a very selective way because of a combination of different cultural, historical, and economic interests (Leerkes et al., 2020).

Following the surge in arrivals registered in Germany in 2023, chancellor Scholz's cabinet approved in October a new package of measures that would allegedly facilitate the implementation of returns, making these more efficient.

The draft legislation has been, however, deemed by many as controversial due to the increase in the maximum duration of pre-deportation detention (from 10 to 28 days) and the heightened power of the police provided for⁴³.

Currently, in line with the EU approach, return is described as the main policy preference. The policy emphasis on return is reported below:

"There is a tendency, and this is official policy, to return people; at least they were big announcements made, big announcements made by German politicians, including the chancellor, saying we will now return a lot of people"

German civil society organisation

"Through the necessary law and policy tools, there is no return that cannot be implemented (...) Currently, the aim is to place (voluntary) return as the main response to irregularity" German public stakeholder

⁴³ <https://apnews.com/article/germany-migration-deportation-cabinet-ed036246d7d4c6b7816f430d495dacf9>



Although the German government states that return is the preferred option, in reality, the return procedure is arduous and not really effective: The gap between TCNs obliged to leave and the realized returns is significant. In 2023, 44,625 third-country nationals were ordered to leave the country, and only 15,440 left the country, and all returns were implemented through assisted forced return (Eurostat, 2024).

Policies toward irregular immigrants

Germany has always been a refugee-receiving country. Some scholars (Colombo & Dalla-Zuanna, 2019) argue that, since the 1970s (the end of guest worker movement), this policy of opening up to refugees has been an importation of labour in a form more accepted by public opinion at the time. From the late 1980s onwards, as the numbers of asylum seekers and refugees grew, so did the demand for restrictions. Since the late 20th century, Germany's policy developments in the field of asylum (as well as of return) have been characterized by ambivalent legislation, which has combined and alternated between restrictive regulations and more liberalising measures. Initially, throughout the 1980s and 1990s, Germany implemented significant policy changes aimed at limiting asylum, exemplified by the pivotal Asylum Compromise of 1993. This reform stipulated that asylum can be conferred only upon migrants entering Germany via an EU country or a third country that is deemed non-safe. Since all neighbouring countries of Germany are safe, this implies that people accessing the country via an overland route are not granted asylum. Despite not having Schengen external borders, Germany has played a significant role in the EU's externalization of migration management. It has adopted and enforced restrictive measures concerning pre-entry and internal controls, contributing to its hegemonic position in border policies. Furthermore, Germany has influenced and aligned with the EU's securitized approach to migration policies, highlighting a process of reciprocal influence (Kirchhoff et al., 2018).

A shift towards more liberal migration policies began in the late 1990s under a Social-Democratic-Green government, especially in the areas of family reunification, anti-discrimination and regularization of undocumented immigrant. During the 2015 'refugee crisis', the coalition led by Chancellor Angela Merkel, initially displayed openness towards the mounting influx of migrants reaching Europe by suspending the EU's Dublin Regulation for Syrians⁴⁴ and granting international protection to a significant share of the asylum applicants. However, this was swiftly followed by the imposition of restrictive measures,

⁴⁴ Ayoub, M. (2019). Understanding Germany's response to the 2015 refugee crisis. *Review of Economic and Political Science*, 8(6), 577–604. <https://doi.org/10.1108/reps-03-2019-0024>



including temporary border controls with Austria. In 2023, systematic checks were reintroduced at the Swiss, Czech, and Polish frontiers following an increase in the number of arrivals⁴⁵.

However, an exceptional refugee flow in Germany is that of Ukrainians. By mid-February 2024, around 6 million Ukrainian war refugees were registered in Europe, with the largest number in Germany (1.13 million)⁴⁶. Like in many other European countries, Ukrainian refugees were granted services and facilities not available to other refugee groups. Their media depiction is quite positive; in particular, women are often presented as productive participants in the German welfare state and labour market⁴⁷.

Other current significant shifts in Germany's irregular migration policies can be listed as follows:

- Stricter stance and tightening of regulations, including the Asylum Seekers Benefits Law (AsylbewG);
- Return Improvement Act (Rückführverbesserungsgesetz) that concerns deportation and access to welfare (Rheindorf et al., 2024).

1.

Another important information to mention is that Germany is one of the European countries where a reporting obligation exists (except in schools) when an institution gets in contact with an irregularly staying person, and such policy is critically assessed by NGOs:

2. *"According to the Residency Act, we (in Germany) have a reporting obligation. So, every public institution that comes into contact with a person with an irregular status has to report it to the immigration authorities, which then can lead to deportation. So, there is a big movement around, especially the access to healthcare for irregular migrants in Germany; we have been advocating for"* German civil society organisation

Alternative to return policies: Forms of internal control

⁴⁵ <https://www.politico.eu/article/germany-extends-border-control-poland-czech-republic-switzerland-eu-countries-three-months-march/>

⁴⁶ [https://www.dw.com/en/ukrainian-refugees-in-germany-why-few-work-for-a-living/a-68338226#:~:text=The%20UN%20Refugee%20Agency%20\(UNHCR,in%20Germany%20\(1.13%20million\)](https://www.dw.com/en/ukrainian-refugees-in-germany-why-few-work-for-a-living/a-68338226#:~:text=The%20UN%20Refugee%20Agency%20(UNHCR,in%20Germany%20(1.13%20million))

⁴⁷ <https://theconversation.com/how-german-media-attention-idealises-female-ukrainian-refugees-228232>



Detention

Detention is an administrative measure that applies to any person present in the country without permission, including those whose asylum claim has been rejected and who are subject to deportation (Welch et al., 2005).

The Aliens Law (Aufenthaltsrecht) enshrines two forms of detention: custody to prepare or secure deportation. The 'custody to prepare detention' (Vorbereitungshaft–§62AufenthG) is ordered by a judge and cannot be longer than six weeks. Moreover, a new provision of the Residence Act adopted in 2020 provides for the 'preparatory' detention of persons who are subject to an entry ban and present 'a significant danger to their own or others' lives, or to 'internal security' or have been convicted for criminal offences, including asylum seekers (AIDA, 2023).

The 'custody to secure deportation' (Sicherungshaft §62 AufenthG) can only be ordered when there are grounds for believing that an individual will abscond. This form of detention is ordered on condition that deportation can be implemented within three months. Detention can be extended to further 12 months, in cases where 'the foreigner hinders his deportation' (§62 AufenthG) (for instance, when the detainee refuses the necessary signature for the issue of a new passport or travel documents) (Welch et al., 2005). According to the Asylum Information Database (AIDA, 2023), there has been an increase in detention facilities over the last years, in parallel with rising numbers of detentions. According to information provided by the federal states in response to a parliamentary inquiry in 2018, at least 1,849 non-citizens were detained in 2015, compared to 2,833 in 2016, 4,303 in 2017 and 2,777 in 2018⁴⁸.

Informal form of tolerated stay based on exceptional circumstances

The right to remain for persons with toleration status (Duldung) was introduced (Bleiberechtsbeschluss) in 2006 by a decision of the Conference of Ministers of Interior of the German Bundesländer (Reichel et. al, 2014).

The toleration status merely entails the suspension of the deportation for a defined period, but it does not give any regular residence status to third-country nationals. The obligation to leave the country is only suspended temporarily for legal or practical reasons. For instance, deportation may be difficult because of a severe illness or the lack of identification

⁴⁸ However, as these figures are incomplete and not standardised across the federal states that share information on detentions, they should be interpreted with caution. Please, see: <https://www.globaldetentionproject.org/wp-content/uploads/2020/09/GDP-Immigration-Detention-in-Germany-2020-Update-Online-Report.pdf>



papers. Other legitimate reasons may concern the participation of migrants in a vocational training or the need to take care of a sick relative. Following the 2006 decision on the right to remain, temporary residence permits were released to several categories of tolerated third country nationals fulfilling a different range of criteria.

The Duldung system, therefore, represents a “limbo status,” which deals with the non-deportability of certain migrants in a practical way, without legalising this category but de facto recognising their presence (Schütze, 2022; Jonitz & Leerkes, 2022). What is more, some public agencies, such as the Federal Ministry of Interior and the Federal Office for Migration and Refugees, classify the status of toleration as an irregular situation (Cyrus, 2023). Under this system, migrants are provided with some benefits, including housing, healthcare, and, only in a few cases, access to living allowances, employment, and education (Leerkes et al., 2020). The right to education for minors also includes those with Duldung (in many federal states, minors are accepted until 16 years old)⁴⁹. Overall, however, the possibility for this category of people to fully participate in society remains limited, especially in terms of employment. For immigrants with Duldung, the immigration office can issue an employment ban under migration law (ausländerrechtliches Beschäftigungsverbot) under the following conditions⁵⁰:

- To be considered to have entered Germany for the sole purpose of gaining social benefits;
- To be obliged to leave the country and to be alleged to have not cooperated sufficiently for deportation to be carried out;
- To come from a “safe country of origin,” and the application for asylum, as filed after 31 August 2015, was rejected.

Around 248'000 people were living under Duldung status in Germany at the end of 2022⁵¹.

Pathways to regularisation

Despite the official position that Germany does not pursue and promote a regularisation policy, irregular migrants who meet certain conditions are entitled to become regularised (Cyrus, 2023).

⁴⁹ https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-germany_en

⁵⁰ https://aktiv.fluechtlingsrat-bw.de/files/Dateien/Dokumente/INFOS%20-%20Materialien%20zur%20Beratung/2019-01%20Zielgruppenflyer%20Arbeitserlaubnis_NIFA_englisch.pdf

⁵¹ <https://www.infomigrants.net/en/post/50180/nearly-50000-migrants-apply-under-german-residence-law>



The processes through which irregular migrants can be regularised are mainly two: either by exceptional, one-off measures (regularisation programmes) or through permanent procedures embedded in law (regularisation mechanisms). With respect to the first category, Germany introduced a few regularisation programmes since 2000 to facilitate the integration and access to labour market of some categories of ‘tolerated’ persons (Reichel et. al, 2014). However, given the main regularisation criteria concerned integration, employment and income level, undocumented migrants were excluded by these programmes⁵².

With respect to regularisation through legally embedded mechanisms, one of the most recent studies on the topic, Regine’s study, a research project on regularisation practices in the European Union, shows that out of the 305’000 applications registered in Europe between 2001–2009, 118’434 occurred in Germany⁵³. A temporary residence permit may “be granted if a person holds a toleration status for longer than 18 months and his/her deportation is unlikely to be enforceable in the near future” (Reichel et. al, 2014). Tolerated persons can also receive a residence permit on the basis of a hardship-clause, the so-called “Leave to remain” (Bleiberecht), which applies to those individuals, who were under 14 years old when they arrived in Germany, and attended school for at least six years and obtained a degree in the country. Temporary residence may also be granted to victims of criminal offences and for other exceptional reasons.

Another mechanism has been introduced to regularise “qualified” persons (i.e. persons with vocational training or higher education) on the basis of their continuous employment history in the country. They must demonstrate to have worked in the past two or three years in a profession that matches the applicant’s qualifications.

When a migrant undergoes a three-year vocational training program, their deportation is temporarily suspended under the so-called “Ausbildungsduldung” – a “toleration status” tied to their vocational training. Subsequently, the program awards a two-year residence permit for applicants who completed their vocational training and found jobs related to their training. People whose deportation has been suspended for at least twelve months and who have worked lawfully for at least twelve months are instead the focus of the “tolerated status” for employment (so-called *Beschäftigungsduldung*), if certain other

⁵² https://www.caritas.eu/wordpress/wp-content/uploads/2021/03/210326-Regularisation-of-undocumented-migrants_policy-paper.pdf

⁵³ Regine 2009, op.cit. p.34-35. The figure represents the sum of various individual mechanisms.



requirements are met. Access to a 30-month residence permit is granted by this status, and it is extendable⁵⁴.

The Bundestag legislation of June 2023 aimed to address the shortage in skilled labour within Germany by facilitating the exploration of employment opportunities by qualified migrants meeting specific criteria, such as language proficiency and qualifications.⁵⁵ Notably, this provision extends to individuals whose asylum applications have been rejected yet are permitted to stay within the country contingent upon securing employment. To mitigate potential concerns regarding the creation of a perceived attraction for migration, the government has delimited the applicability of this clause exclusively to individuals whose asylum proceedings were underway prior to March 29, 2023⁵⁶. As of 1 January 2020, there is a new type of 'Duldung' or tolerated residence permit: the so-called 'Beschäftigungsduldung,' issued to those who already have a 'Duldung' and who already have a job and meet other requirements. Unlike the normal 'Duldung,' during 'Beschäftigungsduldung,' holders cannot be deported⁵⁷.

Temporary Protection and Humanitarian protection

As a result of the EU Council decision to activate the Temporary Protection Directive on 7th March 2022, the German Federal Government adopted the "Ukraine-Residence-Transitional Regulation" (Ukraine-Aufenthalts-Übergangsverordnung) (AIDA, 2022). The regulation and its amendments enshrine provisions on legal entry and stay of Ukrainian nationals and foreigners residing in Ukraine. The groups eligible to apply for temporary protection are: i) Ukrainian citizens who were residing in Ukraine before 24th February 2022; ii) stateless persons and foreign citizens who obtained international protection in Ukraine; and iii) family members of these groups (AIDA, 2022). Moreover, temporary protection covers those Ukrainians who already have any residence permit in Germany or where their stay was formerly tolerated. Temporary protection is granted retrospectively from the day of arrival to the 4th of March 2024.

Temporary residence permit

⁵⁴ Open society foundation (2020), Towards an EU toolbox for migrant workers

⁵⁵ <https://www.euractiv.com/section/migration/news/germany-revamps-immigration-law-to-attract-skilled-labour/>

⁵⁶ <https://greentech.training/germany-revises-its-immigration-law/>

⁵⁷ <https://handbookgermany.de/en/beschaefigungsduldung>



The criteria for third-country nationals (typically persons with a toleration status) under paragraph 104a(1) of the Residence Act to be eligible for temporary residence are the following :

- i. stayed in Germany for at least eight years, lived together with at least one minor or unmarried child as a family unit;
- ii. have appropriate accommodation; adequate knowledge of German;
- iii. prove that the child attends school;
- iv. have not deceived the foreigners authority;
- v. lack of connections to extremist or terrorist organisations;
- vi. no conviction of an offense committed in Germany.

According to the second section of paragraph 104a(2), the temporary residence can also be granted to asylum seekers or individuals enjoying humanitarian status residing in Germany for at least six years (as minor), who seem to “integrate into the way of life prevailing in Germany” based on his/her education or “way of life”. Moreover, under paragraph 104b, minors can have a residence permit if they meet criteria of integration and long-term stay in the country, similar to those described as above.

Recently, on October 31, 2022, the Government passed a new law to facilitate the acquisition of a residency permit to foreigners with a short-term 'tolerated stay' permit (18 months) (InfoMigrants, 2022). Through the so-called Opportunity Residency (*Chancenaufenthaltsrecht*), foreigners who have been living in Germany for at least five years with a *Duldung* or a temporary residence permit will be entitled to the "Opportunity Residency". This right ensures them legal status for a year and a half to access the labour market through which to obtain a long-term stay permit. Under specific circumstances, married partners and underage children can also enjoy these rights. In the approximately one year since its introduction, the Opportunity Residency has been applied for by approximately 12,000 persons (Rheindorf et al., 2024).

These forms of regularisation are considered more permanent and somehow different from the ad hoc regularisation programmes which merely focus on specific migrant categories and for a limited amount of time (Leerkes et. al, 2020; Brick, 2011).

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ITALY

Context description

Due to its geographical position, Italy welcomes both sea and land arrivals. The Central Mediterranean route departing from the North-African shores of Libya, Tunisia, Algeria, and Egypt sees the southern European peninsula as their endpoint, alongside Malta (UNHCR, 2022). However, Italy is also considered a country of transit for migrants and refugees who aim to reach Northern countries to find better conditions of life.

Following the categorisation of Leerkes & Van Houte (2020), Italy is considered a 'thin enforcement regime', with limited capacity to return migrants.

The country heavily relies on migrant (including irregular migrants) labour in the informal sector and although the formal requirements are in place, workplace controls and inspections are deficient. Alternatives to returns are therefore adopted and implemented to tackle specific economic and labour needs and challenges.

Policies toward irregular immigrants

Italy enacted three main legislative reforms in the last years to tackle unwanted migration. In particular, in relation to humanitarian and special protection, it is worth noting that:

1. A law introduced in 2018 has stated the abrogation of general humanitarian protection and in place of this, it has introduced special residence permits, recognised on specific grounds⁵⁸: a permit for medical reasons, valid for a maximum of 1 year (the duration is established according to the need of each person); a residence document for "exceptional natural disasters", valid for six months; a residence permit for "exceptional civil acts", lasting two years; a one year (renewable) residence permit for "special protection" to protect migrants from the risk of torture or persecution (in accordance with the principle of non-refoulement); and a residence permit valid for up to six months to one year for other special cases (social protection, victims of domestic abuse, victims of labour exploitation).

⁵⁸ Art 1, Decreto legge 113/2018. General humanitarian protection was introduced by the D.lgs. 286/1998, Italian Immigration Act, Article 5 par.6. This provision, now modified, stated that: "Refusal or revocation of a residence permit may be adopted on the basis of international conventions or agreements (...) unless there are serious reasons, in particular of a humanitarian nature or resulting from the constitutional or international requirements of the Italian State."



