

How to secure a regularisation

Case Study

Belgium Regularisation



Organisation: Confederation of Christian Trade Unions of Belgium (ACV / CSC)

Year of Regularisation: 2009



Overall context

Migration and geographic context

Belgium over time has become a country of permanent immigration¹. However, prior to the 1980's labour migration and asylum policy developed in a piecemeal and ad-hoc fashion. In an attempt to address this decade long short fall, more comprehensive immigration laws were adopted, including on citizenship and integration policies. By the end of the 1990's and early 2000's the government reformed policies of asylum, and family reunification and a single approach to asylum and migration was brought in under the Secretary of State Asylum and Migration.

However, successive Belgium governments have maintained restrictive asylum and immigration laws and policies, which have led to large numbers of undocumented people with limited possibilities to regularise their immigration status.

History of advocacy for undocumented rights

In advance of bringing in more restrictive immigration measures, the Belgium government introduced a regularisation in 1974, to 'set the clocks back to zero'. This regularised 7,448 people out of 8,420 applications submitted². Throughout the 1990s, the Belgium authorities legalized just over 1,000 undocumented people every year, on a case-by-case basis³.

A second regularisation took place in Belgium in 2000 (exceptional law 22/12/99). The application process lasted for three weeks during January 2000 and applicants submitted forms in their town of residence. Around 36,662 applicants were made in respect of roughly 50,000 people, of whom

some 23,000 were minors⁴. This regularisation was based on four main criteria (1) a long-term asylum procedure, (2) impossibility of return, (3) medical reasons or (4) humanitarian considerations or social ties^{5,6}. An independent 'Regularisation Commission' composed by Magistrates, advocates and NGO's, examined all negative decisions and had the authority to grant stays. A total of about 40,000 persons were regularised until 2005⁷.

In 2009, a third regularization was introduced with criteria based on durable social ties - 'sustainable local anchoring', and regularisation through employment. This case study focusses on this regularisation from a Trade Union perspective.

How Confederation of Christian Trade Unions (CSC) initially got involved

Since 1947, the Confederation of Christian Trade Unions (CSC) has been organizing Trade Union actions for migrant workers to strengthen global action through solidarity. However, years of discretionary and ad-hoc policies, saw huge numbers of undocumented workers working irregularly, experiencing exploitation but playing a crucial role in the labour market and directly contributing to society.

The CSC's work with undocumented workers accelerated dramatically in 2008 in Brussels as more and more undocumented workers sought legal advice and information through the CSC Brussels legal advisory service. This work developed a collective response and began to support a group of undocumented workers to affiliate with the union.

Advocacy & Campaigning

Overall advocacy strategy and development

The work of CSC was part of a larger campaign to regularise undocumented people in Belgium that involved many different organisations and groups and began in 2003. By 2009, the Union of Defence of Undocumented People and the campaign for regularisation was supported by a strong and active coalition of civil society organisations, religious groups and eventually Trade Unions like CSC. It was this alliance as a whole that eventually gained sufficient power to convince the government that they needed to respond to this issue, thus securing the regularisation of 2009 on which this case study focusses.

This case study aims to provide an insight into the work of the CSC to support undocumented workers to come together and stand up for their rights as part of our Trade Union and also to support their involvement in the broader movement for regularisation.

It will outline some tactics and strategies employed by the broader alliance both together and individually that led to regularisation but with a specific focus on the work of the CSC Trade Union and our undocumented members. We will look at how this group was formed and supported, the tactics it implemented and, most importantly, the strong influence and impact that the CSC undocumented workers committee had in the broader campaign and in securing the regularisation.

Tactics and actions employed.

1. Individual to the Collective

CSC in Brussels first came into contact with undocumented workers who sought legal advice and information through its legal advisory service. The CSC Brussels supports members to claim back their wages, putting pressure on the employer by calling the employer or sending a letter and in some cases threatening or using legal or collective action. The advice service was very important for helping individuals but also for beginning to change the perception and kick start our campaigning on this issue.

