



Regularisations and Employment in Netherlands

REGANE Assessment Report

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February 2014

Introduction

This report is part of a broader comparative study that explores the feasibility of a representative survey on labour market trajectories of regularised immigrants in seven EU Member States (Germany, France, Italy, the Netherlands, Poland, Spain and Sweden). The study collects background information on regularisation practices in the countries under study, assesses the feasibility and best possible research design for such a survey and collects information based on semi-structured qualitative interviews on possible labour market trajectories of regularised migrants and migrants in an irregular situation.² Although several studies have covered the evolution of regularisation policy frameworks, only little is known about the actual impact of regularisations on individuals. This study aims to explore the possibility of conducting a comparative survey that addresses this research lacuna. Whereas previous research has repeatedly underlined the strong link between the legal status and employment status within the EU, no robust studies have been conducted on how the regularisation (i.e. the attribution of a residence permit) actually impacts labour market

¹ The author of the report is grateful for very helpful comments provided by our country experts Godfried Engbersen and Arjen Leerkes. The author would like to thank the interviewers and especially interviewees, who immensely supported the study by sharing their experience and knowledge. The responsibility for the content of this report and any errors and omissions solely lies with the author. The views expressed in this study are those of the author and do not necessarily reflect the point of view of the European Commission or ICMPD as an intergovernmental organisation.

² The comparative report of the REGANE feasibility study is available under <http://research.icmpd.org/2335.html>.

trajectories of third country nationals in different EU countries.³ The pilot study looks into seven EU member states which have adopted very different labour market policies and, furthermore, diverse sets of measures addressing the migrants in an irregular situation.

The feasibility study defines regularisation as a policy instrument redressing the precarious situation of immigrants without legal residence by virtue of granting a residence status. Actual instruments providing regularisation are shaped very differently, even within a given member state. Very generally, this project differs between ongoing regularisation mechanisms and regularisation programmes that are limited in time and scope. Irregular residence can be defined as presence on the territory of a Member State, of a third country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.⁴ Irregular residence is not solely, or even, increasingly less the result of entering the country without authorisation. Rather, the pathways into irregularity from previously regular statuses represent a growing challenge in the realm of migration governance.

Present report discusses the results from the collection of background information and qualitative interviews regarding regularisation practices and labour market trajectories of third country nationals in the Netherlands. The report provides an overview on the regularisation framework and practices in the Netherlands. It further offers preliminary results on labour market trajectories of regularised migrants in preparation of the follow-up quantitative survey. The report is based both on desk research, consisting of a review of existing literature, official reports, policy and legal documents etc., secondary analysis of statistical sources and on fieldwork, comprising expert interviews with different stakeholders (bureaucrats, NGO representatives and academics) as well as qualitative interviews with individuals who were either subject to regularisation or who have remained in the country without a regular residence permit. The interviews were conducted in and around the metropolitan area of Amsterdam. It represents one of the most densely populated areas in terms of immigrant residents as well as proportions of economically active immigrants among the working population.

³ At the same time, Bakewell (2008: 439) critically reflects on the relevance and explanatory power of policy categories: "Holding too closely to policy categories not only makes some outside the category invisible, but it also tends to privilege category membership as an explanatory variable for differences between people. (...) The world becomes divided up by categories of migration and we look for explanations on that basis first, rather than on the grounds of social class, length of residence, education and so forth."

⁴ "Return Directive" (2008/115/EC) and Schengen Border Code (Regulation (EC) No 562/2006).

1. General Context: Migration history and policy

Subsequent to a period of emigration in the immediate post World War II period, the Netherlands became a country of immigration in the 1960ies. Post-colonial ties and the growing recruitment of labour migrants in the wake of economic prosperity primarily shaped the migration patterns to the Netherlands. Immigrant reception was then largely operated through a guest worker regime, regulating the recruitment and arrival of labour migrants from Italy, Spain, Portugal, Turkey, Greece, Morocco, Tunisia, later on Suriname and other, more spontaneous arrivals of immigrants from a diversity of country of origins. Moreover, a relatively lenient practice towards irregular migrants was adopted, though condemned in public discourse: the provision of employment was a fairly accessible pathway to obtain residence; moreover, individuals who arrived on tourist visa could easily access working permits, if they found work. However, similar to many European states, the recruitment stop subsequent to the oil crisis in 1973 revealed that the government had wrongly assumed guest worker migration to be of a temporary character. Lacking a framework that would address this situation, quite a number of persons had slipped into irregular situations. In practice, the acquisition of a tax and social security number and, consequently, of formal employment, was still possible for migrants, despite their deprivation of a formal residence status (van der Leun & Ilies 2010; Bonjour et al. 2009).

Notwithstanding the recruitment stop, migration to the Netherlands continued to evolve around the channels of family migration and asylum-related migration (van der Leun & Ilies 2010: 187f; van Meeteren et al. 2013). From the early 1980s onwards a rising number of asylum seekers arrived in the Netherlands, mostly originating from former Yugoslavia, the former Soviet Union, Turkey, Afghanistan, Iraq, Iran, and Somalia. The four largest groups in the Netherlands are Afghan (38,000), Iraqi (52,000), Iranian (31,000) and Somali (27,000) refugees⁵ (Bakker et al. 2013; van Meeteren et al. 2013). However, it is argued in academic literature that a clear-cut categorisation is hard to make out, since for example the categories of asylum seekers, circular migrants and irregular migrants are often diffuse, overlapping and liable to change (Leerkes et al. 2007: 1492).

As the table on net migration below indicates, the countries of origin of immigrants from third countries are highly diverse. Data from the Immigration and Naturalization service moreover provides an overview of the distribution of residence permits by grounds of residence and country of origin (see also table below and IND 2011). For the year 2009, the largest shares

⁵ In January 2010.

of net migration were documented for persons from Somalia (asylum), China (students, labour migration), Iraq (asylum), Turkey (family reasons), USA (students, highly skilled, labour migrants), Morocco (family reasons) and Suriname.

