EUROPEAN MIGRATION NETWORK

Belgian Contact Point

Illegally Resident Third Country Nationals in Belgium:

State approaches towards them and their profile and social situation.

EMN

The current report is the Belgian contribution to an EU-wide investigation on illegal immigration and the approach of the Member States towards illegal immigrants. This investigation is being undertaken by the National Contact Points of the European Migration Network (EMN), a network established in order to collect and classify information on migration and asylum, provide access to this information and facilitate the exchange of it. The EMN also analyses this kind of information and has its own research projects. The intention is to identify similarities and differences in the approaches of the EU Member States towards illegal immigrants by comparing the studies made on the national level, to stimulate the exchange of information, to promote goodwill and understanding between the Member States and, in this way, to contribute to well-founded and well-informed policy making. More information about the EMN is available on: www.european-migration-network.org

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More written contributions from the Belgian Contact Point are, among others, Policy Reports on Asylum and Migration (2003-2004; 2004-2005 to be expected soon) and a small scale study on "Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Belgian Reception System".

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ABBREVIATIONS

ABVV:	Belgian Socialist Trade Union (Algemeen Belgisch Vakverbond)
AL:	Alien's Law
BS:	Bulletin of Acts, Orders and Decrees
CCPR:	International Covenant on Civil and Political Rights
CGKS:	Centre for Equal Opportunities and Opposition to Racism
CGRS:	Commissioner-General for Refugees and Stateless People
CLA:	Collective Labour Agreement (CAO)
ECHR :	European Convention on Human Rights
FPA:	Federal Public Authority (Ministry)
IAMM:	Information and Analysis Centre Human Trafficking and Human Smuggling
ICESC:	International Covenant on Economic, Social and Cultural Rights
IS:	Immigration Service
NPMA:	non-profit making association (VZW/ASBL)
OECD:	Organisation for Economic Co-operation and Development
OLT:	Order to leave the territory
OSCE:	Organisation for Security and Co-operation in Europe
PECO:	Pays d'Europe Centrale et Orientale
RD:	Royal Decree
SWA:	Social Welfare Agencies (OCMW/CPAS)

INTRODUCTION

Internet sources were particularly used (e.g. NGOs websites), scientific publications, annual reports of authorities as well as NGOs and specific documents (for example: press articles). Colleagues from the Ministry of Internal Affairs, other authority services, NGOs and scientists were also got in touch with by phone and by mail. A personal appointment was made with some of them. As the study advanced, the network progressively expanded, e.g. searchers referring to other searchers or the search for researchers whose names and publications were found in the bibliography of another work. The enthusiasm of the contacted people was not uniform: while some of them were eager to provide information, some others were rather reluctant. There are in Belgium rather many sources setting out the juridical and social aspects of the matter but obviously fewer taking the economic and financial sides of the matter into consideration. Whenever it was judged necessary, foreign sources were also consulted or referred to. Within the framework of EMN's mission, no new inquiry has been carried out but the already existing information was synthetized. Some of the subject's sets of themes like for example illegal transit migration as well as the delicate theme of foreign unaccompanied minors are only sporadically brought up namely whenever it was judged necessary in order to carry out this mission. As far as possible, the theoretical considerations were coupled with matters of facts based upon practical experiences.

Moreover, the framework of reference is limited to the local (national) level and does not consequently take into account the so-called push-factors or complex political and socio-economical sources of inequality because, on the one hand, it was not the objective of this report and would, on the other hand, lead to a too discursive study. As far as the term "illegal alien" is concerned, some people point out that this often leads to a negative connotation. If the terms "illegals or illegal foreigners" are sometimes used in the report, this is only for the sake of using a synonym (unless otherwise expressively specified) for people in illegal residence, undocumented migrants, clandestines, etc. but does not entail any negative value judgement about the very ones concerned. Information about the social situation of people in illegal residence is only given when it can further the report: since it is obvious that most illegal migrants generally live in hard circumstances precisely because of their statute of residence, it was considered unnecessary to lay even more emphasis on it.

Finally, although the title is "State approaches towards illegally third country nationals", reference was made for a part to migration of the current EU member states (notably and mainly Poland), especially because it will be shown that the different aspects of the (former) illegal migration from Poland to Belgium is illustrative and applicable to other groups of illegals and migration types (request to be hired in the informal economy, series of migration (chain migration), etc).

EXECUTIVE SUMMARY

According to the Court of Arbitration illegal aliens have, in principle, the same rights as Belgians, unless the law itself makes exception to this. Still according to the Court, the authorities have the duty, on the basis of the principle of subsidiarity, to use as a priority all the direct means contained in the Aliens Act in order to maintain a restrictive migration policy. Jurists are of the opinion that the increasing significance of human rights protection has had the effect that undocumented aliens are also recognised as legal entities who have a number of basic rights to be respected. The nation-state may have become less important, under the influence of international treaties.

The right of access to medical care and to education and vocational training, the right to housing, the right to income security, the right to family life and the right to legal aid are being discussed; subsequently, it is being examined to what extent and under which circumstances undocumented migrants could claim these rights. At the same time and as far as possible the practice in the field is looked at (for example, Belgian courts tend to be more flexible than the European Court of Human Rights, certainly in medical disputes).

Only urgent medical care, education for minors and legal assistance appear to be absolute basic rights for undocumented migrants. Otherwise, a case by case assessment of the situation is required, given the complexity of the matters in dispute concerning aliens and the divergence of factual situations in the field. It should also be mentioned that although in theory protection is sometimes provided, an undocumented migrant is in practice highly unlikely to (try to) claim it, from ignorance or for fear of becoming known. To illustrate this, the Minority Decree of the Flemish Community is examined; this Decree looks at the problem from a humanitarian point of view as well and is not incompatible, in the opinion of the entitled Flemish authorities, with the federal migration policy, since the granting of social rights would by no means shut the door to the federal removal policy.

There is no sound information on the number of aliens in Belgium – we do not know how many tens of thousands are involved. During the last 15 years, some few estimates have been circulating based on different techniques (mostly the Delphi method), but they should be interpreted with much caution, as is the case with the number of intercepted illegal migrants. Countries each time involved in interceptions these last years – who may partially be considered as countries of origin of aliens without legal residence – are Yugoslavia, the future member states Romania and Bulgaria, the Maghrib countries, Polish moonlighters, Iran, other countries around the Black Sea, “population giants” China and India, Albania, Afghanistan and Iraq (surely for the last two countries identity hiding is a phenomenon to reckon with). Nevertheless, extended research has shown that in the case of certain nationalities the number of illegal migrants is (was) by all means (much) higher than the population of the legal community (e.g. Poland, Colombia). There is also evidence that the illegal transit migration has diminished in 2004 by comparison with previous years.

In a subsequent chapter some reports are treated. In part they deal with the social situation and the daily life – the survival or residence strategies, one may call it – of illegally residing people. Most of these reports are the result of so-called intensive investigation, during which in-depth interviews were taken of the target group (Poles, Colombians, Roma people and various other groups). Among the important findings are the following: undocumented migrants use all kinds of methods to be able to reside in Belgium, that is to say to acquire a residence permit or, if that seems difficult or even impossible, at least not to become expelled; the fact whether or not the undocumented migrant has resided legally before affects the choice of the residence strategy; only a small number has already been in trouble with the police (during illegal stay); knowledge of the country of origin is crucial to understand the world of undocumented migration and the motivation of undocumented migrants; a certain freedom of action of the officials and the staff carrying out the work brings the illegal migrant to think of the system as unfair and unpredictable, thus affecting the hope of a possible regularisation; prevention campaigns seem to be very important because many people have a false idea of the West European society; voluntary return, without the migrant regarding his migration project as completed, is hardly taken into consideration because the undocumented migrant usually has to pay off a debt and cannot afford a loss of face in the community he left behind; chain migration plays a key role in the illegal migration. At the same time, a short description is given of the pressing problem of the international domestic staff which in Belgium draws more and more attention. A variety of reasons lead some to believe that the demand for domestic staff will rise even more in the future (for example, the ageing of the European population, the changing family structures, a lack of affordable babysitters, a lack of facilities for the elderly).

With regard to measures on the national level, Belgium is in favour of a multidisciplinary approach focusing on immigration law enforcement, efforts to reduce the grey economy and removals. On the basis of reports of the Aliens Office and the federal police – the main actors in the fight against illegal immigration – the issue is further amplified and the way the authorities anticipate and react is explained as well. Through the REAB programme (Return and Emigration of Asylum Seekers ex Belgium) the IOM provides us a better understanding of voluntary returns. According to the IOM, there is a connection between voluntary and forced returns, though it is a rather weak one. The number of returning illegal migrants who never applied for asylum is increasing. The average age of the voluntary returns corresponds with that of the forced returns. It looks as if many illegal migrants arrive in Belgium (Europe) at an early adult age. Particularly in the fight against human trafficking and human smuggling a multidisciplinary approach is followed: in 2004, two panels have been set up (the Information and Analysis Centre for Human Trafficking and Human Smuggling and the Interdepartmental Co-ordination Unit for Human Trafficking and Human Smuggling) which have to make strategic analyses; these panels consist of representatives from the competent administrative and judicial services. As an example, a brief survey is given of the Iranian and the Chinese smuggling of humans into Belgium. The pseudo-legal migration – mainly the abuse of the marriage status and the student status – is becoming increasingly important in attempting to get away with the immigration stop. Belgium remains dedicated to an internationally co-ordinated approach in the global immigration policy, its participation to numerous working groups on the subject is evidence of this.

Little concrete information is found on the impact of illegal immigration on the host country (only some theoretical thoughts) and, in any case, views differ on that matter. Not surprisingly, there is a consensus about the fact that illegal immigration is negative and must be avoided, yet there is also controversy about the way this has to be achieved, on to what

degree illegal immigration is negative and on which consequences illegal immigration has on Belgian society. The negative consequences are mainly becoming apparent in the economy, in the tax system and in the field of security. Therefore, inevitably, the informal economy and the discussion about legal (labour) migration come into the picture. On the basis of some reports a survey is given of the main high-risk sectors and high-risk nationalities, both on the national level and, more specifically, in the Brussels region. Sometimes the exploitation is clearly visible, but it cannot be considered a general phenomenon. The illegal migrant is very flexible and motivated, as he has no alternative anyway. It should be avoided to hold only the undocumented migrant responsible for the large shadow economy – which appears to be more dynamic than the official one –, simply because that is by no means the case. Sometimes illegal migration is more advantageous for the host country than legal migration (leaving ethical questions aside). Illegal migrants seem to function as a kind of lubricant in the lower sections of the labour market; as to that, however, the question arises whether this could not be resolved by reforms in the labour market and the social security system. Fighting the informal economy is at least as much important to restrain illegal migration as border checks. Once again reference is made to the existence of established migrant communities, which partially explains, through the effect of "family and friends", the phenomenon of undocumented migration.

The report has made it clear that it is very difficult to draw up a standard profile of the illegal migrant. The occupants of the closed centres (foreigners awaiting their forced removal) are mainly men, in average around 30 years of age. Although more men are caught moonlighting (and the number of removed men is considerably higher), the number of women as traditional labour illegals is certainly not inferior, according to some research reports (e.g. Poles, Latin Americans, Philippines). Formerly, the undocumented migrant was principally an illegally residing *guest worker*. Then the fall of the Iron Curtain, the technological progress, better (and cheaper) transport facilities and, in connection therewith, increasing streams of asylum seekers, have generated an enormous diversity within the illegal population. The division into residence illegals and employment illegals seems certainly very useful, it even explains fundamental differences within the illegal population (country of origin, situation of dependence, work, health, et cetera). In practice, however, this division becomes ever more difficult to maintain. The fact whether or not a social network exists has also important consequences for the living conditions of the illegal migrant (information about housing and job opportunities, mental problems, choice of survival strategies, and so forth). This network may consist of both family members and friends (most common with former guest worker countries) or compatriots or people with the same cultural and religious background (typically for sub-Saharan Africans).

Finally, an account is given (in the annex) of the collective regularisation campaign of 2000. This campaign has put an end to the difficult living conditions of tens of thousands of migrants, but one may ask if such methods offer – certainly if repeated and without coupling it with strengthened checks and a more effective removal of the remaining undocumented migrants - for the medium range, a solution to the problem of managing illegal migration, with regard to the so-called pull factors.

1. LEGAL FRAMEWORK, POLICY DEVELOPMENTS AND SOME THEORETICAL CONSIDERATIONS

1.1. INTRODUCTION

There is no specific definition of the term "illegal immigrant" in the Belgian law. To define someone as 'illegal' or 'without legal residence', it is very often referred to the Belgian Aliens Act (Law from December 15th 1980 about the access to the territory, the residence, the settling and the removal of foreigners). Different articles from this law must be considered before judging someone as illegal. In practice that means that someone must have the required documents of identity or residence at disposal. Illegal migrants or people without legal residence are consequently all the foreigners who stay on the Belgian territory without any legal title of residence. Or also: a foreigner has to be considered as illegal when staying on the Belgian territory without having any authorization or permission for it, in other words, when he cannot put forward any title of residence. In reality only the Minister of Internal Affairs or his proxy (a civil servant at the Immigration Service) can judge about the legal character of the stay. A difference has to be made between illegal aliens and foreigners who stay in the country irregularly. The latter are foreigners who stay legally in the kingdom but who materially do not have a title of residence at their disposal (for example because he has not respected the obligation to register at the town authorities). The situation of foreigners whose order to leave the territory has been extended is not (always) clear; in a way they stay legally ('a toleration status') on the territory as long as this period of time has not passed (Anyway, the authorities agree that a longer period of time can be given to these category of "legally staying illegal migrants" to execute the order to leave the territory). The reasons why someone receives an OLT can naturally be different, precisely as there are different sorts of OLT models providing different period of time. The range of possible statuses of residence coupled with the very differing situations on hand notably lead to a real muddle of positions. The Federal Police define illegal immigration as the illegal entrance, the illegal residence and the illegal movement of a person in a state in which the one who is concerned is no national or resident contrary to the legislation of the state or the states with which Belgium concluded an agreement about the entrance, the stay and the movement of foreigners.[1]

Though there is no direct juridical ground, it is also sometimes necessary within the context of this inquiry to make a difference between the so-called *overstayers* (refused asylum applicants, former students, former legal workers, family reunion units in exhaustion of legal remedies) and the so-called "pure clandestines" (i.e people who have never stayed legally in Belgium or all the very most who have entered Belgium with a tourist visa).

The professors Foblets and Vanheule also make the difference between people with illegal residence, illegal aliens and the "tolerated ones". Among the tolerated ones, they include the foreigners for whom the possibility of expulsion was either expressively ruled out by the legislator or is difficult to apply in a way that would not infringe certain obligations of human rights conventions, or is practically (materially) not applicable.[2]

[1] Federal Police, Picture *Illegal immigration and human smuggling*, first half of 2004, p5.

[2] Other juridical experts describe tolerating as: "The fact of not intervening against infringement of rules by an organ that in principle is juridically competent and factually in state to make such interventions" on the basis of which another difference is made between active (the authority expressively informs the infringer that nothing will be made against the infringement) and passive (if the authority knows about it and does not intervene) allowed infringers (see: LINDEMANS D, *Tolerance and intervention in administrative law III* (administrative law library studies), Die Keure, 2003, 255p).

Another difference that can be of importance for the figures is the one between illegal entrance and illegal residence (flow versus stock). Some other categories are passing (transit) illegals, foreign unaccompanied minors and migrants who reside legally in the country but who are in contravention of certain employment conditions. A Dutch inquiry mentions the difference between directed models of migration in which the illegal aliens directly settle from the country of origin and improvised migration models in which the illegal aliens arrive in Europe only after several wanderings[3]. Among the directed models you find the so-called migration in series (chain migration) and the organized human smuggling and human trafficking. While the first production is in the hands of family or friends (e.g: overstayer after visiting their family on the basis of a tourist visa), the second arrival is directed against (often high) payment and assistance is limited to the actual travel. The newcomers of the second model of migration are mainly conditioned by job opportunities, the presence of acquaintances as well as the presence of their own ethnic community. The support these ones receive at their arrival is, according to the same inquiry, less prominent and without commitment.

Johan Leman, professor at the KU Leuven Social and Cultural anthropology centre and former director of the Centre of Equal Opportunities and Opposition to Racism establishes a difference as point of departure between migrant residence illegality and migrant employment illegality. While the first group chose to stay in Belgium definitively, the migration project for the second group is mainly temporary by nature even though some of them slip into residence illegality and consequently, these points of departure become sometimes along the same lines. The main objective of the first group is to stay in Belgium, the employment illegals want to earn as much money as possible in a short time with a view to a concrete project in the country of origin (e.g. buying a house, starting a business). Examples of the first group are mostly asylum applicants, of the second group Polish, Bulgarians and Filipinos. With the latter, we rather see, according to Leman, how initial projects can change. One can move from employment illegal to residence illegal as well as a 'residence illegal' can more and more become an employment illegal (even more since the beginning of 2001 when the direct financial support when applying for asylum was cancelled). The South Americans are classified in an intermediate category: both components are present and for a long time they do not know themselves where to see their own future. The employment illegals are especially active in hard sectors such as building and women also as domestic servants. The issue of remittances is real for all, even if it is only because there is a pressure from the family left behind[4]. Depending on the importance of the own incomes and the means of transport, by remittances, it is a matter of money or even also of goods in nature.[5]

From an investigation on the field, it seems that all the questioned people[6] had only come to get a better material life and consequently not for the so-called "social promotion projects'. An important difference is rather that some of them, the employment illegals wanted to increase their prosperity by themselves whereas it would seem that an important part of the (former) asylum seekers rather counted on a durable financial insurance of the Belgian

[3] Engbersen G., e.a., *Illegal aliens in the Netherlands. Extent, arrival (coming over), residence and expulsion (Illegale vreemdelingen in Nederland. Omvang, overkomst, verblijf en uitzetting)*, 2002, Contractresearch RISBO, pp80-81.

[4] Mainly as part of a temporary, mutually beneficial, implicit agreement

[5] Other experts in the field also agree that illegal migrants filter much faster into existing networks and make use of another strategy of residence (see Newsletter of the Flemish Minorities Centre, April 2005 and Bafekr S., *Pregnant women and children of school age in the illegality in Brussels in "Cultuur en Migratie*", 1999, number 1, 101pp).

[6] The questioned people had the Polish, Philippine, Congolese and Romanian nationality.

authorities[7]. It seems also, from a Dutch inquiry that refused asylum applicants in comparison with other illegals are more resigned concerning their future expectations.[8]

Like for asylum and immigration policy generally speaking, the policy makers also want to reach in matters of illegal immigration a complex balance between international obligations ensuing, for example, from the ECHR and the application of severe and even sometimes repressive mentioned rules. The concerned minister is, certainly since the recent and future extension of the EU, more than ever convinced that an international and European approach of the issue is necessary and has consequently developed a more horizontal vision: since the migration movements often have to do with a deficit in the political, economical and democratic development in many third countries, the links of collaboration with other actors like the Foreign Relations Council and the Development Council are necessary.

Incriminatory legislation[9]:

In accordance with the article 75 of the Aliens Law, a foreigner who enters or stays illegally in the Kingdom can be punished of a penalty and the illegal residence or the illegal entry may be considered as an offence.[10]

Article 77 of the Aliens Law concerns the possibility of giving assistance to undocumented migrants. In its original version, the article stated: "*Each person knowingly helping or assisting a foreigner, either in the actions preparing or facilitating his illegal entry or illegal residence, or in accomplished actions, can be punished*." In 1996, a "humanitarian clause" was added to this article, excluding from penalization all assistance that is given for humanitarian reasons. The following wording was used: "*In case the help to the foreigner is provided on the basis of merely humanitarian considerations, the previous part does not apply*." (Bulletin of Acts, Orders and Decrees 05/10/1996).

However, it turned out that this formulation was biased. In April 1997, Ms. Verschaeve, a Belgian woman, was condemned by the court of the city of Bruges for living together with her partner while being aware of his irregular residence status. The judge stated that the above-mentioned humanitarian clause only applied to charity organizations. Friendship and love relations were, according to the judge, not to be considered "humanitarian considerations", since the latter should have an "objective and verifiable background", and should be to the benefit of only one party. Ms Verschaeve was eventually acquitted in appeal.

It should be noted that the Verschaeve case was not the only case, but was given a lot of publicity and evoked a strong reaction in society. Following this case, discussion began on the genuine interpretation of this article. This led to a change in the article (Law of 29 April 1999) as follows: "*In case the help to the foreigner is provided on mainly humanitarian considerations, the previous paragraph does not apply*" (BS 26/06/1999). So, essential is the replacement of the term "merely" by the term "mainly". In the discussions on the adaptation of the article, it was stated that the main aim of the help provided should be humanitarian, while a possible secondary aim could perfectly be of economic nature.

[7] Bafekr S, pp 63-64.
[8] Engbersen a.o., *Illegal aliens in the Netherlands*, p117.
[9] Quoted from "*Book of Solidarity*", Picum, pp47-48.
[10] Article 75 of the Aliens Law: "*A foreigner who enters or stays illegally in the kingdom, is punished with a penalty of prison from 8 days to 3 months and with a fine from twenty-six euro to two hundred euro or with only one of these penalties*."

This Belgian experience shows how a wording that at first sight is clear, can still give room for interpretation in different directions.

Generally, one may consequently conclude that helping or assisting people without legal residence is not punishable, as far as help mainly concerns humanitarian considerations (art. 77 Aliens Law).

Duty to denounce in Belgium: the duty to denounce illegal residence to the Immigration Service is not mentioned in the Belgian Aliens' Law. Article 29 of the Code of Criminal Procedure states that every authority, every public officer or civil servant who, while executing his profession, is confronted with a crime or an offence, is obliged to denounce this to the public prosecutor. Because irregular residence or irregular entry can be considered as such an offence, official institutions are obliged to denounce undocumented migrants. However, Article 29 only involves a moral obligation; not to act according to this article does not directly imply a penal sanction. Moreover, this article is not applicable to persons bound by professional discretion. At some points the necessity was felt to explicitly underline the fact that it is not obligatory to denounce undocumented migrants (regarding schools for example, see further).

1.2. BASIC RIGHTS – SOCIAL SERVICES – EDUCATIONAL FACILITIES (measures of rectification and remedy)

1.2.1. Sources of Law (general)[11]:

The basic rights of people without legal residence are based on supranational, international and national sources of law (treaties, conventions, laws, decrees, Royal Decrees and circulars, jurisprudence). According to Professor Foblets the increasing meaning of the protection of the human rights made sure that the undocumented migrants are also considered as juridical subjects who can in the essential parts of social relations pride themselves on the respect of an increasing amount of basic rights, a development progressing in nearly all the European countries.[12] [13]

International level:

- The Universal Declaration of Human Rights (as explanation of intention), the International Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, the European Social Charter

[11] Information mostly drawn from the website of the non-profit organization "Medimmigrant" (named until 2005 Medisch Steunpunt Mensen zonder Papieren) and the documentation file "In slechte Papieren" from the Flemish Centre for Minorities.

[12] FOBLETS, M.-C., *Illegal migration. Does'main autochtony' also grip the migration policy*? in 'Culture, ethnicity and migration' (1999), pp302-303.

[13] According to some scientists, this is linked to the evolution since the early 90's to a post-national citizenship (by which the nation state becomes less and less important in favour of international treaties). See News Bulletin of the Flemish Centre for Minorities, April 2005.

- The November 2nd 1989[14] Convention on the Rights of the Child

National level:

Except the articles 10 (equality) and 11 (banning of discrimination) the article 23 of the coordinated Constitution is also important here and states that everyone has the right to lead a worthy life. These rights include, among others, the right to working and to free professional choice, the right to social security, social and health protection, medical and juridical assistance, the right to a decent housing, the right for the protection of a healthy environment as well as the right to social and cultural blooming. The Article 191 states moreover that "*every foreigner who is on the territory of Belgium takes benefit of the protection granted to people and goods apart from the exceptions stated by the law*". Consequently the illegal aliens have as a rule the same rights as the Belgians except when the laws constitute an exception[15]. This is a point of view that was confirmed among others by the Arbitration Court, the Belgian Constitutional Court (judgement of the 29/06/1994).

Community level:

The "decree in matters of the Flemish policy concerning ethnic and cultural minorities of the 28th April 1998" states that the Flemish minorities policy includes a reception policy turned towards the reception and the orientation of these people without legal residence who request reception and support because of their state of emergency. The notion of 'orientation' acknowledges that the support of undocumented migrants must go hand in hand with the working-out of a meaningful perspective of future. The reception policy is an inclusive policy applied first and foremost in the domains of well-being, health and education (see also further).

The regulations of the Brussels Capital Region, the Walloon Region and of the French Community make no explicit reference to undocumented people which however does not mean that illegal migrants would have fewer rights there.

1.2.2 The rights of people without legal residence:[16]

- Right to urgent medical assistance/access to health care
- Right to education/educational and vocational training (general principle: unlimited for minors whose parents are illegal residents in Belgium; for adults, it depends very often on the concerned school although there are no regulations forbidding access to education for illegal foreigners)
- Right to housing (general principle: limited to the private market)
- Right of security of income. In some cases right to the financial aid (subsistence level) of a Social Welfare Agency[17] and particular social and work security rights (see also farther).

[14] How far the Convention on the Rights of the Child has a direct effect on the Belgian juridical order is not clear. So, a 2001decision of the Council of State does not grant any direct effect to any aspect of the Treaty whereas according to some other experts most conditions do have a direct effect since they are so clear that no adaptation is even necessary for the possible enforcement. Anyway, the Treaty was ratified by Belgium and its Communities.

[15] As far as civil rights are concerned this is expressively stated once again in the article l 1 of the Civil Code.

[16] This concerns 'theoretical rights'. In practice hints such as financial incapacity or fear of expulsion can further limit these rights.

- Right to family and parents life
- Right to juridical assistance

Consecutively, we discuss the right to health care, the right to education and training, the right to housing, the right to family and kin life and finally the right to juridical assistance. The whole issue of illegal employment and illegal work market will be dealt with further in a separate chapter. As far as possible a reference is also constantly made to the actual situation (practice).

a. Access to health care – (urgent) medical care:

Since foreigners without legal residence do not (can not) legally work, they do not either have access to the system of social security (apart from some exceptions). The Belgian Aliens Law knows no particular conditions forbidding the deprivation for medical reasons but in practice the ECHR and the jurisprudence are taken into account. A few articles of the above-mentioned international treaties explicitly refer to the right to health care:
Article 3 of the ECHR, article 25 Universal Declaration, article 12 of the International Covenant on Economic, Social and Cultural Rights, article l11 of the European Social Charter.

The general right to "urgent medical assistance" is specified in the Social Welfare Agency-law (specifications of the July 8th 1976 organic law concerning the public centres of social assistance that still belongs to the competence of the federal authority). The article 57 is more specifically important for people without legal residence. Article 57§1 determines that the SWAs take on the task to ensure and provide people and families with provision of services to which the community is obliged. The SWA ensures not only soothing or curative help but also preventive assistance. The second paragraph rather determines that the task of the SWA is limited to provide urgent medical assistance when the person is a foreigner who is illegal in the Kingdom. The King determines what must be understood by urgent medical care. This paragraph determines further that "*the social provision of services to a foreigner who was really asking for assistance at the moment when he was informed of the order to leave the territory, stops, except for urgent medical assistance on the day when the foreigner effectively leaves the territory and at the latest on the day when the deadline of the order to leave the territory expires*."

The right to urgent medical care for illegal aliens is consequently explicitly recognized by the law. This is, among others, the consequence of the June 29th 1994 order of the Arbitration Court : "... f*or the aliens staying illegally on the territory, social assistance may be refused ...but it's quite obvious that the social provision of service implies a positive obligation for the authority and that urgent medical assistance is granted to illegal aliens for an undetermined period of time*".[18] The 12th December 1996 Royal Decree '*concerning the urgent medical assistance dispensed by the SWA to the aliens who stay illegally in the Kingdom*' gives a clearer explanation: it cannot come down to any financial assistance or housing or any provision of service in kind; it can be both curative and preventive; it can be

[17] By a 1998 decision of the Arbitration Court, it is necessary in this field to make a distinction among others between the asylum applicants in exhaustion of legal remedies who have introduced an appeal against the refusal of their application for asylum by the Commissioner-General for Refugees and Stateless Persons or the Permanent Appeal Commission for Refugees at the Council of State and other foreigners in illegal residence.
[18] BAFEKR S, *Zwangere vrouwen en schoolgaande kinderen in de illegaliteit te Brussel*, p14.

both ambulatory or given in a health care institution. The costs are only paid back to the SWA (by the state) provided this centre produces a medical certificate proving the urgent necessity of the care. The medical attestation is the determining factor in what must be understood by urgent medical assistance.

