



UNDOCUMENTED MIGRATION IN AUSTRIA CLANDESTINO



Counting the Uncountable: Data and Trends across Europe

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Research Brief

KEY POINTS

Main facts and figures

- All available evidence suggests that the stock of persons without any or without valid residence titles has considerably declined over the past several years as a consequence of EU-enlargement and a drop in irregular entries and asylum related migration from non-EU countries. At the same time, it is likely that the number of persons in irregular employment who are 'legally' staying has (temporarily) increased.

Quality assessment of estimates found in literature

- The few available global estimates on the irregular resident population date from the pre-enlargement period and are thus now largely obsolete. Most estimates are compound estimates, with estimates on specific subgroups being mainly based on plausibility considerations and 'rules of thumb'. Although there are more 'scientific' estimates, these similarly do not stand up to scrutiny.

Main paths of irregularity

- Contrary to common wisdom, irregular entry and overstaying are not the only, and perhaps even not the most important pathways into illegality. In the Austrian context, withdrawal and loss of status is a main source of irregular migration.

Irregular migration and the economy

- The large majority of persons found illegally employed in Austria – some 57% – are citizens from new EU Member States in breach of transitional restrictions on employment. Given that most third country nationals found illegally employed similarly were legally staying but in breach of restrictions on employment, the link between outright irregular migration and the economy seems to be relatively weak.

Relevant policies

- The main focus of policies concerning irregular migration in Austria is on prevention (notably border controls), law enforcement (worksite inspections, employer sanctions, detention) and removal. However, as a large number of irregular migrants enter the asylum system and irregular migration is generally perceived as an asylum issue, asylum and refugee policies play a major role.
- Apart from two major regularisation programmes — a programme regularising illegally employed migrant workers in the early 1990s and a programme for Bosnian war refugees in the late 1990s, respectively, Austria regularises only on an individual bases in a highly limited number of cases. However, to tackle illegal employment in the private care sector, there has been an amnesty for illegally employed non-nationals, which, however, excluded illegally staying non-nationals.

Conclusions - policy suggestions

- Statistics on irregular migrants (apprehension statistics, return statistics, etc.) should be improved.
- Regularisation should be explored more systematically as a policy tool, in particular in cases in which return proves unfeasible. In-action and long-term de facto toleration by contrast should be avoided.



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THE RESEARCH

Estimates and guesstimates of irregular migration in Europe ‘travel’ freely and uncritically among experts, journalists and policy makers without it being clear who produced them first and how. Their source may not be clear, their direction, however, definitely is: these numbers are routinely used as a means of arousing public anxiety about migration and exercising pressure for policy responses.

This study critically explores the sources of data and estimates of irregular migration and, in particular, the validity and reliability of the methods used in their production. In doing so, it shows why and how migrants become irregular and whether and how they can achieve legal status. We also critically assess the policies aimed at tackling the phenomenon of irregular migration.

Background of Migration Situation in Austria

In Austria, irregular migration became an issue of public and policy debates only in the 1990s when the policy framework governing migration dating from the “guest worker” period was completely overhauled in the context of a rising numbers of immigrants and an increasing politicisation of migration. The reform shifted the emphasis of control from control of access to the labour market to control of entry and residence. It is these changes in the regulation of migration which can be largely credited for producing irregular migration, both as a discursive space and as an empirical phenomenon.

In contrast to irregular entry and residence which was and continues to be largely associated with asylum and hence with migrants from major asylum sending countries, irregular work has been largely associated with migrants outside the asylum nexus and in terms of country of origins, mostly with migrants from Eastern Europe. In addition, irregular migrant work seems to be linked to various semi-legal forms of entry and residence and non-compliance rather than with irregular entry or residence in a narrow sense.

Size and Demographic Features of Irregular Migration

On the basis of the available evidence, no serious quantification of irregular migration in Austria is possible. The few global estimates on the irregularly resident population that exist are largely obsolete as a consequence of the accession of important sending countries of irregular migrants to the EU. These caveats notwithstanding, all available evidence suggests that both flows and stocks of irregularly staying migrants have considerably decreased since about 2002.

As the combined result of enlargement and the decline of asylum related migration (applications have decreased from 39,354 in 2002 to 11,921 in 2007) the overall number of apprehensions for irregular entry and stay has sharply declined from a total of 48,751 in 2001 to 38,642 in 2004 and 14,862 in 2007. Considering the presumably large share of citizens from EU Member States in pre-accession stocks of irregular migrants, pre-enlargement estimates of irregularly staying non-nationals – 70,000 to 100,000 persons – seem far too high and the actual size of the irregular migrant population is likely to be significantly lower.

Although the extent of illegal employment, in particular illegal employment linked to irregular residence, has significantly dropped during the past decade or so, semi-legal (non-compliant) forms of employment (undeclared work, pseudo-self-employment etc.) and illegal employment of legally resident persons might have increased in the same period. In the current context, the dominant form of irregular migration in Austria thus seems to be of a semi-legal and – as non-compliance and illegal employment is strongly associated with citizens from new EU Member States – of a transitional nature. Importantly, third country nationals who are not long term residents are also threatened with status withdrawal.

According to apprehension data the share of male irregular entrants and residents is slightly higher (56%) than that of female irregular migrants (44%), but in contrast to a comparative perspective, the gender balance is relatively equal. Before the last wave of enlargement in 2007, the most important nationalities of apprehended persons were Serbia and Montenegro (14%), Ukraine (8%), Romania (7%) and Turkey (5%). The overwhelming majority (97%) of apprehended migrants is in working age. However, the importance of irregularly staying migrants from non-EU countries in the informal economy is limited. According to data on persons found illegally working citizens from new EU Member States constitute almost 57% of persons found illegally working and are by far the largest group of irregularly employed migrants. Citizens from non-EU European

states represent the second largest group with almost 22%. The remainder comprises citizens from the EU-15 (5.5%), Asia and Middle East (8.6%), and Africa (1.4%).

