

PICUM standpoint on REGULARISATION

The necessity of regularisation campaigns

A regularisation campaign is a 'cleaning' operation, meant to legalise the residence of undocumented migrants who are unable or unwilling to return to their own countries. The presence of these migrants is explained by a variety of factors. More and more people are fleeing their home countries, because of wars, famine, environmental catastrophes, etc. At the same time, most European states are characterized by a lack of a realistic migration policy, a restrictive asylum procedure and the inability to deal with asylum applications within a reasonable time, and a failing return policy. Moreover, many European economic sectors are relying on underpaid clandestine workers. All this contributes to the reasons why many people remain in a particular country without legal status. By opening a concrete possibility to regularisation, a government recognizes this crooked situation, and assumes its responsibility to restore some order and do justice to all people residing on its territory.

Installing a regularization campaign

The practice in many European countries during the last years proves that there are many different models of regularisation campaigns (see 'Regularisation campaigns in Europe, PICUM, 2001). Depending on the intention behind, several questions need to be considered.

► *Who can qualify for the campaign?*

- It should be made clear who is eligible for the campaign. The campaign can exclusively address undocumented migrants, or also foreigners with a precarious residence permit (asylum seekers who have begun an official procedure, foreign students, people who have begun an official procedure for family reunification, people with temporary residence permits, , ...).
- Some campaigns, e.g. the campaigns in most countries in southern European in the past 25 year, are used for regularisation of illegal workers, or people who are actively looking for work. The central criterion here is that the applicant can give proof of unofficial employment.
- It can be intended for foreigners who can prove long-term (uninterrupted) residence in the country (either within or not within the framework of a residence procedure). This criterion of duration of residence is of minor importance in most campaigns, except in France in 1991 (exceptional long period awaiting asylum decision), in Belgium in 2000 (exceptional long period awaiting asylum decision; residence of 5 or 6 years in Belgium)

- A campaign could also address foreigners who can prove sustainable familial or social relationships (cf. France 1997; Belgium 2000, Spain 2001), or people who are seriously ill (cf. France 1991, Belgium 2000).
- Finally, there are examples of campaigns meant for people who do not have the possibility to return (cf. Belgium 2000).

► *How should the campaign be organised?*

Taking into account that the aim of the campaign is to reach as many people as possible, and to motivate them to file their demand, the following measures can be proposed:

- The period in which applications can be submitted should be long enough (three weeks as in Belgium (2000) was too short; most of the European campaigns foresee at least 3 months). A longer application period assures less waiting time at the application offices, and more time for public awareness campaigns.
- It is highly recommendable to use clear, well-defined criteria, discussion on the interpretation should be avoided.
- A protection by law of undocumented migrants who filed a demand should be installed, to protect them from being expelled in the course of the procedure.
- Social benefits for people who filed their demand should be foreseen (possibility of employment (cf. Belgium 2000) or social support). This is necessary since almost all campaigns exceed the duration that has been set, some people may wait years to receive an answer.
- A complaint procedure should be installed for rejected applicants.
- The application should be treated by an independent commission in which NGOs are also represented (cf. Belgium 2000) instead of by the Ministry of Interior Affairs or Justice (cf. other European countries)
- The NGO-world should be involved in the setting up of the campaign, to enhance the confidence of candidates in the procedure and to assist in the filing of the applications. Also Trade Unions could play an important role.
- The alleged 'magnetic effect' of a regularization campaign on new (illegal) migrants can be restricted:
 - o by making the reference date for the campaign early enough, foreigners who want to travel off to the regularization-country at the last minute to try their luck will be discouraged
 - o by using clear and simple criteria
 - o a European harmonization of the regularization policy will counteract "regularization-shopping"

► *What should be the result of the campaign concerning 'residence'*

It should be clear in advance in which statuses the regularization will result. The choice is between a permanent residence or a temporary (conditional) residence, with for example a possibility to extension to undefined residence in case of actual employment.

Pointing at the (positive) effects of regularization

Although many fears exist regarding a regularisation campaign, it should be recognised and reminded that many European countries have positive experiences with these campaigns.

First of all, it is more easy to ascertain access to basic social rights to legal, 'registered' inhabitants. Legalised migrants run fewer risks of becoming marginalized and excluded.

A regularization does not necessarily imply an additional cost: legal residence leads to broader participation in economic life (possibility of official employment with payment of social contributions and taxes ...). It is beneficial to public security, and it creates a better visibility which makes policies more effective.

Need for broader structural measures concerning the phenomenon of migration

A regularisation campaign, being a single action meant to legalise the status of a certain group of undocumented migrants, is not a final solution to the problem of illegal residents in a particular territory. Such a campaign never reaches all the undocumented migrants: every day new people find their asylum claim rejected, new people enter the state clandestinely, etc. More and more people are also finding themselves in precarious humanitarian situations (serious illness, no possibility to go back because of civil war in the country of origin, strong social ties to the host country, ...), making the need for a regularization of their residence very real. Therefore, there is a strong need for a permanent regularisation policy, or at least for a legal ruling of all these different humanitarian situations.

Since a regularization campaign, a permanent regularization procedure or a legal ruling will never be a solution for all undocumented migrants, it is important to protect the basic social rights of this group of migrants. Everyone's right to health care, to shelter and food, to education, to legal advice etc. should be safeguarded regardless of status. Since most of the undocumented migrants are also workers, it is crucial that their employment rights are respected. Assistance to undocumented migrants to help them accessing these basic rights should never be penalized or criminalized.

Regularization is only a –necessary– treatment of the symptoms; it does not address the causes of illegal migration. Regularization of illegal residence should be combined with the installment of a realistic and humane migration policy, with international cooperation to combat root causes, a good asylum procedure and fewer deterrent measures, and a fair procedure for family reunification.