An illegal alien has consequently right to urgent medical assistance. In different situations the alien without legal residence has however the remaining right to the social services provided by the SWA or a federal reception centre by which the urgent medical care granted by the Royal Decree is consequently not applicable. This is true for the asylum applicants appealing to the Council of State against a negative decision of the CGRS or the Permanent Appeals Commission for Refugees (PCA). This is the consequence of the 22nd April 1998 judgement of the Court of Arbitration. This judgement stated namely that the Belgian authority may refuse assistance to rejected asylum applicants who have introduced an appeal to the Council of State against the refusal of their application for asylum by the CGRS or PCA, because, according to the Court, at the Council of State a procedure exists to dismiss delaying appeals and it would then be exaggerated to further stipulate that social assistance would be refused to these asylum applicants in exhaustion of legal remedies who have introduced an appeal to the Council of State. It was consequently here, according to the Court, a matter of discriminating treatment towards the other categories of foreigners and Belgians and question of a disproportionate limitation of fundamental rights (right to social services and right to the effective practise of a jurisdictional appeal).

The aforementioned law sources not only determine the circumstances in which an illegal has a right to medical care, but also determine the legal basis to obtain a residence permit (whether or not a temporary one) for humanitarian (medical) reasons. This one is granted on the basis of a discretionary decision of the minister's proxy based on article 9 §3 of the Aliens Act. In principle every application for a granting of a temporary residence permit of more than three months in the Kingdom must be sent in to a Belgian diplomatic or consulary post in the country of residence or the place of residence of the foreigner. However, in case of "*extraordinary circumstances*" which make it impossible to send in the application by way of the normal procedure in the country of origin or in the country of residence or the place of residence of the foreigner, the application can be sent in to the mayor of the commune where the applicant has his real residence who will send it to the Immigration Service who takes a decision. Naturally, medical reasons can be considered as extraordinary circumstances. The Immigration Service (IS) sometimes takes a decision independently, sometimes after the advice of an "Advising Doctor" who assists the Immigration Service. The Immigration Service is not obliged to follow the advice of this doctor.

Also the courts judge the compatibility of an expulsion of the territory or the ground to obtain a (whether or not temporary) residence permit of the illegals who refer to their weak medical situation. As evidence to support their claim not to be expelled as (serious) ill (illegal) aliens to a country where the continuity of appropriate or accessible provisions of the cares to be given is not or insufficiently ensured, the concerned foreigners mainly rely on article 3 of the ECHR and to a very lesser extent on articles 8 and 2 of the same Convention.[19] Following Bouckaert's analysis, the Belgian jurisdictions, either the Council of the State or the civil courts in summary proceedings, seem, most of the time, eager to be ready than the European Court of Human Rights to conclude that article 3 of the Convention is infringed,

[19] BOUCKAERT S, "Medical aspects of the Aliens Law and article *3 of the EVRM. A survey of the jurisdiction of the European Court for Human Rights, the Council of the State and the civil courts*" (document for the work shop organized by the non-profit organization Medical Support for Undocumented Migrants on April 2nd 2004).

although they do rely on the same criteria of sentence. These criteria are: the health care situation in the country where the concerned foreigner is expelled; the seriousness of the illness; the (im) possibility for the concerned one to travel; the effective access of the foreigner to health care in his country of origin, and attention is also paid to his financial situation, as well as, eventually, to the presence of family members if the circumstances of the illness requires it. So, the Belgian jurisdictions adopt a little more flexible behaviour than the European Court of Human Rights. They require no irreversible type of disease though the ailment must have a certain degree of seriousness.[20] The 'medical jurisdiction' at the Council of State consists of two groups of sentences: on the one hand, it concerns sentences rendered by the Council about the validity of the decisions on the basis of which the Immigration Service declares a residence permit inadmissible or unfounded, in compliance with article 9 third paragraph of the Aliens Act whether or not coupled with a (new) expulsion measure. A second category concerns the rulings about the validity of the decisions on the basis of which the IS refuses to consent the lenghtening of the deadline of an expulsion measure, most of the time, an order to leave the territory. Again according to Bouckaert, the Council of State judges in many cases the refusal of regularization under the Aliens Act and the order to leave the territory at the same time while the (civil) courts only judge the OLT. Worth to mention too is that if an alien has produced detailed evidence of his disease, the authorities cannot restrict themselves to a general referral to the possibilities of treatment in the country of origin.

In 2004 the report '*Medical aspects of the aliens policy*' came out in the Netherlands (Smeets Commission)[21]. The Commission concluded that there is no question of unequal use of the possibilities to have access to the Netherlands for medical matters (except for occasional abuses). The idea too that the Dutch aliens legislation would perfectly deal with immigration for medical purposes, the so-called "medical tourism", is not shared by the commission on the basis of the figures and facts at their disposal. The rules and the application of the aliens policy seem effective enough to fight against immigration for medical reasons (medical tourism). The commission also concludes that the policy and the practice in the neighbouring countries, and so Belgium, do not significantly differ from the situation in the Netherlands. Other observations are that the illegal population is, on average, relatively young and healthy; that they only search for medical assistance in case of serious treatments because they experience contacts with instances as threatening; that they pay most of the time the costs of medical care on their own and they sometimes use the insurance papers of other people.

From a note of March 2005 of an Antwerp non-profit making organization, it seems that for the last years the number of undocumented people among the patients population has increased.[22] Also *Médecins sans Frontière* has been more and more confronted with undocumented patients (2001: 2494; 2002: 3244; 2003: 3724; 2004: 4363).[23] It is not clear whether this means that the number of illegal migrants has increased or whether this means that they have now found a better way to the health care system.

[20] Following Bouckaert the European Court of Human Rights makes this way a difference between people infected by the HIV-virus and people who have AIDS.
[21] Centrum voor Migratierecht (KU Nijmegen), "*Medische aspecten van vreemdelingenbeleid*", February 2002, pp 81-84. This report was written on the request of the Justice Minister and the Secretary of the State for Public Health.
[22] Haven, *Access to medical care for undocumented people in Antwerp*.
[23] De Standaard 21 May 2005.

The figures of the total amount of people who refer to the regulations of urgent medical care could not either be handed out.

In a newspaper article dating from 11/05/2005[24] the SWAs complain about the fact that medical tourism would have been increasing and ask therefore the Federal Authorities to have a stronger expulsion policy, among others, because the costs of medical care would be too high. This article followed an open letter from the Belgian SWAs to the competent ministers in which they state that they are more and more confronted with assistance requirements of illegal aliens. Now the aliens in illegal residence head towards the Labour Tribunal when the SWAs refuse to support them on the basis of the SWA law concerning financial support. Even if in accordance with this law, they do not have right to this support, the SWA is nevertheless often condemned to give this financial support. Without any condemnation, the federal authorities cannot refund the granted support to the SWA. In order to remain financially healthy, the SWAs let thus themselves be condemned (again).

The condemnation of the SWAs by the Labour Tribunals and Courts is mainly due to a decision of the Arbitration Court (30 June 1999) in which this Court answered a prejudicial question that the articles 10 (equality) and 11 (forbiddance of discrimination) of the fundamental law are infringed insofar as they apply to aliens to whom an order to leave the territory has been notified and who, because of medical reasons, are in the absolute impossibility to respond to it. Also the Cassation Court judged that, on the basis of the SWA law, it seems that the limitation of the right to the provision of social services is exclusively valid for the aliens who refuse to respond to the order to leave the territory but not for those who, for reasons beyond their control, are prevented from getting back to their country of origin. The SWA, considering what has just been stated, has to grant these social provisions – so not only medical care - services up to the time when they are in state to effectively leave the country.

Besides the provisions for urgent medical care, the aliens in illegal residence sometimes use some other methods to obtain the access to health care: reality shows that undocumented migrants use different formal and informal strategies to try to obtain medical assistance.[25] Among the other (besides urgent medical care) formal strategies are the (rare) use of private health insurance and supplementary private health insurance. The latter are the semi-public institutions that cover the obligatory health insurance for Belgian residents. Some UM are still covered by this insurance after the expiration of their residence permit. Informal strategies for access to medical assistance (which are also more often used than formal strategies) include: borrowing papers from documented residents, mostly compatriots; payment of the full price of the medical assistance by themselves (which often leads to the accumulation of debts) or with the help of others (collection made in their ethnic or religious communities, mostly used for serious medical intervention; gift from NGO's or individuals); negotiations with doctors about the costs of the treatment (doctors of foreign origin as well as Belgians) and consultation at organisations delivering free medical assistance such as Médecins Sans Frontières, Medicine for the people of Free Clinic.[26]

[24] De Standaard

[25] ADAM I, *The social and economic situation of undocumented migrants in Belgium*, in Book of Solidarity (PICUM), pp20-25

[26] Some others let themselves be taken care of, preferably at night, in the emergency department of a hospital because it's free of charge then (the bill has to be paid afterwards). See Bafekr, S, p28. This is a method used by other groups living in poverty.

Undocumented migrants, as far as possible, also search for private doctors speaking their own native language (who also often want to treat them at more attractive fees).[27]

b. Education and Vocational Training [28]

In Belgium there is a difference in the access to education for undocumented minors and adults.

The right to education for children/minors is established in different international treaties and national dispositions. A decree of the French community, dated 30th of June 1998, regulates and guarantees the access to education for undocumented minors. Similarly, a circular letter of the Flemish Minister of Education gives the right to these children to attend school. Moreover this text guarantees that the headmasters of the school do not have to inform the police about the administrative status of the children and their parents, and guarantees that they will not be arrested within the vicinity of the school. The right to education for minors is then legally guaranteed everywhere in Belgium. Since this legislation went into force, it appears that most undocumented parents have registered their children in school. For many undocumented migrants, it is their only contact with an official institution. The education of their children often is a strong motivation for the parents to stay in Belgium (see also farther).

Access to education for adults seems to be more arbitrary: some are refused registration while others are not, even though they are in the same situation of illegal residence. This difference can be explained by the absence of regulation in this field. Except for access to official vocational training (in the three regions) no regulation forbids access to education for undocumented adults. In practice, some institutions will refuse students especially because they fear that they will not get any subsidies for people without legal residence (because they are not registered in the population register).

According to P. Michiels the right to education is also valid for aliens who are in illegal residence in the country since the protection applies to anybody being on the territory and the "*the constitutioner in 1831 had not thought of a long-term illegal residence*".[29] However the settlement and the treaties of the settlement (ECHR, CCPR) do not naturally entail that the access to the territory would be guaranteed. Already in July 1994, a soft regularization was agreed on by the Minister of Internal Affairs and the Flemish Minister of Education: the schools lose their signal function and it is agreed on that the police do not come at the doors of the school to control. The question of the subsidies to be granted to these students came up too: The Minister of Education said to his inspectors to have given the mission not to examine the legal or the illegal character of residence through the control of regular students. This entails that the students in illegal residence can also be considered as subsidizable. Since children of people without legal residence most of the time naturally belong to disadvantaged groups, the schools obtain in the framework of the (Flemish) Decree of Equality of Opportunities dating from June 28th 2002, extra support (hours of lessons or personnel).[30] [31]

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[27] BAFEKR S, *Zwangere vrouwen en schoolgaande kinderen in de illegaliteit te Brussel*, p20.
[28] ADAM I, *The social and economic situation of undocumented migrants in Belgium*, in Book of Solidarity (PICUM), pp20-25.
[29] MICHIELS P, "*Vreemdelingen en het recht op onderwijs*" (Foreigners and their right on education), end-of-training report Flemish Ministry of Education, 2003, p2.
[30] Idem, p10
[31] Children of undocumented (foreign) parents are not taken into consideration for school maintenance allowance from the Flemish community (higher education).

On the other hand, the Belgian Aliens Act grants, in principle, no residence permit to non-EU nationals when the request concerns the primary or secondary education; a situation which is more intricate in the higher education.

It could be deduced that some schools – in any case in the Brussels area – on the one hand, discriminate children without legal residence and on the other, have most difficulties with them ('come irregularly'; 'bring along no food', 'tired children' etc.). The fact that these children are not taken into consideration for the subsidies granted by the authority will then obviously not be strange (concerning this discrimination).[32] A request can also be introduced to the SWA for extra school fees (meals, excursions, ..).

From the 2003 annual report of Sir P. Cottenie, government commissioner for the Flemish Higher Schools, it seems that more than 11% of the foreign students likely to be financed[33] on February 1st 2004 seemed not to have any valid residence permit at their disposal (119 out of 1064). In 76 other cases the procedure was ongoing, which makes that 869 (or 82%) of the students had a legal residence permit at their disposal.[34] From a specific inquiry about this report, it seems that for a considerable amount of students with a valid visa in October 2003, there was no valid residence permit on February 1st 2004. One may suppose that an important part of them after a very short period of time sink into illegality (and are probably no longer interested in studies). The government commissioner aims at more collaboration with the Ministry of Internal Affairs. In some schools, the number of (foreign) students without residence permit is around 40% or more. Another striking figure was found for a school in Gent, where approximately half of the 150 minor students would reside illegally in Belgium.[35] [36]

c. Housing:

Renting to aliens without legal residence is not punishable but abusing their vulnerable position is, especially within the framework of the so-called slum landlordism (art. 77 bis Aliens Act).

People without legal residence are in principle present on the private market as the access to social housing is refused to them. Refused asylum applicants who were admitted in a reception centre during their procedure and who sent in a quashing appeal to the Council of State against their final decision of inadmissibility or lack of founding, may stay in a centre while waiting for the decision.

The circular letter 690 dating from 31st January 2002 of the Flemish Housing Society concerning the registration as well as the granting of social houses to a political refugee candidate and to people without legal residence reflects the point of view of the competent Flemish minister: a renting candidate who (temporarily) resides on the Belgian territory and

[32] Foyer Brussels Vzw, "*De Roma van Brussel*", p84-96, 2004.
[33] EU nationals, children and spouses of foreigners settled in Belgium, accepted refugees, students who are recipients of a school maintenance allowance within the framework of a cultural agreement or depending on the national credits for development aid are not taken into account.
[34] COTTENIE P., Government commissioner for the Flemish Higher Schools, annual report *2003*, p133.
[35] This school offers hospitality as the highest principle in its programme with among others free daily charity food and free language classes for the (illegally residing) parents.
[36] News letter of the Flemish Centre for Minorities, April 2005

has an official address, can be registered as a renting candidate and a social house can be granted to him. A renting candidate, who resides illegally on the Belgian territory cannot be registered and no social housing may be granted to him, except in the following situation: a renting candidate whose application for asylum was refused with a decision "refusal of residence" without an order to leave the territory. The renting of a social housing can come to an end if, while renting a social house, an alien loses the rights of residence. In the Brussels and the Walloon regions too, illegal aliens cannot request a social housing.

In reality undocumented migrants are highly dependent on their network of social relations – at least if they have such a network - to obtain housing (as well as other basic needs).[37] There are two types of networks:
- family or friends who are legal residents in Belgium. This type of network is especially prevalent amongst undocumented migrants coming from countries from where guest workers were formerly recruited (Morocco, Turkey) and from former Belgian colonies (Congo).
- the second type of network is made up of compatriots and/or people of the same cultural or religious background. This network should exist especially amongst sub-Saharan Africans.

A small group of undocumented migrants, mostly rejected asylum seekers, depend on NGO's for accommodation or rent deposit.

An aspect that characterises undocumented migrant's housing is their residential mobility. The reason for this: uncertainty of the income and the feeling of uncomfortability and being a burden. The reason why most live in districts of large cities is: the cost of accommodation and the fact that they are likely to stay unnoticed there. The undocumented position makes it almost[38] impossible to reclaim their rights when the landlord asks for high rent, does not honour commitments or refuses to return the deposits when the tenants leave the flat. Several landlords take advantage of the legal inferiority of the undocumented, asking for high rents for precarious accommodation. Yet, the problem of perception plays here too: while from our point of view, the housing is sometimes unacceptable, this one is for many illegal migrants better than in their country of origin so that they do not feel abused (see among others Bafekr S, *Zwangere vrouwen en schoolgaande kinderen in de illegaliteit te Brussel*, p65).

Fedasil is responsible for material support to illegally resident foreign minors, through its reception centres. This new competence follows on the ruling of the Court of Arbitration of 22 July 2003 which defined the recognition criteria for the provision of social services to illegally resident foreign minors (if a child is in need because the parents of the illegally resident foreign minor fail to fulfil their parental duties, the child has a right to the provision of social services (material assistance) which will only be supplied in a Federal reception centre.

d. Security of income

See farther: labour and economic situation

e. Kin and family life

[37] ADAM, Ilke, *The social and Economic situation of Undocumented migrants in Belgium*, in Book of Solidarity (Picum), pp20-21.
[38] 'Almost' because no disposition in Belgian law prevents an undocumented migrant from starting a civil or penal procedure in court.

- Marriage: an undocumented migrant who resides illegally in Belgium can get married providing he or she produces the necessary documents. Only if the public prosecutor, on the notice of the officer of the civil state, suspects a sham marriage, the marriage can be refused. In 2005 a new agreement was reached at government level to make the commitment of a sham marriage punishable.[39]
-long-term relationships: also in case of long-term cohabitation an alien without legal residence can, under determined (*exceptional*) conditions, obtain legal residence as "long-term cohabitees" in accordance with a circular letter dating from 30/9/1997.

f. Right to juridical assistance

Assistance of a pro-deo lawyer: people with low revenues or people for whom it is presumed that they are insolvent, can request the assistance of a pro-deo lawyer to the Office for Juridical Assistance of the judiciary district of their place of residence. In practice the illegal residence is enough for the Office of juridical assistance to presume a low revenue.

Costless juridical assistance: reduction of procedure costs (stamp duty, writ costs,...): this is valid for the same categories and here it is the Court or the judge who judges about the presented documents.

1.2.3. As an illustration: the Minorities Decree of the Flemish Community

This decree attaches much importance to the situation of the people without status of legal residence:[40]

- General localization

Article 2§1,4° and art. 4§1,3° of the decree dating from April 28th 1998 concerning the Flemish policy with respect to ethno-cultural minorities (Bulletin of Acts, Orders and Decrees of 19.06.1998) state that the Flemish authority has a responsibility towards people without a status of legal residence who reside on its territory.[41] This responsibility includes the reception and the orientation of people without legal residence who are in the Dutch-speaking area or in the bilingual region of Brussels-Capital and who because of their state of emergency request reception or assistance. The decree also determines the priority domains of the policy in which a reception policy must be lead, especially the sectors of well-being, health care and education.

Article 4 §3 states that the policy of minorities is an inclusive policy, which entails that the policy is carried out towards the key groups in the general policy of the different sectors

[39] A penalty is provided for in the bill which was introduced to the Chamber: a system of fine or prison sentence. The penalties vary whether it is a normal sham marriage, against payment, or a forced marriage. Even the attempt to commit a sham marriage is punishable.

[40] Information obtained by Mrs Degroote from ICEM (Interdepartmental Commission for Ethno-Cultural Minorities) which as a coordinating commission supervises the coherence, synergy and co-ordination of the integration policy of the Flemish Community.

[41] The Flemish authorities do not oppose, according to the ICEM, the federal expulsion policy since this latter also approaches the problem field from a humanitarian viewpoint, for example, by the urgent medical care. According to the ICEM, the Flemish reception policy for this key group is complementary to the federal migration and asylum policy: the grant of social rights does not in any way generate a legal residence or a situation of juridical impossibility of expulsion which would make the expulsion policy impossible.

through general measures and, when necessary, through specific actions and arrangements. This is also true for the reception policy.

The Integration policy briefing 2004-2009 of the competent Flemish minister for Integration states expressively that the Flemish authorities want to revise their responsibility by assessing the reception policy for people without legal residence in emergency situation and adapt it when necessary. The concern of the general interest[42] of the society on the one hand and the preoccupation that people without legal residence (can) end up in inhuman circumstances on the other, justify, according to ICEM (Interdepartmental Commission for Ethno-Cultural Minorities) the need of a reception policy. The policy briefing states moreover that the execution of a policy based on the guarantee of the essential rights (such as the right to urgent medical care as well as the right to education for minors) for undocumented migrants, also implies that these people need to be oriented as far as possible in the best conditions to a meaningful perspective of future: either in the country of origin, or in a third country.

In order to attempt to draw up a coherent Flemish reception policy, a working party 'Reception Policy' is active within the ICEM. This working party in which participate the representatives of the relevant departments for the reception policy as well as representatives of relevant branches and experts of the ground, have as a mission to inquire on the respective aspects of the reception policy and to draw up a map in order to word realistic and functional policy proposals. In 2003 this working party wrote up a briefing of recommendations '*Crucial tasks for the reception policy for people without legal residence in the Flanders. Recommendation about who must do what*'.

A few examples of the concrete reception policy in the Flanders are listed below:

- Access to education for minors without legal residence (see also above): All the children residing on the Belgian territory have the right to education. The constitution firmly fixes this right in art. 24, §3: "*Everyone has the right to education in with respect to the fundamental rights and liberties. The access to education is free until the end of the legal compulsory education. All the students who fall under this legal obligation have the right to moral or religious education in charge of the community*".

The decree of the 28th June 2002 concerning the equality of chances in education establishes a principle of right of registration for all the children in the school which is chosen by the child and his parents. Only in a limited number of cases, the school can decide to refuse a child or to enrol him only temporarily in the context of a procedure of refer. A registration cannot be refused on the basis of the only noticing that the residence status of the student candidate is not settled. The circular letter dating from February 24th 2003 concerning the right to education for children without legal residence status establishes this fact once again.

Once registered, these students like the other students in compulsory education have to be regularly present. Since the very moment of the registration, for the authorities these children may be granted in the usual financing basis of the school and the schools may include these students – providing they fulfil the conditions – to receive extra financial means (reception education, policy for equality of chances in education, …). The students who pass a complete training receive a diploma.

The registration in a school does not entail any guarantee for the concerned student or his/her family towards the asylum procedure or the residence law. On the other hand, the

[42] By which one should understand, according to ICEM, social cohesion, stability and security.

schools do not need to report these registrations of students without legal residence status to the police or the aliens services.

Appointments are made with the ministry of Internal Affairs and the Federal Police about the arrest of children without legal residence status. A circular letter dating from April 29th 2003 states that it is not authorized to fetch at school the children in compulsory education of people without legal residence during school time. The intervention must take place before school time. It is also recommended not to wait for the children at the gates of the school. The concerned police service must warn the direction of the school before carrying out an intervention at or in the surroundings of the school and also let the school know if the child will no longer go to school because of the execution of a decision of expulsion. The Immigration Service can eventually decide to postpone the execution of a decision of expulsion, taken within the period of time starting from the beginning of Easter holidays until the end of the school year, if the children going to school are less than 18 years old.

Thanks to the "*Royal Decree of February 6th 2003 modifying the Royal Decree of June 9th 1999 in execution of the law of April 30th 1999 concerning the employment of foreign workers*" it is allowed for minors who reside illegally in the country to have the possibility to follow a training education under an apprenticeship contract, to attend a training course, or a block-release training (part-time professional secondary education). This provision was extended to students older than 18 for them to be able to complete a school education started before the age of 18.

Access to health care

Health care is a fundamental right, recognized by the most important multilateral organisations active in the sector of public health such as the World Health Organization and the Council of Europe. This basic right is defined in international treaties.
Health care as basic right is limited in Belgium to 'urgent medical care'. The right to urgent medical assistance is determined in art.57, §2 of the organic law on the OCMW (Social Welfare Agencies) dating from July 8th 1976. The notion 'urgent medical provision of assistance' of the article 65 of the law dating from July 15th 1996 took more form by the Royal Decree dating from 12th December 1996. This Royal Decree came into force on January 10th 1997.

Though the RD and its application are federal matters in which the Flemish authorities have little influence, this does not prevent the Flemish provisions to make constant efforts to support the application of the RD.

Medimmigrant, a non-profit making association, wants to guarantee the access to health care for aliens without legal residence living in the Region of Brussels-Capital. This non profit making association is since 1994 recognized and granted by the Commission of the Flemish Community. Via the RD 'urgent medical assistance' or by their medical network, one tries to effectively intervene so that people without legal residence can also enter the existing health structures. Moreover one tries – in collaboration with other partners – to lead these people to a realistic perspective of future. By their structural work Medimmigrant promotes the recognition of health care as basic right for people without legal residence as well as the guarantee of health care through the whole project of life of the concerned people even in case of a possible return[43].

[43] For more information see： http://www.medimmigrant.be/

"Ondersteuningspunt Medische Zorg", an initiative of the local centre for integration "de Acht" from the city of Antwerp, was created by the concern of a certain number of social services who had noticed that people without legal residence or with a precarious residence status are confronted with many obstacles when they need health care. The support centre aims at a fast access to regular health care for people without legal residence or with a precarious residence status who live in the city of Antwerp.[44]

"Oriëntatiepunt Gezondheidszorg Oost-Vlaanderen" (East-Flanders) targets a guaranteed right to health care for precarious residents and makes sure that they effectively take benefit of this access to health care and intends to promote expertise in the different organisations, among care dispensers as well as institutions who are confronted with these people[45].

Other initiatives concerning people without legal residence (Flemish level)

The province West-Flanders has very much to deal with people without legal residence who try to reach Great Britain via Zeebrugge. On a request of the maritime police of Zeebrugge, a collaboration is carried out with the Provincial Centre for Integration of West-Flanders, which is especially concerned by these undocumented people. This target group, according to ICEM, has considerably increased because of the reinforced controls outside the frontiers of the Schengen zone, and constitutes on a yearly base the biggest group of undocumented people in West-Flanders. Since, in most cases, this group, after their interception in the harbour or on their way, do not appeal to any Belgian asylum procedures, they are repatriated or they receive an order to leave the country within the 5 days. The objective is to preserve the basic rights of people without legal residence, among others in matters of health care as well as to promote the creation of networks between the various concerned instances.

Under the impulse of the regional centre for integration "de Foyer" a "recipe book" was written up that should serve as reference to implement a district reception policy in the Region of Brussels Capital. The development of the residence book is an example.

The provincial integration centre of Antwerp (PRICMA) worked out a plan of steps that serves as reference to enter into contact with local administration and provincial authorities about the specifications of the reception policy. One of the instruments is the residence book meant for the SWAs in the province of Antwerp. The objective of this book is to improve the provision of assistance as well as the justice administration. The production and the distribution in the province of Antwerp is carried out with the collaboration of the local centre for minorities "*De Acht*" in Antwerp. The production of these residence books is subsidized by the province.

From the provincial integration centre of East-Flanders work is carried out in the following fields of actions within the framework of the reception policy:

Stimulating and supporting an adequate provision of service of the local administrations, Centres for General Social Assistance and other social services (by quarterly discussion platforms about Refugees and people without legal residence, trainings made on measure for communal civil servants who deal with Foreigner Affairs, ..)

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[44] For more information see: www.de8.be/medischezorg.htm)

[45] For more information see: www.orientatiepunt.be

- Implementing specific actions (news flashes about important new legislation – specific trainings and actions about the regularization policy of asylum applicants, setting up of a limited social card for services and voluntary organizations that work with asylum applicants and people without legal residence,...).
- Stimulating and supporting the basic rights.
- Setting up networks (juridical and administrative network, voluntary network, social).

One of the results of the project, 'family assistance for Roma from Kosovo' started from the self organization Romano Dzuvdipe vzw (The life of the Roma), is training organized around the preventive health care to Roma. This piece of information is given in a number of communes e.g in Temse and in Sint-Nikaas. In the "Waasland" there are according to the estimations 700 Kosovar Roma. The self organization goes to all the Yugoslavian Roma in Flanders.

2. STOCKS

It is naturally impossible to stick a (more or less) precise figure on the number of illegal residents in Belgium. Nevertheless scientists use various methods[46] in order to try to assess the number of migrants without legal status. The theoretical instruments used to measure the stock of illegal migrants residing on the territory (and illegal labour migrants) seem to be more numerous and more reliable than the ones used to measure migration flows.