The current migration framework is shaped by a welcoming policy towards highly skilled migrants and students and a distinct policy against irregular migration (see for example IND 2011: 7), which has been characterized as a 'discouragement policy' by migration researchers, a trend, however, not unique to the Netherlands alone (e.g. van der Leun 2006: 313f.; Broeders & Engbersen 2007).⁶ The latter has resulted in a range of measures such as employer sanctions, increase of document requirements for labour market access, and finally, the blockage of tax and social security systems as well as of public welfare for migrants in an irregular situation. The so-called Linking Act of 1998 (*Koppelingswet*) specifies five categories of lawfully residing aliens and has established the possibility to verify the residence status and access to the labour market of immigrants by linking the immigration service registration files, the census bureau data, the tax identification as well as social security data. In a nutshell: a regular residence status is now necessary to access any of these public services/institutions, comprising the formal labour market, social security benefits, health care, social housing and education (Engbersen & Broeders 2009). The detection of and law enforcement against persons in an irregular situation has been delegated to a range of actors involved in these state-sponsored services (also see Leerkes et al. 2012). Exceptions apply solely to young persons aged under 18 pursuing education, the public financing of legal assistance and the provision of basic medical care (there is however state funding available to migrants who cannot afford to pay the necessary care themselves).⁷ However, it turns out that a gap, or even contradiction, between national policies and local implementation has evolved (ibid.: 189; van der Leun 2006: 314f.). As previous research on irregular migrants in the Netherlands emphasises, on the one hand "Illegal immigrants tend to distrust official institutes and find their own ways of surviving." (van der Leun 2006: 314). On the other hand, the same research indicates that irregular migrants still turn to institutions in one way or another and discretionary autonomy in the provision of services is maintained by implementing authorities (ibid.: 318). The room for discretion however also entails arbitrariness in the decision-making processes, which can provoke deeply problematic situations for individuals concerned. Moreover, the degree of obstruction

⁶ "The thinking behind such policies is the purported belief that welfare systems serve as a magnet for prospective (illegal) immigrants and a potential obstacle when they are considering a return to their home country." (van der Leun 2006: 314).

⁷ The introduction of the Linking Act entailed the exclusion of irregularly residing migrants from health insurance, although having previously contributed to the social security system (refers to so-called "white illegals"). These effects have been subject to protest among irregular immigrants (Picum 2008).

or compliance is further differing from domain to domain of intervention, which is influenced by a specific type of professional ethics and degree of professionalisation in a given sector (ibid.: 320ff.). As to the further development of this two-track system, the outcome remains yet unclear. Whereas researchers hypothesized that “one option for the national government might be to exert more pressure on lower-level professionals to act according to official policy.” (ibid.: 324), an assessment conducted by ACVZ indicates that even five years subsequent to the conclusion of an administrative agreement aiming to end the friction between the national and the local scale of politics, some municipalities were still receiving and providing assistance to migrants in an irregular situation. Most frequently, the lack of effective return policies was mentioned as the principal motive for their doing. The report further adds that it is likely that most individuals concerned by this exclusionary practice in fact cannot return to their country of origin for various reasons, entailing dubious situations in the light of European human right standards (ACVZ 2012: 116ff.). In addition to that expert interviews conducted for the purpose of this report have repeatedly stressed that despite ongoing obstruction of laws by some municipalities, loopholes increasingly cease to exist or have become hard to access.

Although irregular residence on the territory is not (yet) addressed in penal law, it is indirectly liable to criminal conviction in the Netherlands. Repeated irregular residence has for many years been a ground to declare a migrant an ‘undesirable alien’. Continued or repeated illegal residence as an undesirable alien is considered a crime against the state (Leerkes & Broeders 2010 and 2013). Such undesirable alien declarations are increasingly common in the Netherlands (Leerkes et al. 2012). Furthermore, the Netherlands implemented the Return Directive in 2011. Contrary to most European countries, violating an entry ban has become chargeable under Dutch law. Additionally, a range of administrative measures are being deployed, irregular migrants are more frequently detained, the duration of detention has increased in the past years and the apparatus for law enforcement has been widened. In addition, the voluntary exit from the country may result in a return ban for five years. This may however lead to an immobilisation of migrants in an irregular situation, since a voluntary exit entails the risk of not being able to return to the Netherlands. Finally, the proportion of deportation has dropped (van der Leun & Ilies 2008: 13f.; van Walsum 2013: 172), although this too seems to have changed in recent years (Leerkes & Broeders 2013). Most recently, a proposal to establish irregular migration as a criminal offence is debated in the national assembly; the actual outcome is yet to be seen.

Table 1: Migration from Third Countries to Netherlands since 1995

Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Somalia	2,676	3,089	1,370	1,040	1,254	1,696	1,202	594	90	-18	74	398	1,077	1,986	4,088
China	1,101	1,036	1,306	1,554	1,577	2,311	3,298	3,418	3,393	2,678	2,083	1,785	2,203	3,415	3,496
Iraq	2,408	4,123	5,531	6,710	2,878	3,998	2,784	1,230	880	561	332	466	1,319	3,002	2,466
Turkey	3,161	4,548	5,053	4,814	4,150	4,617	5,406	5,613	5,820	2,700	1,572	1,224	714	1,949	2,154
USA	-491	333	152	494	585	516	707	1,007	697	127	-106	197	402	1,255	1,275
Morocco	1,758	3,122	3,631	4,572	3,972	3,792	4,511	4,505	4,175	2,833	1,537	1,233	664	982	1,133
Suriname	1,593	2,303	2,062	3,399	2,272	2,663	2,640	2,384	2,419	1,723	753	445	632	976	1,073
Iran	2,475	2,635	1,494	985	981	1,543	2,019	1,279	749	458	369	381	478	704	875
Russia	594	782	651	873	1,093	1,940	2,125	1,498	1,129	645	532	513	480	684	794
Afghanistan	1,367	2,639	3,273	3,462	4,919	4,239	4,062	2,385	1,350	542	306	288	168	269	661
Indonesia	234	385	506	1,503	1,072	1,254	1,467	1,216	1,037	679	470	401	454	584	367
Syria	314	344	330	317	645	1,050	1,089	598	380	284	178	159	182	243	360
Sierra Leone	93	172	167	211	410	767	1,514	1,858	564	155	98	73	81	159	187
Bosnia-Herzegovina	5,437	2,073	639	251	755	1,022	647	295	130	-123	-73	-55	-7	-24	121
Sudan	213	272	551	927	767	1,451	1,307	760	346	84	100	-9	8	39	88
Azerbaijan	99	92	97	222	399	1,512	1,120	606	306	120	58	56	52	68	70
Federal Republic of Yugoslavia	1,336	723	449	663	2,283	2,483	1,721	664	282	28	13	1	0	0	0
Other countries	8,644	12,889	13,366	16,923	17,300	21,412	23,961	23,707	15,900	10,655	7,912	6,560	7,391	15,678	17,665
Total	33,012	41,560	40,628	48,920	47,312	58,266	61,580	53,617	39,647	24,131	16,208	141,16	16,298	31,969	36,873