However, permits for humanitarian protection recognized before the 5th October 2018 (date of entry into force of D.L. 113/2018) continued to be valid for two years.⁵⁹

2. On 21 October 2020, the Decree-Law n.130/2020 was officially adopted which amends the security decrees of 2018 and includes provisions in the field of immigration, international and complementary protection. In particular, the Decree-Law, converted into law on 18 December 2020, reintroduced a form of humanitarian protection, calling it special protection. It specifies that the special residence permits to stay are now granted for the duration of two years and are renewable, subject to a favourable opinion by the Territorial Commission, and changeable in labour residence permits. The new law has extended the duration and the convertibility into residence permits for work purposes of different types of national residence permits. There are some important aspects of special protection: valid for 2 years (before was 1 year only), renewable and convertible into work permit; - protection for natural disasters /calamities: valid for 1 year (before was 6 months), renewable if the requirements continue to exist, convertible into work permit; - health protection: valid for a maximum of 1 year, renewable if the requirements continue to exist; - special cases for social protection: 6 months, renewable and convertible into work permit; - special cases for victims of domestic violence: 1 year, convertible into work permit; - special cases for labour exploitation: 6 months, convertible into work permit;- permit for acts of particular civil value: 2 years, renewable, convertible into a work permit. This new law represented an important development in comparison with the previous Salvini's security decree n.113/18 that abolished humanitarian protection.
3. However, the new Meloni government adopted the Legislative Decree 20 of 2023 (so-called Cutro Decree), converted with amendments into law no. 50/23, which restricted the possibilities of issuing a residence permit for special protection.⁶⁰ The new regulation therefore:
 - a. removes the residence permit for special reasons, and provides that special protection permits already issued and currently valid are renewed only

⁵⁹ Conte, C. (2021). The uneven legal and policy framework facing persons with humanitarian status in Europe: Current gaps and possible solutions for improving integration policies. NIEM in-depth analysis. Brussels: Migration Policy Group

⁶⁰ Covella, A.R. (2023). Un'analisi della normativa contenuta nel Decreto Legge n. 20 del 2023 (c.d. DL Cutro). Available at: <https://www.meltingpot.org/2023/06/unanalisi-della-normativa-contenuta-nel-decreto-legge-n-20-del-2023-c-d-decreto-cutro/>



once for an annual duration, without prejudice to the right to convert them into permits for work purposes;

- b. limits the ban on expulsion for health reasons, allowing the application of this ban only in cases of "serious psychophysical conditions or deriving from serious pathologies";
- c. prevents the conversion of the residence permit issued for medical treatment into a work permit;
- d. limits the permit for disasters (art. 20 bis TUI) to "contingent and exceptional" situations and no longer just to the situation of "serious disasters", making it renewable for only 6 months and excluding the possibility of converting it into a permit for work reasons.

In this scenario, on the one hand, a high number of rejections of asylum applications⁶¹, which are not followed by expulsions, increase the irregular and unprotected population and on the other hand, restrictive emerging policies on humanitarian protection at a national level, characterized by the issue of precarious and short-term residence permits, risk putting people in an irregular situation and create obstacles for their long-term integration in society.

Alternative to return policies: Forms of internal control

Detention

Forced repatriation in Italy goes hand in hand with detention. Data does not corroborate the notion that detention of irregular migrants favours their return, as generally the rate of detainees effectively returned is rather low. In 2022 in the face of 6,383 migrants detained in the Italian Centres of Permanence for Repatriation (Centri di Permanenza per il Rimpatrio, hereinafter CPRs), only 3,154 were effectively returned, corresponding to 49,4 % (Garante Nazionale, 2023b: 194). However, the emphasis of migrant detention in Italy is widespread and perceived to be a solution to irregular migration. The use of migrant detention is also regulated and partially harmonised at an EU level through several legislative instruments.⁶²

CPRs which formally substituted the Centres for Identification and Expulsion (Centri di Identificazione ed Espulsione, CIE), are *de facto* administrative detention centres, where

⁶¹ In 2022, 84 percent of asylum applications have been rejected in the first instance. See: <https://www.worlddata.info/europe/italy/asylum.php>

⁶² The Reception Condition Directive 2013/33/EU, the Dublin Regulation EU No 604/2013, the Asylum Procedure Directive 2013/32/EU, and the Return Directive 2008/115/EC.



individuals in an irregular state are detained pending their identification and return. Extensive reports by national NGOs outline the problematic conditions in which migrants are detained in CPRs, in terms of sanitary conditions and limited psychological, legal and healthcare support (ASGI, 2022; Actionaid and Openpolis, 2022).

Furthermore, the current government adopted decree n.124 of 19th of September 2023,⁶³ which extended the term for migrant detention to a total of 18 months, representing a major step back from previous governments, which had a maximum detention duration set at 180 days in 2018 (“Salvini” Decree n.113/2018 on Security and Immigration) and 120 days in 2020 “Lamorgese” Decree, n. 130/2020). This development aligns the Italian legal framework with the maximum detention duration envisioned in the EU acquis.

Concluding, detention is a politically highlighted area in the Italian migration-related policy debate:

“In Italy, we have to consider that irregular migrants are around 500,000, and the number of people that are going inside these places of migrant detentions every year is around 5000, a maximum of 6000. So is a very little part (of the total numbers), but about that politicians are talking a lot. (...) (It is being used as) as a sort of model in migration management” Italian Civil Society Organisation (2)

Institutional abandonment, exclusion from social services

Irregular migrants in Italy are particularly vulnerable to violations of their fundamental rights, including exploitation at work, obstacles in access to health services, and difficulties finding affordable and decent housing, and are unlikely to report labour exploitation due to fear of arrest, detention, and deportation (Human Rights Watch, 2020).⁶⁴

By law⁶⁵, irregular migrants are entitled to access urgent and essential care, including continuous, curative, or preventive treatments until the completion of treatment and rehabilitation. However, the prohibition from registering with a General Practitioner, accompanied by logistical and bureaucratic obstacles such as lack of information, inability to register due to the lack of a formal address, linguistic barriers, and mistrust in public

⁶³ <https://www.gazzettaufficiale.it/eli/id/2023/09/19/23G00137/sg>

⁶⁴ Human Rights Watch, 2020, Italy: Flawed Migrant Regularization Program, <https://www.hrw.org/news/2020/12/18/italy-flawed-migrant-regularization-program>

⁶⁵ National Immigration Law T.U. 286/98 (Legislative Decree No. 286/1998 Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero (25 July 1998))



authorities, is a major barrier to accessing secondary care in practice (Human Rights Watch, 2020).

Pathways to regularisation

Italy presents a sizeable migrant population in a condition of irregularity, with estimates in 2021 reaching 519,000 individuals, corresponding to 9% of the total migrant population in the country (ISMU, 2021).

Despite a national political rhetoric presenting return and readmission policies as the preferred solution to tackle irregular migration, Italy has a long-standing history of regularisation efforts, implementing eight regularisation programmes in the last 35 years, alongside other EU member states (European Migration Network, 2021).⁶⁶ Out of the 4.6 million migrants estimated to have been regularized in Europe between 1995 and 2008, the majority was in Italy, Greece and Spain (King & De Bono, 2013: 9).

Italy is the EU country that has granted the largest number of regularisations, through six amnesties in 22 years and through other covert forms of regularisation. For example, the four amnesties granted between 1986 and 1998 involved 790,000 people; a further 630,000 were regularised in 2002; 300,000 applications were under evaluation in regularisation of 2009.

Regularisation efforts in Italy have not been enacted in a systematic manner or in accordance with a long-term strategy. They are rather ad hoc large-scale regularisations enacted in the form of amnesties, term which some deem problematic as it may be understood to imply acquittal from a prior criminal or penal offence (Sciortino, 2012).

Lately, during the Covid-19 pandemic in 2020, Italy adopted a two-track regularisation programme. In the first track, employers could apply to conclude an employment contract with a foreign national living on the territory or declare an existing irregular employment relationship (PICUM, 2022).⁶⁷ In the second track, undocumented people who had recently worked in the agri-food and domestic work sector could themselves apply for a six-month residence permit to look for new work. In this case, the length of the residency permit was

⁶⁶ European Migration Network. (2021). Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway. Available at: https://home-affairs.ec.europa.eu/whats-new/publications/emn-study-provides-overview-policies-and-practices-member-states-and-norway-regarding-third-country_en

⁶⁷ PICUM. (2022). Regularisation mechanisms and programmes: Why they matter and how to design them; see also Camilloni, S. (2020). Regularizzazione, ecco il testo in Gazzetta Ufficiale. Il contributo forfettario è di 500 euro. Available at: <https://stranieriinitalia.it/attualita/regularizzazione-ecco-il-testo-in-gazzetta-ufficiale/?cn-reloaded=1>



determined by the length of the employment contract but could be converted into another type of permit, including based on work in a different sector (Human Rights Watch, 2020). The second track of the programme left out those job seekers whose residence permit expired before 31 October 2019, a seemingly arbitrary date. This permit could also be converted.

The criteria to enjoy the 2020 regularisation programmes, aiming at undocumented workers in the agricultural and domestic sectors, were very strict and covered, especially with regarding to the income of the employer applying for regularisation. Employers need to prove to have a minimum annual income of €30,000. One of the main obstacles in the agricultural sector, where most work is seasonal, was the demand for a stable contract.

Indeed, the complexity and institutional uncertainty characterizing the 2020 amnesty compromised migrants' ability to act strategically toward the attainment of a less precarious status (Bonizzoni & Artero, 2023).

Both during the application process and after the approval of the permit, the applicants are considered to be legally residing in the territory and therefore have the right to enjoy equal treatment in access to goods and services as other foreigners holding a work permit, including access to national health services, opening a bank account, and registration of their residence at the municipality. Although the permit allows access to national health services with a declaration of employment containing the data from the application and the provisional tax code, many health facilities refuse registration in the absence of proof of payment of contributions by the employer (ASGI, 2021).⁶⁸

This programme has also received criticisms because it has been misused by some employers who forced undocumented workers to pay the 500 EUR fee, put them in longer working hours or even sold them labour contracts, in amounts of up to 7,000 EUR (PICUM, 2022).⁶⁹ In addition, employers have little incentive to regularise irregular migrants and to pay due wages, tax and social security contributions. As PICUM reported, this programmes risk creating the “conditions for exploitation and a market for employers to sell contracts to workers seeking to regularise their status”.⁷⁰

⁶⁸ ASGI. (2021). *Regolarizzazione 2020: Domande e risposte*. Available at: <https://www.asgi.it/regolarizzazione-2020-domande-e-risposte/>

⁶⁹ Camilloni, S. (2020). *Regolarizzazione, ecco il testo in Gazzetta Ufficiale. Il contributo forfettario è di 500 euro*. Available at: <https://stranieriinitalia.it/attualita/regolarizzazione-ecco-il-testo-in-gazzetta-ufficiale/?cn-reloaded=1>

⁷⁰ PICUM. (2022). *Regularisation mechanisms and programmes: Why they matter and how to design them*. Available at: https://picum.org/wp-content/uploads/2023/01/Regularisation-mechanisms-and-programmes_Why-they-matter-and-how-to-design-them_EN.pdf



This form of regularisation is considered to be an example of a government response to specific economic challenges to address the gaps in the labour market as a result of the COVID-19 pandemic (PICUM, 2022).

There are also semi-explicitly promoted regularisations in Italy. Decreto Flussi (quota system) is a good example. On paper, Decreto Flussi is a policy tool based on matching Italian employers with non-European foreign workers and aims to promote the legal entry of labour through work permits. However, in practice, the annual quota mechanism has often acted semi-explicitly as a regularisation scheme for those already present irregularly in the labour market, since, on the one hand, regular entries have been slowed down due to administrative obstacles and, on the other, employers are reluctant to hire workers they do not know (Cuttitta 2008). Research so far showed that this system can be used to regularize irregular migrants but it can also cause legal status precarity and illegalisation among those who have entered on a work visa (De Blasis & Bonizzoni, 2024; Tuckett, 2018; Devitt, 2023). What is to be noted in relation to the Italian situation is the de facto reliance of certain economic sectors on a widely irregular labour force, e.g., in the case of domestic care workers, housekeepers, and agricultural workers (Ambrosini, 2012).

Residence permit for childcare (Art. 31)

The residence permit for childcare (Art. 31) is issued to the family member of a minor who is on Italian territory, upon authorisation by the Juvenile Court. It allows work to be carried out and upon its expiry may be converted into a work permit.

Residence permit for labour exploitation⁷¹

For foreign nationals, without a residence permit, who are victims of particular labour exploitation, the law provides that the Police Commissioner, on the proposal or with the favourable opinion of the Public Prosecutor, may issue a residence permit to a foreigner who has lodged a complaint and cooperates in the criminal proceedings instituted against the employer (Article 22, paragraph 12-quater of Legislative Decree 286/1998).

Residence Permit for Social Protection Purposes⁷²

The residence permit for reasons of social protection is intended for foreign nationals who have been subjected to violence or have been victims of exploitation in terms of

⁷¹ <https://integrazioneimmigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/2722/Permesso-di-soggiorno-per-sfruttamento-lavorativo-quali-sono-le-condizioni-per-averne-diritto>

⁷² <https://www.pratomigranti.it/en/documenti/permesso-soggiorno/tipologie/protezione-sociale/pagina336.html#:~:text=The%20residence%20permit%20for%20social%20protection%20purposes%20can%20also%20be,him%2Fher%20for%20crimes%20committed>



prostitution, labour, begging or acts for which, if caught in the act, they are liable to arrest (slavery, human trafficking, sexual violence, etc.). It is valid for **6 months** and can be renewed for a year or for the maximum term necessary for judicial purposes. The residence permit for social protection purposes allows for:

- access to social services and to educational services;
- enrolment on the job-seekers register;
- carrying out of subordinate employment;
- registration with the national health service;

If the holder of the residence permit, upon expiration of the permit, has employment, the permit can be subsequently extended or renewed for the duration of the employment contract. The residence permit can be converted into a residence permit for work purposes or for study purposes, if the holder is enrolled for a valid study course.

Furthermore, according to the Consolidation Act on Immigration (Legislative Decree 286/98) in Article 18 bis, when situations of violence or abuse are ascertained and a concrete and present danger for the victim's safety emerges, a permit⁷³ is issued to allow the foreign victim, who does not have a residence permit, to escape domestic violence.

Residence permit for reasons of medical treatment and pregnancy⁷⁴

Pregnant women may apply for a residence permit for medical treatment (pregnancy) from the moment their pregnancy is certified and for six months after the birth of their child. The newborn has the same rights as the mother and, having been given a tax code, is assigned a paediatrician. It is not renewable beyond six months after the birth of the child and does not allow work. However, in accordance with Article 30, § 1, letter c) of the Consolidated Law on immigration, when the holder of the residency permit falls within the cases provided for by Article 29 of the Consolidated Law regulating the right to family reunification (income and accommodation requirements provided for by the aforementioned article), it is possible to convert the residence permit.

Residence permit for family reasons (family cohesion)⁷⁵

⁷³ <https://integrazionemigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/2557/Permesso-di-soggiorno-per-vittime-di-violenza-domestica-chi-ne-ha-diritto>

⁷⁴ https://www.asgi.it/wp-content/uploads/2015/08/NO-RED-TAPE_PDS-GRAVIDANZA_ITA.pdf

⁷⁵ <https://www.antonellapedone.com/guide/coesione-familiare>



Irregular migrants cohabiting with relatives within the second degree or with their spouses, who are Italian nationals or refugees, may apply for a residency permit for family reasons. For such persons, there is a ban on expulsion and an express right to obtain a residence permit for family reasons (Article 28, letter b) of Presidential Decree 394/1999).

Residence permit for acts of special civic value⁷⁶

A residence permit can be issued by the Minister of the Interior, on the proposal of the competent prefect, if the foreign citizen has performed 'acts of particular civil value'. It is granted for having saved people, for having prevented or diminished the effects of a serious public or private disaster, for having re-established public order, for having arrested or participated in the arrest of someone, for science or for having contributed to the progress of humanity. It lasts two years, is renewable on expiry and can be converted into a work or study permit.

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⁷⁶ <https://openmigration.org/glossary-term/permesso-di-soggiorno-per-atti-di-particolare-valore-civile/>



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POLAND

Context description

Poland is the largest country in Central Eastern Europe and its borders with Belarus and Ukraine represent the EU's external borders (UNHCR, 2023). In relation to mobility and migration, Poland presents a multifaceted profile as a country of emigration, transit and, more recently, of immigration (Okólski 2021; Klaus and Szulecka 2022).

In terms of the management of irregular migration, for about three decades now, the prevention of it and the enactment of provisions addressing this issue (e.g., on the rules of granting visas, refusal of entry, requirements for residence permits as well as the positive and negative prerequisites of issuing and executing return orders) have been one of the crucial dimensions of Poland's migration policy. This was due not only to Poland's geopolitical position, on the road from the East to the West, but also, as has been the case everywhere in Europe since the 1990s, to the fact that legislation and the development of migration policies were mostly determined by the Ministry of the Interior, i.e. the one dealing with control measures and (de)legalisation issues. Only in the 2010s policy towards economic immigration gained more attention (Łodziński and Szonert 2017).

Policies toward irregular immigrants

In 2021, as a result of the crisis at the Belarusian border, Poland tightened its border regulations, enabling pushbacks and limiting access to asylum to Middle-Eastern migrants who had arrived at the Belarusian-Polish border with the support of Belarusian authorities (AIDA, 2023). This new procedure makes it possible for the Polish Border Guard to issue an immediate removal order, different from a return order under the EU Returns Directive, which has immediate effect and, despite the possibility of appeal, the latter has no suspensive effect; this has sparked controversy among human rights monitoring organisations and bodies, as it risks breaching refugee and EU law (AIDA, 2023).