Once able to support people individually, CSC began to have conversations about how we could work collectively. As part of an engagement strategy, workshops on immigration, residence, and labour rights were held to identify leaders and recruit people into the Union. Once recruited, CSC brought people together to talk about the root causes of their situations and to strategize and take action on the issues that mattered most to them.

2. Participation and empowerment of undocumented people

At the end of 2008, a group of undocumented workers and members of the CSC were supported to organize themselves within the official structure of the CSC BHV (then Brussels-Halle-Vilvoorde which defined later a specific movement in Brussels and another in Halle-Vilvoorde-Leuven) trade union. CSC supported undocumented workers to come together to raise awareness both within the union and externally to shape public opinion on the rights of undocumented workers. Its ethos was grounded in people directly impacted speaking out about their issues, planning actions and being at the forefront of strategy for change, even calling out political inaction in a very professional way.

• **Committee of Undocumented Workers:** This new specific group was founded within the Union to address exploitation and the problems caused by the absence of a work or a residence permit.

• **Recruitment and information sharing:** The Committee of Undocumented Workers was ideally placed to develop new strategies to call for change. In the early stages it focused on resource-sharing, recruiting new members and denouncing employers. This was really important in growing the strength and knowledge of the group.

• **Training:** The Committee of Undocumented Workers were able to use the existing Trade Union systems and structures to provide training to members on topics such as labour and immigration rights. This was really important to make sure undocumented people were equipped and empowered to make decisions on the campaign and how they could take action to effect change.

• **Developing and ask:** This group also worked together to agree a clear set of demands. These were:

1. A permanent mechanism, with clear criteria, for the regularisation of undocumented migrants who were been living in Belgium for several years
2. The protection of undocumented workers when filing a complaint against their employer, i.e. a firewall with immigration authorities

1. Belgium's Immigration Policy Brings Renewal and Challenges: Migration Policy Institute: October 2003 <https://www.migrationpolicy.org/article/belgiums-immigration-policy-brings-renewal-and-challenges>

2. ADDE, Etat des lieux de la régularisation de séjour <https://www.adde.be/joomdoc/guides/regularisation-de-sejour-dec2011-m-b-hiernaux-pdf/download> Décembre 2011

3. Belgium's Immigration Policy Brings Renewal and Challenges: Migration Policy Institute: October 2003. <https://www.migrationpolicy.org/article/belgiums-immigration-policy-brings-renewal-and-challenges>

4. ibid

5. Law 22/12/99 https://etaamb.openjustice.be/fr/loi-du-22-decembre-1999_n1999000985.html and Godin, Marie, et Andrea Rea. « La campagne de régularisation de 2000 en Belgique : une analyse genrée », Migrations Société, vol. 129-130, no. 3-4, 2010, pp. 75-90 <https://www.cairn.info/revue-migrations-societe-2010-3-page-75.htm>

6. ILO Geneva, International Migration Papers No. 116 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_222293.pdf p 15

7. Fact sheet – Regularisation of Irregular Immigrants in Belgium: EMN https://www.udi.no/globalassets/global/european-migration-network_i/konferansefiler/fact-sheet-regularisation-of-irregular-immigrants-in-belgium.pdf

8. ibid

9. The largest TUC in Belgium with more than 1 500 000 members

- **“Communic’action” Group:** The committee set up what became known as a “communic’action” group to monitor public opinion and to connect people together collectively. A strategy from this group enabled undocumented people to speak out more easily and share their stories, to challenge the discourse around undocumented people and to win public opinion.

- **People directly impacted speaking out:** The CSC Brussels Committee of Undocumented Workers developed a story-led campaign model and began to support active members of the committee to tell their stories publicly. While this was a very daunting experience for those involved, it was ultimately hugely impactful for these personal stories to be shared publicly. This had impact on public and political opinion in relation to undocumented people.