Source: Own calculation based on CBS data

Patterns of irregular migration and general policy addresses

More generally, it is argued that irregular migration is not an isolated phenomenon, but is rather connected to regular migration, and, in a wider sense to the general social and economic context. However, structural determinants of irregular migration are frequently left aside in public debates on the 'fight against illegal immigration' (Leerkes et al. 2007: 1509 and 1511). Pathways into irregularity are linked to the set of policies governing migration and the agency of immigrants acting within that terrain. Subsequent to results from qualitative studies, the most common pathway into irregularity in the Netherlands can be ascribed to the expiration of a tourist visa and lack of legal possibilities to access residence and the overstay subsequent to a negative asylum decision. In principle, deprivation from a regular residence permit creates an obligation to depart from the Netherlands, or otherwise may entail a forcible removal. However, expulsions are implemented in half of the cases, in which a removal order is issued. It is estimated that the share of rejected asylum seekers among the population in irregular residence situations is about 15 percent (de Boom et al. 2006; van der Leun & Ilies 2010: 198 and 200).

Regularisation policy in the Netherlands has, since the mid-1970ies, solely been established via administrative circulars. Moreover the numbers of beneficiaries from programmes and even more rarely mechanisms were comparatively low, if estimations on the share of irregularly residing population in the Netherlands are taken into consideration. The criteria for regularisation have, in broad terms, remained the same, comprising a required minimum length of continuous stay in the Netherlands, employment and contribution to the tax and social security system. The seldom recourse to regularisation programmes has facilitated the representation of regularisation as an exceptional policy tool (Bonjour et al. 2009: 99ff.). The scarcity of legal channels into a regular residence in the Netherlands led researchers to conclude that exits out of irregular situations are 'virtually non-existent' (van der Leun & Ilies 2008: 15).

Migration and labour market

Current Dutch immigration law for labour migration clearly differentiates between highly demanded labour forces and those not covered by this category. The previous group is largely defined by a minimum gross income and subject to facilitated admission procedures. If this income is not reached, the employer has to apply for a work permit before hiring the employee. The assessment of the application follows a principle of prioritisation of Dutch, EU and regularly residing third country nationals. Moreover, a minimum wage earning must be assured in the latter case and the applicant has to provide evidence of economic

independence (i.e. ensuring insurance against loss of income due to unemployment or severe illness) (van Walsum 2013: 176f.). As van Walsum (2013: 179f.) explains, there is discussion about introducing additional modes of governing labour migration, which even more increase the dependency of migrant workers on employers (e.g. circular and temporary migration models which tie the residence of the worker to the employer and strip individuals of any perspective to permanent residence or family reunification).

Domestic care work becomes increasingly shaped as a self-entrepreneurial sector in which employers are gradually exempted from contributing to their employee's social insurance and worker's rights (sick leave, paid leave etc.) are cut down in the name of quasi self-employment (van Walsum 2013: 164). Whereas the formal subsidised health and childcare services are not particularly dominated by migrants, it is suggested in literature that especially in larger Dutch cities, the informal economy in the domestic care sector predominantly employs immigrant workers, of whom a considerable share are without regular residence (ibid.). This is partly so, because access to the formal labour market has become increasingly subject to control, bearing risks of considerable fines for employers hiring migrants without regular residence and administrative fines for migrants themselves. Conversely, the informal work in private households is less subject to controls, it has become an attractive employment opportunity for immigrant women in an irregular situation (but also men) (van Walsum 2013: 173). The formal admission as a migrant worker in the domestic and care work sector is hardly realistic as the rules related to admission through work do not take into account the structural peculiarities of the occupation in the Netherlands (e.g. multiple employers, quasi self-employment etc.) and domestic work is moreover not valued as a skilful employment, although requiring for instance considerable social and organizational skills (ibid.: 177). Each year the Netherlands does nonetheless provide one-year residence permits to over 2,000 au pairs. Formally, au pairs may be asked to do 'minor' domestic work for no more than 20 hours a week and are not regarded as domestic workers. However, in practice, many au pairs work longer hours and hold a range of duties in private households.

2. Regularisation policies

2.1. Regularisation programmes

Debates on the regularisation of long-term asylum seekers emerged in 2002, pressured by civil society. A regularisation programme was implemented, however the actual outcome was limited to the issuance of merely 2,300 residence permits. The turnout was especially low because the circular established that the applicant was to be excluded from the scope of the circular, if s/he had provided wrong or incomplete information during his/her asylum application. In view of this rigid criterion and the marginal numbers of regularisation, social protest campaigned against the limited scope of the programme, which turned out to exclude an estimated 26,000 individuals from regularisation and moreover had called for the enforcement of their return, turning the regularisation measure rather into an instrument of return enforcement (Bonjour et al. 2009: 100).