According to Jandl is "*subjecting to comparison the results obtained through a variety of statistical methods, the sole means of coming close to an accurate estimate*."[47]
A short survey of a few methods to assess the number of undocumented migrants residing on the territory:

- "residual" estimation techniques: The difference between the (official) census of the population and other registrations of foreigners (e.g issues of residence permits). This one does not seem applicable in Belgium/Europe but only in the US.
- "multiplier" estimation techniques: The exact multiplier has to be found: the scale of the unknown variable (e.g. the stock of undocumented migrants) has a stable ratio in comparison with a variable that can be measured (e.g. the stock of foreign legal residents).

In the same category but a little bit more intricate, there are the demographic methods which compare the figures of the births and the deaths of illegal migrants with the same variables as the foreign legal residents or the hospitalizations of illegal migrants. These methods are not applicable in Belgium either since such data are not registered in our country (beside the fact that the inquiry shows, as already mentioned, that illegals generally only visit in emergency cases a hospital).
- survey methods: partly applicable in Belgium to assess the number of illegals in January 2000 (moment of the one-shot regularisation campaign): see farther.
- the so-called capture-recapture methods: at two specific moments in time and at one specific location the population is being counted. The amount of the population not present at that specific moment and location can be estimated by using a parameter (Poisson parameter) and so the total population can be counted. Jandl considers this method as superior in relation to the others. However, such an inquiry has never taken place in Belgium and is also sensitive for criticism[48] as it is demonstrated by the differences in the assessments.[49]

- evidence based on regularization data: "*perhaps one of the best sources of data on illegal migration are figures on regularization*", according to Jandl.
This method could be an indication to come closer to the number of illegal migrants in Belgium at the beginning of 2000 since some NGOs, in collaboration with the Catholic University of Leuven, conducted a survey (after the end of the campaign) among 340 undocumented people asking them if they had requested their regularization in January 2000[50]. 57% of them had done it[51]. 33.219 new requests of regularization were introduced in

[46] JANDL, Michael (International Centre for Migration Policy Development); "*The estimation of Illegal Migration in Europe*" in Migration Studies, vol. XLI, no 153, March 2004, pp.141-155.
[47] idem
[48] Intercepted illegal foreigners can take another behaviour after their first interception; the actions and priorities of the police and inspection services can be different in time and space; it is not applicable to short-term illegal (seasonal) migration, etc.
[49] Scientists have assessed on the basis of this method the total amount of illegal migrants in 4 Dutch cities (Amsterdam, Rotterdam, Den Haag and Utrecht) in 1998 to minimum 40.047. In a new inquiry (2004, "Wijken voor Illegalen") the total number of illegal aliens was assessed of between 125,000 and 225,000 illegal aliens annually.
[50] *Divers* (Newsletter from the Flemish Centre for Minorities), number 6 (July-August 2000).

January 2000 relating to a large 50.000 people (possible partner + children). In other words, 43% of 50000 (21.500) + 50.000 could be a total of 71.500 people without legal residence at the beginning of 2000.[52] [53] However, it is necessary to make the following observations about these figures:

- The relatively small group of questioned people.
- A part of the applicants for regularization were not when introducing their application in a situation of illegal residence but in asylum procedure (declared admissible). These were mainly people who referred to criterion 1 (those who had requested the recognition of refugee without having received an enforceable decision within a period of time of four years or three years for families with minors going to school) and/or criterion 2 (those who, for reasons beyond their control, could not go back to the country or countries where they had mostly been staying before their arrival in Belgium or the country of origin). However the exact number is not known.
- The 340 asked undocumented people were all know at an NGO. As we are going to see farther, they were mainly people who had contacts with a NGO who were rather inclined to introduce a request of regularization. Among the undocumented people who had no contact with a NGO (or lawyer) the percentage non-demanders will obviously be higher.

- snowball-method: step-by-step sampling non-probabilistic sampling method enabling to recruit subjects for the study through the intermediary of friends, family or acquaintances. The objective is to determine the number of clandestine migrants living in a precise community, with the risk to include some people in more than one category.
- Delphi-method: policy representatives, personnel of NGO's, etc. are requested to provide a ciphering of the number of clandestine migrants.
- Estimations based on the extent of illegal foreign employment.

- Assessment of the number of illegal entries:

Here also, the problem lies in finding the right multiplier. There are also, as far as Belgium is concerned, only data available of the number of aliens who illegally (from outside the Schengen zone) try to pass the frontier. James Clarke words it as follows and also adds a warning: "*A key element in such estimations is the proportions that apprehended migrants account for the total engaging in irregular migration. These vary not only from country to country but also among the different institutions within countries. What data exist often reflect the incidental, local or particular requirements of the agencies collecting the data*."[54]

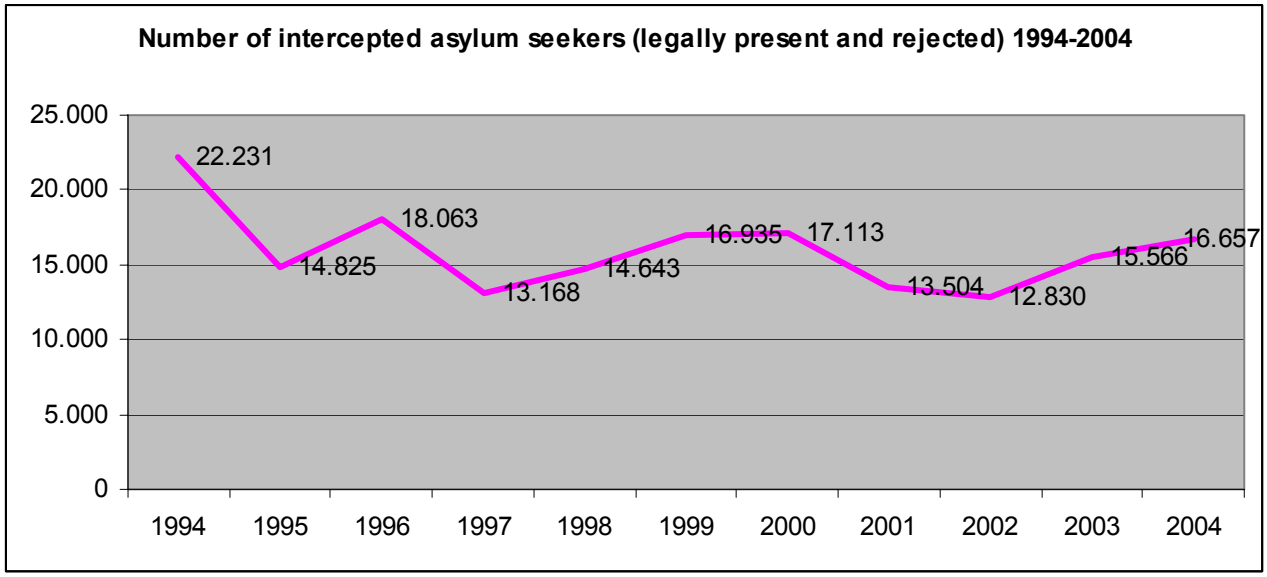
The predominant groups of intercepted illegal immigrants:

[51] For the 43% of non-introducers the most important reason seemed to be a lack of confidence in the government institutions.
[52] The Minister of Internal Affairs gave in 1999 a hypothetical amount from 50 to 75.000 illegal migrants.
[53] While the Ministry of Justice assessed their number in the early 90s from 70.000 to 100.000. Some others also gave a similar number in the first half of the 90s (Royal Commission for the Migrants Policy, OCIV, journalists). In a survey of the International Labour Organisation an assessment from 50.000 to 100.000 is giver (Stalker P, *The work of Strangers: a survey of International Labour Migration*, 1994).
[54] In De Bruycker, Apap, etc, *Regularisations of illegal immigrants in the European Union*, p20.

The Federal Police and the Immigration Service[55] keep since 1994 the figures about the number of intercepted illegal immigrants/clandestines (= so meaning that these people were not known by the authorities up to the time of their interception; therefore this does not concern e.g asylum applicants in exhaustion of legal remedies). This figure has remained stable for the last ten years:

1994: 14.001
1995: 14.335
1996: 13.562
1997: 14.394
1998: 12.704
1999: 13.471
2000: 15.263
2001: 14.913
2002: 17.319
2003: 16.715
2004: 13.771

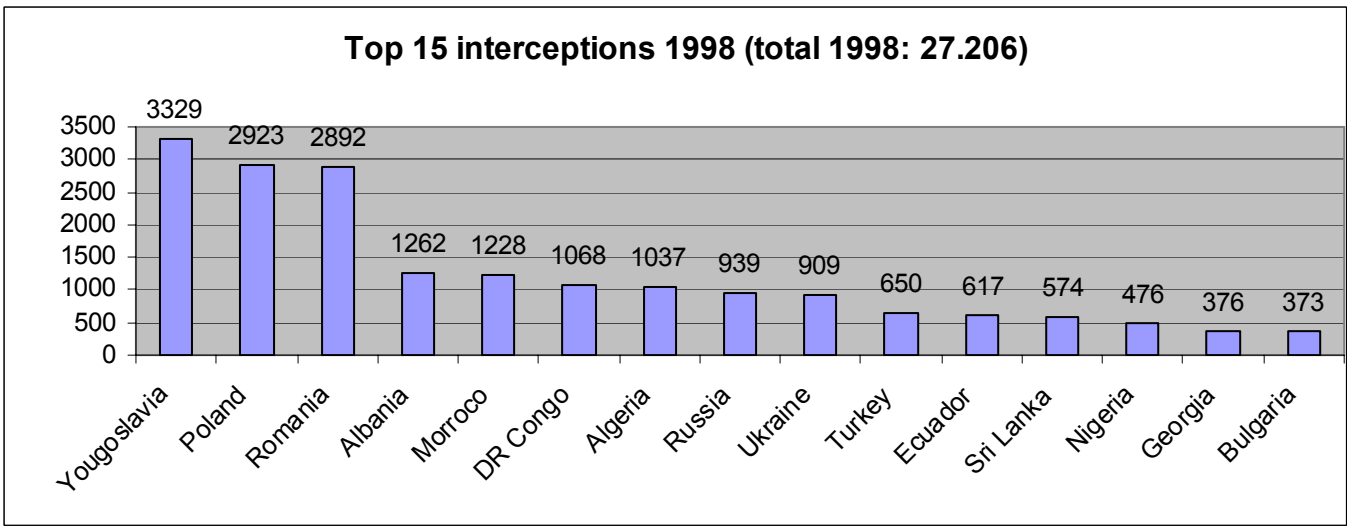
Besides, the figures concerning the number of intercepted asylum applicants and asylum applicants in exhaustion of legal remedies are also kept (this last category also concerns illegal aliens). Unfortunately the division between (legally residing) asylum applicants and asylum applicants in exhaustion of legal remedies is not taken into account:

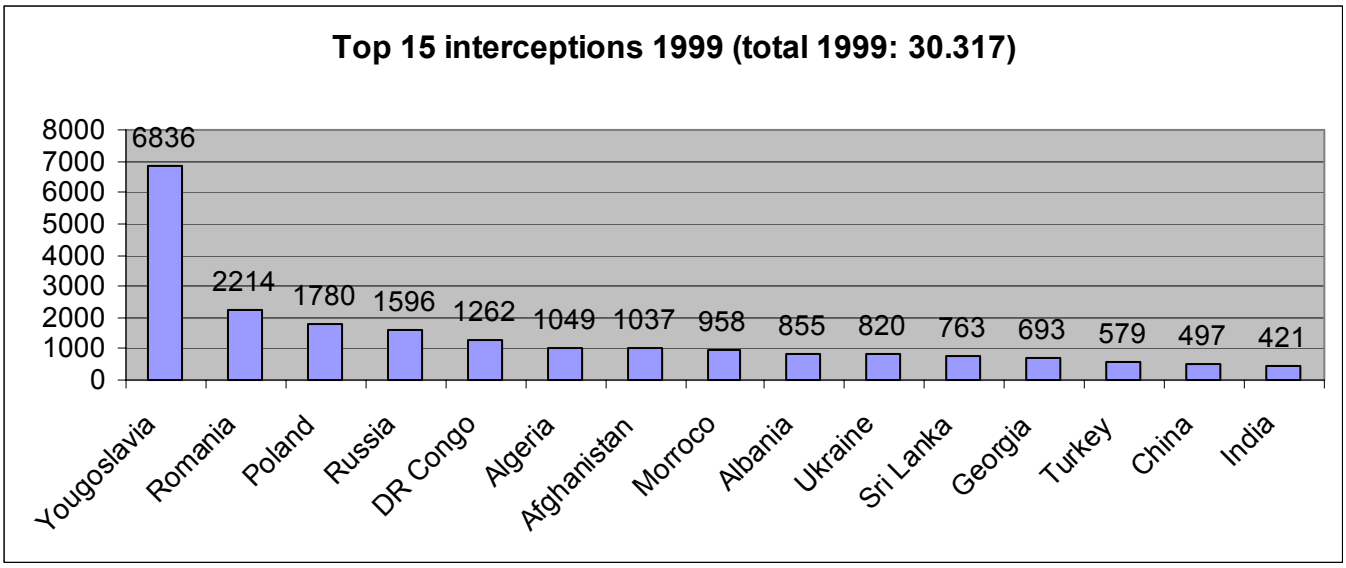


Since 1998 the (claimed) nationalities of the intercepted people have been kept to date.[56] The following figures give a survey of the total number of intercepted ones[57]: illegal immigrants and (whether or not rejected) asylum seekers:

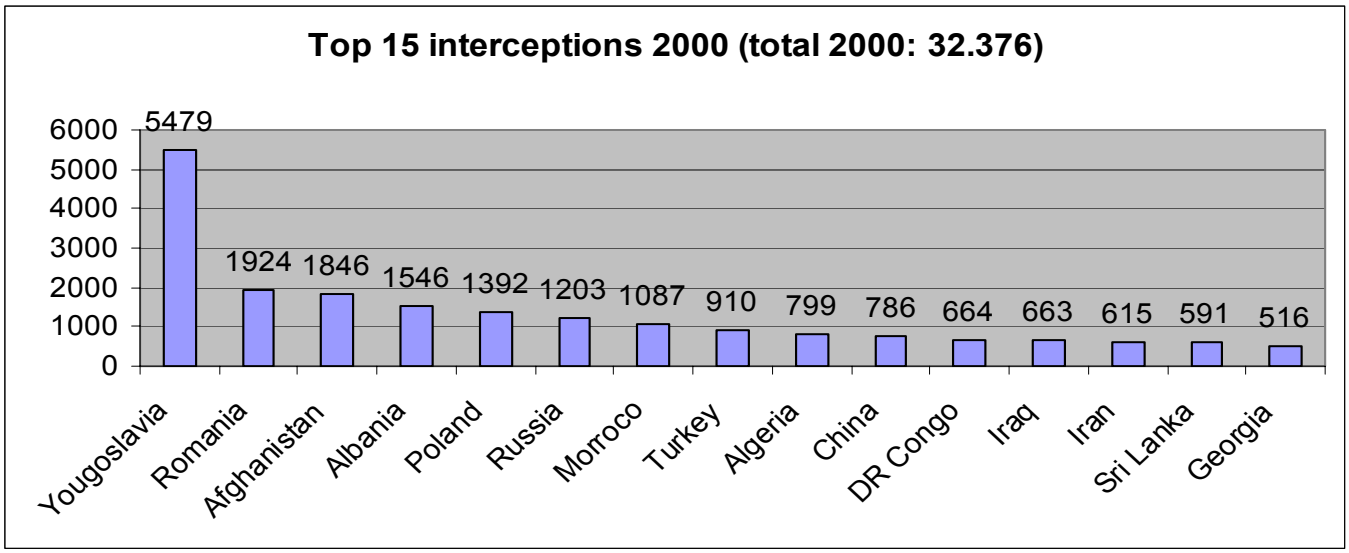
[55] The figures of the police on the one hand and those of the IS on the other seem to indicate sometimes a little difference. The figures of the IS are listed hereafter.
[56] Lists of arrests + immediate removals
[57] These interceptions may be considered as an indication for determination of the countries of origin of the illegal aliens.

The top fifteen through the different years[58] [59] :

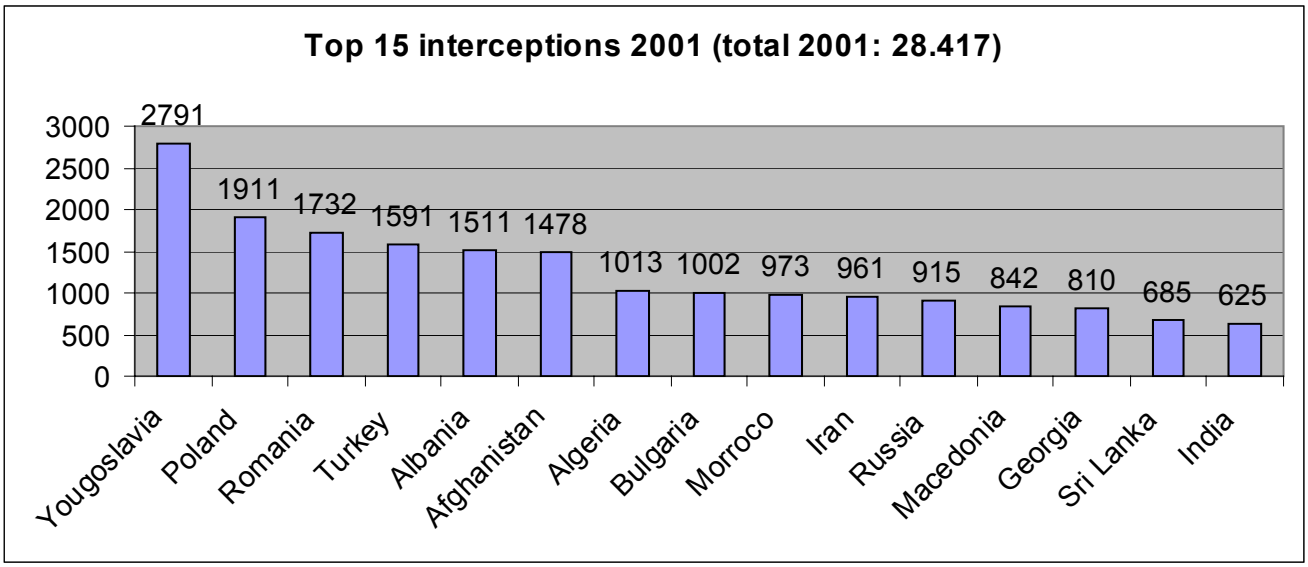


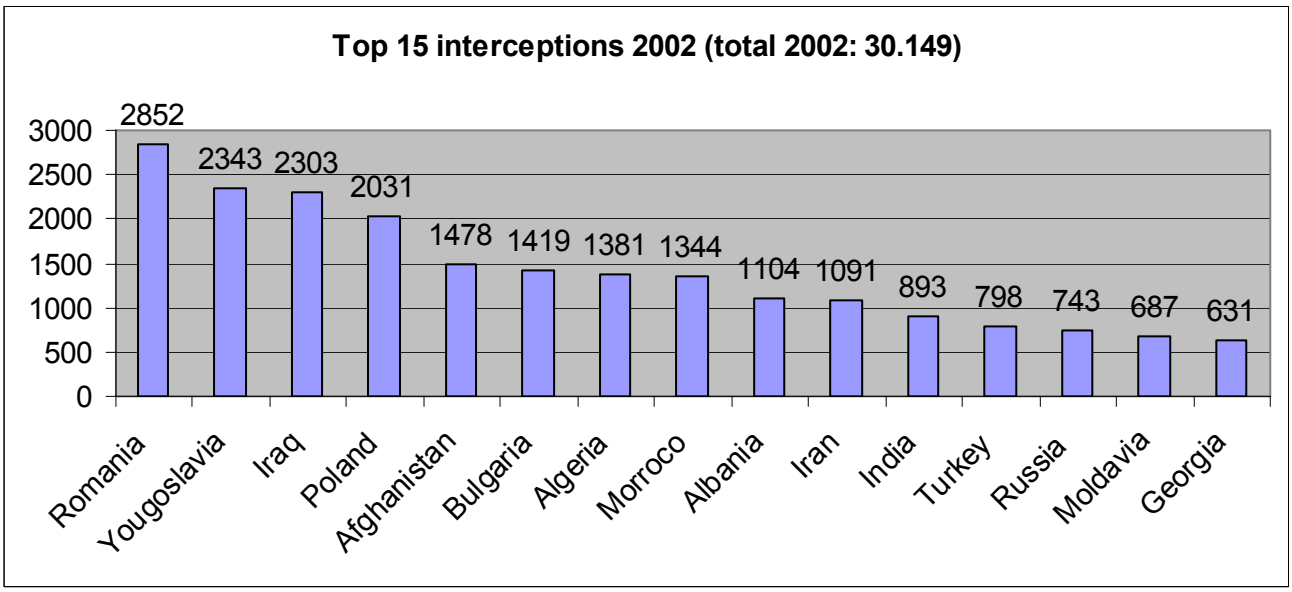


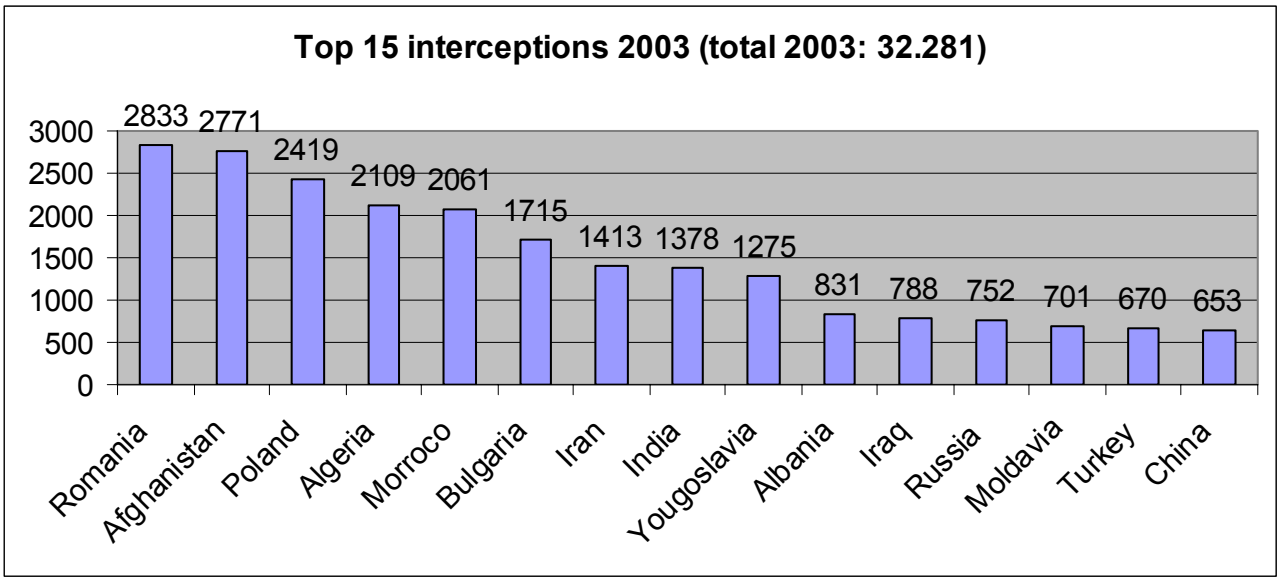
[58] With "Yougoslavia" one means the intercepted people from Serbia-Montenegro and Kosovo
[59] Year 2004; following the access of Poland to the EU, this concerns only the Polish who were caught working on the side.

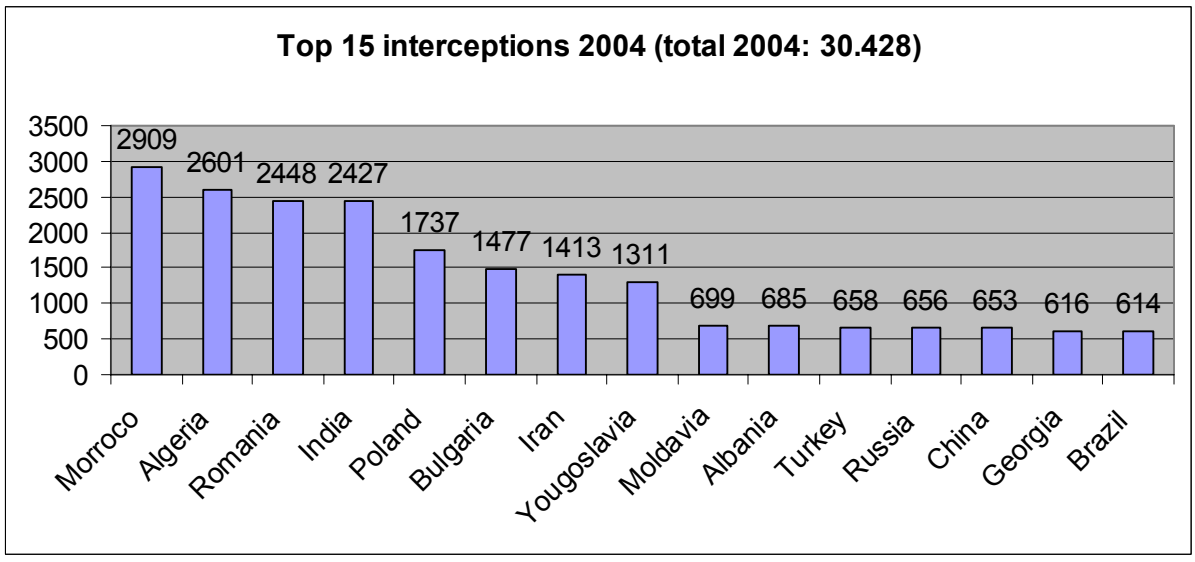


(In 2000 504 British were intercepted and removed but all this had to do with people who had troubled the EURO 2000 football championship)



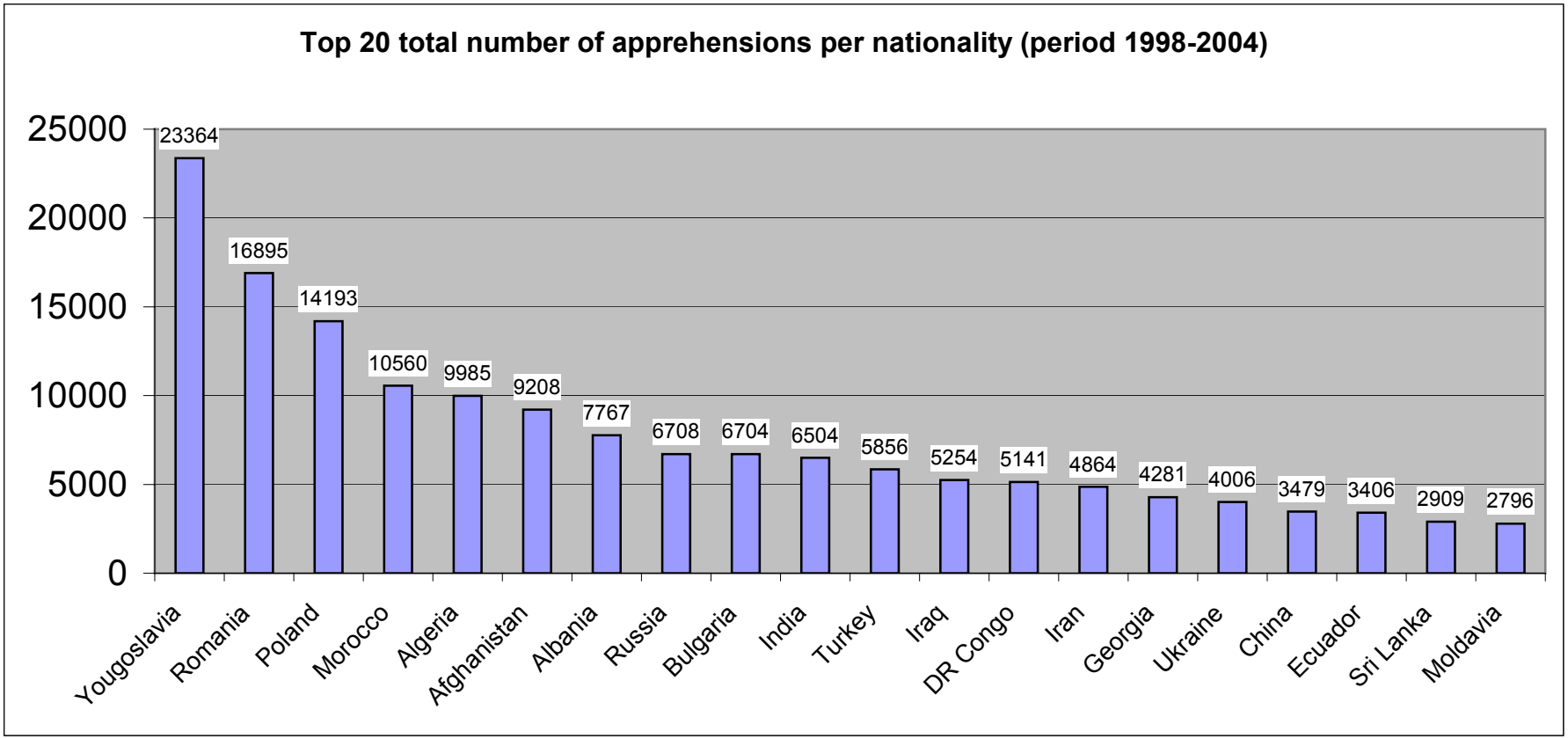



Top 15 interceptions 2003 (total 2003: 32.281)
3000
2500
2000
1500
1000
500
0
2833
2771
2419
2109
2061
1715
1413
1378
1275
831
788
752
701
670
653
Romania
Afghanistan
Poland
Algeria
Morroco
Bulgaria
Iran
India
Yougoslavia
Albania
Iraq
Russia
Moldavia
Turkey
China