According to the Fundamental Rights Agency, despite the existence of a wide plethora of NGOs monitoring the implementation of forced returns in Poland, public reports are not available (FRA, 2022). According to representatives of CSO in Poland, lack of on-time information about forced returns or lack of funds for monitoring constitute the main obstacle in regular participation and reporting on the monitoring of forced returns⁷⁷.

⁷⁷ Information gathered during a seminar within GAPs project at CMR UW (17 Jan. 2024).



With high levels of autonomous voluntary return and high levels of secondary onward movements by migrants residing in Poland towards other EU countries, the level of forced return appears to be rather low (Klaus & Szulecka, 2022). The numbers confirm this assumption. In 2023, 5,550 return cases out of a total of 6,945 returns were registered as non-assisted voluntary returns (Eurostat, 2024).

In fact, forced deportation, alongside being very costly, often encounters legal, logistical and political obstacles in the country, such as the lack of infrastructure to cooperate with third countries or humanitarian concerns (Klaus & Szulecka, 2022). A tendency to be noted is the presence of practices of indifference and almost encouragement for migrants to either embark on secondary movements or to return autonomously (Klaus & Szulecka, 2022).

Beyond the specificity of the Polish case, and applying it to many European cases, here we would be dealing with a crucial function in the management of irregular migrant flows. Indeed, an alternative policy to repatriation would be one of passivity and institutional abandonment, doing nothing in the hope that migrants would leave the country without state intervention.

Alternative to return policies: Forms of internal control

Migrants with no valid authorization to stay in Poland have no access to social services. They receive health care services without determining their legal status only if their condition demonstrates serious risk to their life or health. The cost of such services should be covered by a migrant or another body (e.g. a civil society actor). As happens in the other European countries, migrants without valid documents authorising them to stay in Poland cannot work and run their own business lawfully, which means they also cannot be insured in the public health care system (healthcare contributions are obligatory for all hired workers and entrepreneurs operating in compliance with the law in force). Irregular migrants do not have access to unemployment or other social assistance benefits. Due to the school obligation for children up to 18 years old, migrant children regardless of their status have right to free of charge, public education in Poland.

In this framework, there are two types of internal controls:

- 1) control of the legality of stay carried out by the Border Guard, Police, Office for Foreigners and voivodship offices
- 2) control of the legality of work performed by the Border Guard (authorized only to control foreigners' economic activity) and the National Labour Inspectorate.



Both types of controls may end up in revealing prerequisites of issuing a return order to a foreign national. Their catalogue (specified in article 302 of the Law on Foreigners of 2013) is quite complex, and it includes (among other reasons): overstaying the validity of visas, residence permits or the permitted period of stay within the visa-free regime; unauthorized border crossing; not leaving Poland despite obligation to do so (upon return order or after the specified time following the negative decision in the asylum procedure or within the legalization procedure). Importantly, one of the prerequisites for the issuance of a return order is the situation of “semi-compliance”, i.e., when a foreigner has authorization to stay in Poland but remains in breach of the conditions of this authorization, e.g. having tourist visa undertakes for-profit employment.

To secure the issuance or execution of the return order the Border Guard may apply to the common court for placing a foreign national in detention (for up to 3 months, with a possibility to prolong detention to up to 18 months). The isolative measure, according to the Law on Foreigners of 2013 (article 398), may be applied to persons that demonstrate a high risk of absconding; cause difficulties in the return procedure or in the execution of the return order (e.g., through not revealing the facts related to their identity). The number of guarded detention centres increased to 9 (to be opened in August 2021) and the number of places in them to 2,256 (compared to 595 in 2020) due to the situation on the Polish-Belarusian border.⁷⁸

In addition to the increasing numbers reserved for detention, The empirical evidence states that detention transforms into a vicious circle and used as deterrent factor:

“(Once the irregularity is detected) the procedure to place the person in detention starts, and the period of stay in detention is usually much longer than it should be because the Polish authorities are mostly saying that they are trying to organize everything in order to prepare for the return. Even though those delays in organizing the returns are not the fault of foreigners, they are still being placed in detention for months and months because the authorities are not able to organise the necessary documents. So, I would say the general policy is just to try to return people and if it's not possible,

⁷⁸ <https://asylumineurope.org/reports/country/poland/detention-asylum-seekers/detention-conditions/place-detention/>



just keep them in detention as long as possible. Polish civil society organisation

Detention may also be applied in the case of foreign nationals who will be transferred to other countries, based on the Dublin Regulations or readmission documents. If there is a risk of absconding and the risk that apprehended individuals may not be subject to the decisions on Dublin transfer or readmission arrangements, they are placed in detention centres and transferred to other states directly from there.

Detention may also be applied to foreign nationals within the asylum procedure (article 87 of the Law on granting protection to foreigners in the Republic of Poland). The Border Guard applies to the common regional court for detaining asylum applicants, in case of whom – according to the authorities:

- there is a risk of absconding (which usually means leaving Poland and travelling to another EU state);
- there is a need to gather information included in the asylum motion submitted by the foreigner;
- the risk of absconding is accompanied by the fact of unauthorized border crossing or the necessity to confirm the identity of the individual;
- there is a probability that the asylum motion was submitted to postpone or interrupt the process of issuing or executing a return order.

In case of asylum applicants, detention may be applied for up to 60 days, but it may be prolonged. In practice, detention is prolonged due to the changes in legal basis – persons detained due to the initiation of the return procedure may apply for international protection, which requires another decision from the court; and vice versa: persons detained to secure asylum procedure, may be covered by another motion for detention after a negative decision on asylum claim was issued, based this time on the Law on Foreigners (Klaus, Szulecka, and Wzorek 2024).

There are 6 detention centres in Poland run by the Border Guard. According to human rights campaigners and researchers, detention is applied automatically in Poland, the decisions issued by courts lack individualized assessment of the detention motions submitted by the Border Guard, detention is applied towards minors if they accompany adults covered with detention motions, and it happens that the isolative measures are applied towards people with trauma and victims of violence (Klaus, Szulecka, and Wzorek 2024; Białas 2014).



Polish legislation provides for measures alternative to detention, to be applied by the Border Guard or the court towards people in both the asylum and the return procedure. These include: reporting to the assigned Border Guard outpost, payment of a cash security in a specified amount (min. twice the minimum wage), providing a travel document or other identity document for deposit (does not apply to asylum applicants), residing in the place designated in the decision (often the reception centres for asylum applicants). In practice, these measures are applied very rarely to persons subjected to the return procedures (Klaus, Szulecka, and Wzorek 2024).

Pathways to regularization

Since the year 2000, Poland has enacted three regularization programmes for irregular migrants, thus regularizing the stay of approximately 8,400 individuals (Reichel, 2014). These regularization waves happened in 2003, 2007 and 2012. The first programme presented strict requirements related to residence, accommodation and employment and, also due to the short deadline, registered a low number of applicants (3,500), of which, however, an overwhelming majority was regularized (2,700, corresponding to 78% of applicants) (Reichel, 2014). As a consequence of the low number of applications, a second identical programme was run in 2007, with similar results: low turnout but a high regularization rate (73.5%) (Reichel, 2014). For both these programmes the major groups of applicants were of Vietnamese and Armenian nationality (Reichel, 2014).

In 2012, a third programme was enacted which presented almost no requirements, in order to allow a wider reach than the previous ones. The only requirement that irregular migrants had to satisfy to apply for a residence permit within this regularization programme was to stay in Poland since at least 20 December 2007, which is the day preceding the abandonment of regular border controls on the internal border due to Poland's accession to the Schengen zone. Other requirements related to security, public and legal order: applicants posing a threat to state security, having SIS record for refusal of entry from another EU state, or providing false information within the regularization procedure could not be granted residence permit (Fagasiński, Górczyńska, and Szczepanik 2015). This last programme took place in the context of the abolition of border checks for Poland in the EU, following its accession to the Schengen area in 2007. The programme allowed rejected asylum seekers who had been issued a return decision and had stayed in Poland since 2010 to also apply (Reichel, 2014). The 2003 and 2007 programmes showed a high level of sustainability as a large share of regularized applicant could keep their status.



The 2012 programme reached a wider audience, counting 9,555 applications and granting a two-year permit to regularized applicants (Reichel, 2014). To a moderate extent, the Polish case represents a pragmatic and positive approach to migrant regularization (Reichel, 2014).

In particular, the last regularisation is assessed very positively for being sustainable.

“If a person got the temporary residence permit as a result of this program, then they had it for two years and then they could continue on the normal rules with the with legalisation and this was the best for them in this action”

Polish civil society organisation

The bigger number of migrants interested in and benefitted from the regularization programme in 2012 resulted also from broader information campaigns, involvement of migrant-based organisations in advocating for the regularisation and then providing legal advice on participation in the programme. This time, one of the main groups of beneficiaries was also Ukrainian citizens, next to citizens of Vietnam and Armenia (Fagasiński, Górczyńska, and Szczepanik 2015). One of the side effects of the programme was participation of citizens of Asian countries living on permanent basis in other EU states, e.g. France, attracted by relatively liberal conditions of the regularization programme and assisted by paid intermediaries. The scale of the phenomenon cannot be, however, properly determined (Perkowska 2015).

An informal form of tolerated stay based on exceptional circumstances or humanitarian grounds

The Polish normative framework does not provide rules on the permanence of irregular migrants on the territory. From a legal perspective, a definition of irregular migrants is present in the system through reference to the circumstances in which a return order is emitted, such as lack of valid documents authorizing to stay in Poland or the expiry of previous residence documents (Szulecka, 2019).

In Poland, there are two national forms of stay that can be granted in the context of a return process. The first one is based on humanitarian reasons (zgoda na pobyt ze względów humanitarnych), and it is granted to individuals whose return cannot be executed because of the risk of breaches of their human rights (e.g., risk of torture, family unity concerns, rights of children, long stay in Poland, etc.) (Szulecka, 2019).

A second permit, known as a permit for tolerated stay (pobyt tolerowany) is granted to applicants whose return cannot be implemented because of a variety of reasons, including



logistical obstacles in organizing repatriation flights, the impossibility of obtaining the required travel documentation for the returnee, court decision of non-removal and in some cases humanitarian concerns related to the safety of the returnee in the country of return (Szulecka, 2019; Reichel, 2014).

Both permits are valid for 2 years and may be renewed (requirements apply) and allow for employment and independent work. However, they do not allow access to services related to the status of refugees. People with a history of criminal offences or that may represent a threat to national security are not eligible for a humanitarian reasons permit and in the impossibility of return they may be granted a permit of tolerated stay. The former allows cross-border mobility, while the latter does not (Szulecka, 2019).

Polish immigration law envisages the possibility to legalise short-term stay in exceptional circumstances (requiring short term stay on the territory of Poland; specified in article 181 of the Law on Foreigners of 13 December 2013). This provision is by no means a regularisation mechanism, since it allows for legalisation of short term stay when – due to some reasons – this stay in Poland is necessary. The courts emphasise that the provision does not serve as a long-term regularisation mechanism and the exceptional circumstances should be objective; the courts do not recognise as such subjective opinions of immigrants that they are in exceptional situations and they have to stay in Poland. Obtaining such a permit for stay due to exceptional circumstances does not allow for further legalisation, applying for other permits. The permit may be granted. It is not obligatory to grant the permit even if the presence of the required motives is confirmed. This, in practice, reduces the availability of this option for legalization and increases the arbitrariness of the decisions. The uncertainty of the result and how the presented motives will be assessed by the office may be also accompanied by fear of self-denunciation and negative consequences it may bring (return order). However, in practice obtaining such a permit may allow migrants to solve their problems through e.g. leaving the territory of Poland during the allowed stay and searching for legal entry paths abroad. In the same way, AVRR programmes may be treated. Migrants returning with the assistance of IOM (after the return decision is issued) may be offered assistance in return, but not in re-integration, if they declare their will to return to Poland, after obtaining necessary documents allowing them to cross the border and enter Poland (this may require application for shortening or waiving the ban of re-entry)⁷⁹. As regards paths to legalisation, there are also provisions for victims of human trafficking assuming legalisation of stay (in case it is undocumented)

⁷⁹ Based on the information provided by IOM Poland office during a webinar on AVRR an human trafficking (13 Feb. 2024).



if the person cooperates with the authorities. This is, however, a part of the system of preventing trafficking in human beings.

There are also grey zones in which irregular migrants are institutionally abandoned, where no control occurs, and people remain in an irregular status for a long time until a serious health and safety issue comes up.

“The main idea is to exclude the people and or to ignore as long as the person is not well (...) While they (public authorities) do not introduce any kind of support, those people treated, I would say, as invisible” Polish civil society organisation

Temporary Protection and Humanitarian protection

In 2023 as a result of the Russian invasion of Ukraine Poland hosts approximately 950,000 Ukrainian temporary protected beneficiaries (Eurostat, 2023).

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SWITZERLAND

Context description

Switzerland is a federalist state composed of 26 different cantons where the decision-making process is shared between the municipal/communal level, the cantonal level, and the federal/national level. Migration policy is typically under the competence of the federal state, but cantons have some powers in the implementation of migration laws.⁸⁰ Migration policy in the countries covers three different dimensions: asylum, EU migration and third country migration (mainly regulated by the Law on foreigners and integration). Swiss policies are often criticised because of the existence of a “dual immigration system”, that on one side grants favourable conditions to EU nationals and other immigrants from developed countries, while on the other provides very unfavourable conditions for third-country nationals.

Switzerland is generally considered to have restrictive immigration policy, especially for third country nationals who seeks to obtain a work permit for a ‘low-skilled’ job. In addition, the access of undocumented migrants to basic services is different at local level depending on where they live in Switzerland.

Policies toward irregular immigrants

Switzerland had a long-standing reputation as an international humanitarian actor, based on its neutrality and the actions of the International Red Cross (Parini, 1997). It offered asylum to several political activists and intellectuals, especially during the nineteenth century and the first half of the twentieth century (Portmann-Tinguely/ von Cranach 2016; Efionayi-Mäder 2003). However, lately Parini defined Switzerland’s reputation of a land of asylum as a “myth that has been challenged by history”.⁸¹

Since the entry into force of the Swiss Asylum Act (AsylA) in 1981, asylum has been a very sensitive issue in the national political agenda, leading to 15 partial or total revisions of the law and the adoption of more restrictive measures towards asylum seekers.⁸² In 1991, as a result of the war in Yugoslavia, Switzerland stopped accepting refugee quotas established

⁸⁰ CCSI, How to secure a regularization. Case Study, Switzerland regularization. 2017. Available at https://picum.org/wp-content/uploads/2023/05/MRCI_106_CS_Swiss_Web_DP.pdf

⁸¹ Parini, L. (1997b). “La Suisse terre d’asile” : un mythe ébranlé par l’histoire. *Revue européenne de migrations internationales*, 13(1), 51–69.

⁸² Dina Bader, Who Ought to Stay? Asylum Policy and Protest Culture in Switzerland, in Sieglinde Rosenberger, Verena Stern, Nina Merhaut, Protest Movements in Asylum and Deportation, IMISCOE Research Series.of more restrictive measures towards asylum seekers.



by the UNHCR. Moreover, in the last years an increasing sceptical social and political attitude raised towards asylum applicants from Africa and the Balkan regions, who replaced the traditional Italian labour migration in the view of Swiss citizens (Maire/Garufu 2013).⁸³

Research shows that deportation is widely used as an “ultimate instrument” to ensure respect of the asylum system and prevent economic migrants from entering Switzerland by applying to asylum (Wicker 2010). Public discourse and narrative differentiate between “genuine refugees” and “bogus refugees” who abuse the opportunities offered by the asylum system.⁸⁴

Alternative to return policies: Forms of internal control

Detention

In Switzerland, according to UNHCR (2022, p.5), asylum seekers are generally not detained during the asylum procedure. ⁸⁵ However, their freedom of movement is restricted as they are required to stay in a specific place, and they are obliged to make themselves available to the authorities. Moreover, detention is frequently used to carry out deportations to ensure that a removal decision can be enforced, including for asylum seekers to be returned to other States under the Dublin III Regulation.

According to Article 78 of the Federal Act on Foreign Nationals and Integration, “coercive detention can be ordered when a legally enforceable removal or expulsion order cannot be enforced due to the personal conduct of the foreigner” (ECRE, 2022). This provision has been considered not fully in line with Article 15(4) of the Return Directive, which sets out that when a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately.⁸⁶

ECRE 2022 report on Switzerland outlines that the nationalities more represented in administrative detention (asylum and non-asylum cases taken together) are Algeria (422 cases), Albania (202), Afghanistan (181), Morocco (178) and Tunisia (157). Special attention

⁸³ Maire, C., & Garufu, F. (2013). *L'étranger à l'affiche. Altérité et identité dans l'affiche politique suisse 1918–2010*. Neuchâtel: éditions Alphil.

⁸⁴ Wicker, H.-R. (2010). Deportation at the limits of “tolerance”: The juridical, institutional, and social construction of “illegality” in Switzerland. In N. De Genova & N. Peutz (Eds.), *The deportation regime: Sovereignty, space, and the freedom of movement* (pp. 224–244). Durham: Duke University Press

⁸⁵ Submission by the United Nations High Commissioner for Refugees. For the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: 4th Cycle, 42nd Session.