In view of the ongoing mobilisation against the pitfalls of the previous programme established in 2002, a regularisation programme addressing asylum seekers went into force in June 2007. The requirements specified in the circular were (1) to have lodged the first asylum application prior to 1 April 2001, (2) to provide evidence of continuous presence in the Netherlands since 1 April 2001 (i.e. via record at the IND, the Repatriation and Departure Service or by declaration of the Mayor), (3) to withdraw any pending procedure. The regularisation could be extended to family members under certain conditions. Similar to the previous programme, the government expressed its intention to ensure effective repatriation of failed applicants (Bonjour et al. 2009: 101). The number of applicants for the programme amounted to 35,874, of which 29,288 were already known to the authorities and 6,586 candidates appointed by mayors. 28,304 were granted a residence permit comprising access to the labour market (renewable) (WODC 2011: 168). An evaluation of the programme was conducted by the research and documentation unit of the Ministry of Justice, the results will be discussed in more detail below.

A big issue being currently debated is the (lacking) access to naturalisation of regularised immigrants in the framework of the 2007 programme. A legal change in 2009 has installed a provision that makes a birth certificate and valid passport a prerequisite for naturalisation of rejected asylum seekers. It is believed that this will represent a significant hurdle for pardoners to access citizenship. Moreover according to experts interviewed, the language requirement necessary for naturalisation is believed to represent a significant problem for individuals who have previously been granted a status under the regularisation programme –

one major concern being the exclusion of asylum seekers from language courses throughout their often considerably lengthy procedures, previous to their regularisation.

2.2 Regularisation mechanisms

In the years 1990-2003, exceptional regularisation was open to applicants from third countries, who had their application of a residence permit pending longer than three years. This policy was installed in order to prevent backlogs and to signal the administration's obligation to assess applications within reasonable time (Bonjour et al. 2009: 101). However the mechanism as such did not address irregular migrants, since these had pending applications. Further there is regularisation possible on the bases of ministerial discretion. Yet, the experts interviewed indicated figures are published solely subsequent to each legislative period.

A residence permit for health reasons may be granted to persons in an irregular situation either on account of a health situation diagnosed as critical or if the person in question pursues medical treatment in the Netherlands. The latter reason generally entails a residence permit for the length of the treatment (up to a year), exceptionally, the residence permit may be granted for a duration of up to five years, provided treatment only is possible in the Netherlands. A residence permit granted on account of critical health conditions (valid one year, renewable) is subject to a range of conditions (i.e. termination of treatment would lead to a critical health condition, the treatment is not accessible in the country of origin or any other country reasonably accessible to the individual, the critical condition is esteemed to endure more than a year). Upon the third renewal permanent residence on grounds of critical health condition, permanent residence may be accessed. Further, temporary permits for health reasons are issued (up to a year, renewable), if the duration of treatment is expected to be inferior to a year. This permit however does not found a residence in legal terms, but rather qualifies as a temporary suspension of removal.

In addition to health reasons, a regularisation mechanism was recently established, which addresses the situation of children and young adults (including unaccompanied minors), who have been irregularly residing in an irregular situation in the Netherlands. The mechanism was set up via an administrative circular.⁸ The scope applies to persons aged less than 19 while applying for regularisation, who have an application for asylum pending and continuously stayed in the Netherlands for at least five years. Moreover, they have to display a record of continuous registration with the responsible authorities (alien's police or child

⁸ Besluit van de Staatssecretaris van Veiligheid en Justitie van 30 januari 2013, nummer WBV 2013/1, houdende wijziging van de Vreemdelingencirculaire 2000.

welfare institution in the case of unaccompanied minors) and have to withdraw any ongoing procedure related to their residence status if applying for residence under this circular. The circular further foresees the possibility to issue a residence permit to family members, provided the family ties are intact (the obligation to provide evidence of the family relation lies with the applicant). Potential beneficiaries are: parents, siblings (minor and adult, provided they still form part of the family unit, i.e. have not founded a family on their own). Other persons might be eligible under certain circumstances, should the notion of upright family union not apply to the circle of family members enumerated above (e.g. spouses, partners, and children of the applicant).

Beyond the scarce programmes and narrowly defined regularisation mechanisms for health reasons and long-term residing children/young adults, regularisation may be possible through marriage with a Dutch national (which requires an application from the country of origin and is subject to a range of eligibility criteria, see de Hart and Strijk 2013 for further discussion), or else, requires a successful asylum application.

Finally, the Netherlands does foresee two instruments for 'piecemeal' regularisation. Every year a limited number of persons in an irregular situation obtain a residence permit because they can prove that they cannot return to the country of origin (ACVZ 2013). The State Secretary of Justice can also grant residence permits for humanitarian considerations that are not ordinarily covered by law; decisions are taken at his/her discretion.

2.3. Statistics on regularised immigrants and migrants in irregular situations

The registration with municipalities regardless of residence status was derogated in 1991, since then statistical information on migrants in irregular situations is basically relying on estimations. There is no specific government approach in this regard (e.g. compared to France), however, a solid body of statistical expertise (mostly based in academic research) on that topic has evolved over the past two decades or so. The focus of these estimations is twofold: (1) capturing socio-demographic characteristics of the migrant population in an irregular situation and (2) looking into informally working population, which also involves migrants residing without residence status in the Netherlands (van der Leun & Ilies 2010: 191). According to the assessment of van der Leun and Ilies, these approaches largely draw upon police apprehension statistics, which are complemented with estimations on the hidden population through the so-called capture-recapture method. Especially apprehension numbers are however far from neutral, as they evolve differently in the realm of varying political interests (e.g. growing interest in detecting immigrants in an irregular situation). Interestingly, the number of estimated migrants from third countries irregularly present in the