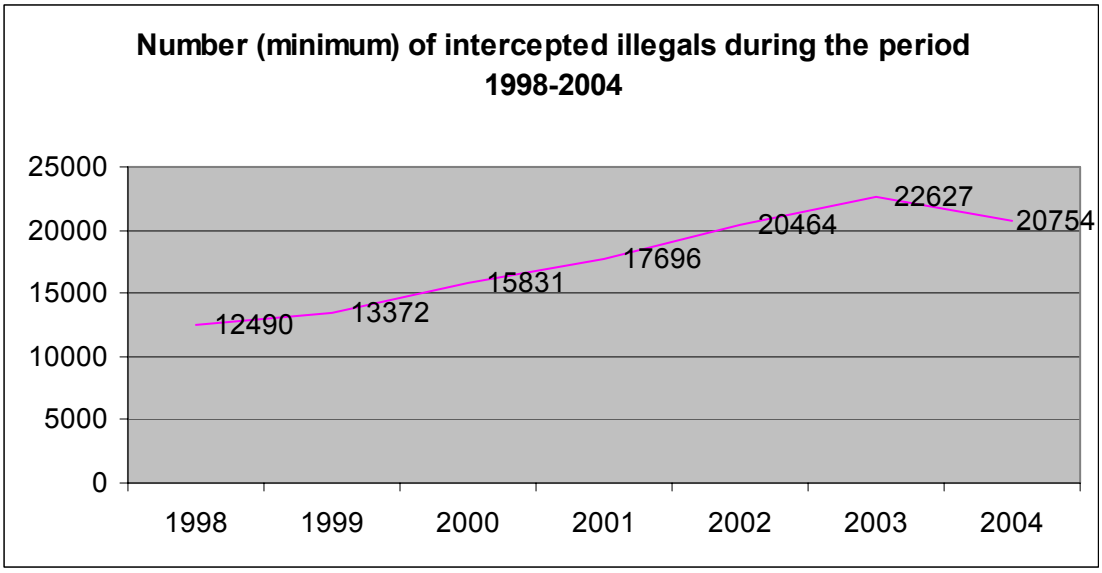

Top 15 interceptions 2004 (total 2004: 30.428)
3500
3000
2500
2000
1500
1000
500
0
2909
2601
2448
2427
1737
1477
1413
1311
699
685
658
656
653
616
614
Morroco
Algeria
Romania
India
Poland
Bulgaria
Iran
Yougoslavia
Moldavia
Albania
Turkey
Russia
China
Georgia
Brazil

No distinction has been made here between the so-called illegal transit migration and the other illegal immigrants who were intercepted. An example of a transit nationality in 2003 and 2004 were e.g the Indians who made the figures increase especially from the summer until the beginning of the autumn[60]. Other examples of transit illegals are[61] the Iraqis, the Somalis, the Afghans, the Albanians, the Turkish, the Moldavians[62], the Chinese, the Palestinians and the Romanians (although many people of these nationalities have to be qualified as residence illegals, e.g. the Albanians, the Turkish, the Romanians). From the information at the disposal of the IS and the Police 2004 knew a less important flux of transit illegals than 2003. Another important observation concerning the differences between the interceptions of 2004 in comparison with 2003 is the important increase of the Moroccans and the Algerians, whereas the Romanians, the Bulgarians, the Iranians and especially the Afghans were a little less found. Another phenomenon for 2004 is the appearance of illegal Brazilians (see also farther). Finally, we have to point out that the decreasing for 2004 is due to the entry of the ten new countries member states of the EU.

[60] More than 40% of the interceptions in the harbour of Zeebrugge in 2004 were Indians.
[61] "Transit illegals", because these nationalities are ordinarily found inside and around harbours or along the highways to the Coast. Their objective is then clearly to reach the United Kingdom.
[62] Some of the intercepted "Moldavians" are actually Romanians (the possibility of removal to Romania is higher than the one to Moldavia).


Top 20 total number of apprehensions per nationality (period 1998-2004)
25000
20000
15000
10000
5000
0
23364
16895
14193
10560
9985
9208
7767
6708
6704
6504
5856
5254
5141
4864
4281
4006
3479
3406
2909
2796
Yougoslavia
Romania
Poland
Morocco
Algeria
Afghanistan
Albania
Russia
Bulgaria
India
Turkey
Iraq
DR Congo
Iran
Georgia
Ukraine
China
Ecuador
Sri Lanka
Moldavia

To know the annual minimum number of people who were at the time of their interception in illegal situation, we could add up the following figures:
foreigners to whom was delivered an order to leave the territory + foreigners who were kept up in a closed centre with a view to identification and future repatriation[63] + the number of immediate (direct) repatriations. For the different years we reach the following numbers:



These figures have thus been in increasing line since 1998 (until 2003).

However, these figures should be cautiously dealt with, especially because one does not know how many times the same person was intercepted 2x, 3x or more (possibly spread through different years), whether or not under the same identity (nationality) and because interceptions can sometimes be the result of police actions steered by higher instances.

AGE AND SEX:

From the annual report of the **closed centres**, it seems that those centres were mostly occupied by a **masculine and young public**:

2003:

CIB (Bruges): 1031 registrations, among which 67% men and 33% women. Average age: approximately 29 years
CIM (Merksplas): 1297 registrations, only men. Average age 29 years
CIV (Vottem): 927 registrations, only men. Average age 30 years and 11 months
127 bis (Steenokkerzeel): 2730 registrations among which 78,5% men. Age: 31 years and 4 months

2004:
CIB (Bruges): 748 new registrations among which 67% men. Age: approximately 30 years

[63] In application of article 7 or 27 of the Aliens Law

CIM (Merksplas): 1076 new registrations, 100% men; average age 30, 3 years
127 bis (Steenokkerzeel): 1771 new registrations (adult) among which 77% men

These figures seem to confirm the thesis that the illegal population mostly concerns a young public. However one may not so easily infer that it mainly concerns men: as we are going to see farther the police would spare more women than men when controlling, the chance to end up in a closed centre is higher among the men because they are more caught when working on the side (see also further), because men are anyway more concerned by criminal activities (and so will be more easily targeted by the police)[64] and because only a limited number of places are reserved for women in closed centres.

In some other chapters useful and informative figures are also outlined.

[64] In 1999 for example the feminine penitentiary population represented about only 4% of the total penitentiary population (Belgians, legal residents and illegal aliens). (Annual report of the general direction of penal establishment).

3. SOCIAL AND ECONOMIC SITUATION; SURVIVAL AND RESIDENCE STRATEGIES. A few reports as illustration.

Though one essential feature of undocumented migrants is ordinarily that they try, as much as possible, to remain unnoticed, there are however a number of reports based principally on so-called intensive research[65], the results of which are listed below.

A. Strategies of undocumented people in Belgium

An interesting report was carried, out on the request of King Baudouin's Foundation, by two university teams (CEDEM[66] from the University of Liège and GERME[67] from the Free University of Brussels) and an NGO (Support centre for undocumented people).[68] One hundred thirty in-depth interviews of people in precarious or without legal residence [69] in eight cities (Liège, Brussels, Antwerp, Charleroi, Gent, Verviers, Turnhout and Sint-Niklaas).[70] On the basis of their origin, they were subdivided into 9 groups (Eastern Europe and the Balkans; the Maghrib; Turkey and the Middle East; French-speaking Subsaharian Africa; English-speaking sub-Saharan Africa; Congo; South-America; South-Asia and South –East Asia).

Under **residence strategies** the investigators intended the activities developed by people to '*have **the permission*** to stay in Belgium', meaning to obtain a residence permit (1) and to ' *have **the possibility*** to stay in Belgium', meaning not being expulsed and/or being tolerated (2).

1: To have the *permission* to stay in Belgium: obtaining a residence status

On the basis of the interviews with illegal migrants, it seemed that this strategy was limited to a single determined attempt for some of these people, for some others, it is a real struggle, and some others have never tried to reside legally in Belgium. The following survey is not exhaustive, yet it is a large survey. The researchers have subdivided the strategies into **two groups: formal or juridical (1) and informal strategies, to support juridical strategies (2)**, these are informal channels to obtain a residence permit (a.o. through contacts with lawyers, NGO's, official instances and politicians).

[65] A form of empirical research by which a detailed picture of a relatively small group of questioned people is outlined. This method is supposed to be applied when it comes down to the study of a phenomenon about which little is relatively known, such as for the residence and social situation of illegal migrants.
[66] Centre d'Etudes de l'Ethnicité et des Migrations (Centre for Ethnic and Migration Studies)
[67] Groupe d'études sur l'Ethnicité, le Racisme, les Migrations et l'Exclusion
[68] King Baudouin's Foundation, Research Project Migration and asylum*, part III (trajecten van mensen zonder papieren in België*), 2001, 221 pp. An appropriate, improved version of this investigation part came out in *Histoires sans-papiers* (Adam I, Rea A, Bonaventure K e.a., 2002).
[69] 23 in the asylum procedure and 107 in illegal residence.
[70] Representative because it concerns the three regions as well as (the) big and medium-sized cities.

*__FORMAL (JURIDICAL) STRATEGIES__:

The formal or juridical strategies were subdivided into two groups, i.e. direct and indirect. By direct strategies the researchers meant the residence procedures sensu stricto. When migrants try to obtain a status which indirectly can lead to a residence permit (by marriage, student, au pair, worker, etc.), we speak about indirect strategies[71].

DIRECT STRATEGIES:

- asylum application: a few more than half of the questioned migrants have never applied for asylum. Among the Subsaharian Africans, all the questioned people except a few former students had applied for asylum. All the illegals from India, Pakistan and Bangladesh had also applied for asylum. Among the Turkish questioned only the Kurdish. The large majority of the interviewed East-Europeans had never applied for asylum, contrary to the former Yugoslavians. A fifth of all the questioned people came from the Maghreb but among them only two Algerians had never applied for asylum. Unsurprisingly, many asylum applicants in exhaustion of legal remedies consider the refusal of their asylum application as unfair and cannot understand the reasons of their refusal. A return to the country of origin is not envisaged.

- Regularization following article 9§3 of the Aliens Law: a majority of all the questioned people who had ever resided legally in Belgium, tried to regularize their residence by this clause. The application of asylum applicants in exhaustion of legal remedies was nearly always introduced within the period of time of one year after the person received the negative decision concerning his asylum application. The only people who only introduced their application for regularization after 5 to 6 years of illegal residence (following art 9.3) were those who had little or no contact with a lawyer, the social and juridical service and whose life happened almost exclusively in the own ethnic community. A little less than a third did not introduce any application for regularization following art. 9.3 of the Aliens Law. Clandestines (or people who have never resided legally in Belgium) considered regularization following art. 9§3 far less as a solution (less than 1 on 7). A large part of undocumented migrants had tried several times to obtain a residence permit following article 9§3.

- The regularization campaign of January 2000 (law dating from 22nd December 1999): the application could only be introduced from January 10th to 30th 2000. It was rather an intricate law which also left large doors open for interpretation. The time limit for introducing the request was rather short (three weeks). All this provided that the choice of information channels of the illegal migrants seemed to have played an important role in the introduction or not of an application. Except for 1 exception, all the(questioned) asylum applicants in exhaustion of legal remedies who had resided in Belgium for more than 3 years tried to regularize their residence by this law. The asylum applicants in exhaustion of legal remedies who had not introduced any application had only arrived in Belgium after 1997 except for 1 exception. On the basis of these data as well as their experience with provision of assistance, the authors of the report supposed that the majority of this group was reached by the regularisation campaign. Approximately three quarters (73%) of those who had not applied for regularization were clandestine illegal migrants. Among all the clandestine illegal migrants only half of them required regularization.

[71] See about this: pseudo-legal migration

The researchers gave the following explanation (on basis of the interviews) to why a majority of asylum applicants in exhaustion of legal remedies and other former legal residents had introduced an application for regularization and only half of the clandestine illegals: these ones had never known a legal residence in Belgium. The Belgian authorities have always been for this group the "expulser", those who do not want them and who try everything to expulse them from the country. For these people, mistrusting the authorities is even a strategy to be able to stay in Belgium. People who ever stayed documented in Belgium like most refugee candidates in exhaustion of legal remedies and other former legal residents have known the Belgian authorities in other circumstances than "expulser" who not necessarily and exclusively has to be mistrusted. They often know better than anybody else that the reception of an order to leave the territory does not necessarily mean that you are expulsed from the country manu militari. A large part of the asylum applicants in exhaustion of legal remedies was assisted by a lawyer and/or juridical service during the asylum procedure. They thus knew where to go to be informed by a regularization campaign. The following factors also played a role not to apply for a regularization during the campaign period of January 2000: the fear of expulsion (mistrust towards the authorities whether the campaign were only a trap to expulse everybody and/or the fear of a refusal of his personal file and the expulsion which may follow); a lack of information; according to his source of information (not always correct) the concerned one does not meet the criteria of the law; to have another strategy than regularization by this law; a plan to get back to the country of origin; a lack of evidence. It was often a link with some of these various factors which explains the absence of introduction.

Different undocumented migrants doubted whether or not they would apply for regularization. After having assessed the advantages (a residence status and what this entails) and the disadvantages (the risk of an expulsion) they eventually took the plunge. These who doubted were mainly clandestine illegals. The difference with the non-introducers are that these doubtful people reside on average for longer in Belgium and that (most of the time) at a precise moment, before or during the campaign, were stimulated by an informant who advised them to introduce an application.

- obtaining the Belgian nationality:

After the law change dating from March 1st 2000 the naturalization procedure was simplified and the required duration of residence a lot shortened. Previously you had to reside for 5 unbroken years in Belgium, after the law change only 3 unbroken years were requested. Naturalization as a way out from illegality was especially put forward among people who had already stayed legally in Belgium: aliens who have lost their unlimited residence right, rejected asylum seekers or former students. This is quite logical since they are more likely to obtain the naturalization[72] than those who have always stayed illegally in Belgium.

- minors:
Undocumented youngsters could not, in principle, receive an expulsion order as long as they were minors. Apart from this, there was only a single note concerning undocumented minors.[73] If the minor had come to Belgium in the company of an adult, the adult was obliged to take back the (undocumented) minor to the country of origin. In practice, undocumented

[72] "More likely" is relative here since because of their illegal residence situation the chance is still very tiny.
[73] This situation is now solved since the implementation on the 1st May 2004 of the Guardianship Law for unaccompanied minors.

minors are often encouraged to apply for asylum by the accompanying adult or before departure.

- visa extension: the visas are extended only in very exceptional circumstances (e.g. medical reasons) if this is asked during its validity.

INDIRECT STRATEGIES:

- marriage: Although the right to get married is not linked to the residence status of the partners, it can anyway, in practice, entail some problems. Collecting all the necessary documents for such a marriage does not always seem easy for an undocumented person.

A right to marriage does not necessarily mean that the concerned person immediately has a right to residence. The Aliens Law (art. 10 and 40) states that the spouse of a Belgian or a legal migrant has to right to stay in Belgium. In practice, however, a marriage does not immediately lead to a residence status, certainly not if the concerned person is on the spot (in Belgium).

On the basis of the investigation, no indication could be given about the number of questioned people who had been searching for a marriage partner and who had succeeded in it. Nevertheless, the marriage was considered as a possible solution among the questioned undocumented people, by those who were planning to get married as well as those who did not. This last group know that it can be a solution but refuse it as a pure residence strategy. The option of marriage was regularly put forward during the interviews, in fact often by Moroccan and Turkish undocumented people. Marriage as a residence strategy seems to concern the biggest communities of foreign origin (apart from EU nationals) settled in Belgium i.e. the Moroccan and Turkish community. This is considered by almost all the illegal migrants as *the* possibility to escape. From the interviews, it appeared that a marriage partner is especially searched for within the own ethnic community. The presence of a large own community consequently increases the chance to find a marriage partner. Most Turkish and Moroccan migrants are single young people, they ordinarily prefer a real marriage (which has the advantage to lead to a possibility of residence status) than a sham marriage. The latter rather seems to be considered as an emergency solution. In the interviews with the Moroccan and Turkish undocumented people, the marriage is also less taboo than in the other communities. It also often concerns an arranged marriage, as it is sometimes the custom within these communities in their own country, and less sham marriages.

The option of marriage in other communities is also put forward in the other communities (than the Turkish or the Moroccan ones), but certainly far less in number and less as the only solution. Assuming that the preference is given to a marriage within the own community, then the undocumented people who hardly have a settled community of their own in Belgium are less likely to meet a marriage partner with a residence status. The researchers gave the examples of the Latino-American and the Filipino community. These communities, for a large, consist of illegal feminine migrants. A masculine partner with a residence status is consequently harder to find in the own community.

A sham marriage, an arranged marriage or a relationship based on affective feelings?

This question is asked by the people around the newly married couple: not only the civil servants of the civil state but also family, friends and acquaintances. Even if a sham marriage is not taken into consideration, the marriage of an illegal migrant with a legal migrant or a Belgian often seemed taboo[74]. A possible underlying motive (obtaining a legal status) seems to shade the whole event of a marriage. Some undocumented people then prefer not to get married as long as they do not have papers not to have the finger pointed at them. The practice of the sham marriage was condemned by several questioned people, some others did not do it but meant that they neither appreciated a sham marriage nor an arranged. Some others thought that the time for marriage had not come yet.

The paradox of the marriage (of illegal migrants): illegal migrants are, concerning marriage, in a paradoxical situation. Although marriage is often considered as the (only) way out from illegality, this illegal status is precisely an obstacle to find a marriage partner. Beside the inferior social position and uncertain situation in which these illegal migrants are[75], the fear of the partner that the illegal migrant is only in search of papers, plays a role.

- work permit:

When a foreigner applies for a Belgian work permit, he must have a valid residence document. If an illegal migrant applies for a work permit, it will thus in principle be refused.[76]

However, it can happen that an foreigner without legal residence still is in the possession of a valid working permit. They are then foreigners who obtained during their legal residence a work permit the validity of which had not yet expired at the moment when they reside illegally[77]. In very exceptional cases[78] a work permit will be delivered without legal residence. The fact to have a work or labour permit can indeed be an argument to apply for regularization via art 9.3 AL.[79]. Many undocumented people as well as their employer think that, if they find an employer who hires and declares them, they can obtain that way a work or a residence permit[80]. It is also that way that some hoped to get out from illegality.

- student status:

The researchers were not busy here with those who had applied for a students status before their departure and therefore come with a student visa to Belgium to receive a residence status. As mentioned, it only concerned those residence strategies that people use when arriving in Belgium after a certain period of illegal residence or to avoid getting back to illegality after a period of legal stay. Certain foreigners came to Belgium with a view to study here but did not fulfil the necessary criteria at their departure in their country of origin to receive a student visa (right diplomas, proof of incomes, registration in an official institution of higher education). These prospective students come then to Belgium with a tourism visa and try to be registered in an institution of education during the validity of the visa and while

[74] Indecent to do, to use or to talk about

[75] This inferior social position makes e.g. an arranged marriage difficult. This type of marriages is sometimes still the custom within the Turkish community. An illegal migrant is mostly not considered as an ideal son-in-law or daughter-in-law. (Burgers en Engbersen: 229)

[76] The same for work permits for self-employed.

[77] This does not still mean that one can work legally because in this case both a residence permit and a labour permit are compulsory.

[78] Specialised work and social circumstances.

[79] On condition of being able to bring evidence of extraordinary circumstances which makes it impossible to do it from the country of origin.

[80] Information assistance 'Steunpunt Mensen zonder Papieren' (following the same research report)

they still fulfil the conditions to obtain a student status. If this does not work during the validity of their tourist visa, they will afterwards try to regularize their residence (using art 9.3 AL.).

- adoption:
If the conditions for adoption are fulfilled and the illegal migrant is adopted by a Belgian or a EU national, there is a possible right to residence if the applicant is not 21 years old yet. For people older than 21, adoption guarantees no right to residence. Only a single person said to have applied for adoption hoping to regularize his residence. For his ongoing procedure of adoption, he had not applied for regularization in January 2000.

- au pair: It often concerns domestic helpers who try on the advice of their employer.[81]

***INFORMAL STRATEGIES**:

- steady appeal and unblocking:

The possibility of a steady appeal (or also unequal appeal, reopening of a file) is not settled in the law. Under reopening the authors of the report meant that an administrative instance who made a decision, is anyway going to re-examine the question and considers if the decision will be revised. A request for reopening can be asked to the civil servant, to the representative of the authorities who made the decision, to the hierarchical superior or other influential people (the Royal Family, politicians, etc.). Since a request for reopening is not in the law, the concerned instance is not obliged to react.

Writing to the Minister or the King makes it possible that for a forgotten file in which no decision was made be treated again. However, the researchers do not consider this as a steady appeal or reopening but rather as an unblocking. Writing that way to the King or to the Minister on Internal Affairs can be considered as the way out of the last hope. It is especially after the exhaustion of all the possibilities that one turns to the Minister or the King hoping that the file will be reopened and judged. (Rejected) asylum seekers are consequently those who often chose this option but also others who already had a long struggle for documents to their credits.

- contacts with (juridical) assistants:

Getting information about the different possibilities to obtain a legal residence in Belgium and being assisted in the procedures to reach this objective are the parts of a residence strategy. The discussed points are those which were strikingly put forward during the (semi-directive) interviews:

- classical actors of assistance: the most classical ways which are followed to be informed and assisted in the residence procedures are consulting a lawyer or seeking assistance at a NGO. Also the media seemed to be an important channel to get simple information (especially for the regularization campaign of January 2000). Besides, the role of the own ethnic community has naturally not to be neglected as a source of information. Beside those who have never undertaken a juridical residence procedure (as well as those who mostly have never consulted

[81] Source: phone permanency of the " Steunpunt Mensen zonder Papieren" (following the report)

a lawyer or an NGO collaborator) these are the most efficient ways to be informed and be assisted. The authors further wanted to mention some strategies of information and some less classical actors who provide assistance to undocumented people.
- non-classical actors for juridical assistance and information: beside lawyers and NGOs some other (not classical) actors also fulfil a role in getting information across. It seemed so that certain undocumented migrants who had arrived in reception centres for homeless people were well-guided. Within the framework of their mission to search for a meaningful solution for the problem of these people (i.e. to stay on the street) the attempt to obtain a permit is logical. For some other undocumented people, the employer or a Belgian friend play the role of go-between between them and the authorities. Besides, sometimes also the local authorities provide assistance to write up a file of regularization (art 9.3 AL.).

- accompanying strategies: by accompanying strategies the researchers meant the way undocumented migrants try to be surrounded by those who know information about residence procedures which can concern them and which they can possibly communicate to their companions in misfortune. By joining an association and/or a self organization which promotes the interests of undocumented people, one can get many information about the residence procedures. Certain undocumented people even work voluntarily in NGOs, others join self-organizations. The public of lawyers and NGOs is essentially made of asylum applicants in exhaustion of legal remedies and other former legal residents. This seems logical since they are also the ones who mostly use the juridical way to get out from illegality. Clandestine illegals (those who have never resided legally in Belgium) have little contacts with lawyers and NGOs. It seems that the first juridical assistant is mostly a lawyer. The assistance of a NGO is only required after.

An important group of people in exhaustion of legal remedies got into debts to pay their lawyer. Often money is lent within the own community and those who are lucky may ask for a collection in their religious community or count on the gifts of their family or friends here or in the country of origin. Some of them say to have stopped the asylum procedure or any other procedure for financial reasons. Many of the questioned people did not know the existence of pro-deo lawyers (also asylum applicants in exhaustion of legal remedies) or did not know where they could find one. Many questioned people were not happy with the provision of service of their lawyer and considered the limited assistance of their lawyer as the cause of their current situation. The people who have been trying to obtain a residence permit for a long time change their lawyers quite often. The cited reason is often a dissatisfaction about the provision of service. The pending bills sometimes explain why lawyers are changed.

Nearly all the people without legal residence who visit a NGO for advice or assistance in relation to their residence file have first sought advice form a lawyer. The reasons are very often that one knows about the existence of these NGOs only after having spent a certain amount of time in Belgium and also because the provision of assistance of a lawyer comes to an end due to the price and the (dissatisfaction about the unfruitful) result.

2) Having the *possibility* to stay in Belgium: not to be expulsed.

Since people without legal residence do not have the required authorization to have the possibility to stay in Belgium, they incur the risk at any time to be expulsed. There are therefore confronted with different obstacles (e.g.: identity checks, detention at the police)

which can put an end to their stay in Belgium. In order to – though they do not have the permission- anyway have the possibility to stay in Belgium, illegal migrants are going to develop strategies on the one hand, to avoid contacts with the services of public order (and their consequences) and on the other, not to be expulsed by a police check. The presence of illegal migrants is sometimes tolerated, very often because of the expulsion capacity limitations of the authorities as well as for humanitarian reasons.

Identity checks:

Checks on the public way, in drinking establishments, and by social inspections are mostly linked to other illegal practices than only the legal residence. Public transports: some people were even asked to show their identity papers even though they had a valid transport ticket. Illegal aliens would less often use public transports without paying than Belgians and legal aliens because they know that by a possible inspection they do not only risk a fine but can also and especially be expulsed from the country. It was especially through transport tickets inspections that most of the questioned people came into contact with the services of the public order.

Course of the contact with officials of public order and/or the delivery of an order to leave the territory:

Only a tiny minority of the questioned people had ever been arrested by public order officials and even very less of the questioned undocumented migrants had been to a detention centre or prison for their illegal residence.

The illegal people having just been in exhaustion of legal procedures balance the fact to get back to their country of origin or to stay in Belgium. Most of the questioned people very quickly made up their mind and considered that going back to their country of origin was no option (only one person considered to go back voluntarily after having received an order to leave the country at the end of his asylum procedure).

The reaction of most undocumented migrants in exhaustion of legal procedures after having received an expulsion order are: carrying out a new attempt to try again to get a residence permit and/or hiding as much as possible from the view of the services of public order. They do it by removing and by going out less often. The refused asylum applicants who were staying in a small commune during their asylum procedure move very often to the anonymity of big cities after having received an expulsion order.

When the services of public order come into contact with a foreigner without legal residence, they must in principle get in touch with the Immigration Service to know what they must do with this person. In practice, it does not seem to be the case all the time. The lucky one eventually gets rid of fear, does not receive any order and is not arrested either.

From the report, it may then be concluded that the undocumented people who have not received an order (to leave the territory) are very often those who can show a kind of identity proof or evidence that they have applied for regularization (art 9.3 AL). Women also seemed to be more spared than men. Moreover, as it often is the case, the services of public order often hold identity checks with a view to another objective than catching illegal migrants (e.g. in case of burglaries, hold-ups), if they uphazardly intercept an illegal foreigner, it is naturally not illogical that they do not give priority to it (knowing that this work can last quite some time).

Among the 107 questioned people, 6 had already been imprisoned in a detention centre for illegal residence. Among the 6 illegal aliens who had ever been arrested, 2 were expulsed from the country. Another person was immediately repatriated after arrest.