⁸⁶ The 2022 update of this report was written by Adriana Romer, Laura Rezzonico, Lucia Della Torre, and Esther Omlin, legal unit of the Swiss Refugee Council, and was edited by ECRE.



in the report is given to Eritrean nationals, who are often detained with the goal to force them to collaborate with their own deportation. This practice could be problematic because administrative detention is considered proportional and lawful only when the removal is possible and foreseeable.⁸⁷

Another controversial practice identified by UNHCR is the lack of sufficient alternatives to detention. Switzerland indeed detains minors aged between 15 and 18 for immigration purposes and often resorts to the detention of one parent to put pressure on the whole family to cooperate on deportations.

Pathways to regularisation

After World War II, Switzerland experienced rapid economic growth and increasing migration flows. To address the uncertain legal status of some groups of migrants present in the country, some regularization measures have been put in place.

In the late 1970s, the government granted to seasonal workers the same set of rights of guestworkers who moved to Switzerland on longer contracts. The government allowed to “upgrade” their seasonal permits into permanent residency and to bring their families in the country.⁸⁸ The number of seasonal permits did not decrease, and a number of 130,000 permits has been issued per year on average between 1985 and 1995. This system was used to facilitate permanent immigration, provide cheap labour supporting the growing Swiss economy and avoid high wages (D’Amato, 2011). In 1982, there was an attempt to reform the Alien’s Law to better regulate permanent residents and give migrants more solid legal grounds to stay in the country. However, the reform of immigration and migrant settlement law was stopped by the referendum promoted by the Swiss Democrats (SD) and the seasonal permits continued to be in place until 2002. After the abolition of the “seasonal worker” permit, thousands of workers were stranded in a legal limbo, as they could not reach the number of years necessary to obtain a regular residence permit and could not enjoy the free movement of workers granted to EU nationals⁸⁹.

It is also worth noting that, across three referenda in the last forty years (1983, 1994, 2004), Swiss voters and most of the cantons rejected different legal proposals that would have

⁸⁷ The 2022 update of this report was written by Adriana Romer, Laura Rezzonico, Lucia Della Torre, and Esther Omlin, legal unit of the Swiss Refugee Council, and was edited by ECRE.

⁸⁸ D’Amato G. The Case of Switzerland. In: Zincone G, Penninx R, Borkert M, eds. Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present. Amsterdam University Press; 2012:165-194.

⁸⁹ CCSI. How to secure a regularization. Case Study, Switzerland regularization. 2017. Available at https://picum.org/wp-content/uploads/2023/05/MRCI_106_CS_Swiss_Web_DP.pdf



facilitated the naturalization of children of immigrants. For instance, the law submitted to a referendum in 2004 would have granted citizenship to Swiss-born grandchild of a foreign resident automatically at birth (D'Amato, 2011).

There would be a significant exception in a restrictive framework: from February 2017 to December 2018, public authorities in Geneva, implemented a regularisation scheme called "Operation Papyrus". In a city of about half a million people, with a population of between 8000 and 12,000 individuals in an irregular situation, this programme allowed over 2,800 people to obtain a residence permit. 90 One of the main conditions reported as an impediment to applying for regularisation is to be involved in police control twice (even without committing any offence)⁹¹.

"Operation Papyrus" is considered a novel experiment because of the following characteristics⁹² (Halle, 2020):

- Through this scheme, the regularisation procedure is simplified and made more transparent with clear and specific admission requirements;
- It adopted a holistic approach since it included measures to tackle undeclared work and support regularised individuals and families;
- It is implemented in partnership and a constant dialogue with different public and private stakeholders, and it is the result of over a decade of sustained advocacy for regularisation.

Here, it is necessary to open a parenthesis. The implementation of policies in cooperation with the third sector, which often has direct contact with irregular migrants, is essential, also considering the distance between public authorities and irregular migrants, even where access to services is possible, due to lack of trust and fear of being reported. Such fear is efficiently highlighted also during the fieldwork:

"There is a problem of trust towards the institution. Irregular migrants appear to be reported to the authorities, so this creates a lack of trust in public institutions, and we (as NGO) take care of many issues" Swiss civil society organization (1) (dealing specifically with irregular migrants from the Middle East).

⁹⁰ Louise Cottrel Allué, Switzerland: new study measures benefits of 2018 Geneva regularization, blogpost available at: <https://picum.org/blog/switzerland-new-study-measures-benefits-of-2018-geneva-regularisation/>

⁹¹ Focus Group, Swiss Civil Society Organisation (2).

⁹² <https://picum.org/blog/geneva-operation-papyrus-regularised-thousands-of-undocumented-workers/>



There are still other aspects that need to be reported on “Operation Papyrus”. Researchers from the University of Geneva found that this programme had a beneficial effect on the life of migrants, especially in relation to their living and health conditions, access to housing and jobs.⁹³ The Operation Papyrus criteria to apply for the permit were the following:

- Continuous residence in Geneva for five years (for families with at least one child attending school), or 10 years (for all others);
- Being employed;
- Being financially independent;
- Achieving A2 (oral) level in French;
- Not having a criminal record.⁹⁴

The permit obtained consisted of a yearly residence and work permit, which grants the person full access to the labour market and the right to travel inside and outside the country. The permit can be renewed if the person still meets the criteria, and, after five years, one can apply for a more stable five-year “settlement” permit⁹⁵.

Another important aspect to mention is the fact that an independent report on the operation clearly shows that there was no increase in the arrival of irregular migrants, dispelling the claim that regularisations attract irregular migrants.⁹⁶

From an economic point of view, the programme is also cost-beneficial. After 1663 adults and 727 children were regularised (about half of the applicants), the programme had generated a benefit of at least CHF 5.7 million (about EUR 5.2 million) for the cantonal social security system⁹⁷. The final contribution is higher, as 2883 persons were eventually regularised through the initiative.

a. Humanitarian Cases

⁹³ [Jan-Erik Refle](#), [Claudine Burton-Jeangros](#), [Yves Jackson](#), [Liala Consoli](#), [Julien Fakhoury](#), *Sortir de la clandestinité. Les conséquences de la régularisation des travailleurs sans-papiers*, 2024.

⁹⁴ CCSI, *How to secure a regularization. Case Study, Switzerland regularization*. 2017. Available at https://picum.org/wp-content/uploads/2023/05/MRCI_106_CS_Swiss_Web_DP.pdf

⁹⁵ *Ibid.*

⁹⁶ <https://picum.org/blog/geneva-operation-papyrus-regularised-thousands-of-undocumented-workers/>

⁹⁷ https://picum.org/wp-content/uploads/2022/12/Regularisation-mechanisms-and-programmes_Why-they-matter-and-how-to-design-them_Executive-Summary_IT.pdf



Swiss law sets out that rejected asylum-seekers have the possibility to stay in the country if departure from the country would provoke serious hardship on the person concerned.⁹⁸ For instance, the humanitarian ground could cover the case of a person who is well integrated in the country and would risk of suffering from the social and economic conditions if forcibly returned to the country of origin. The granting of this status is discretionary, and it has been often used to ensure some protection to asylum-seekers who have been waiting for a decision for several years. However, this form of protection does not ensure the same legal protection guaranteed by the 1951 Convention and therefore should not replace it.

According to UNHCR, humanitarian visas are crucial instruments to allow family members who are in imminent and serious danger of bodily harm to come to Switzerland. Many insurmountable barriers for beneficiaries are in place to obtain them and the Swiss Red Cross had to close a counter for counselling on humanitarian visas in December 2021 because of the restrictive practices in the country (ECRE, 2022). In 2022, out of 3,703 applications only 142 were accepted. The most relevant countries in terms of applications were Afghanistan (1,759 applications, 98 accepted), Iran (849 applications, 3 accepted) and Syria (745 applications, 12 accepted).

b. Temporary Protection

Swiss asylum law provides the possibility to grant temporary protection (“protection provisoire”, “S permit”) to persons in need of protection during a period of serious general danger, in particular during a war or civil war as well as in situations of general violence (Articles 66–79a AsyIA).

In the 1990s, this legal instrument was introduced after the conflicts in the former Yugoslavia to enable the Swiss authorities to manage situations of mass exodus.⁹⁹ It was activated for the first time in the context of the war in Ukraine by the Federal Council on 11 March 2022 (ECRE, 2022). As for the humanitarian protection, this form of protection has many advantages in the short-term, but it can potentially undermine the correct application of the international protection as envisaged by the 1951 Convention regime and lower the legal standards of protection in the long-term for its beneficiaries

⁹⁸ Walter Kalin, "The Legal Condition of Refugees in Switzerland," *Journal of Refugee Studies* 7, no. 1 (1994): 82–95

⁹⁹ *Ibid.*



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THE NETHERLANDS

Context description

Traditionally, the Netherlands has not perceived itself as an immigration destination. Following the post-war era, both official statements and public opinion converged on the belief that the Netherlands was an overpopulated country, and thus, not conducive to immigration (Bruquetas-Callejo et al. 2011). Yet, in 2022 15% of the Dutch population was born abroad (Centraal Bureau voor de Statistiek (Statistics Netherlands) 2023).

The Netherlands has historically faced challenges in housing asylum seekers and has adopted austere measures, which are thought to aim to discourage asylum seekers applications (NL Times 2023; Muus 1997). Housing difficulties for asylum seekers have increased since the COVID-19 period. During the pandemic, the number of asylum seekers was relatively low, leading to a reduction in reception facilities. However, when the post-COVID increase in asylum seekers occurred, it became difficult to scale up capacity again due to staffing and housing shortages. Additionally, delays in the asylum decision-making process have put further pressure on asylum centers, forcing them to host people beyond their capacity.¹⁰⁰

Since the 1990s, the Netherlands has implemented various laws and policies aimed at reducing the number of irregular migrants in the country. For instance, since 1991, employers can face inspection and fines if they hire irregular migrants (Pluymen 2002). Additionally, the Koppelingswet, introduced in 1998, ties access to welfare benefits and public services to legal status, thereby restricting access for irregular migrants (Pluymen 2002). To facilitate internal control, the Netherlands has established a comprehensive data infrastructure that enables service providers to easily verify an individual's legal status (Van der Leun, 2003; Leerkes, 2009; Timmerman, Leerkes, and Staring, 2019).

In addition, anyone older than 14 years old could be requested to present their identification upon request of a police authority, public transport inspectors and enforcement officers if requested as part of their regular duties (Wet op de identificatieplicht (Compulsory Identification Act) 1994).

Efforts to combat irregular migration and human trafficking have been central to the Dutch government's agenda. To combat irregular migration, the Dutch government has put the emphasis on strengthening partnership with main countries of origin and transit and has



particularly emphasized the need to use carrot and sticks (Government of the Netherlands 2018). To combat human trafficking and other crimes, the Netherlands was among the pioneers in Europe in implementing the “free in, free out” policy, allowing irregular migrants to report crimes without fear of arrest or detention because of their immigration status (Timmerman, Leerkes, Staring and Delvino, 2020). This policy aims not only to protect irregular migrants but also to combat various crimes, particularly human trafficking.

In an ongoing effort to combat human trafficking, the government recently proposed a bill to the House of Representatives of the General States (Tweede Kamer der Staten Generaal), currently pending approval, which enables the prosecution of human traffickers in the Netherlands, irrespective of where the crime was committed or the nationality of the criminal and the victim (EMN 2023, Raad van State (Council of State) 2022, Eerste Kamer der Staten Generaal (Senate of the States General) 2023). This measure is designed to empower the Netherlands in effectively dismantling human trafficking networks.

Policies toward irregular immigrants

Combatting irregular migration has remained a top priority for the Dutch Government, with a focus on addressing the root causes of migration. One key approach has been the strengthening of externalization policies and internal border controls, particularly in airports and other key transit points (Government of the Netherlands 2018).

Migrant detention in the Netherlands is used solely for deportation purposes and could not last more than 6 months but could be extended to up to 18 months in case the migrant refuses to cooperate with their return or the documentation has not been obtained.¹⁰¹ This time limit puts pressure on Dutch authorities to quickly engage with third countries to document and readmit their nationals. The most recent statistics on returns in the Netherlands (2023) show that the majority of returnees 10,130 (43.81%) return voluntarily, while a smaller number 5,480 (23.7%), are forcibly returned.¹⁰² This indicates that the system is quite effective in mobilizing voluntary returns.

The Netherlands ties access to welfare rights to regular migration status. For instance, irregular migrants can only receive housing and shelter if they collaborate with return

¹⁰¹ <https://www.government.nl/topics/return-of-foreign-citizens/aliens-detention>

¹⁰² There is a group known as “independent returns without supervision” which constitutes 32.48% of the total returns. This category includes individuals who have disappeared from their registered addresses and are assumed by the authorities to have returned to their home countries (<https://data.overheid.nl/sites/default/files/dataset/4032288d-9b0c-453b-bd20-50bc76c46ea8/resources/Vertrek%20-%20Ketenbreed%20vertrek%202023.csv>)



procedures. This underscores the intricate relationship between migration and social policy, as social policies can act both as tools of inclusion and exclusion, where access to certain welfare rights is used to incentivize compliance with return procedures, reflecting broader governmental strategies to manage irregular migration (Rosenberger and Koppes 2018).

Alternative to return policies: Forms of internal control

The *Koppelingswet*, introduced in 1998, ties welfare benefits to legal status, thereby restricting social rights for irregular migrants with the exception of basic education until the age of 18, emergency care and legal aid. In terms of education, irregular migrants under the age of 18 have access to education, including primary and secondary schooling. Moreover, if an irregular migrant begins higher education before turning 18, they are permitted to continue their studies with government funding (EMN 2023, Dez and Fiorito 2022). As it is rare for irregular migrants to complete high school before reaching 18, higher education remains largely inaccessible. To address this issue, the Municipality of Amsterdam (2022) initiated a pilot agreement in 2022 with higher education institutions and universities. This agreement aims at reducing tuition fees for irregular migrants educated in the Netherlands who are under 30 years old and assists them in meeting the requirements for obtaining a residence permit. Upon graduation, they might be eligible to apply for a job search residence permit, allowing them to transition into the labor market if they secure employment within a year after completing their studies (Immigratie en Naturalisatiedienst (IND) (Immigration and Naturalisation Service) 2024).

According to the *Koppelingswet*, emergency care is available to irregular migrants. To allow irregular migrants to get access to non-emergency care, the Central Administration Office (CAK) has a special fund designed to reimburse service providers the costs they incurred in giving medical attention to irregular migrants that lack resources to pay them (art. 122a *Zorgverzekeringswet* (Healthcare Insurance Act) 2006). Reimbursement percentages vary depending on the type of care and contractual agreements with the CAK. Typically, healthcare expenses are eligible for reimbursement ranging from 80% to near-full coverage. Notably, pregnancy and childbirth care are exceptions, with 100% reimbursement available in these cases (EMN Netherlands 2021).

In terms of housing and shelter, irregular migrants are in general unprotected, unless they cooperate with the authorities in their return or in finding a solution to their situation. If there are children involved, collaboration is not required. *Gezinlocaties* (family locations) provide shelter for families that have received a return decision and that have under their



care children below the age of 18. In *gezinlocaties*, families are restricted from leaving the municipality where the location is placed and are required to report regularly to the Aliens Police (Leerkes 2016). If no children are involved, shelter is given only to those that cooperate with their return. They are usually placed in *Vrijheidsbeperkende locaties* (freedom-restricting locations), which allow occupants to leave the facilities but not the municipality where the location is situated (Van Alphen et al. 2013).

However, return is not always feasible, for example when the country of origin does not cooperate. In such cases, families who cannot be returned remain in these shelters for a long time, in a limbo situation:

"(...) There are also many countries to which expulsions do not take place because it is practically impossible for the Dutch authorities. Iraq is a good example of such countries. So, these families remain there in limbo. They have no chance of regularisation, but they are not deported either, so they stay there. With all the restrictions, of course." Dutch civil society organisation

However, the "deportability" risk always remains since the cooperation between states is in constant evolution:

"In the case of Iraq, they (families) don't have to fear this every day, but the situation can change over time. Last summer, there was a situation where there were rumours that the Iraqi authorities were going to start discussing cooperation. So, there was a lot of panic among Iraqi families. Afterward, a couple of weeks later, nothing really happened (...). For them, there is no status of tolerance or anything like that, so if a country decides to cooperate with expulsions, from one moment to another, a lot of families can be at risk". Dutch civil society organisation

Regardless of a return decision, irregular migrants could also be sheltered and be given counselling service in *Landelijke Vreemdelingen Voorziening* (LVV) (National Immigration Facilities) to the extent that they collaborate in finding a solution to their situation of irregularity. The LVV is a pilot program that ran from 2019 to 2022 in designated municipalities (Amsterdam, Utrecht, Eindhoven, Groningen, and Rotterdam). This initiative, involving the Immigration and Naturalization Service (IND), civil society organizations,



police, Repatriation and Departure Service (DT&V), and the municipalities, aimed to find solutions for irregular migrants. While shelter and food were provided, participation required cooperation in resolving their situation, which might involve returning to their home country, relocating to another EU state, or regularization (Mack et al., 2022). At the moment, there are plans to scale up the program and expand it to the whole country, but financial aspects have to be decided first (Government of the Netherlands 2023).

Bed, Bad en Brood (BBB) (Bed, bath, and bread) are initiatives ran by NGOs and civil society organizations. They benefited from the financial contribution from the central government until the end of 2021 where the aid was stopped because of the LVV pilot program (EMN Netherlands 2021).