3. Alliance Building

The 2009 regularisation is an example of the power of alliance building in affecting change. It was the culmination of many organisations and grassroots activists coming together to secure regularisation. This broad network of allies added legitimacy, power and support to the campaign and brought awareness to a much wider audience through various mobilisations and actions.

- **Union of Defence of Undocumented People (UDEP):** By 2009, different community groups of undocumented people as well as individuals had come together to form the UDEP and were leading critical demonstrations and mobilizations to maximize political pressure.

- **Coalition of civil society organisations, religious groups and Trade Unions supporting the campaign.** Civil society organisations included Coordination et initiatives pour réfugiés et étrangers (CIRÉ), Refugee Work Flanders (Vluchtelingwerk), FAM, Contre les Rafles, les Expulsions et pour la Régularisation (CRER), Amnesty Belgium, ORCE, Mouvement Ouvrier Chretien (MOC), Mouvement contre le racisme, L’antisémitisme et la xénophobie (MRAX) and Collectif de Résistance Aux Centres Pour Etrangers (CRACPE). The main religious organisation involved was the Flemish Catholic Church and the main Trade Unions were ourselves, Confederation of Christian Trade Unions (CSC), and Fédération Générale du Travail de Belgique (FGTB).

- **Trade Union as a powerful ally:** While the CSC and FGTB were already supporters of the overall alliance campaigning for regularisation. The CSC Committee of Undocumented Workers in Brussels really succeeded from 2008 onwards in forging deep support for the undocumented campaign from other

individual members of the trade union who were not undocumented.

The Committee of Undocumented Workers raised motions in general assemblies of the CSC to support their calls and activities. This was a great way to bring the broader membership of the Trade Union together in support of the Committee of Undocumented Workers and all undocumented workers in Belgium. The support in terms of sheer numbers of the broader membership of the TU was a huge source of power for the campaign in its final push for regularisation. The Trade Unions also were able to use their significant political influence to help secure the regularisation.

- **Student Organisations and Universities:** Another major ally that came at a late stage of the campaign were student organisations and support from Universities. Thousands of students all over the country marched in the streets to denounce the political situation and support undocumented people in their demands for recognition and obtaining a legal status and dignity. University rectors also played a strong role at a political level in pushing for regularisation.

- **Religious Organisations:** The involvement of religious organisations, in particular the Flemish Catholic Church, came at a key stage in the campaign and helped hugely in exerting political influence over political parties and individual politicians who had a strong link to the church.

4. Collective Action

The CSC Committee of Undocumented Workers were aware of the importance of raising awareness at a collective level rather than continuing to carry out individual actions which had limited impact on public opinion. It began to think about a more collective advocacy strategy that included speaking out on exploitation and injustice and taking action in demonstrations and mobilizations both organised by the CSC and the broader coalition.

- **Creative Actions:** Both the CSC and the members of Committee of Undocumented Workers created political pressure through involvement in a variety of different actions, hosting events, films, photos exhibitions. These were important in moving the dial of public and political opinion but also a great way to bring people into the campaign and support them along their journey for change.

- **Mobilisations:** The CSC Committee of Undocumented Workers was committed to collective action as the best way to achieve immigration reform in Belgium. They organized mobilizations and demonstrations as well as participating in

others organized by the broader coalition who were campaigning for regularisation. These mobilisations were ultimately hugely successful, and the sheer numbers that were brought together by the broader membership of the Trade Unions made a difference in showing power to help secure regularization.

- **Radical Action:** As a response to the lack of action after the 2007 government commitment to regularisation by the Leterme government, the overall movement gained strength through collective action that could not be ignored. This included radical action such as the occupation of churches and universities, and hunger strikes. These actions gained huge media and political attention and drove the campaign forward at a very important time.

5. Political Engagement

There were several elements of political engagement that really helped to secure this regularisation. These included presenting to political committees, influencing political parties and ensuring political champions supported the campaign at key moments.

