



UNDOCUMENTED MIGRATION IN GERMANY CLANDESTINO



Counting the Uncountable: Data and Trends across Europe

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Research Brief

Main facts and figures

KEY POINTS

- Germany is a country famous for its governments' attitude in favour of strict migration control and the rejection of regularization programmes.
- In spite of a tough political rhetoric, Germany hosts a considerable number of irregular migrants which leave marks not only in special reports dealing with social and political issues but also in public statistical accounting.
- The most recent expert estimate stems from 2004 after the accession of ten new EU member states and indicates that there are between 500,000 and 1 million irregular foreign residents in the country.

Quality assessment of estimates found in literature

- In particular, publications from public authorities (State Police, Federal Police, Federal Customs) and charity organisations provide information on irregular immigrants in a more or less open and transparent form.
- However, the quality of quantitative data is often poor because circumstances of collection are not transparent, the definition of categories remains fuzzy, the distinction between case and person data is not always clear, and data exchange causes multiple registrations.
- Until now, the debate has been characterised by reference to guesstimates replicated continuously despite their lack of reliable methodological grounds.
- Only a few scholars took steps to examine the available body of information in order to develop ideas for more methodologically-consistent approaches to get more reliable assessments.

Main paths of irregularity

- The knowledge on trajectories of irregular immigrants is still fragmentary. Unauthorized stay and undeclared employment after visa-free entry was, until 2004, probably the most important path into irregularity, while other relevant patterns like visa-overstaying or irregular entry without documents may have gained relevance in relative terms since.

Relevant policies

- Immigration policies are dominated by the idea that the integration of immigrants already residing in the country should be accomplished before more liberal rules for new immigrants could be introduced.
- The implementation of the new immigration law still aims to prevent or reduce permanent immigration of third-country nationals and prefers entries for temporary purposes.
- The policy towards unwanted immigration is dominated by rejection, non-integration and removal.

Conclusions - policy suggestions

- Against the background of demographic developments, labour market demands and increasing transnational family life the future trends in irregular migration are closely related to the future design of immigration policy.
- If politicians proceed with a restrictive line and do not open channels for legal immigration in spite of an increasing demand, Germany will be confronted with increasing irregular immigration. Consequently, the gap between a declared restrictive immigration policy and its failure is likely to fuel a heated debate giving vent to xenophobic resentment.
- A more enlightened migration policy would not always give priority to migration control but answer to the interests of the different actors involved in immigration. Instead of using migration control debates as an ideological battlefield, the search for pragmatic solutions would be more favourable to migrants and the receiving society.



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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 Germany

The current immigrant population can be traced to a variety of immigration patterns both past and present. As a matter of fact, in the last six decades Germany received not only immigrants of foreign but also of German nationality. The most important immigration patterns were foreign workers recruited between 1955 and 1973, and the subsequent immigration of their relatives since 1973; ethnic Germans since the 1950s, initially mainly from Poland and Romania and later mainly from the former Soviet Union; Jewish quota refugees that came exclusively from the area of the Former Soviet Union since 1990; the (often reluctant) reception of asylum seekers and civil-war-refugees since late 1970s; temporarily admitted migrant workers and students. These immigration patterns amount to a current share of 16 % of the population with a migration background. The share of foreign population is currently 9 %.

But an only exclusive consideration of entries would deliver a distorted picture of the current migration situation in Germany. Indeed immigration is always accompanied by a significant level of emigration that influences migration balance. In the German case, the level of emigration was and is considerable and even counterbalanced immigration in the last ten years. A review of registered entries and exits across German borders for 1991 – 2007 indicates that the total immigration balance decreased since 2004 and was, in 2006 and 2007 below 50,000 cases.

Currently, Germany does not receive much new long-term immigration but a high number of entries for temporary purposes. This situation may be explained *inter alia* as the intended outcome of a policy that still aims to prevent permanent immigration of foreign nationals in favour of temporary employment arrangements and removal of unwanted immigrants. The modest immigration balance may be also interpreted as an expression of a decreasing economic and social attractiveness of Germany that does not pull migrants as it did in previous decades. To a certain extent it may be also an indication that people who are rejected, and do not see a chance to enter on a regular basis due to the tight immigration law, make use of side-entrances or back-doors through irregular entry and stay.