Pathways to regularization

The Dutch system provides limited avenues for irregular migrants to obtain a residence permit. As will be explained below, irregular migrants could only obtain a temporary residence permit in exceptional circumstances, due to medical reasons, on humanitarian grounds (victims of human trafficking, domestic violence, honour crimes, amongst others) or “their” country not cooperating with their readmission.

Suspension of deportation for medical reasons

Article 64 of the Vreemdelingenwet (Aliens Act) (2000) allows for the suspension of deportation due to medical conditions affecting the foreigner or their family members, typically their spouse and children. This suspension occurs if (Vreemdelingencirculaire (A) (Aliens Implementation Guidelines (A)) 2000, sections 7.1.3 – 7.1.5):

- Failing to provide medical treatment would lead to a medical emergency, such as death, disability, or serious harm; and,
- The required medical treatment is either unavailable or inaccessible in the individual’s country of origin.

During the assessment of the suspension period, the foreigner is not entitled to benefits in kind, such as accommodation. Additionally, the pending procedure does not confer legal residence status, but the DT&V (Repatriation and Departure Service) refrains from deporting the migrant while the decision is pending (Aliens Implementation Guidelines



2000, section 7.2.2). The duration of the postponement is determined by medical experts, with a maximum limit of one year. Once the suspension is granted, the migrant becomes entitled to benefits in kind, including reception conditions.

If the medical conditions persist after the one-year postponement, the foreigner may obtain a temporary residence permit on the condition that s/he cooperates in securing access to medical care in his country of origin and arrange for his departure (Article 3.51 Vreemdelingenbesluit (Aliens Decree) 2000, Vreemdelingencirculaire (B) (Aliens Circular (B)) 2000, paragraph 9.1.1). Throughout this process, the individual remains eligible for reception support (Aliens Circular 2000 (B8), paragraph 9.1.9).

The duration of the residence permit can vary from one to five years, depending on the severity of the medical conditions and the availability of treatment in the country of origin. The foreigner is not allowed to work (Aliens Circular 2000 (B8), paragraph 9.2)

Residence permit under humanitarian grounds

A residence permit on humanitarian grounds can be granted for various circumstances beyond the medical conditions mentioned above. These include:

- Victims of honor-related and domestic violence provided there is a threat in the country of return preventing them from escaping violence (Article 3.48 Aliens Decree 2000, Aliens Circular 2000 (B8), paragraph 2).
- Victims and witnesses of human trafficking who agree to cooperate with criminal investigations, unless exceptional circumstances prevent cooperation (e.g., severe threat of violence, medical or psychological issues) (Article 3.48 Aliens Decree 2000, Aliens Circular 2000 (B8), paragraph 3).
- “Westernized” female minors facing disproportionate psychosocial burdens upon return to Afghanistan, given they have lived in the Netherlands for at least 8 years where they have also attended school (Article 3.48 Aliens Decree 2000, Aliens Circular 2000 (B8), paragraph 10).
- Protected witnesses in the National Police Unit’s protection program (Article 3.48 Aliens Decree 2000, Aliens Circular 2000 (B8), paragraph 14).
- Human rights defenders participating in the ICORN (City of Refuge) program, upon request from a relevant municipality participating in ICORN (Article 3.48 Aliens Decree 2000, Aliens Circular 2000 (B8), paragraph 15).



These humanitarian residence permits are typically granted temporarily based on the duration of the humanitarian situation, often for one year with the option for renewal (except for human rights defenders, whose permits can in principle not be renewed) (Aliens Circular 2000 (B8), paragraph 15.4) and they allow the individual to work freely in the Netherlands. If the situation persists, the foreigner may receive a temporary residence permit for an extended period. If the foreigner completes an uninterrupted stay of 5 years in the Netherlands, s/he may apply for a permanent residence permit under general immigration rules (Immigratie en Naturalisatie Dienst 2023).

Rights during the pending procedure may vary depending on the humanitarian ground. For example, alleged victims of human trafficking are entitled to shelter, medical assistance, legal aid, and cost of living (Aliens Circular 2000 (B8), paragraph 3.4) while others do not.

Compelling circumstances

Compelling circumstances, such as health issues or family deaths, may warrant a residence permit. Applicants must justify these circumstances and provide evidence during their initial asylum or residence permit application. Circumstances arising after the onset of irregularity carry less weight (Gonzalez Beilfuss & Koopmans, 2021).

Until 2019, residence permit under compelling circumstances was a discretionary power of the State Secretary. This allowed irregular migrants who were not in the asylum procedure to get this permit. Some cases became even public, placing the State Secretary under public and political pressure (Gonzalez Beilfuss & Koopmans, 2021). Nowadays, compelling circumstances are integrated into the asylum procedure and are granted by the Immigration and Naturalization Service (IND). It was thought that this change would aim to prevent irregular migrants from holding onto false hopes of staying and not cooperating with the return procedure (Parliamentary Papers II, 2018–2019, p.7). However, the placement of this discretionary power within the asylum or residence permit procedure might exclude cases involving rooted children, as their level of rootedness cannot be assessed at the time of the asylum application.

No-fault policy (buitenschuldvergunning)

Irregular migrants may be authorized to stay temporarily if their attempts to return to their country of origin have been unsuccessful by no fault of their own. A specific case of this



policy would be the refusal of the country of origin to receive their citizens. A key requirement for obtaining this temporary residence permit is cooperation with the return process (Section 3.48, sub 2 under a, Aliens Decree (Vb), 2000). Cooperation entails taking tangible steps to facilitate departure, such as engaging with the Repatriation and Departure Service (DT&V) (Aliens Circular 2000 (B), paragraph 4). The Dutch Immigration Service (IND) and the DT&V have the final authority to determine whether the migrant has indeed cooperated with the return process.

Additionally, individuals granted this temporary stay permit are permitted to work. The permit is initially valid for one year and may be extended if it can be demonstrated that returning to the individual's home country is not feasible (Aliens Circular 2000 (B8), paragraphs 4.2, 4.4).

Unaccompanied and undocumented minors' regularisation (kinderpardon)

Unaccompanied minors who cannot be returned through no fault of their own may be granted a regular temporary residence permit if certain conditions are met. These conditions include the minor being younger than fifteen years old at the time of their initial residence application, providing credible information about his/her identity and family, demonstrating a lack of suitable shelter options, and not obstructing investigations into reception options. Additionally, it must be established that adequate shelter in the country of return is generally unavailable, and it is unlikely to become available in the foreseeable future (Aliens Circular 2000 (B8), par. 6). This residence permit is valid for 5 years and allows the holder to work (Aliens Circular 2000, (B8), par. 6.4).

In the Netherlands, rejected minor applicants considered rooted in the country may be regularised through a permanent mechanism (since 2013) called *kinderpardon*, under some specific conditions. Amongst others, minors/applicants¹⁰³:

- have applied for asylum at least 5 years before reaching the age of 18 and have resided in the Netherlands at least 5 years after applying for asylum;
- must actively 'cooperate' with the departure;
- must not be older than 19 at the time of application.

Regularisation is also envisaged for proven family members unless they are considered a threat to public security. Starting from its application, the conditions for legal residence through this channel have become increasingly restrictive.

¹⁰³ https://picum.org/wp-content/uploads/2023/08/Regularisation_Children_Manual_2018.pdf



“(In 2013) A couple of hundred children were granted a residence permit through that regulation and also their parents, in case they were here with their families, and there was a second one, which was introduced at the same time for future cases. But it was very, very restrictive. So in the end, not a single child got a residence permit because of that regulation, and there was a big debate about this issue”. Dutch civil society organisation

The criterion of cooperation with return was introduced in 2013 and was the main reason for the very low approval rates (in 2016, only 1 residence permit was granted under the mechanism), as it is unclear how this condition should be met¹⁰⁴. According to the Dutch Ministry of Justice and Security, in 2022, 30 applications have been assessed. The Dutch Council of State noted that authorities might assess the family member's behaviour when deciding how to evaluate the application. However, the courts have a wider scope for review on appeal if this element is considered to be unfavourable to the child¹⁰⁵. On the other hand, the identification of the child with the lack of adherence to immigration law by their parents is considered legally problematic according to paragraph 2 of Article 2 of the International Convention on the Rights of the Child¹⁰⁶. Currently, the *kinderpardon* procedure is not active, as reported:

“At the moment, there is no regulation for these children; there is no possibility to apply to the Minister. There is only the possibility of applying for a residence permit under Article Eight of the European Convention on Human Rights on private life. But it is extremely difficult to obtain. So, I see many children who are 10 or 15 years old who have spent all their youth in the Netherlands and have not yet obtained a residence permit”. Dutch civil society organisation.

This situation underscores the urgent need for a more compassionate and workable solution that balances the state's need to control immigration with the fundamental rights and welfare of undocumented children.

To sum up, we observe that there are few paths for regularisation in the Netherlands. The existing ones are either linked to exceptional circumstances, such as humanitarian grounds, medical circumstances, lack of cooperation from the third state. In terms of welfare rights, irregular migrants have limited access, mostly reserved for basic necessities like

¹⁰⁴ https://picum.org/wp-content/uploads/2023/08/Regularisation_Children_Manual_2018.pdf

¹⁰⁵ https://euaa.europa.eu/sites/default/files/publications/2023-07/2023_Asylum_Report_EN_0.pdf

¹⁰⁶ <https://www.leidenlawblog.nl/articles/the-right-to-regularise-irregular-residence-is-a-human-right>



emergency care, basic education, and legal aid. Broader access to welfare rights is contingent upon their cooperation with return processes.

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THE UK

Context description

In the UK, immigration has become one of the most controversial political discourses since especially the so-called 'refugee crisis' of 2015 and also the most crucial issue of Brexit, through which EU and non-EU citizens are treated equally. The overall governance of migration in the UK can be seen as complicated and reactive, within which the needs of migrants, refugees, and asylum seekers have been eroded over time in the name of border control¹⁰⁷.

While the governments of Northern Ireland, Scotland, and Wales have some autonomy in the location of funds reserved for social and health-related services, The Central UK Government is responsible for immigration management in immigration-related policies, such as the acquisition of nationality and asylum. Recently, the Scottish Government has announced that, if independence is achieved, it will adopt a migration policy that favours those seeking refuge and facilitates the mobility of those seeking work¹⁰⁸. In this context, the officially declared commitment of the British Home Office is quite different, aiming to reduce the immigration net and bring down the numbers¹⁰⁹. The objective of reducing the immigration net is widely shared by both Conservative and Labour Party representatives. In terms of asylum-related policies the attention has been increasingly shifting to the externalization of the borders and the intensification of collaboration both with border-shared EU countries (in particular France) and non-EU countries through readmission agreements. A recent example of the externalization policy is the highly controversial agreement with Rwanda, which allows asylum seekers to be transferred to Rwanda, designating the Rwandan government as responsible for examining asylum applications. Although the proposal was found to be unlawful by the Court of Appeal in 2023, the government has already notified at least 24,000 people that they are being considered for deportation to a 'safe third country' to determine their claim, presumably referring to Rwanda, the only country with which the UK has such an agreement¹¹⁰. According to the

¹⁰⁷ <https://api.repository.cam.ac.uk/server/api/core/bitstreams/89486f84-978a-4ee7-bbb7-f46c8477024f/content>

¹⁰⁸ <https://www.gov.scot/publications/building-new-scotland-migration-scotland-independence/>

¹⁰⁹ <https://homeofficemedia.blog.gov.uk/2024/05/23/reducing-net-migration-factsheet-december-2023/>

¹¹⁰ <https://www.theguardian.com/uk-news/2023/jun/30/over-24000-uk-asylum-seekers-could-be-sent-to-rwanda-despite-court-ruling>



National Audit Office report¹¹¹, over the five years the UK will pay to Rwanda £370m plus further amounts depending on the number of people relocated to Rwanda (a total of £151,000 per individual relocated to cover the asylum processing and operational costs. These individual relocation payments include an Integration Package and are phased over five years, provided the individual chooses to remain in Rwanda. If a resettled individual decides to leave Rwanda, the UK will stop payments for that individual but would pay the Rwandan government a one-off payment of £10,000 per individual to facilitate their voluntary departure).

Within a parallel voluntary departures policy, Rwanda is also a destination for those asylum seekers offered £3000 by the government for voluntarily leaving the country¹¹².

Policies toward irregular immigrants

The official discourse in the UK identifies irregular immigration with unauthorised entry, especially from the sea (likewise in Italy). In line with these, policies toward irregular immigrants firstly include border control policies, then, tighter regulations and return programs. The border controls include the strengthening of border police forces and the use of advanced technology, such as biometric scanners and surveillance systems, to monitor entry points. Following the 2018 Sandhurst Treaty through which £44.5 million was allocated to video surveillance technologies, in July 2021, the UK government signed a £55 million agreement with France to enhance aerial surveillance and security infrastructure at ports¹¹³.

In terms of normative framework, one of the cornerstones of irregular migration management is the Immigration Act 2016, creating the basis for the combination of laws and processes that regulate access to work, benefits, and services in the UK. This combination is officially named the Compliant Environment (CE), or said differently, “a really hostile environment for illegal immigrants¹¹⁴” and its main objective is to encourage irregular migrants to leave the UK voluntarily. The policy also provides for specific deterrents, such as sanctions for employers, requiring the refusal to provide services to immigrants in an irregular situation, and the criminalisation of driving vehicles by irregular immigrants. This policy shift “*essentially turns all public services into border control and*

¹¹¹ <https://www.nao.org.uk/wp-content/uploads/2024/02/investigation-costs-ukrwanda-partnership-summary.pdf>

¹¹² <https://www.politics.co.uk/news/2024/03/13/3000-for-asylum-seekers-to-move-to-rwanda-a-good-use-of-public-money-minister-claims/>

¹¹³ https://hubble-live-assets.s3.amazonaws.com/biduk/file_asset/file/692/GPS_Tagging_Report_Final__1_.pdf

¹¹⁴ <https://www.cogitatiopress.com/socialinclusion/article/view/1486/845>



where people will be asked to for to prove their immigration status before being able to access services¹¹⁵".

The other policy tool is the so-called Illegal Migration Act 2023¹¹⁶ of which the main objective is to reduce or end "small boat crossings" across the English Channel. Although the current hostile attitude towards small boat arrivals is a new policy focus, it has parallels with 'bogus' asylum seeker narratives of the late 1990s¹¹⁷.

The bill introduces immediate detention, also including children, and deportation to the home country or a "safe" third country, as Rwanda. Critics argue that such legislation may be in breach of international human rights obligations, particularly the right to asylum and protection from inhumane treatment and detention for an undefined period¹¹⁸. Furthermore, those crossing the Channel in small boats or other "irregular" means after 20 July 2023 will not be eligible for the UK asylum system and the Home Office will not process their claims. The government's intention, therefore, is to quickly "detain and remove" these people¹¹⁹. Indeed, the official records¹²⁰ provide information only on unauthorised entries; furthermore, except for a specific period (April–December 2023), the data refers only to arrivals through small boats.

In the UK, "as a pragmatic acceptance that it was simply not viable to gather systematic information about the unauthorized population¹²¹", the exact size and characteristics of the irregular migrant population in the UK are unknown; reliable estimation methods are lacking and available data do not provide an accurate measure of visa overstaying¹²².

However, recent estimates suggest it is between 800,000 and 1.2 million people¹²³

Furthermore, there is no specific legal definition of "irregular migrant". While removal is the preferred policy outcome, in recent years, fewer people considered to have no legal right

¹¹⁵ Quoting the civil society organisation, from the Focus Group conducted on March, 19th 2024.

¹¹⁶ <https://www.gov.uk/government/collections/illegal-migration-bill#:~:text=The%20Illegal%20Migration%20Act%20changes,or%20a%20safe%20third%20country>.

¹¹⁷ Jolly, A. 2023. Politics: Understanding Legal and Policy Contexts – UK: Country Profile. MlrreM Working Paper No.XX.

¹¹⁸ <https://www.lawsociety.org.uk/topics/immigration/illegal-migration-act>

¹¹⁹ <https://www.refugeecouncil.org.uk/information/what-is-the-illegal-migration-act/#:~:text=The%20Act%20places%20a%20legal,third%20country%20such%20as%20Rwanda>

¹²⁰ <https://lordslibrary.parliament.uk/illegal-migration-dealing-with-inadmissible-asylum-applications/#fn-13>

¹²¹ <https://onlinelibrary-wiley-com.ezproxy.unicatt.it/doi/full/10.1111/gove.12499> (pp.

¹²² <https://migrationobservatory.ox.ac.uk/resources/briefings/irregular-migration-in-the-uk/>

¹²³ <https://jcw.org.uk/resource/who-are-the-uks-undocumented-population/>



to be in the UK were removed from the country or left voluntarily. Indeed, the number of enforced returns has been sharply decreasing in the last decade, falling by 82% between 2012 and 2021 from a peak of over 15,000¹²⁴.

Alternative to return policies: Forms of internal control

While being highly criticised by NGOs, advocacy, and human rights organisations, the last policy shifts also emphasise the use of long-lasting detention in irregular migration governance increasingly. Indeed, unlike other European countries, detention has no specific time limit. In the UK, people can be detained for various reasons. These include the pre-deportation phase, identity and nationality verification, and prevention of absconding in case of impending immigration decisions.

Under this information, the proportion of people detained under UK immigration law who are subsequently returned to their country of origin or elsewhere varies from year to year. However, a significant number of people detained are not ultimately removed from the country. The percentage of detainees returned has been relatively low compared to the total number of detentions.

Data referring to the year ending 30 September 2023 showed that most people are detained before they are returned – 76%¹²⁵. This relation does not apply to inversion; in other words, while the majority of returnees are detained, only a small percentage of detainees return.