- **Union of Defence of Undocumented People (UDEP) Political Engagement:** In 2006 UDEP was received by the committee of the chamber as representatives of undocumented migrants. This proved very important in getting regularisation on the political agenda. At that time Patrick Dewael, a liberal of the MR (Mouvement Réformateur), then Minister of the Interior, blocked the discussions. However, the issue had been put on the political agenda and was defended by several parties later when they formed the new government in 2007.

In March, the new government “Leterme 1st” agreed that migration policy would include regularization of undocumented persons. However, nothing concrete in terms of public policy was implemented.

- **Trade Union Political Engagement:** As a trade union, CSC had a range of access to national spaces and raised these issues where and when we could in particular through social dialogue structures and with political representatives.

The unions are the most influential organizations in the Belgian political world (with 3 million affiliates belonging to the CSC and the FGTB alone). The Unions were able to support the movement in a more institutional and formal manner and were able to play their recognized and legitimate role of influence in politics.

Later in 2009, with a political commitment to regularisation, and against a backdrop where the

extreme anti-migrant discourse from the NVA (far right) and Vlaams Belang (extreme right) was firmly on the margins and not gaining popularity with the general public, the unions (CSC and FGTB) were able to exert political influence to get the scheme over the line. This culminated on 18/03/2009, when the alliance of the two unions met with the Prime Minister to enforce the initial agreement of the government.

- **Political Champions:** At a very late stage in the campaign for regularisation there were regional elections which threatened to block regularization. After the elections, the political regional level rallied to the cause through the Minister of Employment in BRUSSELS B. Cérexhe, the Minister of the Interior J. Milquet and the Secretary of State M. Wathelet all from the CdH party (Christian Democrats).

CSC who were well aligned this party denounced the political laissez-faire and found a “listening ear” and a real will in the leader Joëlle Milquet, then Minister of the Interior. She facilitated discussions with Melchior Wathelet then Secretary of State for Asylum and Migration of the same party.

It led to the deep involvement of Herman Van Rompuy, at the head of the government, as one of the main Flemish Catholics through the CD&V (Flemish Party). He was decisive in this matter, personally investing in considering the regularisation of undocumented workers as a priority in his program. This prioritisation by Van Rompuy was in contrast to Prime Minister Yves Leterme who, despite signing the declaration of the Leterme Government I which included regularisation, had not prioritised it in the early part of his tenure.

Stakeholders involved

This campaign was founded on the idea of coalition and a broad group of stakeholders coming together to achieve change. Without listing all those involved again, all of the following stakeholders played a key role at some point in the campaign: Undocumented community groups and individuals, NGOs, other civil society organisations, Trade Unions, Religious Organisations, Universities and political allies.

The fact that all of these groups came together to form a broad movement for regularisation added huge weight and power which eventually led to the governmental agreement for regularisation.

The downside of such a broad grouping being involved in the campaign was that inevitably there were some disagreements on approach between traditional organizing and civil society and more moderate and radical approaches to

winning. However, despite ideological and strategic differences, the coalition and their subsequent actions were the catalyst needed to achieve regularisation.

Process for securing commitment

A consistent and intense period of campaigning in 2008 eventually led to the regularisation being announced and implemented in 2009. Key to this were a series of large demonstrations pushing for change and the more radical occupations of churches and universities. A combination of these large and more radical demonstrations and a changing public awareness and opinion on the issue forced the government to finally bring in a regularisation.

The large numbers of people mobilized to support these demonstrations was in some part thanks to CSC Committee of Undocumented Workers work in spreading the word and securing commitment from other trade union members as well as the involvement of student organisations.

The Trade Unions' official involvement (mobilizations, official advocacy, individual support for undocumented people) represented, in our eyes, the tipping point, which made it possible to reach an agreement on 18th March 2008.