Size and Demographic Features of Irregular Migration

The knowledge on the amount and composition of irregular immigration in Germany is still fragmented. The picture is furthermore blurred by the inconsistent use of categories used in quantitative and qualitative data. Among other problems, the term “irregular immigrant” may include in some contexts not only third-country nationals but also EU-citizens. Another problem is the use of statistics referring to irregular foreign workers which may include legal residents in undeclared employment. Due to data exchange among control authorities the statistics include double counting. As a result of these intricacies it is difficult to gain a full picture - the available information allows an approximate one, only after a careful consideration.

With respect to available flow data, until 1998 Germany faced an increase in cases of irregular entries, with a peak of 40,201 apprehended irregular immigrants in this year. Since then, the number decreased to 17,000 irregular entries in 2007 although border enforcement was significantly expanded. The same trends expose official data on irregular stays. The figure of apprehended foreign suspects without a legal residence title increased to a peak of 140,779 persons in 1998 and has decreased since to 64,605 persons in 2006. Both data sets indicate that irregular immigration was reduced since 1998 and stabilized on a rather modest level (compared to other EU countries).

All in all, the knowledge on the national composition of irregular migration is rather poor and inconsistent. With respect to the 17,962 irregular entries in 2006, the Federal Police reported as most important nationalities Romania (2,459 cases), Ukraine (1,640), Serbia and Montenegro (1,598), Turkey (1,253), Russia (1,113), China (1,026), Iraq (10,003), Bulgaria (547), India (403), Belarus (332), Moldova (306) many several other nationalities (41 %). With respect to the altogether 39,972 foreign suspects without a legal residences status, the Federal Criminal Office reported as the most numerous nationalities Turkey (4,982 persons),

Romania (4,360), Bulgaria (2,732), Serbia and Montenegro (2,718), Russia (2,215), Ukraine (2,197), China (1,597), Vietnam (1,481), India (958) and Iraq (719). Since the mentioned nationalities include EU-member states (Bulgaria, Romania) whose citizens enjoy the freedom of movement these figures mirror rather a snapshot picture of a situation that changes with the amendments of law and the political and economic situation in origin regions. Figures on irregular entry indicate a relationship of local or regional violent conflicts and political unrest and the increase of irregular immigration from these areas. Furthermore, qualitative research studies show that, in addition to nationalities mentioned in official statistics, irregular immigrants from some Latin-American countries (Brazil, Ecuador), Africa (Ghana, Cameroon) and Asia (Philippines) are also living in Germany.

With respect to age composition all available data indicate that the majority of irregular immigrants are between 20 and 40 years old, but also that children and elderly people live in Germany without a regular residence status. Most irregular immigrants work in the shadow economy and perform informal jobs not attractive to natives because the pay offered does not reflect the arduous, dirty or unhealthy character of the occupations. Among other things, irregular immigrants may work as nanny, cleaner, fruit-picker, carer, building-worker, dancing master, teacher of languages, craftsman, waiter, kitchen-help, chambermaid, gardener, sex-worker, painter or dog sitter. All in all, the share of irregular migrant workers is relatively low compared to the amount of undeclared employment performed by resident workers.

The public attention and the efforts to combat illegal employment of irregular migrant workers focuses mainly on industries where the native workforce is in danger of being replaced by informal employment arrangements such as the building industry, restaurant and hotel services or handicraft. Due to close cooperation of public services and data exchange irregular migrants cannot be registered with the social system or tax authorities. The legal vulnerability of irregular migrant workers is abused by employers who undercut local standards of pay and working conditions and sometimes withhold the wage for the work done. Duped workers refrain from going to court for fear that the irregular residence will be reported to police. Also access to health care is difficult because irregular immigrants cannot enrol, for financial and legal reasons, for health insurance. In case of accidents or sickness they have to rely on charity or to disclose the irregular residence status to public services. For fear of deportation sick irregular immigrants delay a consultation with the risk that initially minor health problems may grow into life-threatening ones and require much more expensive medical treatment. School enrolment of irregular immigrants' children is, in most Federal states, only possible with intervention of a charity and the readiness of a school headmaster to bypass administrative orders and school law, and to refrain from recording the pupil's data in order to avoid information coming into the hands of the police.