In 2023 the ratio of detainees to returnees (top-10) is rather low.

¹²⁴ Ibid.

¹²⁵ <https://migrationobservatory.ox.ac.uk/resources/briefings/deportation-and-voluntary-departure-from-the-uk/>

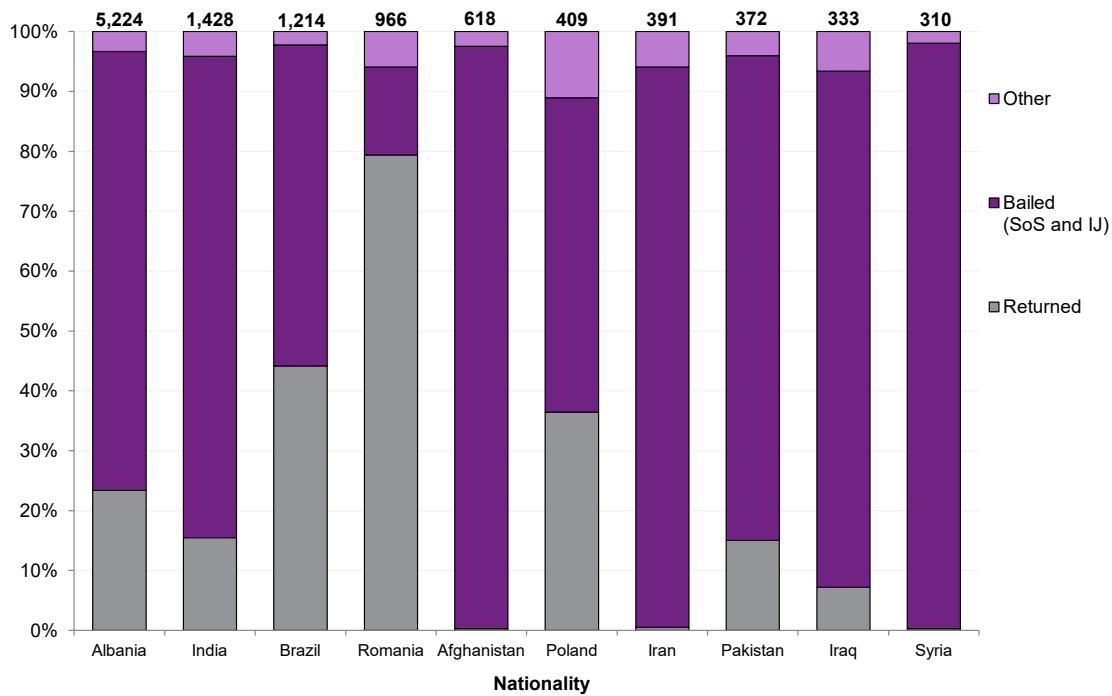


Fig. 1 Top 10 nationalities leaving detention by reason for leaving, year ending September 2023. (Home Office, 2023)

However, the “Illegal Immigration Bill” introduces large powers to detain, including also children and pregnant women. Furthermore, the bill foresees an increase in the size of the detention and, thus, in the space needed for detention. People are likely to be detained in emergency shelters in former military barracks or in similar conditions to the Greek islands, confirming that the UK government sees Greece's approach of confining people seeking asylum to large centres as a policy model¹²⁶.

There is also an alternative to detention. Formerly known as temporary admission, the Immigration Act 2016 has transformed into an immigration bail. Especially when no deportation is feasible in a reasonable time, those who are liable to be detained under any of the above provisions (including asylum seekers and many born or raised in the country) may be granted immigration bail and may remain on bail even if they are no longer lawfully liable to detention¹²⁷. From November 2020, the Home Office has 24/7 monitoring of the location of non-UK nationals on immigration bail through GPS tracking. Beyond having high

¹²⁶ https://www.helenbamber.org/sites/default/files/2023-04/%27Illegal%20Immigration%20Bill%27%20Briefing_FINAL.pdf

¹²⁷ <https://assets.publishing.service.gov.uk/media/65f4260efa1851001a0117bf/Immigration+bail.pdf>



human costs in both public and private dimensions, this non-stop monitoring system has significant interference with the Article 8 of the European Convention on Human Rights.¹²⁸

In terms of service access, irregular immigrants have the No Recourse to Public Funds (NRPF) condition in the UK, meaning they cannot access mainstream social housing or welfare benefits. After the service refusal requirement of the Irregular Act 2016, also accessing private accommodation can be difficult.

Migrant children have the right to attend state schools. Education up to the age of 18 is mandatory, and theoretically, schools have to accept the enrolment of minors without inquiring about immigration status. In terms of school access, the situation for unaccompanied minors is critical. As of March 2022, 21% of unaccompanied children had no access to education and many of them are in temporary accommodation, which can make it difficult to get a place and attend school¹²⁹.

Although the most recent measures only target arrivals via small boats or other irregular routes, the country's irregular migration landscape is more complex and layered than this small percentage. There is a significant presence of people who have regularly arrived and remained in the country after the expiry of their visas, the so-called 'overstayers'. Among other groups, there are between 10,000 and 20,000 students per year for whom there is no clear record of departure, indicating potential overstaying¹³⁰. What is more, just over a quarter of undocumented migrants (215,000) are children, half born in the UK, meaning that they have also families with different legal statuses¹³¹. This irregular presence, which for a variety of reasons is more stable than the new irregular arrivals, continues to live in a grey zone where policies turn a blind eye.

On the other hand, by removing protection options and distorting existing case resolution principles, the Illegal Immigration Bill is likely to lead to an increasing situation of limbo, as not all arrivals could be sent to Rwanda due to its restrictions, and their asylum claims will not be considered in the UK¹³².

Pathways to regularisation

¹²⁸ [https://hubble-live-](https://hubble-live-assets.s3.amazonaws.com/biduk/file_asset/file/692/GPS_Tagging_Report_Final__1_.pdf)

[assets.s3.amazonaws.com/biduk/file_asset/file/692/GPS_Tagging_Report_Final__1_.pdf](https://hubble-live-assets.s3.amazonaws.com/biduk/file_asset/file/692/GPS_Tagging_Report_Final__1_.pdf)

¹²⁹ <https://www.childrenscommissioner.gov.uk/blog/spotlight-on-unaccompanied-asylum-seeking-children-missing-from-education/>

¹³⁰ <https://www.migrationwatchuk.org/briefing-paper/508/student-immigration-to-the-uk>

¹³¹ <https://jcw.org.uk/resource/who-are-the-uks-undocumented-population/>

¹³² <https://www.nrpfnetwork.org.uk/news/illegal-migration-bill>



Unlike other European countries, there is no systematic regularisation or amnesty scheme in the UK. In the past, there have been few regularisations. The two programmes ran from 1974 to 1978 and in 1997, regularising 2,271 citizens of the Commonwealth and former colonies (mostly Pakistani)¹³³. The third and last one ran between July 1998 and October 1999 and aimed at domestic workers. The number of regularised workers was very low (less than 200) due to requirements that were difficult to meet¹³⁴. It's important to highlight the work done by several domestic workers' organisations (in particular Waling Waling) in advocating for regularisation. Although the number of regularised workers was small, the organisations' media work telling stories of workplace abuse and other injustices suffered because of their legal status allowed these women, perhaps for the first time, to be seen for their story rather than their 'illegality'¹³⁵.

Other tools based on long-term presence, family ties, and humanitarian reasons are listed below¹³⁶.

Family ties, minors, and young adults: Minors born in the UK or arrived at a young age, lived in the country at least for 7 years and where it is not “reasonable” to expect them to leave, considering in particular existing family ties (called 7-year route). Applicants aged 18–24 can also obtain up to five years' leave to remain if they have spent at least half their lives continuously in the UK. Parents and partners of British and EU citizen children may apply also for regularisation.

14-year rule: Prior to 2012, irregular immigrants could obtain indefinite residency after 14 years of continuous presence in the UK. This policy was abolished in 2012 and replaced with the 20-year rule.

20-year rule: Under this policy, irregular immigrants who have lived in the UK for 20 years may apply for regularise their status. The residence permit obtained through this scheme is a limited leave to remain (LLR), and it needs to be renewed every 30 months for another 10 years to be converted to an indefinite leave to remain (ILR). The applicants need to prove their presence in the UK. Many people may not have access to official documents or records, making this a challenging situation. This means that even those who have lived in the UK for many years may find it difficult to prove residency, resulting in increased

¹³³https://www.compas.ox.ac.uk/wp-content/uploads/ER-2005-Regularisation_Unauthorized_Literature.pdf

¹³⁴ Ibid.

¹³⁵[https://documentation.lastradainternational.org/lisidocs/28%20Devil%20is%20in%20the%20de tail%20\(Anderson\).pdf](https://documentation.lastradainternational.org/lisidocs/28%20Devil%20is%20in%20the%20de tail%20(Anderson).pdf)

¹³⁶ <https://regularise.org/blog/2023-report-for-the-united-nations/>



uncertainty and insecurity.¹³⁷ On the other hand, the high application fees also constitute significant barriers to regularisation through this tool. The fee to apply for ILR was introduced in 2003 at £155. It has been raised many times since, reaching £2885 in 2023¹³⁸. During the focus groups with the NGOs, in addition to the length of the waiting period (20 years), also access to legal aid is reported as an obstacle to applying for this route.

“The vast majority of people will not have access really to this regularization because of the complexity of the process and also the lack of access to accessible legal aid to help people prepare the application.” The UK civil society organisation

Below is a descriptive sheet of the 20-year rule route.

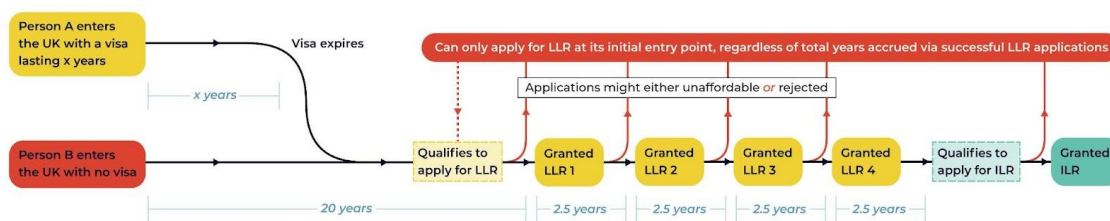


Fig 1. The route to permanent residency under the 20-year rule¹³⁹

Humanitarian protection: Humanitarian protection is a legal status granted to individuals who do not qualify as refugees under the 1951 Refugee Convention but still require protection. It is designed to protect those who face a real risk of serious harm if they return to their home country. Holders of humanitarian protections are entitled to family reunification, the right to work and access public funds, access to healthcare and education, and a 5-year residence permit.

Vulnerability-related regularisations: Visa-dependent partners who lost their immigration status and were exposed to domestic abuse, along with those who have been victims of human trafficking or modern slavery, may apply for regularisation.

¹³⁷ <https://regularise.org/blog/2023-report-for-the-united-nations/>

¹³⁸ <https://migrationobservatory.ox.ac.uk/resources/briefings/migrant-settlement-in-the-uk/>

¹³⁹ <https://regularise.org/reports/undocumented-migrants-20-year-long-residence-rule>



GREECE

Context description

Greece, like other southern European countries, has been historically an emigration country and it has only recently become a migrant-receiving country. The first significant waves were that of Albanians and those coming from neighbouring other former Soviet Union countries. Starting in 2012, the rise of ISIS and the escalation of various wars in the Middle East led to a significant increase in asylum seekers and migrants arriving in Greece, often transiting from Turkey and aiming to arrive in Europe. In 2022, the foreign-born population of the country was around 1.2 million (54% of women), forming 11.2% of the total population. The first three countries of birth were Albania (48%), Georgia (7%), and Russia (5%)¹⁴⁰.

Initially characterised by an “exclusionary ideology and practical permissiveness”¹⁴¹, Greece lacked a comprehensive migration policy for a long time. Indeed, as scholars¹⁴² confirm, rather than developing a long-term plan for immigration management, Greek immigration policy has been largely reactive, responding to *faits accomplis* (e.g., the presence of almost half a million irregular immigrants) with ad hoc legislation or presidential decrees (e.g., regularisation programs).

Once established, the country’s migration policy has evolved significantly in response to the various waves of migration and EU regulations. Also, internal socioeconomic changes significantly shaped migration-related policymaking. The economic crisis that began in 2010 and the subsequent austerity measures deeply impacted the migration landscape, leading to a decline in valid stay permits¹⁴³.

With a new national strategy and legislative reforms, Greece’s migration policy in the last decade has focused on the integration of asylum seekers and beneficiaries of international protection. However, the policy has faced challenges and limitations and has been

¹⁴⁰<https://www.oecd-ilibrary.org/sites/ba0f85e0-en/index.html?itemId=/content/component/ba0f85e0-en>

¹⁴¹ Baldwin-Edwards, M., & Fakiolas, R. (1998). Greece: The Contours of a Fragmented Policy Response. *South European Society and Politics*, 3(3), 186–204. <https://doi.org/10.1080/13608740308539553>

¹⁴² Triandafyllidou, A. (2014). Greek Migration Policy in the 2010s: Europeanization Tensions at a Time of Crisis. *Journal of European Integration*, 36(4), 409–425. <https://doi-org.ezproxy.unicatt.it/10.1080/07036337.2013.848206>

¹⁴³ https://migrant-integration.ec.europa.eu/library-document/migration-greece-people-policies-and-practices_en



criticized for having a "suffocating effect" on human rights defenders, with a lack of support from the EU and framing of migration as a matter of security and prevention.¹⁴⁴

Policies toward irregular immigrants

Greece's irregular immigration policy is historically based on two intertwined lines: deterrence and return¹⁴⁵, and combined increasingly strict border controls, all within the framework of EU regulations and international standards.

From 2007 onwards, border control became a priority in the Greek migration policy due to the increasing pressure of irregular migration at the Greek-Turkish sea and land borders¹⁴⁶. In terms of border surveillance, The European Union provides financial and logistical support to Greece for border management through various funds, including the Asylum, Migration, and Integration Fund (AMIF) and the Internal Security Fund (ISF). In line with the global trend of intensive spending on immigration enforcement¹⁴⁷, Similar to the UK and Italy, also for Greek authorities irregular immigration means arrivals by sea. For this reason, Greece is investing heavily in technology-based policing and border management despite a long period of austerity and testing facial recognition and other controversial biometric technologies¹⁴⁸. The Hellenic Coast Guard and Frontex (the European Border and Coast Guard Agency) play crucial roles in patrolling the Aegean Sea to prevent unauthorized entries. Several human rights organisations have indeed highlighted the inhuman aspects of pushback at the Greek sea borders¹⁴⁹. Furthermore, Greece's coasts witnessed the deadliest refugee tragedies in the last two decades¹⁵⁰.

In addition to intensification in sea borders, Greece has fenced and walled the land border with Turkey, particularly in the Evros region¹⁵¹. However, some scholars¹⁵² also argue that responsibilities for such practices cannot only be attributed to individual states or specific

¹⁴⁴ <https://www.ohchr.org/en/press-releases/2022/06/greece-migration-policy-having-suffocating-effect-human-rights-defenders>

¹⁴⁵ https://cadmus.eui.eu/bitstream/handle/1814/33431/MIDAS_REPORT_2014_10.pdf?sequence

¹⁴⁶ Triandafyllidou, A. (2014). Greek Migration Policy in the 2010s: Europeanization Tensions at a Time of Crisis. *Journal of European Integration*, 36(4), 409–425. <https://doi-org.ezproxy.unicatt.it/10.1080/07036337.2013.848206>

¹⁴⁷ <https://www.migrationpolicy.org/article/immigration-enforcement-spending-rising>

¹⁴⁸ <https://aboutintel.eu/greece-policing-border-surveillance/>

¹⁴⁹ <https://ecre.org/greece-ongoing-pushbacks-and-tragedies-more-reports-highlight-the-countrys-inhumane-and-failing-asylum-system-ecthr-rules-against-the-authorities/>

¹⁵⁰ <https://www.cbsnews.com/news/migrant-boat-sinking-greece-what-to-know/>

¹⁵¹ <https://greekreporter.com/2012/12/17/greece-completes-border-fence-with-turkey/>

¹⁵² <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/weaponizing-rescue-law-and-the-materiality-of-migration-management-in-the-aegean/068B225CF16390CCBA5FFD10FC3CEF8C>



authorities since they, as a whole, “reveal an important and still little-examined dark side of European ‘migration management’”.

The other Greek policy tool in the management of irregular immigration is the agreements with non-EU countries. One of the most emblematic ones is the EU-Turkey Statement, signed in March 2016 between the EU and the Turkish government. The main objective of the agreement was to stem the flow of irregular migrants to Europe, particularly in Greece. This agreement allowed migrants arriving in Greece to be sent back to Turkey if they did not apply for asylum or were rejected. In return, the EU agreed to resettle a number of Syrian refugees directly from Turkey (which has not been implemented) and provide financial support.

Alternative to return policies: Forms of internal control

In Greece, detention remains a key tool in managing irregular migration. At the end of 2022, there were seven pre-removal detention centres in operation.