As a direct result of the trade unions' involvement university rectors and professors joined the cause. Starting at Université Libre de Bruxelles (ULB) in

Brussels, this then spread to all the universities in the country. The occupations of undocumented persons spread to the most important universities in the country (Université Libre de Bruxelles, Université catholique de Louvain, Katholieke Universiteit Leuven, Vrije Universiteit Brussel, Université Saint-Louis, University of Namur, though not Liège University), with the Flemish universities in particular playing a central role in influencing the political discourse in Flanders. On March 19th 2009, Philippe Vincke, rector of ULB representing the rectors was part of the delegation that met with Minister Van Rompuy.

Another key moment in securing the commitment was when the Flemish Catholics Church officially joined the movement. Previously the institutional support of the churches was marginal even though many churches had been occupied. By reaching the Flemish Catholics, key politicians were influenced and in particular the Christian Democratic and Flemish Party (CD&V), a Christian political party. Very quickly the Algemeen Christelijk Werknemersverbond (ACW), the political voice of the CSC, who had a close relationship to the CD&V facilitated the occupation of their buildings in Antwerp.

In response to this intense period of activity and political support, Van Rompuy and the political allies mentioned previously managed to negate the blockages feared from the regional elections and determine a framework of regularization, finalized at a federal level in the ministerial circular of 19 July 2009 at the political level.



Key challenges

- **Raising awareness** of the issue takes time and it is difficult to build solidarity and support if the general public doesn't fully understand the issue

- **Building participation** and leadership is hard, people need to be equipped to take real responsibility and risk, which takes significant resources and investment

- **Disagreement on ask:** No agreement was reached across the broader alliance on specific criteria for a regularization. In fact, some of the more institutional demands of CSC, such as defining clear criteria to remove objectivity in assessing applications were criticized by other parts of the coalition, in particular the students' movement. Nevertheless, we believe it was very useful for the CSC Undocumented Workers Committee to have their ask clearly stated and approved by the undocumented members of CSC to give focus to their campaign activities and in the end some of what we put forward was included in the final scheme.

- **Disagreement on approach:** There were also different approaches across the alliance on campaigning. Some in the alliance preferred to focus on calls for charity and humanitarian aid for undocumented people. While this approach may have kept the issue on the agenda in the media it did little to influence policy. Other in the alliance, like the Trade Unions, believed a different approach was needed which sought to influence political action and bring about real social change for undocumented people.

Key learning

- **Participation and leadership** makes everything stronger. It is so important in any campaign for regularization to ensure those affected are involved and to build a collective approach. The groups knowledge of the issues, being able to share their stories and build awareness of the solutions was central to success

- **Building power** is so important. This was not done by one group alone but with a strong network of allies showing decision makers that the issue is important.

- **Using Allies to convince politicians:** Being able to identify particular allies with strong links or influence to key political targets can be very powerful in achieving change

- **Personal stories** move people and change opinions and are key in building support for change

- **Radical Action:** Sometimes radical action is needed to get what you want

- **Trade Unions** can bring a huge audience of supporters if the work is put in to build understanding, awareness and solidarity about difficulties undocumented union members are facing



Implementation

Involvement of NGOs in scheme creation

CSC played a significant role in pushing for defined criteria and in particular for the work strand of the regularisation. They did this as part of the national alliance and also as CSC Brussels (called then CSC BHV) with the CDH Ministers at National level through J. Millquet and at regional level through B. Cerexhe.

Announcement, dissemination and outreach

On 19th July 2009, a ministerial instruction was adopted by the Van Rompuy Federal Government on the application of Article 9 bis of the Law of 15/12/80 for a specific period (from 15 September 2009 to 15 December 2009 to allow for the legalisation of stay for certain categories of foreigners who met some newly defined criteria.

Criteria:

The criteria applied for this regularisation were as follows:

- I. (i) Local anchoring based on durable social ties. This criterion provided for regularisation according to a lasting local anchoring for those who had been resident in Belgium for more than five years
- II. (ii) Economic regularisation through work. This criterion allowed third-country nationals who had resided in Belgium without interruption since 31 March 2007 and could present a labour contract for a full-time position of at least one year with the gross minimum wage of €1,387.49 could apply for economic regularisation.