Netherlands has only slightly varied for the years under study (see table below), amounting to roughly 5 percent of the total foreign born population residing in the Netherlands. In recent years, the enlargement of the European Union, which granted migrants from recently accessed Member States the right to legal residence as EU citizens, and the decreasing number of asylum seekers has lowered estimates of the irregular population (de Boom et al. 2011). As with regard to estimations on work, it is assumed that about two thirds of migrants residing in an irregular situation in the Netherlands are economically active (including occasional employment and other forms of untypical income-generating activity). As research for the Netherlands has shown, migrants in an irregular situation are unevenly spread across territory. It is, in the case of the Netherlands not merely an urban phenomenon, high stocks of irregularly residing immigrants could be found in both densely populated areas and areas with considerably low shares of population as a whole. The residence of irregular migrants in rural areas is largely attributable to the labour force demand in agriculture and horticulture (especially seasonal work), to a lesser extent also to asylum reception centres as well as deportation and detention centres in the periphery. In urban centres, irregularly residing immigrants can mostly be found in economically deprived districts, which display a high percentage of immigrant population. Amongst others, factors such as availability of cheap (sometimes also informal) housing market, social and ethnic networks (relevant for the supply with goods, information, support etc.) and the neighbourhood's or surrounding economy (first and foremost: service industry) are decisive (to different extents and in their interplay) in shaping the local concentration of immigrants in an irregular situation in the Netherlands. Further, the knowledge about densely populated areas by irregular immigrants has started to attract a range of businesses, such as temporary employment agencies, which heavily draw on the hiring of migrants workers in an irregular situation. As a study on spatial concentration of migrants in an irregular situation resumes, the residential patterns bear great similarities with those of regularly residing migrants, although the former's are restricted to fewer areas, since opportunity structures for irregularly residing immigrants are more limited (Leerkes et al. 2007: 1492, 1496f. and 1503ff.).

Table 2: Estimated number of TCNs with irregular residence status since 2000

Year	Low	Medium	High
2000	71,578	84,523	97,467
2000	72,629	91,788	110,948
2001	46,500	80,000	115,600
2001	77,973	117,373	156,772
2002	77,721	104,990	132,262
2003	60,469	77,077	93,684
2005	62,320	88,116	11,3912
2009	60,667	n.n.	13,3624

Source: <http://irregular-migration.hwwi.net> and van der Heijden et al. (2011)⁹

According to these studies, migrants in an irregular situation predominantly originate from Turkey, Africa (especially the North and therein Morocco and lately also from Somalia), Suriname, Asia (including the Middle East and China) and Latin America. By trend, discussion further points to growing diversification of countries of origin (van der Leun & Ilies 2010: 195), which might be linked to changing migration patterns and the evolvement of new migration networks. The latter comprise a bulk of movements, in which a clear-cut differentiation between regular and irregular migration seems inappropriate.

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http://irregular-migration.net/typo3_upload/groups/31/3.Database_on_IrregMig/3.2.Stock_Tables/Netherlands_Estimates_IrregularMigration_Oct09.pdf.

3. Impact of regularisations on labour market outcomes of regularised immigrants

3.1. Review of existing studies

The Dutch Immigration and Naturalization Service has conducted an evaluation of the General Pardon (regularisation programme that went into force in July 2007). For that purpose, 59 expert interviews were conducted and the data-base on candidates for pardoning was analysed (anonymised). The study was published in 2011 and especially focuses on the organisation of the regularisation programme's implementation, the actual outcome and, regarding beneficiaries of the regularisation scheme, topics of housing, civic integration, labour market integration and enforcement of return for rejected applicants were discussed (WODC 2011).

As previously stated, out of 35,874 applications 28,304 were actually granted permanent residence. Housing was a big issue for the beneficiaries. A significant proportion was accommodated in asylum reception centres (12,500) and an additional 15,000 were provided housing differently. In January 2010, 96 percent had been housed accordingly, the previous group had largely remained in the region or municipality of initial residence, the latter to some extent could even stay in the previous accommodation arrangement, or remain in the municipality of initial residence. Surveyed municipalities however claimed that the housing subsidies were insufficient (30 percent). The civic integration component was implemented through a programme which aimed at language acquisition and entering the labour market (12,417 participants in total). As the study reports, in 2009, about 50 percent of the adult beneficiaries held a job or pursued an education. For language reasons, however, the review of this report cannot indicate whether there have been evaluations on the occupational sectors, professions, the number of hours performed at work/studies and discuss any gender-specific analysis of the participant's occupational situation (the full-length report is solely accessible in Dutch language).

The assessment refers to the year of 2010 at the most, thus the regularisation was very recent to the date of measurement. It seems consequently of interest to conduct a survey in order to assess the trajectories of beneficiaries on a long-term bases. Moreover, the issue of residence consolidation by then had not been an issue. However experts interviewed for the purpose of this study have repeatedly stressed difficulties encountered by regularised migrants regarding naturalisation.

Sarah van Walsum (2013) has looked into migrant domestic work in the Netherlands. She conducted a qualitative study comprising 32 semi-structured interviews with migrant domestic workers from third countries in Amsterdam. In her work, she aims to sketch out the different positions of her participants depending on the specific intersection of race, gender and residence status. In particular she analyses the effects of these different constellations on interactions with employers and the participant's struggle for rights.

In view of constraints regarding labour market access (e.g. deskilling and other obstacles), undeclared domestic care work represents an option even for regularly residing immigrants who participated in the study. There seems to be a tendency towards gendered demand in domestic workers which in addition, intersects with specific images of the 'racialized other', e.g. Filipino women as 'ideal caregivers'.¹⁰ In comparison, male participants in this study seemed to have greater difficulties to find employment in this sector, unless they were introduced by someone (e.g. women already established in the sector) (ibid: 169ff.). Informal domestic work is moreover described in interviews as giving a certain degree of flexibility and financial advantages (working without boss, flexible working hours, not paying taxes). It is noteworthy that participants interviewed holding a regular residence status, were not solely dependent on the undeclared wages they earned in private households, having either partners who earned an income or a part-time job in the formal economy. As van Walsum (2013: 168) concludes: "None are completely without access to some form of social security, whether in their own right or via their spouse." Conversely van Walsum makes clear that in her sample, participants who held no residence status eventually also had some bargaining power and eventually succeeded in negotiating the terms of work with their employers, although confined to informal employment. The author however emphasised that irregularity of the residence situation yet had an impact on how the employment relationship further evolved subsequent to its initiation (ibid.: 171ff.). In view of their exclusion from the formal labour market and state-financed services, the reliance on networks is crucial for irregular migrants. To some extent, employers may become part of the support network system of irregular migrants. The study shows that the participants turned to their employers for different causes (e.g. find work, medical care, obtain a tourist visa for a family member). In return, this may also enhance dependencies, which are already structurally induced (e.g. asymmetric power relations in the realm of employer/employee relations). Finally these may raise feelings of indebtedness towards the employer that may be easily exploited (ibid.: 173f.).