Main Paths into and out of Irregularity

Three principle pathways into irregularity can be distinguished: (1) irregular entry; (2) overstaying; and (3) withdrawal of residence status. Because there are virtually no data or estimates to draw on, it is impossible to draw any definitive conclusions on the quantitative importance of individual pathways vis-à-vis others.

From the available evidence, however, it seems that the importance of irregular entry has considerably declined as a result of EU enlargement as well as a result of the decline of asylum related migration in recent years.

Similarly, overstaying can be assumed to be of rather minor quantitative importance in the Austrian context today. In respect to migrants from non-EU Europe, non-compliant forms of migration on a circular basis (e.g. entry on tourist visa and illegal work; entry as seasonal workers and under-declaration of employment etc. and subsequent return and legal re-entry) are more likely to occur than overstaying. Although it is not unlikely that some citizens of new EU Member States without access to employment “overstay” in a technical sense, there are no means to check this. Both legally and in practice, EU citizens (whether new or old) are no longer seen as a category whose residence status can be irregular. Finally, the relatively strict visa issuing practices vis-à-vis third country nationals subject to visa requirements and the substantial financial guarantees required from “sponsors” as well as increased controls similarly reduces the scope for overstaying and leaves visa-free countries as the most likely source of overstayers.

In the current context, withdrawal and loss of a legal status seems to be the most important pathway into irregularity, which highlights the crucial role of state practices and regulations in producing irregularity. In Austria, the main source of irregularity as a consequence of status withdrawal is the asylum system. The rejection of an asylum claim in itself renders persons unlawfully resident and liable to leave the country. Although detailed statistics on return rates of rejected asylum seekers is lacking, a presumably large share of rejected asylum seekers fail to return.

Third country nationals who do not hold a long term residence status (2003/109/EC) may lose their status for a variety of reasons, in particular on grounds of breach of conditions of stay, for example, by engaging in illegal employment or undeclared work; by failing to meet income or housing requirements; or because of break down of family relationship in case of migrants admitted as family members. In addition, residence may be terminated following a conviction for a criminal offense. Migrants may also lose their residence status by their own negligence or ignorance of administrative residence requirements, for example, if minors turning adults or their parents are unaware of the requirement to acquire an independent permit themselves. Finally, policy changes might result in persons legally resident finding themselves unable to renew their status or losing their status for other reasons. Thus, as a result of the 1993 Aliens Act a large number of persons lost their status as the law did not foresee adequate mechanisms to lead persons from the old into the new system. The restriction of labour immigration to so-called key personnel with the 2002 reform of aliens legislation and the abolition of the possibility to submit applications for family reunion with citizens from within the country in 2005 similarly resulted in a number of persons finding themselves in an irregular situation. The 2005 reform of the Aliens law finally excluded persons with certain professions from the right to consolidate their status, irrespective of the length of stay.

While there are numerous ways into irregularity, there are few ways out. The systematic implementation of the principle to apply for residence permits from abroad, which was extended in the last immigration reform to family members of Austrian citizens has left relatively few options to regularise one’s status from within the country. In addition, Austria rejects regularisation on principled grounds and only grants humanitarian status in a few individual cases on the discretion of the Ministry of the Interior.

Main Policy Recommendations

Independent from the overall quantitative importance of irregular migration as measured in terms of the share of irregular migrants in total stocks and flows of legal migrants, irregular migration must be regarded as an issue of major concern from a humanitarian and political perspective. For those in an irregular status, irregularity deci-

sively and directly impacts on living and working conditions. Addressing irregularity in an effective, pragmatic and flexible manner compatible with broader humanitarian concerns and human rights thus must be a major priority.

Indeed, the main conclusion of the CLANDESTINO study on Austria – that irregular migration is likely to have significantly declined in recent years, both in terms of flows and stocks – seems to support a pragmatic approach – not only is the size of the irregular migrant population relatively small, but a fair share of irregular situations may actually be the result of legal deficiencies and status loss rather than irregular entry or over-staying.

A priority must be to avoid legal insecurity and putting persons at risk of falling into irregularity, by:

- providing immediate access to employment to all immigrants who have a right to stay;
- strengthening and expanding the principle of long term residence, including automatic acquisition of the status;
- setting time limits to de facto suspension of removal orders or residence bans.

Secondly, regularisation mechanisms should be developed as a possible policy tool to address the presence of irregular migrants:

- Regularisation as alternative to return: if return, for whatever reason, is not a viable option, regularisation should be pursued as an alternative. After a certain time lag non-deportable aliens should be entitled to a legal status to avoid protracted limbo situations.
- In addition, “earned regularisation” could be used as a targeted instrument to flexibly regularise the status of persons who are technically irregularly staying or are at risk of losing a transitional or temporary status but who are socially and economically well integrated; for example rejected but legally employed asylum seekers, or asylum seekers with family ties in Austria, amongst others.

Thirdly, existing monitoring tools such as apprehension data, statistics on return, asylum data and statistics on persons found illegally employed, should be developed to better understand both patterns of irregular migration and state responses to irregularity.

For more information

The full report on Austria, by Albert Kraler, David Reichel and Christina Hollomey, is available at <http://www.eliamep.gr/en/category/migration/>.

Read the research briefings and full reports of the other 14 countries included in CLANDESTINO project at <http://www.eliamep.gr/en/category/migration/>

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