Regularisations Practices in the European Union

Patterns, Issues and Possible Policy Options

Workshop – The Future of Regularisations in Europe.
13th International Metropolis Conference, Bonn, 27-31 October 2008
1. Current policy background (1)

- Principled opposition to regularisation
- Focus of debate on large-scale regularisations
- European Pact on Immigration and Asylum

- “Illegal immigrants on Member States’ territory must leave that territory”
- The European Council agrees “to use only case-by-case regularisation rather than generalised regularisation, under national law, for humanitarian and economic reasons” (p.7)
- Case-by-case vs. generalised regularisation – a useful distinction?
1. Current policy background (2)

- Novelty of the pact: regularisation an explicit issue of concern for EU migration policy

• Regularisation taken up by Commission in several communications
  
  • First major comparative study commissioned by EC (Odysseus study, de Bruycker 2000)
  • COM (2000) 757 final : mentions, but does not assess regularisation as a policy tool
  • COM (2001) 657 final: “illegal entry or residence should not lead to the desired stable from of residence“
1. Current policy background (3)

- COM (2003) 336 final: “integration policies cannot be fully successful unless the issues arising from the presence of illegal immigrants are adequately and reasonably addressed“

- COM (2004) 412 final: “For pragmatic reasons the need may arise to regularise certain individuals who do not fulfil the normal criteria for a residence permit”. Also points at the demand for illegal migrant labour in certain countries.
1. Current policy background (4)

- COM (2006) 406 final: explains regularisation with the 
  “difficulties to tolerate the sustained presence of significant 
  numbers of third-country illegal immigrants on their 
  territories.”

  regularisations [sic!] of immigrants in an illegal situation do 
  not constitute a lasting and effective tool for migration 
  management and should be prevented.”

- Changing evaluation of regularisation, only recently that (large-scale) 
  regularisation is rejected as an appropriate policy tool
2. Regularisations - a history (1)

- In the EU-MS, first regularisations implemented in the 1970s
  - (BE, FR, NL, UK), mainly as a corrective instrument accompanying policy changes (restrictions)
  - Stop of recruitment, restrictions of access to work and introduction of the principle of applying for residence/work permits abroad (BE, FR, NL)
  - Restriction of post-colonial migration (UK)
- Target groups:
2. Regularisations - a history (2)

• Increasing use of regularisations since late 1980s
  • Increasing salience of „illegal migration“

• In the 1990s: diversification of regularisation practices
  • Ongoing mechanisms complement programmes
  • New target groups: Long term asylum seekers, Rejected asylum seekers and other non-deportable aliens, War refugees, Family members, special groups (e.g. „erased“ in Slovenia, former Soviet citizens in EE, etc.)
3. The meaning of regularisation

...any state procedure by which non-nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are granted a legal status

BUT:

- not all procedures that have a regularising effects are intended to have such effects/ are explicitly designed as regularisation measures
- Nor do regularisation measures exclusively target illegally staying non-nationals (or TCN)
- And: states sometimes grant statuses short of a fully-fledged legal status (e.g. toleration)

Generally: regularisation needs to be seen in the context of the broader policy framework governing migration
3.1. The meaning of illegality (1)

- „illegal migration“ as a major concern relatively recent
  - Historically developed in tandem with emergence of migration policy
  - Increasing salience of irregular migration direct consequence of more rigid systems of migration control

- Far from clear-cut category
  - E.g. persons in breach of immigration conditions, tolerated persons, EU citizens with residence bans, new EU citizens with restricted access to labour market
  - Various routes into/ out of illegality

- Irregular migrant: non-nationals liable to be deported
3.1. The meaning of illegality (2)

Source: Clandestino – Report on Methodology (Vogl and Jandl 2008)
3.2 Types of regularisation (1)

• By intention and rationale of „regularising procedures“ or „routes into legality“

• **Formal regularisations**: where status adjustment is the explicit objective of awarding a legal status

• **Regularisation by entitlement**: where regularisation follows from a change of personal situation, e.g. by virtue of a marriage with a citizen/ EU citizen; giving birth to a citizen-child (e.g. Ireland)