Additionally, the regional authorities had to agree to deliver a work permit.

Applications and process

Between September and December 2009 undocumented people had three months to apply. People could apply through a lawyer or through the CSC Brussels legal advice service. We managed to have a high level of accepted files from those we submitted because members of the Trade Union team accompanied the persons, checked the demands, listened to the persons (a condition: to be part of the CSC as a member or an activist, thus as a worker)

Outcomes

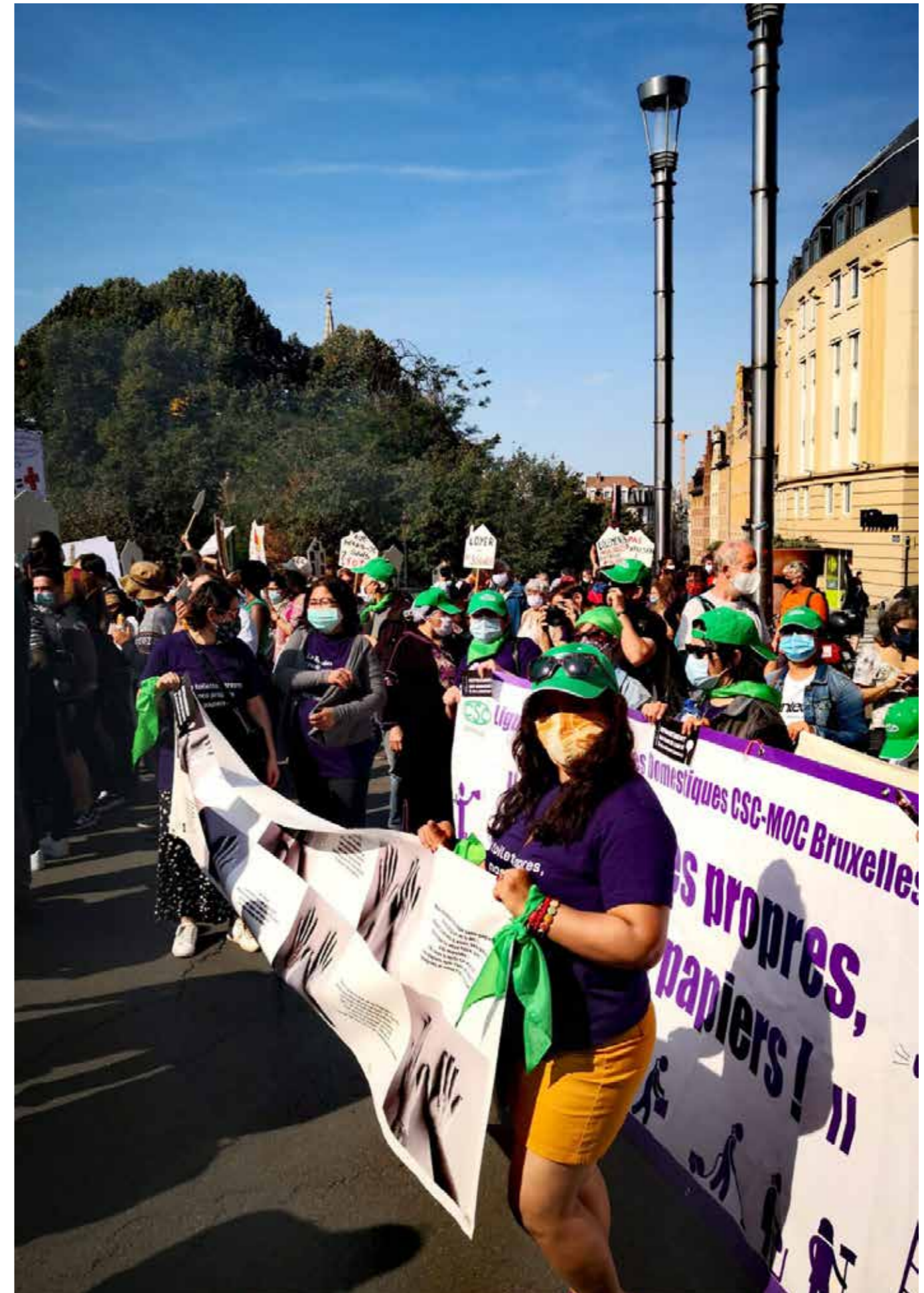
The outcomes of the scheme were different depending on the criteria a person applied under and the specific situation.