Strategies to avoid arrest and expulsion:

The strategies used by illegal aliens to avoid any contact with the services of public order were characterized by the researchers as "reduction risk forms". Other scientists (e.g. G. Engbersen) speak in relation to this about "strategically operating within the public space"[82].

Once caught by the public services of order, the illegal migrants will attempt by all possible means to avoid expulsion sometimes by trying to manipulate their own identity or residence status, but also by trying to claim (observed or not by the expulsion officers) "the status" of tolerated illegals. Sometimes these strategies are rationally thought about beforehand, in some other cases they are an impulsive action at the time.
Risk reduction to avoid a contact with the services of public order: according to Engbersen, there's is a large contrast between the often very long travel that these people made to come to Europe and the immobile behaviour once they have arrived.

Restaurants, pubs, official instances and places where many people meet are considered by illegal migrants as risky places.

A very often mentioned strategy not to be caught by the police is to "behave like a good citizen". This means that one pays attention not to infringe any law (e.g. sneaking a free ride), and avoids to disturb public order (e.g. noise at night) and be involved in criminal activities to as much as possible steer clear of the contact with the police.[83]

**Strategies to avoid contact with services of public order*:

Producing a false identity (and address): different questioned people said they will show a false identity if they are checked.

Hiding identity documents: a repatriation is more difficult if one does not have identity documents at disposal. Knowing this, illegal migrants hide (or destroy) their personal identity documents. There is, however a large group of illegal migrants, mainly sub-Saharan Africans, who have never had once identity documents and are consequently more difficult to expulse. It would be interesting to examine if these groups or individuals who are hard to expulse also entails that the police force let them go or do not report them to the Immigration Service. The researchers gave to understand on the basis of the interviews with some of the questioned people that this is indeed true for certain individuals.

Using (false and) lent documents: the authors of the report found only one case of lending practice of legal documents among the questioned people.

[82] According to Engbersen this strategic operation is one of the four residence strategies beside the benefit from social capital, the manipulation of the own identity and the commitment to a sham marriage (Engbersen, 2002, p100).
[83] An investigation in the Netherlands however demonstrated that among illegal migrants a more cautious or more imprudent behaviour (especially when a previous interception did not lead to expulsion) occurs (Burgers en Engbersen, 1999).

Taking the image of a tourist in order to mask the illegal status: one can adopt the image of a tourist by speaking another language, by telling a precise story. However, pretending to be a rich tourist rather concerns the moment of illegal entry.

Producing precise documents in order to mask the illegal status: by showing particular documents, one can give the impression of staying legally in Belgium. They can be, on the one hand, documents that are only obtained when residing legally in Belgium. Mostly, the people who have such documents at their disposal have already stayed legally in Belgium. On the other hand, one is going to associate a precise document (student cards within the framework of the investigation report) with a legal residence without having ever stayed legally in Belgium.

Requesting "a status of tolerated illegal": illegal migrants will also try to divert the police services, by producing precise reasons, to 'pay attention to the other side'. This can be for humanitarian reasons but also because of the fact that they are still waiting for an answer of a residence procedure (though the waiting for this decision does not guarantee any legal residence). The humanitarian reasons put forward by the illegal migrants to the checking agents and the way they do it can be very different (trying to arouse compassion; possessing a doctor's certificate).

Though the authors named separately all these different strategies to avoid expulsion, it seemed, from the various interviews, that the concerned people do not necessarily restrict themselves to one single strategy. People without legal residence rather hope that a combination of different variables strongly reduces the risk to be expulsed.

Tolerated illegals[84]

As already mentioned the authors understand by tolerating (in Dutch: *gedogen*) "paying attention to the other side, if it seems the best". From the interviews with questioned people, the authors conclude that the presence of illegal migrants in Belgium is partly (and by force of circumstance) tolerated.

Tolerance policy and informal practices of tolerance:

A difference should be made between the above-developed "tolerance policy" and "informal executing practices". The first variant mainly concerns the decision makers whereas in the second variant, the local executing agents are the informal tolerating instances.

The tolerance policy developed by the decision makers can have both an official and unofficial form. The official tolerance policy is ordinarily established in the regulations (e.g. extension of an order to leave the country after a non-refoulement clausula of the Commissioner-General for Refugees and Stateless People). The unofficial tolerance policy is usually but not necessarily hidden. People waiting for an individual regularization seem to be "unofficially" tolerated (art 9.3 AL).

As far as informal tolerance practices it is not possible by definition to speak about uniformity. It depends rather on the way the concerned expulsion agent assesses this situation

[84] The researchers partly based the framework of this part of chapter on the theoretical reflections of Engbersen, G., Kehla, J., Staring, R. and van der Leun, J., 1999.

and follows the instructions of his superiors. It seemed more important for the searchers to observe why tolerating instead of considering who is tolerated.

Why tolerating (*gedogen*)?

Tolerating because of a limited removal capacity: an important reason for tolerating is the limited expulsion capacity of the concerned authorities. Police agents have also other tasks to do than arresting and expulsing undocumented migrants and the detention centres do not have an unlimited number of places at their disposal. The consequence is that priority is going to be given to certain groups of illegal migrants[85]. Moreover an expulsion is often difficult to carry out because the identity of the concerned people is not fixed and there is no collaboration from the country of origin.

Illegal migrants are also tolerated for humanitarian reasons. Although there are no general rules in expulsion practises, undocumented women seem to be more spared than men by the local public services of order. Families with children going to school also seem sometimes tolerated by the local executive civil servants. Other examples of "tolerating for humanitarian reasons" are the elderly and the sick people who are spared by the services of public order. The above-mentioned examples of tolerated people for humanitarian reasons consequently only concern the executing practice.

"Insoluble problem of contradictory rules of law ": following the authors of the same report, the expulsion of certain people without legal residence can be in conflict with some other rules of law, rather international treaties[86]. The expulsion of the parent of a Belgian child for example could be in conflict with the right to family life such as stipulated in art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

People without legal residence waiting for an answer to their regularization application following art. 9.3 AL are tolerated while waiting for a decision. We could state as a reason for this that an expulsion would be in conflict with the "principle of good governance" since the concerned person must have the possibility to wait for his decision in the country[87].

CONCLUSION (of the chapter 'Survival and Residence strategies' of the report "Paths of undocumented people in Belgium")

To have the ***permission*** to stay in Belgium: obtaining a residence permit

Beside residence procedures in the strict sense, illegal migrants also try to obtain a residence permit via a roundabout, notably using an obtained status of spouse, adopted, student, worker, etc. People who have already stayed for some time illegally in Belgium, will

[85] For example those who committed an offence, those who constitute a danger for the public order or the national security or those who seriously disturbed the public order. The preference is also given to those illegal migrants who were trapped during illegal labour or within the context of an action against illegal migration networks or human trafficking.

[86] This will rather seldom be the case since the Immigration Service naturally examines the expulsion order prior to the enforced legislation and procedures.

[87] Although there is a difference between the jurisdiction of the Dutch-speaking (no suspensive effect) and French-speaking Chambers of the Council of State, the principle of suspensive effect for regularization requests within the context of article 9§3 of the aliens law is applied in practice to all the files.

rather use this roundabout to try to regularize their residence. Migrants who have just arrived or people who have stayed legally for some time in Belgium, on the contrary, turn to the residence procedures in the strict sense (nationality obtaining, regularization campaign of 2000, regularization following 9.3 AL., …) .

The informal strategies, i.e. contacts with juridical assistants, official instances and politicians are especially useful for supporting a juridical procedure already introduced.

The authors could establish that choosing the way to try to regularize one's residence depends first on the origin of the concerned person and the presence in Belgium of a (large) community from the same country of origin. For instance, those who come from a country in a state war rather apply for asylum. Those who come from a country a large community of which is represented in Belgium are more likely to find a partner who became Belgian or has a residence status and with whom they can get married. It seemed, indeed, from the interviews that marriages[88] rather are concluded (but not always) within the own community or that the search of a possible marriage partner happens in the own community. Secondly, the knowledge of the residence regulations plays a large role in the choice of the procedure. It consequently seems that most (illegal) migrants, as soon as their stay is longer, get more insight about the possible ways of regularizing their residence. The illegal migrants who have already resided legally in Belgium also ordinarily know more about the existing procedures. They better know the way to find lawyers and specialized services who can provide them with the information about the existing residence procedures.

Beside the diversity in the different types of established procedures, there are also enormous differences concerning the intensity of the attempts to obtain a residence status. A part of the questioned people had never tried to regularize their status whereas others had been involved for years in a struggle to obtain documents. The division between the people who never tried or only once to obtain a residence status and those who had been struggling for years with residence procedures seemed to coincide with the difference between those having already or never resided legally in Belgium.

The people who at that time had never undertaken to obtain papers were separated into two groups by the researchers. Beside a first group who had already a concrete strategy in mind to get out from illegality, there was a second group who had no plan to regularize their residence in the future. The first group concerned exclusively Moroccan and Turkish clandestine illegals who hoped to regularize their residence through marriage. The second group are principally people who think to go back to their country of origin in the near future or those who resigned themselves to an illegal residence entailing no way out from illegality. As regards the people who think to go back to their country of origin in the short term, we would like to point out that these were the words of many illegal residents who in the meantime have already been staying for a very long time and still keep on delaying their return. The questioned people who had no plan in mind to obtain a legal residence seemed mainly to be originating from Eastern-Europe, South-America and the Philippines[89].

Many undocumented people had been busy for years (one of the questioned individual even for 21 years) with a struggle to obtain documents. All the possibilities they knew had been exploited for years. It mostly concerned asylum applicants or other people who had

[88] Between an illegal migrant and a legal resident (whether or not a Belgian).
[89] This corresponds to J. Leman's results about the division of illegal migrants into residence illegals and employment illegals.

already known a legal status in Belgium. These people often speak about their perseverance in the "struggle for documents", the fact that they have never given up and even sometimes that it is a real job which you have to be deeply involved in if you want to reach your objective.

To have the ***possibility*** to stay: not to be expulsed

Receiving an order to leave the country or having a contact with the public services of order constitute an obstacle for illegal migrants to extend their residence in Belgium since in principle this can lead to an expulsion.

It is obvious that the situation of an illegal migrant is different from the one of a legal migrant in many respects: illegality easily leads to marginality and social weakness. Although many of them know that they would live in Belgium without residence status, they are generally not always aware of the impact of it. It also seemed that though different many migrants originally were planning to stay here only for a limited period of time, this changes eventually, in the course of the (illegal) residence into an extension of the residence which does not seldom end up in a definitive project of settlement (by which one means the intention to stay permanently in Belgium)[90]. These are especially the so-called 'economic projects (working and earning money) and 'social promotion projects' (mainly via studies). From the investigation, it seemed that especially this last group 'projects' because of the illegal status and the ensuing consequences generally meet too many obstacles to be realized. Different factors in relation to the country of origin as the host country explain why these people stay in Belgium. The reasons in relation to the country of origin are actually the same as the ones which motivated their decision to come here: mainly the bad socio-economic situation (high unemployment, education, lack of medical care) and the socio-political situation (violence, discrimination, persecution, etc.). Equally, the social check when getting back is often a reason to stay here despite marginalization: going back without the hoped climbing on the social ladder, without money, etc means shame, being considered as a loser. Following the research report it can even go so far that the surroundings in the country of origin nearly forbids the concerned one to go back. The factors in relation to the reception country are mainly (generally it is naturally an interaction and combination of different factors):
- the hope to be able to materialize their project with or without residence permit.
- strong links in Belgium: e.g. children born in Belgium
- habituation to the Belgian way of life; not feeling anymore at home in the country of origin. Very often the priority factor seems to be education for the children.
- the so-called "paradox of residence documents": the residence documents which make a legal residence possible in the reception country are for many illegal migrants a condition to go back to their country of origin. So after a return, one can still come back to Belgium if this must be necessary (possibility to circulate freely). Several asylum applicants in exhaustion of legal remedies also pointed out that the local authorities consider them differently if they go back as undocumented people in exhaustion of legal remedies or with a European residence title.
- resolution to stay: some of them seem to have left their country of origin for good and returning is absolutely no option. Obtaining residence documents sometimes seems to have become the actual reason to want to stay in Belgium.

[90] ADAM I, BONAVENTURE K., and others.; *Trips (Paths) of undocumented people in Belgium*, 2001, pp177-178.

The conclusion of the researchers is that the factors in relation to the country of origin are ordinarily, opposite to what we often think, at the base of the motivation to want to stay in Belgium. Beside prosperity, mobility also seems something desired. The first thing undocumented people want to do once they have residence documents at their disposal is to go back to their country of origin (naturally with the guarantee to be legally allowed to enter Belgium again). Not seldom they also are a few rational factors to explain the resolution to wish to stay in Belgium.

Also different other works sketch a picture of the life and the social situation of the illegal migrant:

Though it is not immediately clear from the title, the book "*De Roma van Brussel*" (**The Rom from Brussels**) actually deals principally with illegal migrants, usually undocumented Roma-gipsies who come from Eastern Europe[91]. Their number in Brussels was assessed in 2004 between 5.500 and 7.000, most of them from Romania (3.500 to 4.600). **Some of the results are the same** as Adam and others 's work.:
Many of them want to radically break with the past (reason why they sold their house); one tries all kinds of strategies at the same time (asylum, regularisation, etc.); a large part of them had already stayed for long in Belgium (6 to 8 years); the importance of the chain migration (men introduce asylum application more often than women; women stay consequently in the country to come and join their men afterwards); the importance of the social network (people of a determined region in Romania generally search for a city where their compatriots reside[92]).

Most of the Roma are to be found back, not surprisingly because their residence status is often illegal, in the so-called concentration neighbourhoods where the offer of cheap houses is higher. The cost of housing rent seems to be the main factor for the space spreading of the Roma.[93]

Contrary to a higher assessment in this report, the health situation, following the questioned helpers of the Roma and other undocumented people is worse than the natives. Generally they are illnesses linked to poverty (e.g. TBC), bad diet models and ailments due to stress. Usually they often go directly to the emergency department. According to the authors of the 'the Roma of Brussels' the undocumented people have also often a difficult access to the necessary health care: some doctors and hospitals send them back because they fear not to be paid and will have to bear the costs on their own (these problems occur mainly in private hospitals). From another investigation, it seems that gipsy women sometimes come to Belgium in order to give birth. These seem to be valid for individual cases and not for women who came via so-called chain migration.[94]

[91] Foyer Vzw, De Roma van Brussel, 2004, 253p
[92] This way, one meets in other Belgian cities Roma from other places in Rumania or from another country (e.g. Slovak Roma: Gent and Tienen; Czech Roma: Gent and Lokeren).
[93] In the Brussels Region too, undocumented people have no access to social housing and are often the victims of unscrupulous owners of slums. A few reception houses have however a certain budget to welcome homeless people in case of extreme emergency.
[94] BAFEKR S, Zwangere vrouwen in de illegaliteit te Brussel, p46.

Another investigation was carried out by Cedem (Centre for Ethnic and Migration Studies, Liège), but this time in charge of **IOM**.[95] Four meetings gathered operational specialists and experts in the field of help and assistance to migrants in **the two Walloon biggest cities**, Liège and Charleroi. The **most important things** discovered are (beside the fact that it is very difficult to develop a standard model of the (illegal) migrant):

- there is a large difference in terms of positions and ways of functioning towards migrants (by the various institutions). On the basis of the study, local actors have a certain freedom of movement regarding the application of valid rules. It consists of a system that is experienced as unfair and unplayable by illegal migrants and influences among others the hope of being ever regularized (or conversly: has an influence to consider or not a voluntary return).
- a (financial and/or symbolic) debt regarding the people who made anything possible to emigrate to Belgium is fundamental and prevents an (early) return to the country which is experienced as a failure. This is further reinforced because many of them try to hide their miserable experience here with respect to their home community.
- It is essential to also consider and deepen the (im-) migrant as emigrant if one wants to be successful with a possible return; the reasons why someone left his country are fundamental and explain why it is so difficult to convince them of a voluntary return.

Beside political, economic or religious reasons, there are also personal arguments (e.g. family problems), the personality of the migrant, the image that one has of Europe, the presence of family members in a determined place or the existence of an economic niche are as many elements that (can) justify the departure. The confidence towards the local authorities seems more important than the one towards the central authorities. It seems also from this report that young and single people are more likely to be expulsed (a.o. by of a different position of the local agents) than couples and families. Contrary to other reports, it seems that the new migrants learn to know their rights and conditions to be regularized faster. They also know the cities, administrations and organizations (e.g. doctors) who are more helpful towards undocumented people. Family in the large sense and/or the ethnic community are the two bedrocks which make it possible for each migrant to limit the difficulties when arriving (work, housing, etc.). The fact that it is possible to live or survive clandestinely during a very long period and that this is eventually considered as a real option is due to the existence of parallel (whether or not organized or structured) networks which make it possible to live outside the administrative structures (e.g. doctors who work for free or against reduced fees). Many undocumented people also believe that "time is on their side" and that the opportunities to obtain papers increase as longer as one stays (illegally) in the country (e.g. hope for a collective regularization campaign).

The report concludes that there are two phenomena explaining why so many people are ready, in spite of the difficult circumstances, to go on living clandestinely: the first concerns the relation between the migrant and the authorities; the second phenomenon refers to the double meaning of a migration project: the fact of leaving one's country (emigration) and the fact to settle in another country (immigration). The first phenomenon refers to the certain freedom or flexibility of police agents or civil servants when making decisions towards undocumented people. This would reinforce the hope for regularization of many migrants and would give them the feeling that it all depends on luck or chance. As far as the second phenomenon is concerned, it is necessary not to lose sight of - if one wants to lead a

[95] MARTINIELLO M, JAMIN J (CEDEM), *Het traject van "irreguliere" migranten in het Waalse Gewest (Guidances of undocumented migrants in the Walloon Region)*. Inquiry to the attention of the International Organisation for Migration, 2004, 50pp.

successful return policy – that the reasons for the departure are as or more decisive than the circumstances in the reception country.

For the time being, there is also scientific ongoing research about the **Polish** and Bulgarian **migration to Belgium**, which mainly deals with irregular migrants. A part of the Polish research[96] is already finished (2003). The author's conclusions are outlined below:

The analysis of the Polish immigrants community who came to Belgium since the nineties, allows us to notice that it is a large community which occupies an important place amongst the foreign society of Belgium. Research shows us that there is indeed an important Polish community in Brussels and that the majority of the persons which compose this community are illegal immigrants. The new Polish immigrants of Brussels enter the Belgian territory as simple tourists. However, after three months, they stay here without a residence permit and join the informal job market. By analysing the Polish society of Brussels, we notice the emergence of a new type of Polish immigrant's community: the transnational community. This form of social organisation has been based upon networks of formal and informal ties and above all, upon family ties. This community has a large network of organisations which allows it to live underground and also maintain permanent and dense ties with the native country.

According to the author however, the existence of the transnational community has rendered the integration or the assimilation of the immigrants more difficult. According to the author's observations and to the results of her enquiry, she notices that the Polish workers, who live in Brussels, are not very inclined to learn the French or the Flemish language**.** They work together with other Poles or are executing jobs for which they do not need to have any linguistic knowledge (housekeeping for instance), they mainly spent their free time with their family or their Polish friends, they watch Polish television by satellite and they read Polish newspapers which are, for them, the main information source. They can buy Polish products in shops employing Polish sale assistants, so they do not need to master a foreign language. Without knowledge of the French or the Flemish language, it is impossible to imagine any kind of integration in or assimilation with the host society. The Belgian society remains unknown to them, even if they are "neighbours" for several years.[97]

The Poles come to Belgium for several reasons. First of all, it is a country which is not far away from Poland, so the travel expenses are relatively cheap. Entering the country was very easy. Thanks to the abolition of the visas, Polish citizens may legally spend three months in Belgium as tourists. In 2004, staying in Belgium became even easier, thanks to the joining of Poland to the European community. Poles come to Belgium because the Belgian authorities tolerate their presence, even if it is an illegal one, in Brussels and in other big cities. The expulsion actions concerning illegal workers have no major consequences and our interlocutors even declared that, throughout the years, they became more and more rare[98].

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[96] KUZMA Elzbieta, *Les immigrés Polonais à Bruxelles (Polish immigrants in Brussels). Analysis and description of the phenomenon*, ULB, 2003, 137pp.

[97] From another investigation, it seems that the knowledge of French or Dutch of many illegal migrants is very weak despite years of residence in Belgium, which demonstrates that the contacts with the native population are very limited (BAFEKR, S, p71).

[98] In reality, the expulsions of Poles have not diminished in recent years (until the adhesion on May 1 2004 at least), on the contrary. It is only an impression that the Poles have. At the same time, they ask themselves questions about the notion of "repatriation", because they can return to Belgium only a few days or a few weeks later if they wish to come back (considering the short distance between both countries and the cheapness of the transportation facilities).

Immigrants can easily access the Belgian labour market and thus also the Poles, who already have a solid reputation and who occupy an important place in the informal economy. Furthermore, the public authorities[99] show a great tolerance concerning this illegality.

The authors were astonished to learn that, despite the illegal situation of their stay and their work, the Polish immigrants can benefit social security, their medical expenses are reimbursed [only in urgent cases] and they can rent an apartment without encountering any problem and register their children for school. False Polish tourists even attend, without a residence permit, French classes organised by the municipalities of the Region of Brussels. They are satisfied with those classes mainly because the price of the inscription is very cheap. All this confirms the opinion of the immigrants that their presence, although numerous and illegal, is tolerated by the Belgian authorities since many years, even before Poland joined the European Union. This is one of the factors that enter in line when choosing the immigration country. Immigrants will not travel to a country where it is difficult to live outside the law and where they could be often bothered by different controls done by the police forces. They come to Belgium because it is relatively easy to find a job here, because they can leave and enter the Belgian territory when they want, they can bring their children to Belgium and give them an education in Belgian schools because they earn more money here than in their home land and because they sometimes have more relatives here than in Poland.

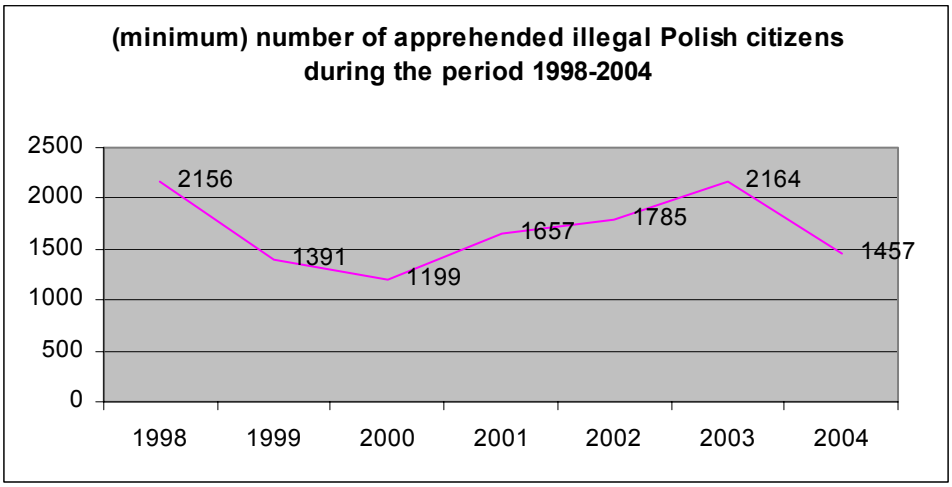
Unlike the initial assumption, it seems that the evolution of this immigration is less linear than expected. If some Polish immigrants do fit in a circular immigration model, spending some time in Brussels and some time in Poland, there is another minority group of this Polish immigration who wants to settle down definitively in Belgium while keeping contact with the home land. As it was the case for previous migrations, some temporary situations could become permanent ones and Polish immigrants who say they wish to go back to Poland, could end up staying in Belgium. However, the majority of the immigrants do consider their stay in Belgium as temporary. Temporality conditions their life in our country because the great majority is not interested by a regularization of their stay in Belgium. This can explain the rather small amount of Poles who applied in order to obtain the documents in Belgium during the regularization action held in 2000. They say they want to go back to Poland in the near future. But, due to the actual economical situation of Poland, the author thinks that the illegal immigration of Polish citizens to Belgium will continue to exist during the years to come. This is most likely due tot the fact that numerous Polish families have a low standard of living, that the unemployment rate in Poland is still very high, that the Polish salaries are still inferior to those of Western European countries and that the undeclared employment market is accessible in Belgium. It must be underlined that – still according to ms. Kuzma - the Polish workers represent no threat what so ever for the local labour forces because they fulfil jobs which are not desired or appreciated by the Belgian citizens. On the other hand, the demand for very cheap and flexible workers, which had been generated by a fragmented labour market within the EU, will no doubt be important during the next years. The migrants coming from Poland and from other economies in transition and for whom the perspectives in their home countries are generally not very attractive represent a response to this demand. They are ready to accept low salaries, several forms of exploitation and the absence of legal protection or social security.

[99] This is also the perception of the (illegal) Poles. They are convinced that the authorities and the citizens tolerate them because they are essential because of their cheap and good labour. According to the author, the Poles think that the authorities are very tolerant towards illegal foreigners.

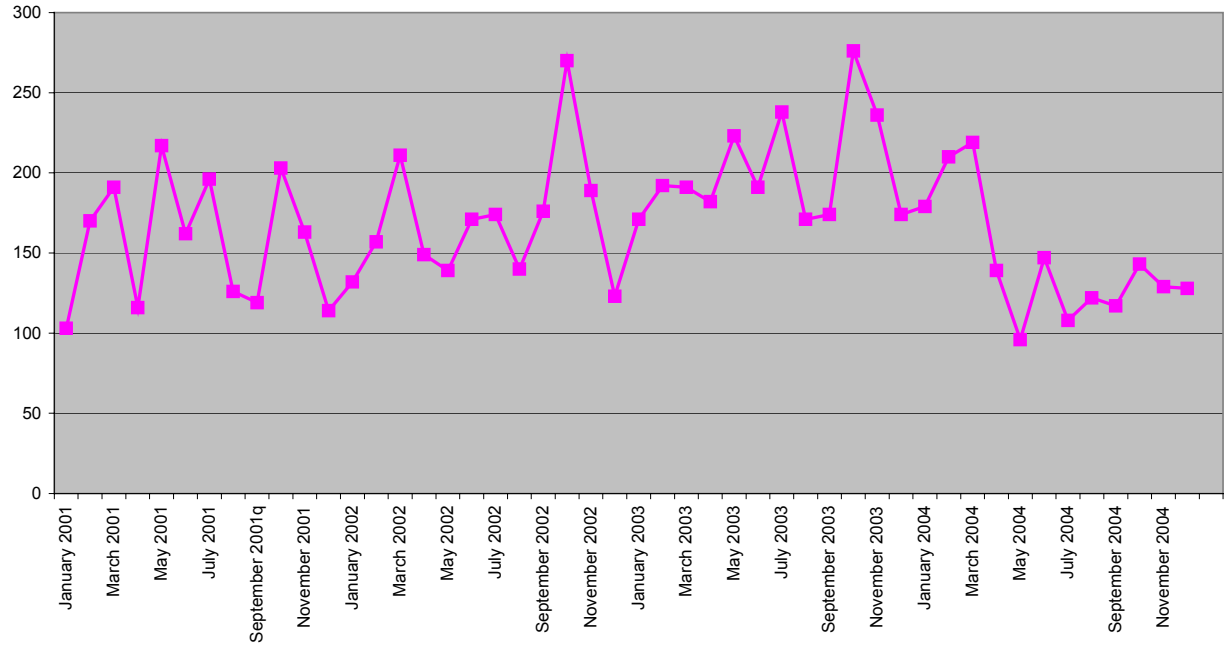
The majority of the Polish immigrants say they will go back home as soon as it is possible for them to find a job in Poland which will earn them enough money to live. They will even return if they just find a job in Poland. It is possible that their children, who are actually growing up in Belgium or the very young immigrants will choose to live outside their native country but this will not concern the older people, those who have relatives or a home in Poland.

So, the author estimates that the transnational community of the Polish immigrants in Brussels, which, despite its illegality, counts many persons and is well organized, will continue to exist and will even expand during the years to come.