¹⁰ As the study argues, participants from Ghana had more difficulties in finding employment, due to their weak position on a racially and ethnically segmented labour market in the Netherlands. This again increases the participants' vulnerability related to their employers (van Walsum 2013: 174).

3.2. Results from the feasibility study

A core element of the feasibility study was to conduct interviews with individuals, who either regularised or live in an irregular residence situation. Based on semi-structured guidelines the interviews aimed at gathering knowledge on residence and employment status of the interviewees and more broadly, on the living circumstances of our respondents. The interviews were conducted during summer 2013 by a research institute (Labyrinth Onderzoek) in the conurbation called Randstad, which comprises the cities Utrecht, Amsterdam, the Hague and Rotterdam, all characterized by a comparatively dense immigrant population. An overview of the interview sample is given in the table below. In terms of residence status, the sample contains an equal amount of individuals in an irregular situation and of individuals who hold a residence permit subsequent to regularisation. The latter were all subject to the regularisation programme established in 2007 (Generaal Pardon, for details on programme see above). The participants, regardless of their current status, all have at some point been involved in the asylum system,¹¹ and subsequent to long pending procedures, were either rejected or received a status via the regularisation programme. Seven out of ten participants arrived to the Netherlands at their child age together with their families. Participants, who were regularised in the realm of the programme recall the procedure as fairly smooth. Without any exception, numerous references to the asylum procedure were being made in the interviews, the experience was repeatedly stressed to be very strenuous, tough and a process that generated strong feelings of uncertainty and insecurity. If a regular status was attained, it was described as a great relief, portrayed by strong metaphorical language such as perceiving the regularisation as a sensation of “animals being released from a cage”.¹² Periods of irregular residence were equally described with similar connotations, such as a feeling of being despised and perception of being “half human – half non-human.”¹³

Out of ten participants, four were Iraqi, two Afghan, one Iranian, one Azerbaijani, one Chinese and one Serbian national. In terms of gender-balance, the sample is dominated by male participants: seven male participants were interviewed and three female interviewees. With one exception only all interviewees indicated to have pursued between a minimum of 13 years up to 23 years of education (three participants 20 years, one 23 years, and in descending order 17 to 13 years for the rest of the participants), several had completed university degrees or are enrolled at university in the Netherlands. When interviews were

¹¹ In one case, the participant could not apply for asylum since his father was qualified as a war criminal by the IND and he was subsequently not eligible for international protection.

¹² 64_NL_1

¹³ 58_NL_2

conducted, three regularised participants were employed out of which one exercised his work part-time next to his medicine studies. The two other regularised participants were seeking employment, whereas the interviewees in irregular situation, with one exception only, reported they were not working and feared taking up irregular employment, as expressed on the subsequent quote from one respondent: “What will they do to me if I work on the side?”¹⁴ Individuals who had accessed a regular status by the time the interview was carried out however mentioned informal employment as a survival strategy during pending asylum procedures or in the course of their residence as rejected asylum seekers in the Netherlands. Reasons mentioned for taking up informal employment in an irregular situation were financial but also psychological motives were raised. Occupations taken up in informal employment comprised newspaper delivery, retail, farming, factory work, construction work, catering and cleaning. There were no contracts and flexible working hours, the respondents referred to their working conditions as strongly depending on the employer and whether or not their unsecure status was strategically exploited or participants were valued as equal to formal employees. It seems unclear whether talking about informal employment is simply easier retrospectively or if the regulations regarding employment have become so tight that informal employment indeed has become a risk (for the employer and the employee), leading to increased reluctance to take up informal employment despite deprivation from labour market access and or irregular residence.

Table 3: Information on participants from the feasibility study

Number	Nationality	Gender	Residence	Status
1	Afghanistan	M	Utrecht	Irregular
2	Afghanistan	M	Schiedam	Irregular
3	Iraq	F	Katwijk	Irregular
4	Iraq	M	Den Haag	Irregular
5	Iraq	M	Den Haag	Irregular
6	China	M	Amsterdam	Regularised
7	Iraq	M	Grijpskerk	Regularised

¹⁴ 55_NL_2

8	Iran	M	Utrecht	Regularised
9	Azerbaijan	F	Nijkerk	Regularised
10	Serbia	F	Roden	Regularised

Participants referred to the period of their pending asylum procedure as one with highly limited opportunities in terms of employment – in fact being restricted to volunteering and self-employment (however many liberal professions cannot be accessed by foreign nationals). Education is open to children, but not accessible to adults. Whereas some were rejected in the asylum system and then applied for regularisation, others received a status in the course of the regularisation programme because they withdrew a pending asylum claim.

The interviews conducted open up a range of insights regarding the possibility of envisaging future plans in accordance with the change of residence status. Employment, education and family life were mentioned as important dimensions. One participant arrived as a child to the Netherlands and could pursue education while the asylum procedure was pending. His family and himself received a status in the realm of the *Generaal Pardon*, which enabled the interviewee to receive financial support for his education and secured access to welfare for his parents. The participant stressed the relevance of finally having rights and legal entitlements; he recalls his life as a young asylum seeker in the following way: “You cannot work, you don’t get a scholarship. These are important things. Without money, you can’t achieve anything. We could study, but we didn’t get anything. This was a problem. Now (...) (w)e are allowed to work, we have the right to a scholarship, you can work on your development. Before the pardon, this was not the case.”¹⁵ The interviewee could, subsequent to his regularisation, apply for support for his studies, he is now enrolled in a medicine degree and works on a flexible basis (zero-hour contract) as a nurse in order to fund his studies. Another participant who regularised in the realm of the *Generaal Pardon* remarked in the interview that the insecure residence situation previous to regularisation creates a ‘gap’, which he feels has left him in a position worse off on the labour market. This feeling of “lagging behind”/“loss of time” (especially with regard to education and employment) was also shared by other participants, even those who eventually earned a university degree and found employment. Some frustration was also expressed with the search for a job, one experience mentioned being the employers’ focus on the migration background, rather than on the participant’s competences.