• **Informal regularisation**: e.g. post-immigration acquisition of a residence/work permit in contravention to standard rules
### 3.2 Types of regularisation (2)

#### Classification of regularisation mechanisms

<table>
<thead>
<tr>
<th>Nature of Status Adjustment</th>
<th>Nature of the procedure</th>
<th>Criteria/ Reasons for regularisation</th>
<th>Status Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regularisation: <em>any state procedure by which third country non-nationals who are illegally residing, or who are otherwise in breach of national immigration rules are granted a legal status in their current country of residence</em></td>
<td>Programme Mechanism</td>
<td>Length of residence, employment, family ties, health, length of the asylum procedure, failure to enforce return, complementary protection, individual ties to a country/integration, other</td>
<td>Temporary permit Permanent residence</td>
</tr>
<tr>
<td>Normalisation: <em>any state procedure by which third country-nationals who are legally residing but who are in a restricted or transitional status are granted a superior legal status</em></td>
<td>Programme Mechanism</td>
<td>Length of residence, employment, family ties, health, length of the asylum procedure, failure to enforce return, complementary protection, individual ties to a country/integration, other</td>
<td>Temporary permit Permanent permit</td>
</tr>
<tr>
<td>Suspension of removal order (toleration)</td>
<td>Programme Mechanism <em>De facto toleration</em></td>
<td>Failure to enforce return, complementary protection, other</td>
<td>Temporary permit ‘Toleration’ status <em>De facto toleration</em></td>
</tr>
</tbody>
</table>

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*De facto* tolerations refer to cases where a removal order is not formally suspended but simply not enforced.
5. The two logics of regularisations

• Regularisations driven by humanitarian/ rights based logic

versus

• Regularisations driven by non-humanitarian, regulatory and labour market oriented logic
5.1 regularisations driven by a humanitarian/ rights based logic

- Regularisation (i.e. status adjustment) goal in itself
- To address policy and implementation failures
  - Non-enforceability of return, long asylum procedures, backlogs in asylum applications
- Principle grounds: avoid „limbo“ situations, etc.
- To address specific humanitarian circumstances
- Broad set of humanitarian criteria
  - Family ties or other substantial ties to country, ill health, complementary form of protection
  - Historically (1990s): used for temporary protection purposes;
5.2 regularisations driven by a non-humanitarian, regulatory, labour market oriented logic

- Status adjustment instrument to achieve wider objectives
- Aims at re-regulation of the economy
  - To combat undeclared work
  - To enforce social rights and labour standards
  - Promote the integration of irregular migrants through legal integration
- Often, but not necessarily involves larger number of immigrants
6. Regularisation Patterns in the EU

- Regularisation in general has become an important pathway to legality
  - Introduction/enforcement of principle to apply for residence from abroad
  - Restrictions on acquisition of legal status by marriage with a citizen
    - But: strong entitlement to legal status through free movement rights

- Regularising effect of enlargement
  - UK: estimate that 30% of EU-8 citizens under the workers registration scheme have stayed in the UK illegally
6.1.1 Evolution of regularisation programmes

Total Number of Programmes, 1973-2008: 69
6.1.2 Applications for regularisation through programmes, 1973-2008

69 Programmes in 19 EU Member States; total applications (est.): 6,017,141; total regularized: 4,361,777

- Before 1990: 403,245
- 1990-1997: 370,197
- 2003-2008: 1,764,857

- Applications/Persons eligible (estimate)
- Regularizations granted
6.1.3 Programmes by Main Target Group
6.1.4. Granted regularisations by main target group (programmes), 1973-2008

![Pie chart showing granted regularisations by main target group (programmes), 1973-2008.](image)
6.1.5. Granted regularisations by country (programmes), 1973-2008
6.2 Regularisation through mechanisms

• Emerged in the context of the “asylum crisis” of the 1990s
  – Adjustment mechanism used to counteract some of the consequences of changes of migration policy
  – Permanent mechanism integrated in the normal policy framework
  – Better known as “humanitarian right to stay”/ “humanitarian status”
  – Limited form of regularisation mechanism: toleration
    • Not a fully fledged form of status adjustment, mainly a form of administrative regularisation (formal documentation of suspension of removal order)