Main Paths into and out of Irregularity

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

The German residence law states that the entry and stay of third-country nationals is subject to the reservation of permission. According to German law the authorized entry, stay and employment of foreign nationals depend on compliance with the provisions of the residence law. Entry is opened for particular nationalities through visa-free entrance for tourist purposes; through granting of a (Schengen-)visa for tourist purposes; through the granting of a residence permit for special purposes, among obtaining higher education, (temporary) employment or formation or family unification. The main path into irregularity seems to be the use of visa-free entry with a subsequent undeclared employment. Until now, due to tight residence law and strict naturalisation law, (long-term) residing foreign nationals may also become irregular migrants if they do not leave the country after the loss of their residence status. After unauthorized entry, immigrants may obtain a regular residence status through an asylum application, but acceptance rates are very low. However, immigrants subject to the order to leave the country may be granted a so-called toleration if the expulsion or deportation cannot be realized due to practical obstacles or to legal ones like the non-refoulement provision or humanitarian concerns. Responsible German policy makers strictly oppose regularization programmes with the argument that illegal behaviour should not be rewarded and that regularization creates pull effects. Irregular entry and stay and its support is a criminal offence that may be punished with a sentence of up to one year's imprisonment. Employees of most state services are obliged by law to report irregular immigrants to immigration services or the police leading to the immigrants' expulsion or deportation.

Main policy recommendations

Irregular immigration has been for about three decades a publicly debated political issue, until the mid-1990s the debate focused mainly on irregular entries of refugees and asylum seekers. Only during the last decade the protection and rights of migrants in an irregular situation were brought to light. But German governments followed and continue to follow a strict rationale with regard to irregular immigration. Social and humanitarian issues are acknowledged but are simultaneously treated as the responsibility of civil society including churches and charity. These organisations partly accept the responsibility but complain that the state tries to dispose of its humanitarian and human rights obligations. Among other things, civil society organisations demand a more liberal policy in the areas of family migration, refugee reception and labour migration in order to reduce irregular entries; disregard regulations (such as the obligation of state health, education and social services to report irregular migrants) that increase vulnerability and impair the social and legal situation of irregular migration; stop classifying irregular migration as criminal offence; and cease to view the humanitarian help for irregular migrants as punishable.

On the other hand, politicians underline the need to combat and contain irregular immigration by stricter law enforcement. This position is justified inter alia with the argument that everybody has to comply with law; that irregular immigrants should not be rewarded with a residence status; that otherwise irregular immigration will increase; that only tough action can put a stop to smugglers' and traffickers' games. German politicians introduce this argument also at European level and stand for a more control-minded and less liberal European immigration policy. On the other hand, at national level the humanitarian situation of irregular immigrants was the subject in parliamentary expert hearings at federal and state level. At federal level at least, the question of education for children without residence status was accepted as an issue that requires a solution. Until now, the government of the federal state of North Rhine-Westphalia announced that, according to the special state law, school directors are neither allowed to ask for a residence title of school attendants nor to report such information to immigration services. However, North Rhine-Westphalia is the only federal state with such a clear legal arrangement. Most other federal states oblige schools to survey and report an irregular residence status. Some cities like Munich, Cologne and Bremen have commissioned research into the social and humanitarian situation of citizens without a residence status and introduced steps in order to mitigate their plight, as well as arrangements towards health care provision and legal protection.

In Germany, irregular immigration is a constantly pressing issue, yet not top of the political agenda. Currently, the impression is that the German state and society merely tolerate irregular migration. Public policy follows a restrictive and control approach while civil society actors are concerned about its failure and side-effects. In spite of evolving difficulties at local level to implement humanitarian arrangements, the continuous public relations efforts of human rights associations may, in the long run, contribute towards the opening of services for humanitarian treatment of irregular immigrants. Against the background of demographic developments, labour market demands and increasing transnational family life the future trends in irregular migration must inform the future design of immigration policy. If responsible politicians proceed with a restrictive line and do not open channels for legal immigration in spite of an increasing demand, Germany will be confronted with increasing irregular immigration. As a consequence, the gap between a declared restrictive immigration policy and its apparent failure would fuel a heated debate likely to give vent to xenophobic resentments. A more enlightened migration policy should not always give priority to migration control but answer to the interests of the different actors involved in immigration. Instead of using migration control debates as an ideological battlefield, the search for pragmatic solutions would be more favourable to migrants and the receiving society. The future findings of further and intensified research on irregular migration could contribute to this target.

For more information

The full report on Germany, by Norbert Cyrus, is available at <http://www.eliamep.gr/en/category/migration/>.

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



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