The use of detention has become systematic and entrenched in Greek law since the implementation of the International Protection Law of 2020 and its subsequent amendments (Law 4939/2022 and Law 3907/2011)¹⁵³. What's more, observations made on the field indicate that detention is often applied arbitrarily, both in terms of the justification and the duration of detention, and that the excessive use of public order grounds leads to asylum-seekers being detained for prolonged periods¹⁵⁴. This policy tool also presents legitimacy problems regarding its effectiveness and proportionality because, as The Greek Ombudsman Report on Return of Third Country Nationals (2022)¹⁵⁵ outlines, while the number of those detained increases, the number of those returned decreases. In 2022, there was a 15% decrease in forced returns compared to 2021 and an increase in the number of foreigners in administrative detention awaiting return (over 3,500). Specifically, 2,763 detainees, mostly Albanian nationals, were forcibly returned.

The 2016 EU-Turkey deal turned the Greek asylum system into a restrictive model, with declining compliance with EU minimum standards and a lack of oversight and accountability¹⁵⁶. As a result, reception centres in the islands, whose conditions were already unsatisfactory before the EU-Turkey deal, have become detention centres for new

¹⁵³ <https://www.mobileinfoteam.org/detention>

¹⁵⁴ Ibid.

¹⁵⁵ <https://www.synigoros.gr/en/category/default/post/special-report-or-return-of-third-country-nationals-2022>

¹⁵⁶ <https://www.asileproject.eu/wp-content/uploads/2024/03/Od0923af-298d-4e11-ab99-ff55e9e5ecae.pdf>



arrivals pending the completion of the necessary readmission procedures with Turkey¹⁵⁷. Hotspot islands were thus established, whose aim is to reduce the intensity of the mobility of migrants and refugees (to and through Europe).¹⁵⁸ Within this, Greek islands (as the Italian ones) became sites where newly arrived people were identified, automatically detained, and, where possible, sent back to Turkey. Amnesty International¹⁵⁹ stated that this group-based detention is, by definition, arbitrary and, therefore, unlawful.

Moria, Europe's largest refugee camp, is on Lesbos Island, one of the nearest islands to Turkey. This hotspot has long been regarded as an open-air prison and the face of the failure of EU migration policy due to the extremely inhuman conditions¹⁶⁰.

The EU and Turkey agreed that all irregular migrants arriving on the Greek islands should be returned to Turkey, whereas between 2016–2023, only 2077 people returned (only in 2023, at least 39,715 people arrived on the Greek islands)¹⁶¹. There has been no asylum seeker among those returnees on the inadmissibility ground¹⁶². This approach then left thousands of people locked in Greece without any documents, support, or means of subsistence.

Like elsewhere, also in Greece, based on the bilateral agreements and the definition of safe countries, while some nationalities are privileged in their asylum applications (Syrian and Afghan nationals), others with very low levels of asylum recognition (nationals of Pakistan, Bangladesh, and Egypt) will easily fall into irregularity. Experiences from the field confirm this:

“With each amendment lately, it (the regularisation possibility) became very strict for those nationalities with low recognition rates, it became extremely difficult” Greek civil society organisation

Internal control mechanisms, however, do not only shape the space granted to immigrants but also that of solidarity networks. As early as the 1990s, the perception that migration

¹⁵⁷ <https://www.amnesty.org/en/documents/eur25/5664/2017/en/>

¹⁵⁸ Tazzioli, M., & Garelli, G. (2020). Containment beyond detention: The hotspot system and disrupted migration movements across Europe. *Environment and Planning D: Society and Space*, 38(6), 1009–1027.

¹⁵⁹ <https://www.amnesty.org/en/documents/eur25/5664/2017/en/>

¹⁶⁰ <https://openmigration.org/analisi/il-nuovo-volto-di-lesbo/>

¹⁶¹ <https://reliefweb.int/report/greece/eu-turkey-deal-documenting-conditions-greek-hotspots-2016-2023>

¹⁶² <https://ejls.eu.europa.eu/wp-content/uploads/sites/32/2017/11/The-Application-of-the-EU-Turkey-Agreement-A-Critical-Analysis-of-the-Decisions-of-the-Greek-Appeals-Committees.pdf>



was linked to crime was one of the most persistent sources of public insecurity¹⁶³. Also, subsequently, in particular, starting from the severe economic crisis that hit Greece, solidarity toward immigrants (search and rescue operations or assistance to access services) is highly criminalised in media and political debate. Indeed, a recent PICUM media report showed that Italy and Greece had the highest number of people criminalised for immigrant solidarity (74 and 31 respectively).¹⁶⁴

Another important aspect to which pay attention the differentiated reception models. As in many other European countries, also in Greece there has been a parallel reception system for refugees from Ukraine. Notis Mitarachi, Minister of Migration and Asylum, in one of his speeches in Parliament¹⁶⁵ in March 2022, declared that Ukrainians are “genuine refugees” according to the definition of International Law, while those arriving from Syria or Afghanistan are “irregular migrants”. Policies implemented confirmed this argument. Upon their arrival, asylum seeking Ukrainians had the possibility to reside wherever they wished and had free access to the Greek national health system (NHS)¹⁶⁶. Irregular immigrants, on the other hand, are entitled to emergency care only. In terms of health access, there are some grey zones where the effects of the fluidity between regularity and irregularity are mostly experienced:

“We had the cases of women from Albania who came to Greece for cancer treatment. When their application for asylum was rejected, the need to continue chemotherapy nevertheless remained. And now the hospitals have become very strict. In previous years, they would give treatment even if their Social Security number was deactivated. Now they don't”. Greek civil society organisation

The last information is on food-related precariousness that affects irregular immigrants. INTERSOS Hellas, in cooperation with the Hellenic Immigrant Forum and later the Hellenic Refugee Forum, launched the Food for All (FFA) project¹⁶⁷ in December 2021, with the aim

¹⁶³ Karyotis, G. & Skleparis, D. (2016) 'Resistance to the Criminalization of Migration', in Rich Furman, Alissa Ackerman and Greg Lamphear (eds) *The Immigrant Other: Lived Experiences in a Transnational World*, Columbia University Press: New York, NY, pp. 266-282

¹⁶⁴ <https://picum.org/wp-content/uploads/2024/04/Cases-of-criminalisation-of-migration-and-solidarity-in-the-EU-in-2023.pdf>

¹⁶⁵ <https://twitter.com/nmitarakis/status/1498621457005531140?s=20&t=L0evNhBCIGmsKit25dnBqQ>

¹⁶⁶ [http://www.forintegration.eu/pl/the-right-of-free-access-to-the-greek-national-health-system-for-refugees-from-ukraine#:~:text=According%20to%20a%20circular%20of,National%20Health%20System%20\(NHS\).](http://www.forintegration.eu/pl/the-right-of-free-access-to-the-greek-national-health-system-for-refugees-from-ukraine#:~:text=According%20to%20a%20circular%20of,National%20Health%20System%20(NHS).)

¹⁶⁷ <https://www.intersos.gr/foodforall/>



of supporting vulnerable population groups, including irregular migrants and asylum seekers. The project results outlined that these immigrant groups suffer from massive food insecurity.

Pathways to regularisation

Greece is a country where restrictions on irregular immigration for certain nationalities, openness towards regularisations for employment reasons and the constant need for labour in certain sectors such as agriculture and construction go hand in hand. Under this perspective, in Greece, on the one hand, migration policies severely restrict the movement of asylum seekers and irregular migrants through open-air detention sites for indefinite periods of time; on the other hand, a large number of irregular migrants, informally employed in the labour market, are periodically regularised through regularisation mechanisms.

Regularisation schemes apply in particular to those who have become integrated into Greek society through employment, have family ties, or have lived in Greece for a long time.

Employment-based regularisations

In order to address labour shortages in specific sectors such as agriculture and construction and provide legal pathways to employment for irregular migrants, Greece has implemented several employment-related regularisation programmes. The first regularisation programme took place in 1998 with around 582,000 applicants. The second regularisation programme took place in 2001 with 362,000 applicants and the third in 2005–06 with approximately 200,000 applicants¹⁶⁸.

In September 2023, an amendment to a Ministry of Labour bill was tabled to grant a three-year residence and work permit to irregular immigrants from non-EU countries who have been working irregularly for at least three years. The new bill reduces the required period of labour market participation from 7 to 3 years. Immigrants can apply on their own as the previous regularization scheme, with the introduction of online application system.

In December 2023, with the exception of three far-right formations (Spartans, Greek Solution and Victory), the amendment was approved by a large majority. However, former

¹⁶⁸ <https://www.bpb.de/themen/migration-integration/laenderprofile/english-version-country-profiles/186455/migration-management-regularization-programs-and-residence-permit-issuing-and-renewal/#:~:text=The%20first%20regularization%20program%20was%20enacted%20in%201998%20and%20there,06%20with%20approximately%20200%2C000%20applicants.>



prime minister and deputy of the ruling New Democracy (ND) MP Antonis Samaras voted against the bill, arguing that it would make Greece "a beacon attracting illegal immigrants"¹⁶⁹. Prime Minister Kyriakos Mitsotakis also stated that large-scale regularisation could become an attraction for other irregular arrivals, while confirming that it is necessary to meet the needs of the labour market and defining regularisation as a shift from black to white to increase the government's revenue from taxes and employment contributions and help address the dramatic (labour) shortage in some sectors¹⁷⁰.

This situation is well outlined by the Greek NGO representative:

"From our side, we raised those concerns because you cannot imagine that at some point, our employability department had employers begging for workers, and we couldn't provide people to work early legally in any field. And the government apparently heard those violent claims"

There have been some critical issues that came out in these regularisation processes due to the New Migration Code (2023) that imposes a five-year ban on applying for a new legal status or renewing an existing status on those who provide false information or documents during the application process. As reported, many applicants of regularisation had been victims of fraudulent contacts:

"Many people (applicants) were deceived by fraudulent contacts and submitted incorrect or blank applications so that they could not obtain certification from the system proving the correct application (through which it is possible to obtain tax registration and Social Security number). The government said that all those who tried to defraud our system would be punished by not being able to apply for a residence permit for five years; however, the government soon realised that the number of people who had submitted fraudulent applications was worryingly high".

In addition to large-scale regularisation mechanisms, there have been also some nationality-based regularisation schemes. The Memorandum of Understanding (MOU) signed between Greece and Bangladesh in 2022 provided the basis for a regularisation under these conditions¹⁷¹:

¹⁶⁹ <https://efe.com/en/latest-news/2023-12-19/greek-parliament-approves-regularization-of-30000-immigrants-due-to-labor-shortage/>

¹⁷⁰ <https://apnews.com/article/greece-migration-labor-economy-ace2e3faac525e58e2eb7151b08b8ff9>

¹⁷¹ <https://www.migrationvisportal.com/2024/02/greece-offers-legal-status-to-over-3400.html>



- being a holder of a valid Bangladeshi passport;
- provide that the applicants were living in Greece before February 2022;
- provide to have a job;
- registration at the Bangladesh Embassy.

In February 2024, 3,405 (out of 10,337) Bangladeshi immigrants were regularised under this MOU, while other applications were pending.¹⁷²

Age-based regularisation

The last reforms aimed specifically young irregular immigrants. In line with this, the Greek parliament reformed the national migration law in March 2023, through which the eligibility conditions for the ten-year residence permit (previous five-year residence) for two groups of young people:

- third-country nationals born in Greece or having successfully completed six years of education in Greece and who are under 23 when applying and
- young adults who arrived in Greece as unaccompanied children and who, before the age of 23, have successfully completed at least three years of secondary education in a Greek secondary school¹⁷³.

Although these changes can be seen as positive for stability (10 years of residence instead of 5), the code has been criticised by rights groups according to which unaccompanied migrant minors may not be able to meet the schooling criteria¹⁷⁴. The requirement of 3 years of school attendance before turning 23 can be a challenge, as many unaccompanied or formerly unaccompanied children are unable to enrol in school because places are limited (especially when they enrol mid-year). Even when they manage to enrol, they may find it difficult to attend classes in Greek, as many are not supported in learning the new language¹⁷⁵.

Residence permit on humanitarian and exceptional grounds

¹⁷² <https://www.infomigrants.net/en/post/55362/about-3400-bangladeshi-migrants-regularized-in-greece-in-2023>

¹⁷³ <https://picum.org/blog/greece-new-migration-code-undocumented-people/#:-:text=The%20new%20Code%20sanctions%20people,and%20without%20a%20court%20order.>

¹⁷⁴ <https://www.infomigrants.net/en/post/47880/greece-parliament-passes-new-migration-code>

¹⁷⁵ <https://picum.org/blog/greece-new-migration-code-undocumented-people/#:-:text=The%20new%20Code%20sanctions%20people,and%20without%20a%20court%20order>



Previously to the Migration Code (2023), there were 17 different residence permit types¹⁷⁶, under Law 4251/2014 for those who are not holders of refugee status and cannot be returned to their country of origin. With the introduction of the New Migration Code (2023), the existing pathways for residence permits are for victims and essential witnesses of crimes, victims of domestic violence, victims of racially motivated crime, persons suffering from serious health conditions, victims of work accidents, persons following mental addiction treatment programmes, family members of Greek citizens eligible for self-standing residence permits. There is also an exceptional residence permit for those irregular immigrants who can prove their residence for 7 consecutive years. It is issued once only and is valid for 3 years, giving the right to access the labour market¹⁷⁷.

According to the official statements, the new Migration Code 2023 aimed to rationalise the existing categories of residence permits by abolishing the ones that derive from national provisions and introducing them under similar categories of residence permits laid down in EU law and by grouping them according to their purpose and importance¹⁷⁸. However, two concerns are reported¹⁷⁹: First, granting of these permits is foreseen *ad hoc* and at the discretion of the Minister of Migration and Asylum while issuing a residence permit in these cases is a binding obligation resulting from other national and supranational legislation.

The New Migration Code also modifies the requirements to apply for a residence permit for exceptional reasons, eliminating the waiting period for a response to an asylum application from the 7 years of stay on the territory and, of course, making the condition of precariousness and limbo much longer than before¹⁸⁰.

¹⁷⁶

https://greece.iom.int/sites/g/files/tmzbd11086/files/documents/IOM%20Legal%20Guide_English.pdf

¹⁷⁷ <https://greece.refugee.info/en-us/articles/12268797861021>

¹⁷⁸ https://rsaegean.org/wp-content/uploads/2023/03/RSA_Comments_ImmigrationCode_final.pdf

¹⁷⁹ Ibid.

¹⁸⁰ <https://picum.org/blog/greece-new-migration-code-undocumented-people/>



SPAIN

Context description

Although only recently part of its history, immigration is now an integral part of Spanish society. Due almost entirely to international migration, Spain's total population increased by 19 percent between 1998 and 2022, from 40 million to 47.5 million¹⁸¹. In the same year, the main immigrant nationalities were Colombian, Venezuelan, and Moroccan. The number of asylum seekers was also on the rise in recent years. In 2022, the number of first-time asylum seekers increased by 87%, arriving at around 116,000. Most applicants were from Venezuela (45 000), Colombia (36 000), and Peru (8 900)¹⁸².

Although the number of asylum seekers in Spain is relatively high compared to other countries of destination (the UK received 81,130 applications in the same year), immigration is not a major issue in the Spanish political debate (as in the UK). According to a poll of November 2023¹⁸³, only 2.5 percent of the population consider immigration to be the main problem in Spain (compared to 12.3 percent for political problems in general and 8.9 percent for unemployment).

However, the country's far-right voice, Vox, has contributed to the normalisation and legitimisation of anti-immigration sentiments in Spain since 2013, in particular toward Muslim immigrants. In October 2023, Santiago Abascal, the Vox party leader, proposed to suspend the granting of Spanish nationality and residence permits to people from Islamic countries¹⁸⁴. Indeed, another survey¹⁸⁵ conducted by the Centro de Investigaciones Sociológicas in April 2024 highlighted that in a general election today, 10% of Spaniards would vote for Vox.

Migration policymaking in Spain is characterised by both inclusive and exclusive practices implemented at different levels. Responsibility for immigrant integration has largely been delegated to Spain's 17 autonomous communities, which have developed their own approaches to supporting migrants within their borders. This allowed regions such as Catalonia to prioritize integration and implement innovative policies that often challenged

¹⁸¹ <https://www.migrationpolicy.org/article/spain-immigration-system-evolution>

¹⁸² <https://www.oecd-ilibrary.org/sites/8a2068fc-en/index.html?itemId=/content/component/8a2068fc-en>

¹⁸³ https://www.cis.es/documents/d/cis/es3427mar_a

¹⁸⁴ <https://www.euronews.com/2023/10/19/spains-far-right-vox-wants-to-freeze-residence-permits-for-people-from-islamic-culture>

¹⁸⁵ <https://www.cis.es/-/el-pp-con-el-33-5-de-estimacion-de-voto-supera-en-un-punto-al-psoe>



the position of the national government, both by stressing respect for human rights and by demonstrating their "right to decide", a key pillar of the separatist cause¹⁸⁶.

At the same time, inhumane working conditions of mostly irregular Maghrebi and African migrants in agroindustry,¹⁸⁷ along with pushbacks and violent police responses at the EU's external borders of Ceuta and Melilla against asylum seekers of Sub-Saharan origin, are highly criticised by migrant rights NGOs.¹⁸⁸

Policies toward irregular immigrants

Spain did not require visas for North Africans until 1991; therefore, the phenomenon of unauthorised entry from North African countries, particularly Morocco, began in the early 1990s and later developed with the transit of people from sub-Saharan African countries¹⁸⁹. Under this perspective, reflecting on the long history of the interaction between Morocco and Spain, fences were built in 1998 in Ceuta and Melilla (Spanish-controlled enclaves in Morocco) to tackle irregular immigration from North Africa to Spain. However, the number of irregular migrants crossing into Spain through these two cities and elsewhere has reportedly increased since the fences were built, in support of the assumption that the more border surveillance is intensified, the more clandestine ways are found to cross the border¹⁹⁰. Furthermore, protests against the government's migration policies and the militarisation of Spain's border were sparked by the deaths of 37 migrants and asylum seekers at the border fence in late June 2022¹⁹¹.