¹⁵ 61_NL_1

As several participants pointed out the regularisation had brought up the possibility to maintain their transnational family lives, this was especially central to participants who described their families were scattered around the globe due to conflict in their country of origin.

In the interviews with participants in an irregular residence situation references to future plans were made as well (e.g. finish a degree, take up employment, stay in the Netherlands because a return was experienced as highly unsafe and impossible). However, the current situation was referred to as very challenging and sometimes even 'without hope', the lack of status was considered a high impediment to realising any of the expressed aspirations. Whereas some participants felt they had tried anything possible in their power, other participants expressed their determination to 'cling on', went on pursuing studies and hoped to eventually regularise or reapply for a status (e.g. through asylum system) or organised themselves in *sans-papiers* movements. As already stated, some participants had arrived as children, but still were deprived from a regular residence status at the time of the interview. In one case the authorities claimed the respondent must return for he was deemed "capable enough" to reintegrate in his country of origin, a reasoning he commented in the following way: "If I returned to Afghanistan, I would be an outcast who would be bullied, discriminated or even kidnapped. I am completely adapted to Dutch norms and values, so they'd think I am strange."¹⁶ One participant had received international protection but after six years, his status was not prolonged and he was expected to return. By that time, he held regular employment, had a career, his financial situation had gradually improved, he was married and, as he stated, found himself "in a process of forgetting the hard times".¹⁷ Although his employer had a supportive attitude, the work contract was paused until the residence situation was cleared, which to the date of the interview had not been the case. The participant could live on his savings in the beginning, then had to leave his house and experienced a very unstable housing situation thereafter and was divorced later. Despite the difficult circumstances and limited support by NGOs (although stressed as very helpful), the respondent is determined to "keep on trying", and repeatedly stressed his intention to stay in the Netherlands and get back to his former employment.¹⁸

Naturalisation of participants regularised in the realm of the programme requires an original valid passport and a birth certificate since a legal amendment in 2009. In the sample, some participants regularised and eligible for naturalisation reported difficulties in providing these documents (e.g. retrieve documents from a country they fled for good reason). This was

¹⁶ 56_NL_2

¹⁷ 58_NL_2

¹⁸ 58_NL_2

being referred to as frustrating, which one participant described as a situation in which “You are constantly reminded of the fact that you are not a Dutch national.”¹⁹ The same participant also reported problems with the prolongation of his residence status that requires proof of a steady income. As a young entrepreneur, his situation does not comply with this requirement, although he stressed to have no financial difficulties. Conversely, another participant who benefitted from the Generaal Pardon had managed to naturalise without difficulties.

¹⁹ 60_NL_1

4. Conclusion

The Netherlands have adopted an active policy against migrants in an irregular situation, which amongst other things, is expressed through the legal institute of the *Koppelingswet*, the ongoing debate on criminalising irregular migration and the high reluctance to regularise, be it through programmes or ongoing mechanisms. As discussed by scholars, the *Koppelingswet* aimed to discourage irregular migration and to prevent irregularly residing individuals from third countries or third country nationals whose admission procedure was yet to be determined, from the accession of social benefits and institutions. The latter was expected to reduce the opportunities to set up a (dignified) existence in the Netherlands and thus, to facilitate the expulsion of individuals not in compliance with the national policies and/or animate return without enforcement. However, studies point to the fact that restrictive policies might enhance even more the presence of irregular migrants (e.g. because mobility is heavily impeded and return is not considered an option in view of the risks). However, the actual implementation of the framework at the local level seems to be in conflict with national policies. A range of municipalities have not complied with the national law and continued receiving and supporting migrants in an irregular situation. As experts interviewed for the purpose of this study argued, it is however questionable whether this rationale of resistance will be maintained on the long run.

The framework addressing regularisation as such is characterised by its strong link with the asylum system, this feature also becomes evident in the sample of the participants interviewed for the purpose of this study. In the period under study, one programme was carried out, which mainly targeted long-term asylum seekers, aiming to deal with the backlog of long-term asylum cases. In terms of mechanisms, the group of potential beneficiaries is very narrowly defined, one addressing persons in critical health conditions and the other one long-term staying children or young adults and their family members.

As the rich qualitative interview material indicates, experiences shared by our participants seem to vary in some regard. First and foremost, a common experience among respondents related to the asylum system, which was overall described as having 'marked' their biography. The psychological dimension of a life put on hold while awaiting a decision or in hiding due to a rejected asylum claim was described as a strenuous and difficult period, in which support from organisations and private networks played a crucial role (cf. also Bakker et al. 2013). Participants who had not accessed a regular status at the time the interview was conducted claimed their intention of staying here or at least of remaining in a EU country, as they felt the situation in their respective countries of origin made a return impossible or, in the

case of participants who arrived to the Netherlands as children, because they simply did not relate at all to their country of birth. Education was highly valued among participants, seven out of ten participants arrived to the Netherlands as children and had pursued a large part of their education in the Netherlands. A regular residence status was stressed as an important factor to access support and scholarships, offering legal opportunities to work besides studying. Employment was actively sought by regularised participants, but some reported frustrating encounters in their quest for qualified employment (e.g. experiences of discrimination, looking at the migration history rather than competences etc.). Those regularised who held formal employment were stressing their satisfaction with their current employment situation, they had elaborated career plans and had experienced a continuous improvement in terms of remuneration or at least managed to stabilise their economic situation.

Participants without regular residence status rather pointed to their reluctance to take up employment for fear of sanctions. Lacking revenues made participants dependent on support of networks and organisations, the health situation and access to medical treatment as well as finding decent housing was referred to as a great challenge. Regularised participants referred to informal employment in the course of their irregular stay, some stressed their good relationship with the employer whereas some referred to their work a situation of exploitation when recalling that period. The interview material further raises questions on the potential of discussing the topic of informal work with individuals in irregular situations, especially in view of the ever-tightened legal framework addressing informal employment and the perceived social stigma.