• All but 5 EU Member States have some kind of regularisation mechanisms (of which one – NL – had one until 2003)
### 6.2.1 Regularisation Mechanisms in the EU27

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Criteria/Target group</th>
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<tbody>
<tr>
<td>AT</td>
<td>yes</td>
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<tr>
<td>BE</td>
<td>yes</td>
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<tr>
<td>BU</td>
<td>no</td>
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<tr>
<td>CY</td>
<td>yes</td>
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<td>CZ</td>
<td>no</td>
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<td>DE</td>
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<td>DK</td>
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<td>EE</td>
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<td>SE</td>
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<tr>
<td>SI</td>
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<tr>
<td>SK</td>
<td>yes</td>
</tr>
</tbody>
</table>

Sources: EMN 2008 and own compilation
6.2.2 Main rationale/target groups of regularisation mechanisms

- Protection grounds (complementary protection)
- Family ties, including „normal“ family reunification impossible under regular framework
- Non-enforceability of return
- Health
- Hardship cases (often involving any of the above)
- In addition: long duration of immigration/asylum procedures, victim protection in criminal procedures (trafficking), long residence
- Employment: rarely, only PT and FR
6.2.3. Quantitative scope of regularisation mechanisms

Regularisations through mechanisms in selected EU Member States, 2005-2006

<table>
<thead>
<tr>
<th>Year</th>
<th>AT</th>
<th>BE</th>
<th>DE</th>
<th>DK</th>
<th>FI</th>
<th>FR</th>
<th>GR</th>
<th>LT</th>
<th>PL</th>
<th>SE</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>1,016</td>
<td>5,422</td>
<td>4,828</td>
<td>486</td>
<td>161</td>
<td>17,239</td>
<td>1,318</td>
<td>3</td>
<td>24</td>
<td>4,997</td>
<td>32,794</td>
</tr>
<tr>
<td>2006</td>
<td>403</td>
<td>5,392</td>
<td>11,415</td>
<td>223</td>
<td>164</td>
<td>25,553</td>
<td>1,041</td>
<td>5</td>
<td>62</td>
<td>18,480</td>
<td>60,080</td>
</tr>
<tr>
<td>Total</td>
<td>1,419</td>
<td>10,814</td>
<td>16,243</td>
<td>709</td>
<td>325</td>
<td>42,792</td>
<td>2,359</td>
<td>8</td>
<td>86</td>
<td>23,477</td>
<td>92,874</td>
</tr>
</tbody>
</table>


Note: For France and Germany the table presents the sum of various individual provisions for regularisation
6.3 Programmes vs. Mechanisms (1)

• Essential distinction between two logics of regularisations

• Employment based programmes usually involve larger numbers
  • Points at specific structural conditions giving rise to large-scale irregular migration
  • Rather than migration policy failure, use of employment based programmes points at mismatch between economic and labour market structures on the one hand and migration policies geared towards formal employment on the other
  • Specific logic of employment based programmes suggests that permanent mechanisms are not an adequate substitute
6.3 Programmes vs. Mechanisms (2)

• Mechanisms an appropriate tool
  – As a corrective device in a range of humanitarian situations
  – Mechanisms as „safety valve“, can be seen as underpinning rather than undermining overall system of migration management
  – Mechanisms better suited to incorporate principled policies
    • Entitlement to legal status after long residence
    • Entitlement to regularisation if return cannot be effected
7. Conclusions

- Numerous ways how migrants become irregular, in few cases outright intention to “bend the rules”
- Diversity of causes of irregularity mirrored by a diversity of objectives of regularisation programmes
- While regularisation mechanisms can be seen as an alternative to return, return in particular in the case large-scale programmes not a viable option (enormous costs, problematic implications of mass-deportations)
- Enormous diversity of regularisation practices:
- Not a question whether regularisations as such are useful, but in what form and under what circumstances
- Need for comprehensive responses: Asylum, policies on legal migration for low skilled workers, family migration policies