Also, in the Spanish case, irregularity is equated with unauthorised border crossing at policy level. In recent years, border controls in Spain continued to tighten, using maritime surveillance systems such as radars and drones to monitor irregular boat traffic in the Mediterranean and Atlantic.

¹⁸⁶ <https://www.migrationpolicy.org/article/spain-immigration-integration-multilevel>

¹⁸⁷ <https://www.eumigs.eu/double-degree/master-theses/75-waiting-in-irregularity-how-young-moroccans-in-southern-spain-navigate-temporal-bordering-processes-produced-by-the-spanish-migration-law>

¹⁸⁸ <https://www.euronews.com/my-europe/2023/08/14/spain-accused-of-failing-to-reopen-genuine-and-effective-access-to-asylum-at-enclaves-sinc#:~:text=Migrant%20rights%20NGOs%20have%20accused,state%20of%20emergency%20in%20March>

¹⁸⁹ <https://www.migrationpolicy.org/article/merits-and-limitations-spains-high-tech-border-control>

¹⁹⁰ Saddiki, S. 2018. World of Walls. The Structure, Roles and Effectiveness of Separation Barriers

¹⁹¹ <https://www.globaldetentionproject.org/10-july-2022-spain>



Following the same logic as other European countries, Spain has also outsourced the control of irregular immigration to its neighbouring countries, especially Morocco, through various bilateral and multilateral cooperation agreements. As reported¹⁹², between 2019 and 2022, Morocco has received €123 million from Spain for migration control and in 2022 Spanish government approved sending another €30 million to the Moroccan authorities for migration control purposes.

Spain adopted diversified reception policies for different asylum-seeking groups. Indeed, in 2018, the Audiencia Nacional provided additional guidance on the legal status of Venezuelans arriving in Spain following the deep political and economic crisis that shook the country, which allowed them to obtain a humanitarian permit to stay and work in Spain for one year, with a possibility of a one-year extension¹⁹³. With this, the country has distinguished itself from the rest of the EU countries by managing the flows in a very pragmatic way, offering rejected Venezuelan asylum seekers (between 2014 and 2019) an alternative route to integration based on a humanitarian permit with the right to work¹⁹⁴.

A further peculiarity of the Spanish system is **the Humanitarian Assistance Program**¹⁹⁵, provided by the Ministry of Inclusion, Social Security, and Migration, to the most vulnerable immigrants. The humanitarian aid programme aims to meet the basic needs of people arriving on the Spanish coast or by land through the cities of Ceuta and Melilla, who are in poor physical condition and lack social, family, and economic support. It is aimed, in particular, at those whose aim is not to apply for asylum in Spain. The programme also includes the development of emergency socio-health services, reception, provision of material to meet basic needs, basic financial assistance, and transfers between different reception facilities.

The programme does not offer a specific permit. However, it is important to note that participation in the programme can be a crucial first step towards stabilisation for newcomers for the fact that it provides the necessary support to navigate Spain's complex immigration laws and procedures should they decide to seek more permanent status.

¹⁹² <https://ecre.org/eu-southern-borders-spain-and-eu-funding-for-morocco-amid-crack-down-on-migrants-iom-reports-thousands-of-deaths-on-the-atlantic-and-mediterranean-as-tragedies-continue-italy-funds-the-so-called-li/>

¹⁹³ https://asylumineurope.org/reports/country/spain/asylum-procedure/differential-treatment-specific-nationalities-procedure/#_ftn1

¹⁹⁴ Finotelli, C., Cassain, L. & Echeverría, G. 2023. Politics: Understanding Legal and Policy Contexts – Spain. Country Profile. MlrreM Working Paper No.3.2.

¹⁹⁵ <https://www.inclusion.gob.es/web/migraciones/atencion-humanitaria>



These types of assistance and care services in other European countries, usually are provided by non-governmental organisations while Spain includes them in its state policies.

Alternative to return policies: Forms of internal control

There are seven Centros de Internamiento de Extranjeros (Detention Centres for Foreigners, CIE) in Spain, located in Madrid, Barcelona, Valencia, Murcia, Algeciras/Tarifa, Las Palmas, and Tenerife¹⁹⁶. The legal framework for detention is outlined in the Aliens Act and includes grounds such as¹⁹⁷:

- Violations of immigration laws, such as being on Spanish territory without proper authorization;
- Threats to public order;
- Attempting to exit the national territory at unauthorized crossing points or without necessary documents.

In terms of detention length, the Spanish system has its own peculiarity, with the lowest maximum detention period (max 60 days compared to max 18 months in many EU countries). Another peculiarity is that COVID-19 acted as an alternative to detention, and the detention centres were emptied due to the impossibility of deportation during the closure of the borders¹⁹⁸. Two years after the evacuation policy, in 2022 there were 2,082 foreigners in detention centres¹⁹⁹. Research²⁰⁰ has shown that there has been a lack of homogeneity in the management and capabilities of detention centres, resulting in serious structural deficiencies in some facilities and a lack of transparency in internal rules and regulations.

Furthermore, in Spain, on average, only less than 50 percent of detainees are eventually deported²⁰¹. In some years, numbers are much lower; in 2016, only 29 percent of those

¹⁹⁶ <https://asylumineurope.org/reports/country/spain/detention-asylum-seekers/detention-conditions/place-detention/>

¹⁹⁷ <https://asylumineurope.org/reports/country/spain/detention-asylum-seekers/legal-framework-detention/grounds-detention/>

¹⁹⁸ <https://foreignpolicy.com/2020/07/31/coronavirus-asylum-end-immigration-detention-spain-france-end-of-fortress-europe/#:~:text=By%20March%2014%2C%20Spain%20had,frozen%2C%20detention%20became%20illegal%20immediately.>

¹⁹⁹ <https://asylumineurope.org/reports/country/spain/detention-asylum-seekers/general/>

²⁰⁰ https://sjme.org/wp-content/uploads/2023/06/Detention-Report-2022-SJM_concise.pdf

²⁰¹ <https://www.globaldetentionproject.org/wp-content/uploads/2020/05/GDP-Immigration-Detention-in-Spain-2020-Online.pdf>



detained were actually deported²⁰². Therefore, as in other countries analysed in this working paper, the Spanish case also entails the arrest and detention of non-deportable persons, highlighting the use of arbitrary detention as a punitive measure.

Of all the countries analysed in this working paper, Spain is the most liberal in terms of access to services. Unlike other EU countries analysed, indeed, Spain provides for a municipal register (Padrón Municipal) that certifies the residence of people in a Spanish municipality to facilitate the social integration of migrants, including those in an irregular situation. Each municipality maintains its own registry, and registration is mandatory for all residents regardless of legal status. Some municipalities, like that of Barcelona can reinforce the importance of registration in the local padrón and reaffirm the city's active policy of informing irregular immigrants of their obligation to register as soon as possible²⁰³.

Irregular migrants enrolled in the padrón can access public health services. Spanish public health care offers urgent care and, in many cases, primary and preventive care. The economic crisis that hit the country (2008–2014), however, is reflected in 2012 in severe restrictions on the access of irregular migrants to the NHS, limiting health care to minors, pregnant women, or emergency cases²⁰⁴. Not all regions have responded equally to the restrictions, with some (Catalonia, Navarre, Andalusia and the Basque Country) announcing their refusal to participate in the cuts²⁰⁵. On the other hand, also where there is a more welcoming approach, technical issues, and fraudulent interventions are reported as barriers to enrolment to padrón:

The problem is that it's very difficult to find an appointment (for registration), and some people (illegal organisations) sell appointments (...). There is a kind of black market for appointments. We have the same problem even with asylum applications. Spanish civil society organisation

Children of irregular migrants are entitled to free and compulsory education until age 16. Registration in padrón facilitates access to public schools. The most important aspect is that after a period of registration, immigrants will be eligible for an individual application

²⁰² <https://www.hrw.org/news/2017/07/31/spain-migrants-held-poor-conditions>

²⁰³ <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf>

²⁰⁴ <https://www.migrationpolicy.org/sites/default/files/publications/TCM-Spaincasestudy.pdf>

²⁰⁵ Ibid.



for regularisation; such practice is also useful to demonstrate continuous residence in Spain.²⁰⁶

Pathways to regularisation

In Spain (as in other southern European countries), immigration dynamics have been shaped by (1) the constant demand for labour in highly precarious occupations and (2) the impossibility of creating legal recruitment channels for foreign workforce due to long and complex procedures²⁰⁷. This paradoxical mix has created an intertwining of irregular immigration and the informal labour market. Within this scenario, employment-based regularisations became one of the most important policy tools for irregular immigration in Spain. Between 1986 and 2010, 1.2 million irregular immigrants were regularised through 6 major regularisation programmes; most of them have targeted irregular workers; however, they have sometimes been extended to other migrant categories such as relatives (1996, 2000 and 2001), asylum-seekers (2000) or specific nationalities, e.g. Ecuadorians (2001).²⁰⁸

In 2024, in response to a popular initiative, [RegularizaciónYa](#), (RegularisationNow) for the regularisation of half a million foreigners in the country, the Spanish parliament took the first legislative step towards the approval of the initiative, which has 700,000 signatures and the support of more than 900 NGOs²⁰⁹.

There are also exceptional individual-basis regularisation options in Spain (roots procedure, *arraigo*). *Arraigo* refers to the situation of an immigrant who has developed social and labour roots in Spain. It may refer to employment-based roots, family-related roots, and social ties-related roots. Even though it is officially defined as a permit for exceptional circumstances, it has become a crucial mechanism for the common functioning of the Spanish migration regime (190,000 people, that would be half of the irregular migrants that were present on the Spanish territory in 2022, applied for different types of *arraigo* between 2022 and 2023)²¹⁰. It is a mechanism that allows irregular migrants to obtain legal status after three years of irregular residence if they can

²⁰⁶ Finotelli, C., Cassain, L. & Echeverría, G. 2023. Politics: Understanding Legal and Policy Contexts – Spain. Country Profile. MirreM Working Paper No.3.2.

²⁰⁷ Finotelli, C., Cassain, L. & Echeverría, G. 2023. Politics: Understanding Legal and Policy Contexts – Spain. Country Profile. MirreM Working Paper No.3.2.

²⁰⁸ <https://docta.ucm.es/rest/api/core/bitstreams/55a25c1f-f612-44b3-9032-f9b2cbb6db54/content>

²⁰⁹ https://migrant-integration.ec.europa.eu/news/spain-takes-first-step-towards-regularising-500-000-migrants_en

²¹⁰ Finotelli, C., Cassain, L. & Echeverría, G. 2023. Politics: Understanding Legal and Policy Contexts – Spain. Country Profile. MirreM Working Paper No.3.2.



demonstrate a certain level of social integration or prolonged employment. Social and labour arraigo are regulated by Royal Decree 2393/2004 and Organic Law 4/2000, respectively²¹¹. There is also training-related arraigo, a recently created concept included in Royal Decree 629/2022²¹².

As reported, arraigo policy, in particular that related to social ties, is in the far-right's crosshairs and its modification (and subsequent abolition) is one of their election promises:

"It's a good achievement that we have in Spain, and we hope we can continue with it because the extreme right wing is trying to change that. It (this policy) is currently their focus (and) they promise that when we win the elections, they will change it" Spanish civil society organization

Similarly to what happens in Italy, also in Spain a quota system has been adopted in 1993 to promote legal entries for responding to labour shortages. However, due to the complexity involved in contracting foreign workers in their places of origin, after 1994, the government agreed to the quota system's being used for regularisations of people already embedded in the informal labour market²¹³.

As in Greece, Spain also recently has promoted specific policies for unaccompanied minors and young adults. In October 2021, the government adopted a decree to facilitate access to residence and work permits for unaccompanied minors and former unaccompanied children currently between 18 and 23 (known in Spanish as *Extutelados*) with the following changes.²¹⁴

²¹¹ <https://www.migrationpolicy.org/article/spain-immigration-system-evolution>

²¹² <https://www.grupo2000.es/en-que-consiste-el-arraigo-por-formacion-de-la-nueva-ley-de-extranjeria/>

²¹³ <https://repositori.upf.edu/bitstream/handle/10230/21307/GRITIM%20%2818%29.pdf?sequence=1&isAllowed=y>

²¹⁴ <https://picum.org/blog/spain-regularisation-young-migrants/>



For unaccompanied minors:

- more simplified access to residence and work permits access,
- a two-year validity of residence permit (instead of one)
- the possibility to work when they are 16 t
- their documentation process starts within three months of arrival (instead of nine months).

For Extutelados:

- the extension of the validity of the previous residence permit for another six months;
- access to the Spanish basic income scheme (around 470 euro per month);
- a possibility to get a work permit proving a monthly income (instead of yearly);
- a more simplified access to regularisation thanks to a regular income through income scheme.

It is important to emphasise, however, that unaccompanied minors and *extutelados* have been politically instrumentalised by far-right political parties in the last years in Spain. In public speeches and political rhetoric, the term “mena”, an acronym for unaccompanied minors (menor extranjero no acompañado), is increasingly used with a highly negative connotation, despite the fact that it is originally neutral and has been in use for years in legislation and immigration studies²¹⁵. Within this rhetoric, they have been accused of violence, threats against their peaceful neighbours and theft of social aid at the expense of the local population²¹⁶.

²¹⁵ https://english.elpais.com/elpais/2019/11/14/inenglish/1573732323_940836.html

²¹⁶ <https://eu.boell.org/en/2024/05/13/migrants-memory-and-rights-spains-battle-against-far-right-narrative>



CONCLUSIONS

This working paper aimed to create an inventory of existing alternatives to return policies in 11 European countries hosting large numbers of irregular migrants. We looked closely at policies that have been implemented, both formally and informally, where, for various normative and practical reasons, no return takes place, and people live in irregular status, in some cases for very long periods. The 20-year route to regularisation introduced in the UK for those with 20 years of documented residence is one of the most emblematic examples of this long-standing limbo situation.

The southern European countries analysed, Greece, Italy, and Spain, are places where, as Echeverría (2014)²¹⁷ reminds us, "irregularity is institutionally reproduced", both because of the dynamics and needs of their labour markets and because of their inability to simplify the bureaucratic procedures for hiring from non-EU countries. However, each of these 3 countries has its own way of dealing with the arrival and stay of irregular migrants. While in Spain, there are many other complementary routes to mass regularisation through employment, in Italy and Greece, there are few alternatives for those who do not take part in the regularisation mechanisms, which are also administratively complex and costly.

In some countries, tolerance of irregular migrants is an official policy (Germany) with various rights and varying degrees of protection from deportation, while in others, it is more informal and akin to institutional abandonment (Austria and the Netherlands). On the other hand, not all irregular migrants are tolerated (both formally and informally) in the same way; the political debate and the diplomatic relations of the countries involved have a strong influence on who should be tolerated and to what extent. Italy and Germany may easily turn a blind eye to irregular women assisting Italian and German families. In Poland, there is a great deal of tolerance towards white European refugees, while there is little room for those who come from the Middle East. In Spain, the exclusion of (only) Muslims from services and civil rights is one of the strongest political debates of the far right. At the same time, Spain has developed a more inclusive framework for those fleeing Venezuela by introducing the right to work for rejected Venezuelan asylum seekers. Despite recent negative changes in the political discourse, Sweden remains the most generous country, allowing all rejected asylum seekers to participate formally in the labour market.

Moreover, while in some countries (Greece), in addition to describing regularisations as a calamity for further irregular flows, governments emphasise the economic benefits of

²¹⁷ http://visitas.reduaz.mx/ponencias_flacso/PonenciaGabrielEcheverría.pdf



regularisations (increased numbers of taxpayers). The political discourse in many countries regards these policies simply as a reward for irregularity (Germany –with a particular emphasis on labour market–, Austria, and the Netherlands). The recent example of Switzerland showed, however, that a simplified and more secure regularisation is socially and economically beneficial for both immigrants and host societies.

Formally, detention is a complementary policy to return and should only be used in the stages prior to removal. However, in almost all the countries under analysis, it is used as an alternative to return, being practiced also where no return is feasible.

Furthermore, deservingness is a crucial measure in the granting of rights. “The Permit for Acts of Particular Civic Value,” introduced in Italy in 2018 with Matteo Salvini’s (former Italian Prime Minister and leader of the right-wing anti-immigration party) Security Decree, is a good example of how merit is reflected in policymaking. The Security Decree in 2018 provided for the repeal of protection for humanitarian reasons under the Consolidated Immigration Act and introduced a residence permit that can be converted to a work permit for those who have performed heroic acts. In this policy line, stopping or helping to lessen the damage caused by a public or private disaster; performing acts for the welfare of humanity or helping to maintain the good reputation of the country created the basis for regular stay.

Finally, the alternatives to return policies presented in this paper can be conceptualised as a spectrum with varying degrees of inclusiveness and formality. While some aim at social and economic participation with legal statuses with varying degrees of permanence, others are conceived as a deterrent to return without state intervention. Important factors in the design and implementation of such policies are the characteristics of the destination country’s labour market and the political debate narrating the irregularity. The understanding and representation of irregularity in political discourse are very different from the one adopted by civil society organizations that are in direct contact with immigrants experiencing irregularity in their daily lives. Thus, in evaluating policies and formulating policy implications for a more equal society for all, a correct analysis of this distance between reality and its representation is crucial.