

Fact sheet – Regularisation of Irregular Immigrants in Belgium

Some questions

1) Is irregularity punishable by the Belgian law?

- Yes, article 75 of the 'Aliens Law' (Law of 15 December 1980) stated that the irregular entry to Belgium or the irregular stay in the country is punishable by imprisonment between 8 days and up to 3 months (minimum: 8 days) and/or a fine between 26€ up to 200€

2) Is there a legal title to regularise an irregular stay?

- No, there is no such legal title. As a rule, the law stipulates that migrants have to apply for a residence permit in Belgium in their country of origin. However, **article 9bis** of the 'Aliens Act' offers "*in extraordinary circumstances*" (§ 1) the possibility for migrants already living in Belgium to apply for a residence permit on "humanitarian grounds" in the country itself. Principally, these persons must possess an ID and should prove that it would be impossible to return to their countries of origin to apply for such a permit. The criteria for the regularisation of their irregular stay are not stipulated by the law. The minister in charge possesses the authority to grant the regularisation. His/her decision is a favour, not a right.
- Additionally, **article 9ter** of the 'Aliens Act' offers the possibility of obtaining a legal stay on medical reasons. This possibility is only applicable for persons with a severe disease, who have no access to adequate treatment in their countries of origin. A medical attestation is obligatory.

3) In Belgium, the minister in charge has the authority to regularise irregular migrants. Which legal nature has this authority and which are the criteria a decision is legitimized on?

- The minister in charge has the discretionary jurisdiction (*pouvoir discrétionnaire/discretionaire bevoegdheid*) to regularise migrants. This means that the institution/person which/who has this authority, may decide in its own power about the preconditions of a measure. In the case of the regularisation of irregular migrants, the authorized minister drafts criteria applicable for the executing administration, the Immigration Office.

4) Has Belgium a history of regularisation programmes of migrants?

- Aside from a small regularisation programme implemented in 1974, Belgium did not consider a large-scale regularisation programme until 1999. Between 1980 and 1999, regularisations were granted on a case-by-case basis and only under exceptional circumstances. The legal basis of the regularisation formed the previous article 9.3 of the 'Aliens Act'.
- In 1999, a new governmental coalition decided a "one-shot" regularisation programme, which was launched in January 2000 by a law. The concerning Decree on regularisation stipulated that migrants, living in Belgium before October 1, 1999 may granted regularisation in the case they fulfil one of the following conditions:
 - Pending asylum procedure for a long period without communication of/on/about a possible decision (4 years for individuals, 3 years for families with minor children);
 - Impossibility to return to the country of origin for humanitarian reasons;
 - Serious illness;
 - Living in the country for at least six years without receiving an order to leave in the past five years;

The application process lasted for three weeks during January 2000. The Immigration Office was in charge to treat the applications and to formulate an individual advice for the minister who formally decided. An especially installed independent ‘Regularisation Commission’, composed by Magistrates, advocates and of NGO’s, examined all negative decisions and had the authority to grant nevertheless a regularisation. A total of about 40.000 persons were regularised until 2005.

- In July 2009, the State Secretary for Migration and Asylum Policies issued new instructions to the Immigration Office, concerning the regularization of irregular migrants in Belgium. The State Secretary added the criterion “sustainable local anchoring” to the already existing criteria¹ and made also the regularisation for reasons of employment possible. For the latter case, the applicant had to reside in Belgium without interruption since 31.03.2007 and had to produce an employment contract. Additionally, the regional authorities had to agree to deliver a work permit B. This case-by-case regularisation was declared temporarily (applications could be lodged only between 15.09.2009 to 15.12.2009). Legal basis remained art. 9bis of the ‘Aliens Law’. On 9 December 2009, the Council of State annulled the instructions, stating that the concerning measures could not be implemented by a ministerial instruction but by the act of parliament. However, the authorized minister has still the before mentioned discretionary jurisdiction to regularise and therefore the instructions remained de facto in force.

5) Does Belgium publish data on regularisations of irregular migrants?

- The Immigration Office publishes on a regular basis data on regularization on its website and in its Annual Report. A short overview on data on regularisation between 2005 and 2010:

Year	New applications (files not persons)	Total proceeded applications (files not persons)	Average of persons per file	Regularized persons	Applications still in processing in the end of the year
2005	15.927	10.971	2,14	11.630	N/A
2006	12.667	13.399	1,89	10.207	22.016
2007	13.883	18.957	1,81	11.335	N/A
2008	19.371	22.531	1,68	8.369	15.572
2009	26.232	15.152	2,06	14.830	23.486
2010	36.848	28.216	1,57	24.199	40.241
Total	124.928	109.226	1,8	80.570	-

¹ These are: 1) lengthy asylum procedure (4 years without decision respectively 3 years for asylum seekers with children), 2) lengthy successive (other) procedures, 3) families in asylum (or other) procedures with children attending school, 4) “pressing humanitarian situation” (unremovable admitted immigrants), 5) medical reasons;