In conclusion, the scarcity of literature on the actual impact of regularisations on labour market trajectories and the manifold aspects revealed by the interview material, which point way beyond the role of labour market insertion (e.g. psychological dimension, housing) calls for the necessity to conduct a survey in the Netherlands.

5. References

- ACVZ, Adviescommissie voor Vreemdelingenzaken (2012): Right to protection of human dignity. Advisory report on reception and assistance for aliens residing illegally in the Netherlands and for aliens who have residence rights but no entitlement to benefits and facilities. ACVZ Maart 2012, Recht op Menswaardig Bestaan.
- ACVZ, Adviescommissie voor Vreemdelingenzaken (2013): Waar een wil is, maar geen weg. Advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken, Den Haag: ACVZ.
- Bakker, L., Engbersen, G. & Dagevos, J. (2013): 'The Importance of Resources and Security in the Socio-Economic Integration of Refugees.' *Journal of International Migration and Integration* DOI:10.1007/s12134-013-0296-2.
- Bonjour, Saskia, Dzhengozova, Mariya & Kraler, Albert (2009): The Netherlands. In Baldwin-Edwards Martin, Kraler Albert (2009): REGINE. Regularisations in Europe. Amsterdam: Pallas Publications.
- Boom, J. de, A. Leerkes & G. Engbersen (2011): Illegale migranten, in R. Jennissen (red.), De Nederlandse migratiekaart. Achtergronden en ontwikkelingen van verschillende internationale migratietypen, pp. 307-330, Den Haag: Boom.
- Boom, J. de, G. Engbersen & A. Leerkes (2006): Asielmigratie en criminaliteit. Den Haag: Elsevier.
- Engbersen, G. & D. Broeders (2009): 'The state versus the alien. Immigration controls and strategies of irregular immigrants.' *West European Politics* Vol. 32 (95): 867- 885
- Engbersen, G. & D. Broeders (2007): 'The Fight against Illegal Migration. Identification Policies and Immigrants' Counter Strategies.' *American Behavioral Scientist* 50 (12): 1592-1609
- Grütters, Carolus (2009): De praktijk van de pardonregeling. De uitvoering op gemeentelijk niveau van de Regeling afwikkeling nalatenschapoude Vreemdelingenwet. Den Haag: Suitgevers.
- IND, Immigration and Naturalisation Service (2011): A focus on the IND. Annual results 2011.
- Leerkes, A. & D. Broeders (2010): 'A case of mixed motives? Formal and informal functions of administrative immigration detention, *British Journal of Criminology* 50 (5): 830-850.

Leerkes, A. & D. Broeders (2013): Deportable and not so deportable: Formal and informal functions of administrative immigration detention, in B. Anderson, M. Gibney and E. Paoletti (Eds.) *The Social, Political and Historical Contours of Deportation*, pp. 79-104, New York: Springer

Leerkes, Arjen, Engbersen, Godfried, & van San, Marion (2007): Shadow Place. Patterns of Spatial Concentration and Incorporation of Irregular Immigrants in the Netherlands. In: *Urban Studies*, 44(8), 1491-1516.

Leerkes, A., J. Van der Leun & G. Engbersen (2012): Crime among irregular immigrants and the influence of crimmigration processes, in M. Guia, J. Van der Leun and M. van der Woude (Eds.) *Social Control and Justice: Crimmigration in the Age of Fear*, pp. 267-288. The Hague: Eleven International Publishers.

Leerkes, A., M. Varsanyi & G. Engbersen (2012): Local Limits to Migration Control: Practices of Selective Migration Policing in a Restrictive National Policy Context, *Police Quarterly* 15 (4): 446-475.

Picum (2008): Picum Newsletter February 2008. Available under: <http://www.rosengrenska.org/pdfs/PICUMfeb2008.pdf>.

Van der Heijden, Peter G.M. & Maarten Cruyff & Ger H.C. van Gils (2011): Schattingen illegaal in Nederland verblijvende vreemelingen 2009. Utrecht, 21 juni 2011, WODC, Ministerie van Veiligheid en Justitie.

Van der Leun, Joanne (2006): Excluding illegal migrants in The Netherlands: Between national policies and local implementation. In: *West European Politics* 29(2), 310-326.

Van der Leun, Joanne & Ilies, Maria (2010): The Netherlands: Assessing the Irregular Population in a Restrictive Setting. In: Triandafyllidou, Anna (ed.): *Irregular Migration in Europe. Myths and Realities*. Ashgate, 187-206.

Van der Leun, Joanne & Ilies, Maria (2008): Undocumented Migration. Counting the Uncountable. Data and Trends across Europe. Country Report: The Netherlands. Prepared under the research project CLANDESTINO.

Van Meeteren, M.J., Pol, S. van de, Dekker, R., Engbersen, G.B.M. & Snel, E. (2013): 'Destination Netherlands. History of immigration and immigration policy in the Netherlands.' In: Judy Ho (Ed.) *Immigration in the 21st Century: Political, Social and Economic Issue*. New York: Nova Science Publishers, pp. 113-170

Van Walsum, Sarah (2013): Regulating Migrant Domestic Work in the Netherlands. Opportunities and Pitfalls. In: Anna Triandafyllidou (ed.): *Irregular Migrant Domestic Workers in Europe. Who Cares?* 161-185.

WODC, Wetenschappelijk Onderzoek en Documentatiecentrum (2011): Pardon? Evaluation of the regulation to settle the legacy of the old Immigration Law. In: Cahier 2011 (10), 167-171.

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- Wolf Mannens (Secretariat, Advisory Committee on Migration Affairs)
- Arjen Leerkes (Documentation and Research Centre of the Dutch Ministry of Security and Justice)
- Godfried Engbersen (Professor of Sociology, Erasmus University of Rotterdam)
- Joanne P. Van der Leun (Professor of Criminology, Universiteit Leiden)
- Carolus Grütters (Senior Researcher, Centre for Migration Law, Radboud University Nijmegen)