As an illustration: data on illegal Polish migration



Monthly evolution of intercepted Polish citizens (illegally present and/or in contravention with the labour regulations) (2001-2004)



A large research was also directed to the **undocumented Colombian community in Brussels**[100]. The *thesis "Transnationalism among Colombian migrants"* brought more precisely an ethnography of the life of Colombian women (in particular from Medellin) in Brussels, seen in the context of their life before their departure, their return project and hence the possible realizations and thirdly, especially the links they have and maintain with their home base in Colombia. The research showed that migration is an acceptable economic alternative within the Colombian context, in which chain migration (*cadena*)[101] holds a central place: the transnational contacts between migrants in Belgium and prospective migrants in Medellín play an extremely important role. Economic transactions from Belgium underline how life and work are both dependent on the family (cell) and/or the large family left there and dependent on the return as well. In their migration, the (plan of) return is settled since the departure. The motivation to get back is however not always the accomplishment of the so-called migration objectives; the nostalgy of the own *ambiente* and the family, in particular, can be decisive. Returning does not however mean a definitive stage at all: different migrants keep in touch with Belgium and Belgium is now on their migration map to where they can possibly migrate back.

[100] During the period 1993-1999.

[101] For some other different authors too, chain migration is very particular for undocumented migration. See Van Broeck, A-M, p131

The research further brought to light:

- *salir pa'delante*: The women leave Colombia[102], first of all for economic considerations, though they do not depart from "pure misery": they belong to the lower middle class and want to improve. Defining the Colombian migration as a mainly feminine migration can be explained by the employment supply in Belgium, for their part, it means *domestica*. The already present migrants also make mainly other women come and especially relatives on their own mother's side; so a certain matrilinearity is involved. Girl friends are also helped. The fact that they can help their family gives the migrants a great satisfaction. Beside the financial help, there is also the indirect help consisting of helping other family members come (*cadena*). Returned migrants making the economic balance, are rarely hundred percent satisfied or are sometimes even disappointed: most of them improved socio-economically speaking but once back in Colombia, the daily struggle continues.
- *conocer*: the migrants come to Belgium to earn money, but they also want to broaden their horizons, they want to get to know Europe and its magic.
- *la cadena*: So, the chain migration in series is very important. The migrants have no idea of Belgium in Colombia; they do not specifically leave to Belgium but to where they know someone. Some of them have already a job in Belgium before their arrival – the independence and the position of strength (by her new financial situation) that the woman gets here can influence the decision to stay in Belgium: she does not want to fall again in the old role model.
- *juntos pero no revueltos*: there is no Colombian community in the strict sense of the word in Brussels: regional chauvinism, distrust, gossips and jealousy divide the migrants.
- *ambiente*: a very difficult notion to describe referring to an atmosphere which mainly takes the social aspects into account. Since this *ambiente* does not exist in Belgium, the nostalgy about their Colombian *ambiente* is very important when the migrants consider their return.
- *(in)seguridad versus (in) tranquilidad (in(security) versus un(quiet))*: Unlike Colombia, Belgium is a secure country but the migrants know some troubles here because they are undocumented (fear of a forced removal). If they strive for regularization, the objective is not really to reside here for ever but this would only help them reach their goal more quickly.

Further relevant data:

The author assessed the number of undocumented Colombians in Brussels from 6 to 7.000 (1999) while there were not even 800 legal Colombians for the whole of Belgium[103] [104]. Women represent 65 to 75% of the whole population, most of them are aged between 20 and 35 years. Older than 50-year-old women constitute an exception. Most of them come from a city context; their family situation is very different. Among women aged between 30 to 50, many are divorced. Most of them stay here alone. They do not precisely have a higher education diploma but some of them followed a professional training education. At least 95% of the Colombian women work as domestic. Some of them have stayed here since the late 70s or early 80s; for many of them however, the arrival took place between 1985-1995 but the author often came into contact with newcomers. Their salary stood (in 1995) between 250 and 300 BF (1 Euro= +/- 40 BF) an hour. Important too, there was a slight tendency to pay

[102] Colombian men chose mainly Venezuela as a destination.
[103] There would be a relatively strong fraction and hierarchy among the different types of migrants. Different legally resident migrants look down on the undocumented migrants from the lower middle class who are busy with cleaning tasks.
[104] And whereas the yearly number of intercepted undocumented migrants is very low and fluctuates for the period 1998-2004 between 26 and 51: "*strategically operating within the public space*"?

lower wages because of the greater competition due to the influx of migrants from the former Eastern bloc. The sterner legislation as well as the higher risk to be trapped would also put pressure on the wages. Ten to fifteen per cent would work as *interna* (living together with the employer) where the exploitation risk is higher. New migrants are also mostly bridgeheads who help relatives or friends to come: the migration reproduction is social and not only family-based. The assistance (housing offers; learning habits; searching for a job) is very important for the first months and makes (illegal) migration viable. Since these women are undocumented, the work fields are highly restricted. Working within the private sphere of a house seems to be one of the very few acceptable possibilities. Since work is, most of the time, passed on within the own group, the ethnostratification of work is carried on (or the fact that different migration groups, to a certain extent, "hold" precise working spheres). Indeed, it is mainly the verbal reference which makes work supply and demand tally[105] [106]. The Colombian women hold mainly, together with other Latin-American, Polish and Philippine women the domain of domestic. Many of them are more anxious about a possible removal during the first period of migration because the migrant has not collected enough to return (and therefore considers his migration project as not fully completed). A good many too have developed a system of thinking and dealing which allows them to avoid risks, to pass more or less unnoticed (wearing good clothes; speaking French on the street; never dodge the fare). Checks with pending order to leave the country (so without detention) does not generally lead to a departure but entails a change of address. Among some of them, it also increases stress and anxiety which in turn influences the consideration to return or not.[107] The fact that the right to education for minors is guaranteed would also have an influence on the decision to let the children come or not.

Another research, carried out in **Antwerp** also brings the social situation and the profile of undocumented people to light.[108] The investigation was led with a view to a **housing project**[109] for which, among others, 23 undocumented migrants were deeply interviewed.[110] The access to social housing for undocumented people is, in principle, as good as impossible, but in the practice, it seemed that in the social housing companies, homes were allotted to some undocumented people. This was partly due to the fact that the collaborators of the social housing companies did not have the necessary knowledge to check the legal residence status.

[105] "Dropping" a job, e.g. in case of a definitive return to Colombia, is judged very negatively.

[106] The family members of Polish pregnant women specially come to Belgium as well to take over the jobs during the period of time before and after the delivery (see BAFEKR S, *Zwangere vrouwen en schoolgaande kinderen in de illegaliteit te Brussel*, p23).

[107] According to other authors too, social, psychological and economic pressure influences to an important extent the decision to return (voluntarily). Returning with "empty" hands seems both economically and psychologically not feasible.

[108] Final report housing research action of undocumented people (Kosova npma and Haven npma), 2000. (Kosova: Koepel Sociale Verhuurkantoren Antwerpen)

[109] The central goal of the project is to provide undocumented people with housing, hence stability and real perspectives of future.

[110] Since the group was relatively small and only concerned undocumented people who were known by assistance organizations, this inquiry does certainly not claim to provide scientific results.

Anyway, in each case, the offer was not structured but rather very scattered (since the circular letter dating from 31st January 2002, after the research, the access to social housing has been impossible for people without legal residence[111]). It further seemed that mainly, the (sub-Saharan) African and, in particular the Congolese, community had very urgent questions to ask about housing. A possible explanation could be that the Turkish and Moroccan undocumented people network is strong enough not to be confronted with the same problems[112]. Other explanations are that Africans better find the way to specialized organizations because they are more articulate; that they are more dependent because they put their hope in the asylum procedure (and less in the informal labour market)[113]; According to the Africans themselves, private owners would more often discriminate Africans. The average residence period of the 23 undocumented people stretched out to more than 8 years. Their average age was 37,5 years old and oscillated between 24 and 52 years; taking their residence time into account, a great many were at the end of their twenties when they arrived in Belgium. Almost ¾ were isolated, living or not with children. A lot of parents had more children than those who were in their charge at that time. The isolated parents with children were mainly women; the isolated people without children were principally men. Some18 out of the 23 had followed a Dutch class at a precise moment. Most of them had different sources of income the most important of which was the support of organizations for refugees. Acquaintances also seemed to materially support a great many. Financial support is rather rare or limited. The available monthly income seemed to be particularly low: for 20 among them, it rose up to 250 Euro per month; 9 among them had even – though even the authors of the report admitted that this was actually impossible[114] – to survive with less than 50 Euro. Psychosocial problems (depressions, anxiety attacks, etc.), body ailments, anaemia, loneliness and miscarriage would quite often happen among undocumented people. It also seemed they moved strikingly often (unlike a Dutch research in Rotterdam). Renting overdues and overpopulation seemed to be frequent (first and mainly in case of houses rented at a high price). Strikingly too, the undocumented people were generally not dissatisfied with their homes (impression) despite the fact that they presented many defects. From the project (real homes for a number of undocumented people by the social letting company) it also seems that the target group is actually more helpless on many fields (than the Social Letting Office believes is necessary for the regular working) since they hardly lived independently.

[111] On February 4th 2004 a new decision was in force on the Social Offices for Letting, which makes provision that maximum 10 % of the homes can be let to a well-defined target group for which the conditions of registration and application of the social renting system do not have to be taken into account. This renting system rather says that people must have a legal residence to have the possibility to be registered (see the circular letter above. The request introduced by the " Project Huisvesting van Huurdersunie en Haven" in June to let the homes from the project be recognized as working target group within the Renters Union, one of the Kosovas'social letting offices was answered positively in October 2004 by the Department of Housing Policy of the Flemish Community: It is an '*extremely vulnerable target group for whom (...) it is very difficult to find a suitable and payable home*' and the target group project offers 'a future appreciation'. In concrete terms, this means that since November the homes are granted within de "Renters Union npma" which approximately corresponds to the payroll of a part-time project collaborator. For the working and renovation costs, the project must continue to call on gifts. The 'Huurdersunie npma' is the only social renting office that is busy with a working target group in relation to people without legal residence.

[112] A Dutch inquiry also concludes that a generous welfare state would create more space for ethnic solidarity as soon as a great part of the community found the way to it.

[113] Compare with the classification of J. Leman (residence and employment illegals).

[114] Especially because the average renting price of their homes amounted between 125 and 250 Euro.

International domestic staff.

In September 2002, the Minister of Employment and Labour of that time required "*a study of the profile of International domestic staff*" to the King Baudouin's Foundation. The execution of the research to this acute problem was entrusted to the Institute for International Research on Criminal Policy from the University of Gent[115]. The report outlined among others the following conclusions: the demand of domestic services increases in Europe and the combination of a number of factors lets suppose that this demand will rise even more in the future: The ageing of the European population; The changes in the structure of families; a lack of payable baby-sitters; a lack of facilities for the elderlies; cultural changes and social disruption. There would be a causal effect between the working and living circumstances of the domestic staff and their legal status, by which illegal workers very often earn less for more working hours. The salary of a domestic help depends on the host country, her legal status and her nationality .

Within the framework of the Daphne-programme from the European Commission, some studies were published in 1998 and 2002 about modern slavery which a.o. under many aspects concerned Belgium. Among others, human trafficking, sexual exploitation, domestic slavery and forced marriages are described as forms of slavery in Europe. There are in Belgium, a number of foreign workers categories exempted from compulsory labour permits, among others the diplomatic staff. Diplomatic domestic staff is the staff who carries out labour in the diplomat's private sphere and private home. These staff members are in a particular situation because their employer enjoys precise advantages and immunities. It is very difficult to make a diplomat appear in court. Moreover, even if a sentence is pronounced, no pressure can be executed to apply the sentence. Beside, the residence situation and the socio-juridical status are two other reasons for their weak position. The domestic staff has a particular identity card at disposal which links them to one employer. If in case of lay off they do not find a new employer or another residence title, they have to leave the territory. Another consequent problem is that very often the labour relation between the employer and the employee may be said to be consensual, though the employer asserts worse conditions of labour than those provided by the legislation, the employee agrees all the same since he considers his position as more favourable in comparison with the one in his country of origin. Again on the basis of the report, the most required group of foreign domestic staff are the Philipinoes (good knowledge of English and helpful behaviour), the Latinoes (Colombians, Ecuadorians en Brazilians) and the Polish. According to the police, the study of the international domestic staff may be set within the framework of the human trafficking research. Specific attention is here paid to labour exploitation: Since in the case of domestic staff, it is a matter of a hierarchical relation and labour contract, the phenomenon is part of labour exploitation. Labour exploitation has to be distinguished from illegal employment when it comes down to constraint. In order to notice this constraint in the practice, about thirty indicators are defined. These are among others: did the people settle their visas themselves or did a third party do it for them, did the people come here alone or in group, is it a homogeneous or a heterogeneous group as far as their nationality is concerned, etc. The police services establish on the basis of these indicators whether it is a matter of human trafficking or not. Cases of ill-treatments of international domestic staff are however not available at the police service for human trafficking. This is mainly due to the fact that even if the employee knows he is underpaid, as already said, he is anyway happy with his situation since that is better than the one he knew in his country of origin. Some others (Payoke) raise the problem of impression too: people who

[115] In collaboration with a group of experts who were especially gathered for this purpose.

are economically exploited[116] do not often experience this as such (They only feel like victims when they are sent back to their home country). There is very often a slave relation considered as normal by both parties. According to some other experts in the field, the important problem of international domestic staff is the illegality which they do not want to go against for fear of being sent back to their country. The fact that many illegal domestic helps are illegally employed made the group of experts conclude the following figures: 52.000 to 55.000 people belonging to the *Diplomatic* C*orps* reside in Belgium. 4120 among them are authorized to apply for a special identity card for their domestic staff. Since the number of application is rather far lower, it is right to suppose, following the researchers, that many domestic help are illegally employed by the diplomatic circle.[117] The diplomatic domestic staff do not mostly have the same nationality as the diplomat. Among particulars and specifically among mixed marriages, it can be noticed that the domestic help has the same nationality as one of the partners.

[116] The problem of domestic staff exploitation may certainly not be generalized. The greatest problems would especially happen in Asian and African embassies (see BAFEKR S, p31-32).
[117] The problem of domestic staff is naturally not limited to the Diplomatic Corps.

4. STATE APPROACHES: measures to prevent illegal immigration and measures of domestic control

In order to manage illegal immigration, some five manners can easily be summarized. These concern the so-called "pull factors"[118] [119]:

1) - Immigration Law Enforcement.
2) - Efforts to reduce the "grey economy".
3) - Legal Labour Migration.
4) - Removals.
5) - Regularisation.

We could assert that the Belgian Authorities, excluding legal labour migration[120], have used these methods for the last years.

On the occasion of the new parliamentary year (2004-2005), the Minister of Internal Affairs confirmed that he is in favour of a multidisciplinary approach and intensive collaboration at both European and Belgian levels. The struggle against all kinds of abuses has to be carried out (sham marriages, visa application fraud, delaying regularisation applications, etc.).

The Belgian policy towards illegal migration seems to be little influenced by strategy papers from organizations like OECD, OSCE, the Council of Europe or the Budapest Process.

Hereafter we will discuss the Immigration Law Enforcement and the return, mainly on basis of the activities of the Immigration Service. The grey economy and regularisations will mainly be discussed in respectively the next chapter (Impact on the host country) and in Annex I.

Immigration Law Enforcement and removals

It is principally the **Immigration Service (IS)** which is responsible for the correct execution of the Aliens law (or the law dating from December 15th 1980 concerning the access, the residence, the settlement and the removal of foreigners), under which falls then the struggle against illegal immigration (and human trafficking as well as human smuggling). The activities of the IS in this field are subdivided, within the framework of this report, into five chapters:

1. Checking the access to the territory and checking the legal residence
2. Involuntary and assisted voluntary returns
3. The multidisciplinary approach
4. The international collaboration of the IS
5. The struggle against pseudo-legal migration (a.o. sham marriages)

[118] Conference Summary: the Presidency Conference on future European Union co-operation in the field of asylum, migration and frontiers (2004, Amsterdam), p13.
[119] A sixth method could also be added here, namely prevention.
[120] New labour migrants are only authorized exceptionally and consequently to a limited extent. It generally concerns higher school degrees, specialized technicians, etc.

4.1. Checking the access to the territory and checking the legal residence:

A. Checking the Schengen outside frontiers

A large amount of instructions, checks, agreements, decisions and preventive measures are made and taken by the Immigration Office with a view to checking the thirteen Belgian Schengen outside frontier posts and can be in relation to a great deal of subjects: instructions for the conditions of entry for nationals from the new EU state members; instructions concerning the enforcement of the Guardianship Service on May 1st 2004; checking the infrastructure of frontiers controls in harbours and airports; agreements with the United Kingdom to make as much as possible for the British Immigration Services to carry out checks at the Eurostar-Terminal; the conclusion of agreement protocols and the organization of dialogue meetings with transport companies; taking decisions about the turning backs (*refoulments*) when the conditions of entry are not fulfilled; maintaining contacts and measures, via the Guardianship Service of the FPA Justice, when unaccompanied foreign minors are trapped at the frontier; carrying out gate checks in the airports, etc.

The **federal police**, human trafficking cell, gives in their annual report 2004 (first half-year) a brief overview of the new techniques (transport means) used by illegal migrants to try to bypass the frontiers posts (a.o. direction UK).

- by sea and via harbours:
Though it is naturally not possible for the police to check all the transports of goods in the harbours, the checks for the last years have drastically increased, among others with specialized equipment (X-ray, heartbeat, passive millimetric wave detector). Because of the increased control checks in the Belgian harbours, (and the closure of the French Sangatte) more illegals should travel, via Belgium, to the harbour of Vlissingen. Brussels seems, in any case, to be a distribution centre from where the illegal migrants make their way to the coast (how the illegal foreigners reached Brussels is, of course, another question).

- by train:
The advantage of trains is that it is a direct way to travel during which checks are limited to the holding of a valid transport title. Many come from Germany by car or on foot and then take the train; some others take the train from Luxemburg or Paris (possibly via the Parisian airports). On April 1st 2004, the frontier checking "arrivals" at the Eurostar-terminal of Brussels was removed (in conformity with an agreement with France dating from January 12th 2004). Mainly Romanians and Moldavians would sometime use freight trains to reach the coast area.

- by way:
refrigerator camions: the isolation and the refrigerating system make catching more difficult and for hygienic reasons they are seldom opened. Others: metal containers without back door; containers with tarpaulin; mobile homes.

- airports:
For a short while, some clandestine flights have been noticed in private little planes (between Belgium and the UK).

B. Checking on the Belgian Territory

- The IS' Office C (clandestines) is the most important point of contact for the police services when checking the residence situation of a foreigner. If this illegal is trapped, the office C can decide for the concerned person to: send him back to the frontier; deliver an order to leave the territory; repatriate him immediately (if possible); imprison him with a view to repatriation or sending back. Office C moreover asks the competent services, via the mayors, to carry out address checks of people who are supposed to have left the territory and after that an adequate measure can be taken and ensures the contacts with the (open) asylum centres as far as the rejected asylum seekers are concerned.

- The IS's General Co-ordination and Control Cell is, on the one hand, in charge of the coordination between the different closed centres, between the Centres and the executing offices and between third parties (authorities, lawyers, etc.) and on the other, for checking the system and the working measures of the Centres.[121]

- The IS's Juridical Unit establishes in conformity with article 81 of the law dating from 15/12/1980 the offences against this law and confirms them. This unit further helps ensure the correct application of the law dating from 30/04/1999 concerning the employment of foreign workers. This units especially undertakes actions on the spot in collaboration with other authorities (police, Social Inspection, Social Laws Surveillance). Also in 2004 the traditional sectors were the horeca (hotel-restaurant-café), agriculture and horticulture. Following the GS, it is necessary to pay more attention to a new phenomenon namely the industrial cleaning sector. Nationals from the future member states Romania and Bulgaria are respectively number 1 and 2 concerning nationals who are not in order with residence documents and/or the necessary labour permits (labour permits, professional permits, PECO-certificates). After follow Morocco, Poland and India. In 2003, some 4291 people were checked by this service, half of them were carried out in the Brussels Region. Less than the half (45%) might leave because they were in order with their legal residence, minor or because they had introduced an application for regularization (9§3). On the Dutch-speaking territory, the province Antwerp prevails with 971 interceptions (but also with the highest number of actions).

- Visa policy:

For the treatment of short-term residence visa, Belgium collaborates with the Schengen commitments. The Schengen instructions stipulate that determined applications for certain nationalities and for security reasons have to be shown to the central authority for extra screening. Since the delivered visas are valid for the whole Schengen space, the Schengen instructions also provide that for certain nationalities a prior agreement is necessary to deliver a visa. Each country determines the country they want to be consulted for. Belgium wishes to be consulted for Burundi, Rwanda and Congo. Consequently, each application, and once again each delivery is checked by the diplomatic post if the concerned is not signalled (SIS or Benelux micro cards). Moreover the conditions mentioned in article 5 and 15 of the Schengen instructions are checked as precisely as possible.

[121] The Royal Decree dating from August 2nd 2002 determines this system and the working measures and has moreover to make sure of a human, respectful and equal treatment of the detained foreigners, among others, via institutions or a commission for claims in charge of dealing with the individual claims of the occupants (beside the already existing procedures for the Chamber of the Council, the Council of State and civil courts).

As far as long-term residence/family reunification visas are concerned, it is certainly worth mentioning that the Authorities have provided since September 1st 2003 in a protective procedure concerning the DNA: since in case of family reunification the lineage link must be proved and in some different countries it is possible that the civil state documents have no evidence value or that the civil state registers were destroyed, these applications automatically was in the past the object of a decision of visa refusal. The applicants who want to do that now have the opportunity to prove the lineage link in 12 diplomatic and consular posts: Abidjan, Addis Abeba, Islamabad, Kinshasa, Lagos, Lubumbashi, New Delhi, Peking, Shanghai, Kigali, Nairobi en Dakar.

- Identifying the illegal foreigner and obtaining a travel document:
The IS' identification cell (CID) receives and visits consular representatives and organized, among others, in 2004 a successful consular party with more than 200 representatives in order to improve the collaboration with the countries of origin. An agreement was concluded between the British Immigration Service and the IS by which both services help each other with identification and expulsion files. With a view to voluntary return, many contacts are maintained with the IOM. With the FPA Justice, other solutions are searched in order to stimulate the often problematic return of former (illegal) prisoners. At the Benelux level already twelve readmission agreements were ratified[122] and three others should follow very quickly[123]. At national level an agreement was concluded with Albania. The liason officers of the IS aim at a more efficient return policy through contacts with the authorities of the country of origin, the relations improvement with diplomatic posts in third countries, the provision of assistance to the FPA Foreign Affairs by developing cooperation protocols, escorting the protected flights. For the last years the number of potentially removable people on the basis of a pass or reapplication requests has clearly increased.

4.2. Return: involuntary (forced removals) and assisted voluntary return

General:

The removal of foreigners from the territory is a very complex question which stands at the junction of different national and international regulations among which three domains are particularly important: the regulations concerning foreigners, the regulations concerning the police services and the regulations concerning air and sea traffic.

Belgium is in favour of voluntary returns but observes that this is for the greater part impossible in the practice. In other words, a kind of cascade system is adapted which means that the possibility to leave voluntarily is offered to everybody. Only when this process does not work, forced removals are resorted to, if possible without constraint but, if necessary, with (constraint). Forced returns are, in other words, inescapable for a realistic and credible return policy. The privation of freedom of illegal foreigners – if a direct removal is not possible – has to be as short as possible. In different countries, the identification procedures, however, still take too much time to be carried out. Therefore the concerned countries are insistently asked to simplify their procedures, to conclude readmission agreements and if this does not seem immediately possible, to settle practical working agreements. The only possibility to

[122] France, Germany, Austria, Bulgaria, Romania, Hungary, Estonia, Lithuania, Croatia, Serbia-Montenegro, Slovenia, Slovakia.
[123] Poland, Latvia and Switzerland.

deal with protected flights (to bring back foreigners who represent a security risk) to some precise countries of origins is of utmost importance to lead a coherent policy.

The forced removal of illegal immigrants (involuntary return)

Removal agreements were concluded with the following countries: Albania, Bulgaria, Germany, France, Croatia, Austria, Slovenia, Estonia, Latvia, Lithuania, Poland, Romania, Hungary, Serbia-Montenegro, Slovakia, Switzerland.

With regard to the problem of "difficult repatriations" (chiefly people who violently resist being removed) Professor Vermeersch of the University of Ghent was again commissioned to carry out a study. In 1999, as a consequence of the death in 1998 of a refused Nigerian female asylum seeker, during attempted repatriation, a Committee had already been established on the instructions of the Government, under the chairmanship of the professor emeritus and moral philosopher, Vermeersch (the so-called 'Vermeersch Committee') with the task of assessing the expulsion of asylum seekers whose legal remedies had been exhausted. The Committee then, inter alia, gave an opinion about the various phases of the removal, including the admissible means of coercion. The latter may not compromise the health or security of the refugees being expelled. The recommendations made by the Committee were transformed into 'best practices' for removal. After the sentence of some police officers in 2003 a new Commission was constituted - again under the leadership of the moral philosopher - which was given the task of drawing up a new strategy for forced removal because it was obvious that still more clarity had to be created. At the end of 2003 the number of illegal immigrants intercepted while trying to reach the United Kingdom through the port of Zeebrugge had fallen drastically as a result of various measures (including the demolition of a number of squats) and the ministerial decision to confine intercepted illegal immigrants nearby the coast with a view to their forced return.

The number of *refoulments*, thanks to a proactive action, keeps decreasing: since transport companies were obliged to carry more and better checks at the departure in the country of origin, the access to the Kingdom had to be refused to less people. The conclusion of protocol agreements with transport companies did not miss its effect.

A special case: the transit zone. There is still discussion of the long-term stay of some foreign nationals in the transit zone of the National Airport. This concerns foreign nationals who do not satisfy the entry conditions to the jurisdiction and who, while awaiting deportation, are kept in a closed centre at the border. They are called "Inadmissibles" or INAD's. Since their presence is compared with a residence in neutral field, they are supposed to have never entered the Belgian territory. They are held in the airport while awaiting their repatriation, in conformity with the international treaties in relation to air traffic (Chicago Treaty and Tokyo Treaty). These people can exercise two kinds of appeal: they can on the one hand appeal to the hearing in chambers of the Criminal Court for misdemeanours against the decision to confine them in a closed centre at the border and, on the other, lodge an appeal with the Council of State, for nullification – combined by a demand for suspension or not – of the decision to refuse them entry. If the Chamber of the Council orders their release but the Council of State does not suspend the decision of repatriation, they are released in the transit zone because the uncontested decision to refuse them entry remains valid and they cannot be admitted into the jurisdiction. Many of these foreigners refuse to leave and therefore remain sometimes for weeks in the transit zone of the airport.

In this context we can point out that Belgium does not carry out any repatriation when arriving at the door of the plane so that everybody has a chance to apply for asylum (in conformity with the "Recommendations of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion borders from September 19 2001). The federal police only make gate checks in order to know which flight the passenger comes from, to more easily have the opportunity to charge the costs to the transport company having brought the (illegal) passenger in.[124]

As well-known, not all the people confined in a closed centre are also effectively repatriated (too much resistance, court order of release, refusal of the captain, etc.). Among the 12.631 planned removals in 2003, some 9.289 were also effectively removed (or 77%), among which the "success percentage" of the repatriations was lower than the one of turning backs.[125]

Belgium requests, among others, protected flights – sometimes in collaboration with the neighbouring countries– to expel illegal resident people[126]. Moreover Belgium participates to the European Resolution 2004/573 concerning the common flights for removing third countries nationals. Some negotiations are also made at the Benelux level to organize group repatriations (the first removal at the Benelux level took place in March 2004). Thanks to missions from Liason Officers of the IS, some administrative agreements could be settled with among others Russia, China, Congo, Nepal, Niger, Guinea and Togo.