For those who applied under criterion (i) (local anchoring) they were awarded permanent residence. This included those with 5 years residence and those with 4 years residence and children. There was also a reasonably high success rate for those who applied under this criterion.

However, the situation was very different for those who attempted to regularize under the criterion (ii) economic regularization through work. This included those with at least 2.5 years of residence and who could prove a 1-year labour contract.

For the people contacted as part of the review of this regularisation channel (all of whom had applied through this criterion) there was a less than 50% success rate¹⁰. If successful they were granted a work permit and a 1-year immigration status, to be renewed yearly, and were only entitled to an unlimited stay after 5 years of uninterrupted stay.

This led to huge issues for those in this second category. Many subsequently fell back into irregularity due to the lack of security and permanence in the immigration permission granted as part of this regularization.



10. Évaluation de la régularisation par le travail décembre 2012 <https://www.cire.be/publication/evaluation-de-la-regularisation-par-le-travail/>

Key challenges

At the end of 2012, CIRé, O.R.C.A, the CSC and FGFB published an evaluation of the scheme, highlighting a series of difficulties which many applicants encountered with this regularization programme. The main issues included the complexity and length of the procedure and abuses resulting from the increased dependence of workers on their employers for those applying under the employment criterion.

- **Different Outcomes:** The 2009 regularisation was split in its approach and gave some people permanent residency and other temporary residency.

- **Dependence of employer:** The group most impacted were those who applied under the 2.5 years criteria for a work permit. In this case there were reports of significant abuse and exploitation as a direct result of making the person dependent on an employer

- **Lack of information** for employers and workers. Information about the process and procedure was disseminated very late in the day. Simple things like the form of the employment contract was not clearly shared early enough

- **Waiting times:** The length of the procedure has resulted in thousands of files waiting long periods to be processed. This administrative slowness was due to municipalities processing cases very slowly as well as a complex and over bureaucratic processes. This was most felt by those waiting for employment permits. There was no priority for processing regularisation through work files and the long processing times led to the withdrawal of prospective employers.

- **Low success rate:** There was a low success rate in particular for the employment criterion. According to the evaluation by CIRé in 2012 only 3,253 people regularized through this criterion compared to 7,025 people whose applications were initially accepted for processing.

- **Lengthy procedure for the renewal** There was also a very lengthy procedure for those wishing to renew the B permit and consequently the residence permit. This administrative slowness actually resulted in many people becoming undocumented again.

Key learning

- **Quick results are vital:** The issuing of positive results within a reasonable timeframe is so important in order to ensure people remain in a position to avail of the scheme. This is particularly true where the status is dependent on a particular employer or job which may not be still available after the long waiting period.

- **Do not tie to an employer or job:** As well as issue indicated above, the permission granted should not rely on any one employer or job. This leads to a significant power imbalance and means a huge risk of poor working conditions and exploitation.

- **Stable and secure status:** All regularized people should receive a stable and secure status. The difference can be seen so clearly in the two strands of this programme. Those who received permanent residence had much better outcomes than those who received a temporary work permit, many of whom fell back into irregularity.

- **A clear and simple application process:** This is hugely important to ensure people can get through the process without having to rely on employers, solicitors, or others to help them.



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