ASSISTED VOLUNTARY RETURN

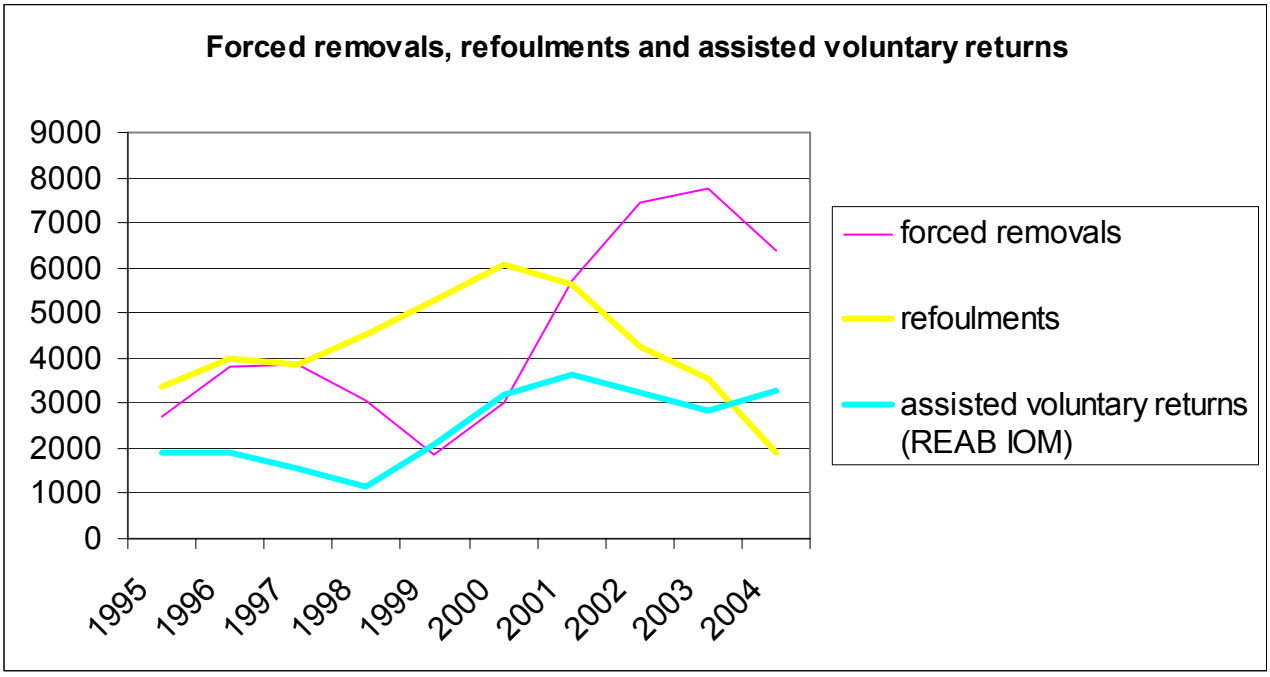
The assisted voluntary return is especially carried out by the **IOM** through the **REAB** programme (the Immigration Service also organizes some assisted voluntary returns for people who are not taken into consideration for the REAB programme: namely the second REAB application in less than 5 years).[127] REAB (**R**eturn and **E**migration of **A**sylum Seekers ex **B**elgium) started in 1984. The key groups are not only (former) asylum applicants but also all the foreigners (with the exception of refugees[128] and EU nationals). The no sanctioning character is important. The REAB programme covers the travel costs from Belgium to the country of origin and grants an indemnity of 250 Euro per adult (and between 25 and 125 euro per child) to cover the first expenses after the return. The assistance of the REAB programme is made of a large series of activities which can be subdivided into the five following fields: general support, REAB support, organization of the travel, travel dispositions and reception in the country of return. So, it is an inclusive programme assisting the migrant until his final destination and that provides a limited financial stimulus (reintegration prime, extra costs for luggage). Some training and information campaigns are organized via a network of partners

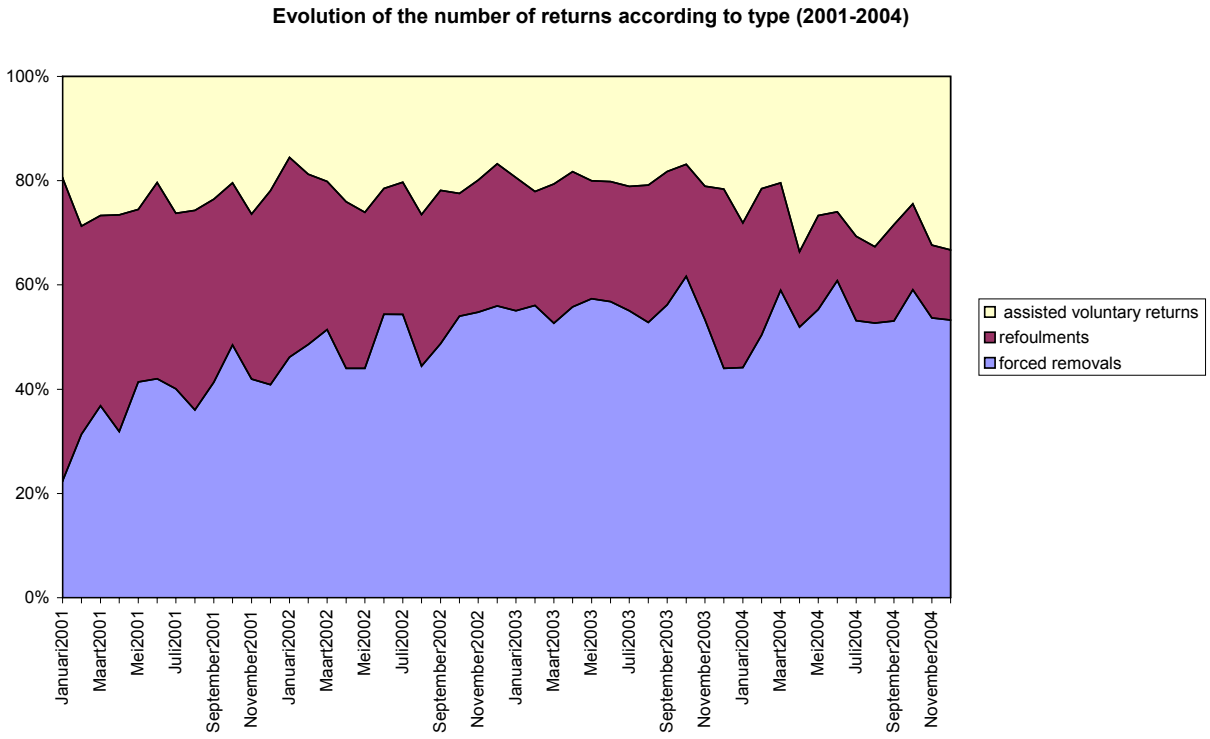
[124] See about this among others "*The final report of the Commission in charge of the evaluation of the removal instructions (II)*". So, in this report, the Commission (Vermeersch) makes a series of recommendations for the removal policy.
[125] Vermeersch Commission II, p40.
[126] For the organisation of a protected flight, two criteria are considered: either the destination constitutes a problem for the civil aviation (e.g. no direct flight; refusal of the captain) or the behaviour of the person is so aggressive that it is impossible to carry out the removal, even under escort, using a regular commercial flight.
[127] Next to this, some other smaller projects are carried out by IOM (for example, country-specific assisted voluntary return programmes have been implemented in the past to facilitate returns to Afghanistan, Kosovo, Bosnia and Slovakia), Fedasil (RD Congo, Romania, Ukraine, Russia), return programmes for minors (RD Congo and Angola), Vluchtelingenwerk Vlaanderen (OCIV) and CIRE (Coordination et Initiatives pour et avec les Réfugiés et Étrangers).
[128] Recognized refugees can only access the programme if they renounce their refugee status.

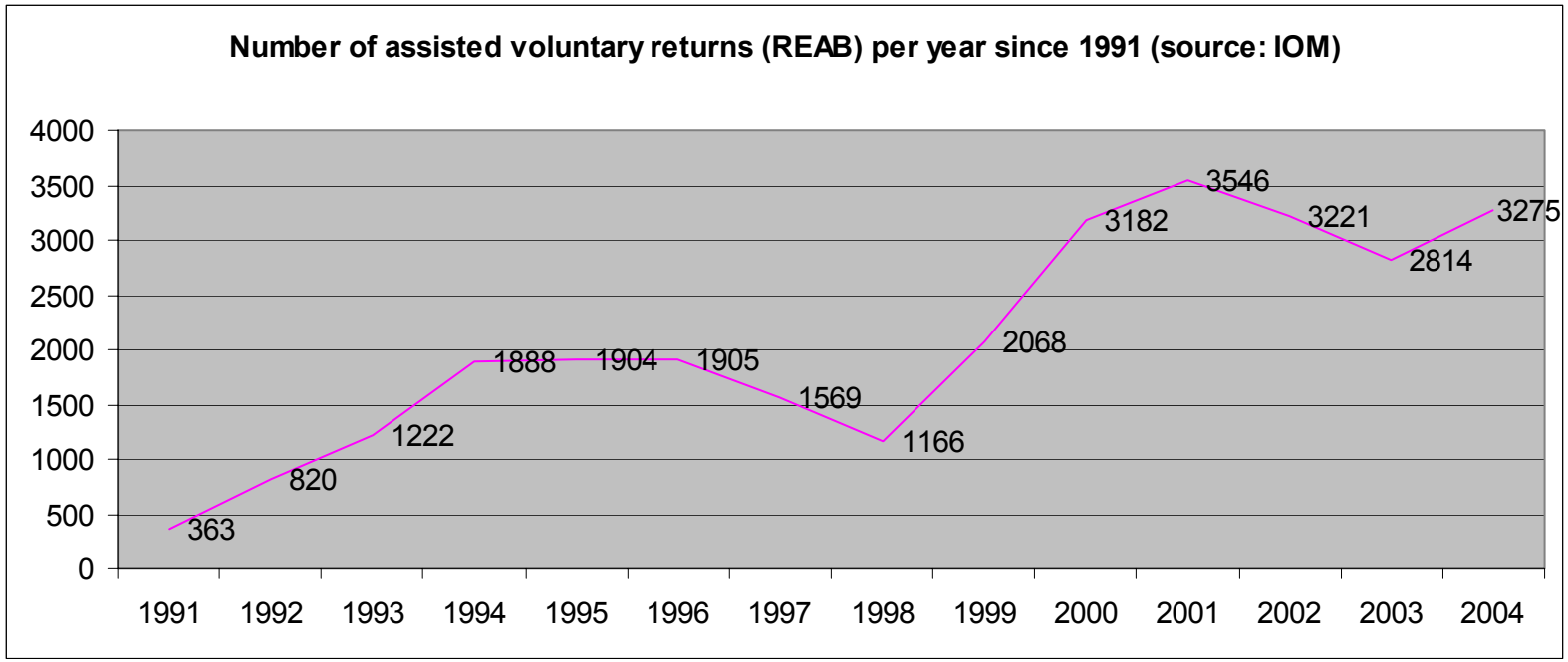
spread all through the territory and as many attempts as possible are made to try to reach (illegal) migrants. The Ministry of Social Integration allocates a yearly budget of approximately EUR 3.000.000. In 2003 the cost per capita of a REAB case was approximately EUR 1.050 covering the entire process[129].

According to IOM the trends are the following[130]: IOM notices a progressive decrease of the voluntary returns. There is a certain interdependence between the number of asylum seekers and the number of migrants applying for the REAB program. Considering the period 2000/2003, the number of migrants asking for asylum in Belgium has decreased about 60% while the REAB returns about 14%. One of the *possible explanations* is that there is *an increasing number of migrants entering Belgium without asking for asylum*. Strikingly too, migrants wait more and more often (longer) before turning to the REAB. In 2000 the average duration period was 12 months, in 2002 13.5 and in 2003 18.9 months. Almost all of them try to remain in Belgium or in the EU as long as they can or at least until the accomplishments of their goals. When migrants are asked about their opinion on voluntary return, the answer is often positive. However, their opinion changes when voluntary return is offered as a concrete option to the migrant who just arrived in Belgium. If there is an obstacle to their staying in Belgium, the most common reaction among the migrants is to exit the public asylum structures and/or become illegal rather than refer immediately to a voluntary return program. *According to IOM* there is little interdependence between the shorter time of the asylum processing (since the first of January 2001) and the quicker departure with REAB. An additional element to be considered is the interaction between forced and voluntary return. It is undoubtful that forced returns has an impact on individuals and migrant communities. Still according to IOM, is the fact that the FPS Internal Affairs is organising forced returns for certain nationalities certainly puts some pressure on the entire community and it is reasonable to believe that some people, living in the illegality, might think to join the REAB and opt for a safe and dignified return rather than wait for the expulsion. External factors like forced removals might have an impact but do not seem to play a prominent role in the decision making process of the REAB returnees. For example, in 2004, the number of voluntary returns has increased although the number of forced removals has decreased (- 25 %).[131]. The number of "clandestines" (people who have never been in the asylum procedure) has increased over the last years: from 23% in 2002 to 40% in 2003. 64% of the REAB candidates live in the two largiest cities (Brussels 44% and Antwerp 20%). This trend can also be explained with the larger number of irregular migrants entering the program. However, it is not a real evidence that the number of illegal foreigners in Belgium would have increased for the last years.

[129] IOM, Return Migration: Policies and practices in Europe, 2004, p50.
[130] IOM, Annual report REAB 2003, pp 33-52.
[131] According to research done by the Immigration Service, the correlation between forced and voluntary returns is positive, but only for some nationalities (for others, not at all).


Forced removals, refoulments and assisted voluntary returns
9000
8000
7000
6000
5000
4000
3000
2000
1000
0
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
forced removals
refoulments
assisted voluntary returns (REAB IOM)


Evolution of the number of returns according to type (2001-2004)
100%
80%
60%
40%
20%
0%
Januari2001
Maart2001
Mei2001
Juli2001
September2001
November2001
Januari2002
Maart2002
Mei2002
Juli2002
September2002
November2002
Januari2003
Maart2003
Mei2003
Juli2003
September2003
November2003
Januari2004
Maart2004
Mei2004
Juli2004
September2004
November2004
assisted voluntary returns
refoulments
forced removals

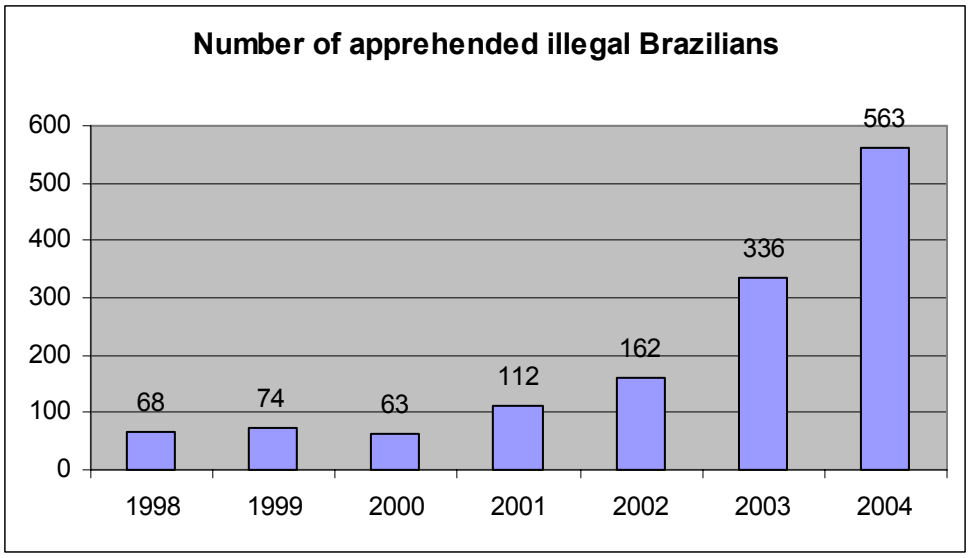

Number of assisted voluntary returns (REAB) per year since 1991 (source: IOM)
4000
3500
3000
2500
2000
1500
1000
500
0
363
820
1222
1888
1904
1905
1569
1166
2068
3182
3546
3221
2814
3275
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004

The **age and the sex** of people who return voluntarily:

REAB 2003: 58% masculine; 42% F. average age: 29 years
REAB 2004: 61% masculine; 39% F. average age: 32 years

So, the average age is more or less identical with the one of the foreigners confined in closed centres whereas the number of women who require a voluntary return is relatively higher than the number of women confined in closed centres.

Brazilians have for the last years formed the largest group as regards the (assisted) voluntary return. The increasing since 2000 is noteworthy:
2000: 14 (0, 4% of the total number REAB's)
2001: 77 (2, 2%)
2002: 120 (3, 7%)
2003: 365 (13%)
2004: 637 (19, 5%)



These figures clearly indicate that the Brazilian illegal emigration to Belgium has strikingly increased for the last years. It is also well-known that a large part of them are illegally employed in the building sector of Brussels. According to a Brazilian social scientist linked to the university of Louvain-la-Neuve approximately 90% of the Brazilian migrants in Belgium are natives from only two provinces (Minas Gerais and Goiás), which are quite successful from a political and socio-economical point of view in comparison with other regions in Brazil. On the basis of the deep interviews, the researcher concluded that the cultural factor plays an important role in the migration projects which are by nature especially temporary. The cultural factor is based on the age-old mentality of striving for success in these mine regions. There was first the inside migration from the countryside to the big city and afterwards also to the smaller province cities, until also these ones did not offer enough job opportunities. Extra stimulating factors are the well-developed tourist industry, the fact that banks easily agree on 'migration loans' and the 'family and friends effect'.[132]

[132] MO-magazine, June 2005, p19.

According to a IOM-report, the issue of assisted voluntary return is increasingly becoming politicised, and social and/or political events are impacting more and more on its implementation. For example, as a result of protests held by Iranian, Chehchenyan and Afghan asylum seekers in 2003, some migrants hoped that their immigration status would change opted to "wait and see" what impact these events would have on Belgian immigration policies. Rumours in July 2003 of a possible regularization of persons with pending asylum applications encouraged these aspirations. A similar attitude was experienced during the May 2003 election period, when migrants were waiting for possible changes in the migration policies of the new government before taking any decision to return.[133]

4.3. The multidisciplinary approach

- Collaboration between the Immigration Service and the communes:
  - Pilot projects: the IS started pilot projects with some ten communes which are, among others but not exclusively, related to a more efficient repatriation of illegal migrants. By means of an open dialogue between the concerned instances, the problems which they both are confronted with are attempted to be defined and solutions are tried to be brought.
  - Project Europa: a very long-term project between the IS, the town authorities, the Central Service for Fight against Falsities and the local police services, with a view to combat against the abuse of European documents by third countries nationals. The Conka Judgement of the European Court of Human rights (2002) however, made the combat against this phenomenon rather more difficult.

Cooperation with the FPA Foreign Affairs: on the basis of a ministerial request, a work group was founded between the IS representatives and the General Consular Direction of Foreign Affairs in relation to illegal immigration.

Naturally, an intense collaboration is also carried out with the police services, the Security and Information services, the services of the Public Prosecutors and the Ambassador for Asylum and Migration (FPA Foreign Affairs).

Human trafficking: the fight against human trafficking is an outstanding example of a multi-disciplinary approach.
The collaboration between the different concerned instances (police services, public prosecutor, CGKS) and departments (FPA Internal Affairs, Justice, Foreign Affairs, Employment) is better and better organized. So in 2004, two fora were created, the IAMM (Information and Analysis Centre Human Trafficking and Human Smuggling) and the Interdepartmental Co-ordination Cell Human Trafficking and Human Smuggling[134]. The IAMM stands under the supervision of the ministers of Internal Affairs and Justice and is a network intended to collect and exchange information – which are widely spread over the different institutions and services - to carry out strategical analyses in these matters. Another example lies in the collaboration protocol between the FPA Labour, Employment and the FPA Social Affairs which make provision of at least one checking in a risk sector for human trafficking in each (of the 27 juridical) arrondissement(s). The Federal Public Prosecutor is competent for the international collaboration and for a coordinated national approach. The

[133] IOM, *Return Migration: Policies and practices in Europe*, 2004, p50
[134] To substitute the former Coordination cell of fight against international human trafficking (which was met for the first time in 1995).

human trafficking cell from the Federal Police was created in 1992 and has a.o. as an objective to detect networks, advice function, etc.

The independent **Centre for Equal Opportunities and Opposition to Racism** as well has had since 1995 a coordinating and stimulating task in the field of fight against human trafficking.

As an illustration: the human trafficking annual report(2004) of the Centre of Equal Opportunities and Opposition to Racism (CGKS):

An extensive overview of the Chinese and Iranian smuggling networks to Belgium is among others provided in the annual report on human trafficking and human smuggling of the Centre for Equal Opportunities and Opposition to Racism135. Both networks have a few common features: their flexibility which is not hierarchically pyramid-like but consists of different little horizontal networks with an international coordinating; These networks are not necessarily ethnically oriented and collaborate on the basis of mutual subcontracting; They sometimes take the form of organisations which are also active in other criminal fronts and can have ramifications in the economic life of different countries; the social networks of acquaintances, family and by word of mouth advertising are a very important channel for hiring, among others, because it creates a link of trust between the trafficker and the victim; False documents seem to be an important modus operandi; among most victims, it was question of violence and threats.
From this report too, it seems that the illegal immigrant, though he is in a precarious situation cannot afford to lose face towards his home community. The pseudo legal migration and corruption seems important in smuggling. Among the Chinese networks, three (Chinese) smuggling organizations seem to be concerned. Restaurants seem to be regularly used as safe-houses and on the basis of Dutch studies labour forces are even delivered on order. The Chinese victims seem to be older than the average victim and there are many men older than 25 among them. Another feature of the Chinese human smuggling is that since the very beginning "a" West European country (but no precise one) is chosen as final destination.

The Iranian emigration[136] was until the late 90s especially limited to the higher social classes from a city background. By this emigration – launched with the modernization attempts of the Sjah, even more en masse after the Islamic Revolution and the Iran-Iraq war – in the meantime, a certain migration culture had also developed which led to a certain democratisation of the migration process: the latter is no longer reserved for the elite but became also a survival strategy for the lower classes. This was facilitated by a large migration industry. At the basis of the smuggling networks lay old and deep social links with features going beyond the frontiers. (North-East: Pakistan, Afghanistan – North -West: Kurdish smuggling gangs). These routes were used before for other types of smuggling, but by the migration tradition and the technological progress (e.g. mobile telephony) (smugglers even often have a past as illegal migrant or refugee) these could extend their

[135] Centre for Equal Opportunities and Opposition to Racism, *annual report struggle against human trafficking: analysis from the perspective of the victim*, 2004.
[136] In June 2005, the CGKS published a new, more extended report about Iranian immigration (Iranian migration to Belgium. Trends and perspectives. Report Analysis June 2005, 34p). Another extended report about Chinese migration followed in September.

sphere of activity to the international level. The social network also seems important here as a recruiting channel for emigration. Istanbul seems to be a central hub in the migration between Iran and the West.

4.4. Pseudo-legal migration

As already mentioned, Belgium has more and more to deal with so-called pseudo-legal migration, like sham marriages. From the information at the IS' disposal, it seems that sham marriages[137] have exponentially increased for the last years and links with organized criminality are not rarely observed. As already said, in 2005, a bill was introduced which made such marriages (and attempts to) punishable. All the same, by the implementation of the European directives concerning family reunification, an option will be chosen to provide for a longer checking time limit before granting a definitive residence right. In order to approach such abuses, the IS were also in-house restructured and some pilot projects started with different towns. Since Belgium knows softer conditions for delivering student visas, one can possibly as a consequence of abuse in that field speak about an influx of pseudo-legal migrants. Inside the IS, among others, the cell "Inquiries" (*opsporingen*) has a crucial role in the fight against phenomena like human trafficking and human smuggling, pseudo-legal migration, etc.

The annual report of the human trafficking cell from the Federal Police (first half of 2004) also pays a particular attention to the pseudo-legal phenomenon (the misuse of marriage status, student status, business visas, etc). Following the police too, the abuse of marriage, whether or not in combination with family reunification, further increases too, either among men or among women. Mainly the Moroccans and the Turkish conclude sham marriages in Antwerp and lesser in Brussels. The laxer legislation in other member states is sometimes often used to that aim. Principally, the Chinese and the Congolese make abuse of the specifications concerning the student status. The practice of visa misuse by all kinds of groups has already been known for longer and seems especially popular among the Congolese. Mala fide travel agencies still seem to be popular in the pseudo-immigration. Again following the same report from the Federal Police, the asylum procedure is also not seldom misused, whether or not in combination with the use of false documents. Mainly countries from the Far East are specialized in making false documents, which are more and more delivered by commercial mail services. Approximately 33% of the interceptions of illegal foreigners at the Zaventem airport are coupled with the use of false documents. The Athens airport seems to be a noticeable point of access for the migrants who, often with false documents proceed their travel to other Schengen countries. Finally, as far as the European enlargement is concerned, the Federal Police point out in their report that an increase of the number of illegals by transport of goods may be feared (since only one frontier must be crossed) as well as an increase of potential candidates for sham marriages, since the new member states do not have the affluence of the "old" member states, which would make them more sensitive to such offers. As regards biometric documents, it is expected that these can temporarily slow down the use of falsifications but eventual gaps about these are feared to be noticed too. The Federal Police also gives in their annual report a short description of

[137] It is necessary to point out that a considerable part of marriages of convenience take place with (native) Belgians, and not only with legal foreigners or Belgians of autochthonous origin.

consecutive Moroccan, Algerian, Romanian, Polish, Indian, Chinese, Congolese and Russian migration flows to Belgium.

4.5. The international collaboration of the Immigration Service

- The activities of the Immigration Service at international level: The IS deals with the immigration issue field by numerous work groups and organizations: the SCIFA[138], CIREFI[139] [140], Work Group Frontiers, High Level Working Group on Asylum and Migration, the Inter-Governmental Consultations on Asylum and Migration (IGC - Geneva) and the ICMPD[141]. Belgian liaison officers are bilaterally exchanged with the Netherlands and Germany within the framework of the collaboration in relation to the Dublin procedure, the bilateral removal procedures and immigration in general. The service consists of several immigration officials who are often sent to countries of origin or transit countries within the context of a preventive and/or repressive approach of all kinds of problems linked to illegal immigration (human smuggling, removals, pseudo-legal immigration, voluntary return). A narrow collaboration is carried out, especially in the field of return, with the FPA Foreign Affairs (Immigration Ambassador). The minister of Foreign Affairs has by the way entrusted each Belgian diplomatic and consular service to write down an annual report with useful information about illegal immigration in the concerned countries of origin.

Concrete prevention campaigns and projects of technical assistance (in collaboration with the General Direction of Development Aid and IOM) have been financed for the last years in Romania, Russia, DR Congo, Angola, Guinea, Ukraine, Morocco and Iran.

[138] Strategic Committee on Immigration, Frontiers and Asylum (European Commission).
[139] Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (European Council).
[140] So, the Belgian initiative for the implementation of an EU immigration liaison officials system in the Balkan was implemented and with important Belgian support, subjects like sham marriages and misuse of administrative statuses in CIREFI were treated.
[141] International Centre for Migration Policy Development

5. THE IMPACT OF ILLEGAL IMMIGRATION ON THE HOST COUNTRY

5.1. General Points

Different social actors pay attention to the problem field of illegal immigration: political parties, public authorities, NGOs, charity institutions, media, etc.

Although there are naturally different NGOs promoting the rights of people without legal residence, we give here a summary of those who exclusively deal with undocumented migrants:
PICUM[142]: Platform for International Cooperation on Undocumented Migrants. Picum is a non-governmental organization that aims to promote the respect for human rights of undocumented migrants. PICUM seeks to achieve this aim by providing its members and other interested parties with expertise, advice and support, by strengthening networking amongst organizations dealing with undocumented migrants in Europe, and by formulating recommendations for improving the legal and social position of these immigrants, in accordance with the national constitutions and international treaties. So, it is an encompassing European organization home-based in Brussels.

ORCA[143] (Organisation for Clandestine Labour Migrants) has been operational since March 1st 2005 and promotes the right and the effective protection of foreign workers without legal residence and/or labour permit.

Medimmigrant (see also before: "Basic Rights, the Flemish Decree for Minorities): this non-profit making organisation, named until 2004 'medical support centre for people without legal residence', was setted in 1992 and recognized in 1994. It is financed by the Flemish Community Commission and is active in Brussels Capital Region. It focuses on three themes: Access to health care (better implementation of the RD 'Urgent Medical Care'); social rights (right to social provision of services for people who because of their illness cannot return to their country of origin; psycho-social care; right to employment); residence for medical reasons (orientation to a meaningful and realistic perspective of future in Belgium, the country of origin or a third country). Medimmigrant promotes the installation of a European medical data bank and cares for both individual provision of assistance and structural working.

Point d'Appui (Liège): was created in 1996 and aims at improving the circumstances of life of people in illegal residence or uncertain residence situation providing advice, information and lobbying.

Approximately all the *political parties agree* irrespective of their importance on the necessity to fight against illegal immigration and to repatriate illegal foreigners apart from exceptions for humanitarian reasons. The different parties rather consider illegal migration as a threat for security (criminality) as well as for the social fabric. The difference rather lies in: the measure or intensity in which illegal migration is experienced as a threat; the measure and the way in which return (whether or not forced) is considered to approach illegal immigration; the necessity in which a dialogue with the countries of origin and a collaboration development

[142] www.picum.org
[143] www.orcasite.be

is seen as a means to approach illegal migration; the possibilities of regularization for illegal migrants, the measure in which people without legal residence can count on a number of basic rights, etc. The opinion of the parties also varies sometimes about the use and the efficiency of the proclaimed immigration stop in 1974 (concerning illegal immigration): while some of them agree that this immigration stop is rather a catalyst for further illegal immigration (and hence has to be softened), the others precisely consider that the still remaining legal methods to migrate to Belgium leave too many open doors to abuses and hence make illegal immigration possible, and must consequently be strengthened (e.g. family reunification; problem field of sham marriages). In any case, most parties seem to be convinced that new labour migration has only to be considered as last means, meaning that priority must be given to the (native and allochtonous) unemployed people. The current Minister of Internal Affairs is, on the contrary, in favour of a labour quota (linked to well-defined conditions).

As regards the *average population*, the difference must be made between the local and the collective: while local groups sometimes promote the interests of undocumented people whom he *personally knows* – especially in case of impending removal -, this is different for the global migration- and removal policy. Or, as the Vermeersch Commission says, especially the paradoxical behaviour lived by many actors in the policy execution: it concerns the tendency to choose, individual cases which one is confronted with, the party of the concerned person (the illegal foreigner) against the awareness that a general policy which would be based on such personal sympathies would eventually seem untenable.[144]

The *trade unions* do not express a clearly explicit opinion on the real illegal (labour) immigration[145], but set the problem field within the larger framework of economic and humanitarian migration, refugee flows, globalisation and delocalizations, the ageing of the population, etc. Concerning the discussion about labour immigration, the socialist trade union (ABVV)[146] is clearly against economic immigration as *the* solution for the needs of the labour market. In itself, economic immigration offers no answer according to ABVV and is rather in favour of a restrictive approach of economic migration. The interests of the host country and those of the country of origin (brain drain) as well as the interests of employers and employees must be taken into account (instead of the only interest of the employers). The ABVV is, at world level, in favour of the ratification of the ILO Conventions concerning migrants and at the Belgian level in favour of a more intensive fight against work on the side, a more efficient labour inspection, restricting measures against not very scrupulous employers and the regularization of undocumented people. All the same, following the Christian Trade Union Confederation, more economic immigration gives no answer to the problem field of illegal employment. According to them new immigrations must be possible but then especially for humanitarian reasons. New immigration for economic reasons is only possible if all the other possibilities to approach the problem have been exploited.[147]

The Union of the Belgian Enterprises places the struggle against clandestine immigration in the large North-South problem field and in the brain-drain problem field.[148]

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[144] Vermeersch Commission II, p16.

[145] Although the trade unions seem to have recently paid more and more attention to vulnerable statuses such as domestic helps and illegal labour migrants.

[146] Note/document received by email from the ABBV: "*Definition of the ABVV position: directions immigration policy and labour market* ".

[147] ACV – ACW – MOC, Press conference: *New immigrations: first humanitarian, economic in last instance*, 06/07/2001, 15pp.

[148] VBO (Union of the Belgian enterprises), Immigration policy, Perscontact 29/06/2001, 11pp.

The Belgian position, in relation to the Green Paper about economic immigration, considers the whole thing within a global framework with many dimensions: migration flows management, the effect for the country of origin, the struggle against the informal economy and the human trafficking.[149]

As regards the *media*, we could state that rather little objective, balanced information is provided about this topic: either the illegal migrant is considered as a threat for the society (e.g. articles about massive illegal employment) or as a victim of insensitive or inhuman networks, landlords, employers, authorities.

5.2. Income (in)security, employment, the informal economy (costs) and some theoretical considerations

5.2.1. General

The illegality of their residence strongly conditions their access to a livelihood due to their exclusion from the labour market and social benefits. Ilke Adam distinguishes **three sources of livelihood**[150] [151]:
1. livelihood provided by aid (public or private. **See also chapter 3**)
2. income from work
3. income from criminal activities

Aid:

- Public Assistance (Social Welfare Agencies): As already mentioned, the mission of the Social Welfare Agencies in Belgium is to guarantee a dignified existence to every person living in the country. Since 1984, undocumented migrants have nevertheless been exempted from this right. They can only claim the previously mentioned "urgent medical care". This exclusion from undocumented migrants has been accepted by the Belgian constitutional court as "*a means whose results permit to reach the desired objective, namely to urge the concerned person to leave the country*" (only a small group of sans papiers, namely rejected asylum-seekers who are waiting for their appeal from the Council of State, still benefit from social assistance)[152] [153].

- Private Aid: can be individuals or organisations. On basis of interviews made it became clear that the individuals are mostly members of their ethnic community living in Belgium. A

[149] Livre vert sur les migrations économiques. Contribution de la Belgique.
[150] Based on ADAM Ilke, The social and economic situation of undocumented migrants in Belgium.
[151] A Dutch inquiry establishes four existence strategies for poor families: the formal economy of salaried worker or entrepreneurship; the informal economy in which people by labour or criminality can generate extra income; the assistance economy and finally the gift economy.
[152] In a decree, the Arbitration Court has namely decided that the obligations of the SWAs towards the asylum seekers in exhaustion of legal remedies only stop when the other possibilities of appeal at the Council of the State are exhausted. If the minister judges that the return is impossible or the CGRS in their negative decision includes a non-refoulment clausula, the limit period of the order to leave the territory is lengthened so that they can still benefit from social assistance.
[153] People without legal residence can however sometimes indirectly - by jurisdiction- apply for financial or material support?

small group is nevertheless financially supported by family members living in other migration countries or in the country of origin. The assistance given by individuals or NGO's is sometimes monetary but mostly in kind.

5.2.2. Income from work – the informal economy

5.2.2.1. ***Overview of the legislation***[154]:

Foreigners can only work in Belgium when they are regularly employed. To be regularly employed, one must work legally as well as officially.

Working legally entails that foreigners must possess the necessary labour and residence documents. A labour permit is in principle never given to a foreigner without legal residence. Working officially entails that the employer tells the Belgian State and pays defined social security contributions.

In Belgium, however, the labour and residence regulations of foreigners are worked out in separate regulations. This is among others expressed in the Foreign Labour Force Law (RD dating from July 20th 1967 on the basis of the mandates law dating from March 31st 1967). Strictly speaking, for the provision of the limited or unlimited access to the labour market, no valid residence status is required. The principle of the possible labour migration is not explicitly stated in the residence regulations. The access to the labour market must be obtained by the foreign employee before coming to Belgium. Even those who fulfil the criteria and the procedure of the labour regulations must afterwards start a residence procedure. The foreigner who received a labour card but no residence permit cannot assert his right to labour.

Not being authorized to receive a labour permit constitutes, following the Council of State, a valid reason to deliver an order to leave the territory. The EU non-nationals who reside legally in Belgium (e.g. via a valid passport with visa, but is not authorized nor mandated to stay longer than three months) and works without a labour permit consequently risks to have to leave the country.

Although the two regulations, labour and residence, are actually close to one another, there is in any case, an interaction and a hierarchy between the two. In the practice the primacy comes naturally to the residence regulations. It is, however, not possible to exercise a right to access to the labour market if the foreigner does not have at the same time the right to residence. On the contrary, the exercise of a right to residence is perfectly possible without possessing any rights towards the labour market.

Although illegal foreigners are fundamentally excluded from employment, this employment is, however, submitted to specific regulations. If a foreigner whose residence is no longer valid but who still has at disposal a "valid" labour permit or an employment permit and goes on working, this is then illegal. An employer who employs a foreigner without legal residence but with a "valid" labour permit commits an infringement and may receive a fine.

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[154] Based on: FOBLETS M-C, VANHEULE D, LOONES S; *The International UN Convention of 1990. Juridical effects of a Belgian ratification: a detailed study* (*De Internationale VN-Conventie van 1990. Rechtsgevolgen van een Belgische ratificatie: een verkennende studie)*; november 2003, pp66.

Following some authors, the labour regulations concerning foreign employees are written in such a way that they can without any problem compensate cyclical fluctuations. On the basis of the situation, the regulations will be narrowly or largely interpreted (see Foblets and Vanheule, p19).

Following the authors of the report, the prolonged effect of some precise basic rights lies in an increasing meaning, also for undocumented migrants[155]:

- salary and labour conditions: different legal provisions state that the employer has to apply the salary and labour conditions in accordance to a Collective Labour Agreement for all the employers. And, even though the labour contract is null and void in the case of employment of an illegal, the employed illegal foreigner can all the same draw on rights from the labour regulations.
- rights to social security: In the unemployment regulations, the condition of legal residence is explicitly stated. In some exceptional cases, people without legal residence work and are declared (social contributions are paid).[156] These have right to family allowances. For people who do not work or who have not worked, there is no guaranteed family allowance. To take benefit of it, one must however reside legally. Foreigners without legal residence who were employed and declared can receive a pension provided they really reside in Belgium.

5.2.2.2. Some data, reports and theoretical considerations

A) General
B) Inquiry in the Brussels Capital Region
C) Annual Reports on national level (FPA Social Security – Social Inspection)
D) Criminality, global costs: theoretical considerations

Although work on the side (of foreigners) is sometimes associated with illegal residence, it should be pointed out that informal work is not restricted to undocumented migrants, on the contrary. The statistics of the Ministry of Employment indicate that 90% of the infringements of their inspection concern Belgians or legal residents (according to E. Krzeslo, 2002 – see farther).

To find a job, undocumented migrants mostly mobilize their social capital in their own ethnic circles. Remarkable is that, according to the research made by I. Adam, rejected asylum seekers who were dependent on social benefits during their asylum procedure seem to be less integrated in their ethnic network. Once they become undocumented, they seem to have more difficulties finding informal jobs than undocumented migrants who never stayed legally in Belgium (conclusions comparable with J. Leman). This difference has also consequences as regards the school situation of the children.[157]

[155] It is important to make a distinction between the law and the practice. The theoretical protection provided for in the Belgian legislation is hindered by: the own interest of the employee (better being paid less than no work at all) and the absence of evidence (generally no written documents).
[156] And especially since the implementation of the Law dating from April 30th concerning the employment of foreign workers, only very seldom illegal workers will be registered (e.g. discussion aiming at assessing whether the people who introduced a regularization application in 2000 were still "illegal" or not).
[157] BAFEKR S, p59.

Still accordingly to I. Adam, what distinguishes undocumented migrants from other economic agents is the precariousness of their situation. They hold jobs at the bottom of the ladder and salaries at the bottom of the scale. Normally they don't/can not complain without the risk losing their livelihood. Nevertheless, in case of an accident, Belgian legislation provides right to a grant from the Fund for Work Accidents, at least if certain conditions are fulfilled: it must be proven that the place of accident is the workplace, that the one is working in Belgium for an employer who falls under Belgian legislation and who will furnish a certificate of the physical damages suffered by the victim. The principle exists, but in reality it is unlikely that an undocumented migrant will begin such a procedure.

A considerable group of undocumented migrants seem to earn their living very well by working as informal freelancers. Few sources exist about the profile and qualifications of undocumented workers. Among the 130 undocumented migrants interviewed in the framework of the research (for the King Baudouin Foundation – see above), all kind of professional qualifications could be distinguished. Nevertheless, the expectations and perceptions of professional integration in Belgium did not differ between a *sans papier* with a university degree and an illiterate person. The priority is the access to an income. Rarely are the undocumented able to mobilize their human capital for a job according to their profile (with the exception, in some cases, of qualified workers and technicians).

In a newspaper article dating from May 6th 2004[158], the damage (loss of incomes) for the Public Treasury caused by illegal labour is assessed to approximately 6% of the total figure of social contributions, or 2,43 billion Euro. This number refers to the employment of Belgians as well as foreigners (whether or not with residence right or labour permit). Beside, reference is made to the damageable effects for the employees who are legally employed and the market economy as a whole (unfair competition). The Minister of Labour and Employment (of the time) and the Minister of Social Affairs:" *Les entreprises qui se dérobent au respect des conditions normales de travail ou évitent les cotisations à la sécurité sociale, créent une concurrence déloyale et écartent finalement leurs concurrents sérieux*"[159]

Moreover, the number of infringements would have increased for the last years, especially as regards the employment of foreigners without labour permit: in 2001, some 416 workers without labour permit were trapped, in 2002, some 482 and in 2003 some 591, although the number of checks would rather have decreased.

The building sector leads the list as regards to the infringements to illegal employees: one out of six checks leads to the discovery of at least one illegal worker. Afterwards, the meat industries (12, 6%), the markets (7, 7%) and the Chinese restaurants (6, 7%). The major part of the number of illegal employees come from Europe (41%) most among which are from Poland (35%) en Bulgaria (20%). Afterwards, there are especially Asians (35%, most of them being Chinese) who are trapped at illegal labour. As regards Africa, more than the half comes from the Maghrib (54%) and as regards South-America 85% come from Ecuador (see farther).

It also seems from an interview with the chairman of the Flemish Building Confederation [160] that the building sector groans under the illegal competition and illegal employment. Mainly in Central and East European companies [which operate in Belgium] the work on the

[158] La Libre Belgique
[159] Same article
[160] De Morgen, February 23rd 2005

side would make a great fuss. Especially in the renovation sector, the competition would really be hard. As a consequence to these unfair competition, the sector requires from the government not only to control more but also to be less rigid for granting labour permits to foreigners. Being too hard for granting labour permits opens according to him the door to working on the side. He also lays on the table the problem field of false (pseudo) self-employment, or the so-called grey circuit (So the Collective Labour Agreements do not have to be respected anymore) and he fears that the situation will even be worse with the application of the so-called Bolkestein directive.[161] In a newspaper article dating from the end of May, the Flemish Building Confederation sounded the alarm bell again and asked for a regularization of the East European illegal workers.[162] [163]

It also seems from the annual report of the Immigration Service that concerning the new EU- members, the (Belgian) social inspection services can only discover with great many difficulties whether or not the concerned people are really socially insured in their home country and if such is the case under which system they fall. The data exchange with the new member states seems to be very problematic, indeed impossible.

Estelle Krzeslo[164] refrains from making an automatic correlation between the immigration question and the informal labour market (because this market is not only aimed at foreigners). In an article, some years ago, a figure of 1, 2 billion Euro was given as loss of income for the authorities and it would have been strongly increasing for the last years. She also notices that though the Social Inspection Services especially aim at penalizing the employer (fines), one should not lose sight of the penalty to which the illegal can be the subject either: in the worst case, forced removal. The conclusions of her inquiry are the following[165]:

The total number of migrants without legal residence turns around the 10% of the total number of employees working on the side (figures 1999). Among the 2233 noticed infringements (by the social inspection) some 8, 5% concerned the employment of people in illegal residence. Among these 8, 5% the majority was employed in the agriculture (15, 2%), food industry (13,7%), textile (11,1%), building (9,7%), trade (9, 2%) and horeca (8, 8%). Although each activity within the same sectors has its own logic, they all have, following the researcher, the same reason why illegal workers are hired: increasing flexibility (via a decreasing of labour costs, flexible working hours, etc.). Beside the traditional sectors of the parallel economy (building, agriculture, horticulture, horeca, domestic help, etc.) illegal migrants were trapped in all kinds of sectors: retail business, exotic shops, second-hand shops, car-wash, petrol stations, food packaging industry, call centres, "home deliveries".

[161] The checks will fall to the Authorities in the country of origin.
[162] Following the newspaper *Het Nieuwsblad* (June 3rd 2005) there are 50.000 illegal foreigners active in the building sector.
[163] A difference should be made between the problem field of illegal workers, the false (pseudo) self-employed and the falsification of competition as a consequence of secondments.
[164] "*Le travail clandestin, la régularisation, les papiers, le séjour. Aperçu de l'état du marché du travail clandestin en Belgique et à Bruxelles en particulier* », in Cahiers de sociologie et d'économie régionale, 3/2002, pp 45-102.
[165] The research was carried out some five years ago; It is consequently not clear how far the obtained results are still representative.

The researcher carried out a specific **inquiry on the situation in the Brussels Capital Region**. According to some researchers, half of the people without legal residence would live in the Brussels Region.[166]
Within the period 1994-1999 some 6481 actions were carried out by the inspection services. Some 3680 led to a so-called "NTM"("nothing to mention"). Among some 2801 (43%) a file was opened among which some 70% of the cases concerned the employment of people without residence right (in some 25% of the cases, it was reported that a foreigner actually resided legally in the country but was employed without labour permit). Some 51, 50 % of the infringements were observed in the building; some 19, 4% in the horeca; 10, 6% in business (among which garages) and some 9, 2% in the manufacturing industry (textile, food). More than half of the infringements were linked to the building sector in which especially Polish workers were involved. Following the entrepreneurs who were questioned within the framework of the research, without the employment of these illegal workers, it would be financially very difficult for many individuals to renovate their house and the amount of slums would undoubtedly increase in Brussels Capital Region. These Polish come mainly from the region of Byalistok, at the Frontier with Belorussia and would have substituted the Portuguese who were busy in the same sector but who have for the major part now disappeared since the entry of Portugal into the EU. The short distance and the possibilities of transport (bus) as well as the fact that the Polish no longer needed visas are the most principal reasons provided for this labour migration (apart from the high unemployment level and the low salaries in this region)[167]. According to the researchers the arrival of these Polish occurred in the early 90s, among others supervised by the Polish Catholic Mission in Brussels. The Polish Mission estimated the number in Brussels at 15.000 at the beginning of 1996, though this was a very rough projection (Leman: p 28, 1997).[168] According to a paper of A. Grzymala-Kazlowska (Journal of Ethnic and Migration Studies, July 2005), there were at the end of the 1990s estimated to be between 30.000 and 50.000 undocumented Polish workers at any given moment in Belgium, from whom it was believed that about the half of them worked in Brussels; Antwerp and Liège were (are) other areas of Polish migrant concentration.

This Polish worker community has the impression that the Authorities tolerate their activities (see also chapter 3, Polish immigration to Belgium). The worst penalty for the worker, namely repatriation, only eventually means a tiny financial loss (since the transport costs to return to Belgium are very low). As regards the horeca, so, good for 20% of the infringements, they are not only exotic restaurants but also e.g. luxury hotels and restaurants who employ illegal foreigners (via "trainees", subcontracting, temporary workers). As regards the employers who employ illegals, slightly more than the half had the Belgian nationality (51, 8%) and almost 20% the nationality of another EU member state. Afterwards came the infringers mainly native from the Middle East (7,8%), Maghrib (7, 2%) and Asia (6,5%). Among the 1748 trapped illegal workers, some 668 were repatriated, among whom

[166] The figures within the framework of the regularization campaign of 2000 indicated a little more than a third: out of the 32.662 (new) files, some 11.464 were introduced in Brussels (35%).
[167] The Polish emigration to Belgium however knew, already before the fall of the Berlin wall and even since the birth of the Belgium kingdom, a certain tradition. The Interbellum (work in the Limburg Mines), WO II, 1968 (anti- Semitic explosion in Poland) and the years 1982-1984 were the years during which the already considerable number of Polish came to Belgium. See: GRZYMALA-KAZLOWSKA, Aleksandra, "*From ethnic cooperation to in-group competition: undocumented Polish workers in Brussels*", in Journal of Ethnic and Migration Studies, p677.
[168] Surveys for 1995 and 1996, by Beata Siewiera and Sigrid Bafekr, revealed that services held in the two main Polish Catholic churches in Brussels attracted a total of around 4000 Polish worshippers each weekend (Johan Leman, p36, 1997)

the majority from Eastern Europe (457). In the clothing sector the illegal labour forces earned 60 BF (of that time) (1, 5 Euro) an hour. For the whole "*secteurs manufacturiers*" the wage for an hour amounted to an average of 200 BF, sometimes 150 BF[169]. In the building, the salaries amounted to 1000 to 2000 BF a day, a.o. depending on the nationality. A Polish worker was paid 300 BF an hour; his Ukrainian counterpart 200. In the horeca the hour rate was generally only 80 BF (2 Euro); in the countryside even lower, with peaks to 40 BF. In the Flemish horticulture, the salaries, again following the same report, from, 130 to 150 BF.

The researcher wanted to show with her article that clandestine labour supplies a certain demand of (some) employers to run their company as cheaply as possible. The additional advantage of the undocumented migrants is that the relationship with the employer is very "evanescent", in other words that they can be laid off on the spur of the moment. Following E. Krzeslo a more open immigration policy is the only way to clean up the employment of illegal foreigners.

Also **the annual reports of the Office of the National Coordinator Human Trafficking (FPA Social Security – Social Inspection**) provide insight in the problem field of illegal employment:

General context:

Since the social inspection services approach human trafficking not only from a criminal point of view but also from a financial one, their action is then considered as the most effective weapon in the fight against human trafficking. It is then also no co-incidence that the Parliamentary Inquiry Commission as well as the Chamber of the Representatives[170] as the Senate Subcommission 'Human trafficking and Prostitution'[171] came to the conclusion that human trafficking mainly has to be approached at the socio-judicial level.

It departs from this philosophy that the Minister of Labour and Employment of that time[172] and the minister of Social Affairs[173] decided to gather their forces and develop a common particular initiative.

The Protocol concerning the collaboration in matters of struggling against human trafficking concluded between the Social Inspection of the Ministry of Social Affairs and the Inspection of the Social Laws of the Ministry of Labour and Employment– 2001:

Within the framework of this collaboration protocol, a structured and coordinated way of working was developed to carry out employment controls of illegal foreign workers inside the judiciary districts and to funnel these information in an adequate way so that they efficiently can be used by other competent services. This way of working was structured in the way that one monthly checking action was required per region, preferably in one of the six sectors with increased risk of human trafficking. It concerned notably exotic restaurants, cleaning companies, agriculture and horticulture companies, old clothes recuperation companies, clothing workshops, as well as the prostitution sector.

[169] 1 Euro is approximately 40 Belgian Francs
[170] Document Chamber, 673/8, 91/92, pag. 163 e.v.
[171] Document Senate, 2-152/1, 1999/2000, pag. 160.
[172] L. Onkelinkx
[173] F. Vandenbroucke

On the other hand this collaboration is coordinated because, at the national level, a coordinator was appointed to both services. These coordinators following a previously settled planning ensure the correct execution of the planified actions, they collect the results and put them at the disposal of the police officials and juridical services who are also involved in this fight against human trafficking. At the local level (per region or per arrondissement) a common agreement is settled between the officials of both services and depending on the region, whether or not in agreement with the competent labour auditor, public prosecutor and/or police service, decide in which concrete companies the checking visits will take place.

Results 2003 (working report mini-protocol 2003):

Some 912 institutions were checked by the services of inspection in which 2055 people of foreign nationality were concerned (237 self-employed and 1818 workers). Among the 918 noticed infringements some 29% concerned illegal employment of foreigners. Theses were trapped in different sectors: Chinese restaurants (22, 2%), agriculture and horticulture (18,6%), building (14%), markets (10,5%), prostitution (7,5%), exotic restaurants (5,4%), old clothes processing (4,9%), exotic retail trade (4%), meat processing (3,2%), particulars (2,7%), night shops (2,2%), navigation (1%), horeca (1%), others (2,7%).

The number of employed foreigners per sector linked to the number of checks (%)*:

Building:	17,25%
Meat processing:	12,62%
Old clothes processing:	12,24%
Particulars:	10,66%
Exotic retail trade:	8,63%
Markets:	7,73%
Chinese restaurants:	6,66%
Exotic restaurants:	4,82%
Agriculture and horticulture:	4,70%
Others:	3,83%
Prostitution:	3,50%
Night shops and phone shops:	2,76%
Navigation:	2,66%
Horeca:	1,94%

* reference percentage : 7,14%

These figures are, according to the national coordinator, absolutely indicative enough[174] to have to conclude that the aspect of labour exploitation within the phenomenon of human trafficking remains important and that not only the outlined way must go on but some additional initiatives must be taken in order to fight against this.
In 2003 some specific checks were carried out for the first time on foreign self-employed.[175]

[174] It is difficult to set these figures in their right context because of the lack of reference material and specialized analysts (these are provided by the Federal Committee of Coordination, Law dating from 3.5.2003).
[175] Competence notified to the services by the RO K.B. dating from 27.11.2002.

General comment on the figures:[176]

Origin of illegal labour migrants:

A majority of the trapped illegal migrants came (2003) from Europe (41%), followed by Asia (35%). Within the European region, the Polish (35%) were at the peak, followed by the newcomer Bulgaria (20%). Among the Asian countries, the superiority of the Chinese (61%) illegal labour forces was striking, from very far followed by Turkey (8%) and India (7%). From the African continent most illegal migrants came from the Maghrib countries (54%). The large part of native illegals from the American continent have the Ecuadorian nationality (85%). Expressed in percentage, the feminine illegals represent 23% of the total number of trapped illegals, up to a part of 28% in the European region, mainly via the Polish and the Bulgarian nationalities. Among the Polish population women even represent 35% of the trapped undocumented migrants. For the latter, this can again be explained by the sectors in which they are employed (prostitution and private domestic help). The greatest number of illegal freelances, namely 64%, came from Ecuador, but this was entailed by the sector in which these people are active, namely trincket trade.

Illegal migrants per sector:

If one does not take into account the division of the carried out checks into the different sectors, the Chinese restaurants (22%), agriculture and horticulture (19%) and the building sector (14%) remained the main economic sectors in which illegal workers were trapped. A particular attention has to be paid to the branch of the markets (11%), where in 2003 considerable numbers of Ecuadorian nationals were trapped who seemed to execute labour provisions illegally.

When the absolute numbers of trapped illegal workforces are linked to the number of checks carried out in the respective sectors, we reach adequate percentages. These relative figures reflect the ratio of the trapped labour forces in a precise sector to the other observations in the other checked sectors, taking into account the amount of carried out checkings.[177] So, the probability risk to be trapped seems to be at the highest in the building sector, followed by the meat processing industry, the old clothes processing industry and the employment at particulars.

Nationality per sector:

The whole population of the trapped employed illegal foreigners were the Chinese labour forces active in Chinese restaurants, who to a lesser extent further request the South East Asian labour forces (Malaysia, South Korea, the Philippines). The majority of illegal employed Moroccan (52%) and Algerian (59%) labour forces were employed in the agriculture and horticulture sectors; both nationalities represent 22% from the trapped foreign illegal labour forces in this sector (in 2002 their part in the sector hardly amounted to 7%). The majority of the trapped illegal labour forces in the agriculture and horticulture sectors is from East European nationality (58%), with Polish and Bulgarians at the peak. Strikingly too, the smaller number of trapped workers in this sector was the illegal Asian labour forces

[176] Since the inspection services mainly direct to the so-called risk sectors, it is not clear how representative the figures concerning the trapped illegal foreigners are for the "global image" of the countries of origin (of illegal (labour) migrants).

[177] The last mentioned percentage provides an indication about the relative "chances of being caught" in each separate sector.

(particularly India, Pakistan, Nepal): 12%, when this still was in 2002 some 38%; at the same time there was no noticeable shift of these nationalities to other economic sectors. The large majority (87%) of the trapped illegal labour forces lay in the building sector with natives from East European countries, from Poland, the Czech Republic and Slovakia as main nationalities. As regards the spreading of East European illegal labour forces, beside the prevailing presence of the Polish, Czech and Slovakians in the building sector, there is an important attraction force of East European labour forces in the horticulture sector: respectively 50%, 37% and 32% of the illegally employed Romanians, Bulgarians and Polish were trapped in this sector. Further, the illegal employment of illegal Bulgarian labour forces in the meat processing industry is also striking. As regards the East European nationalities, it is worth mentioning that among 14 checks at particular households 11 Polish, 1 Moldavian and 3 Bulgarian women (housekeepers) and 1 Romanian man were trapped. The half of the illegally employed Turkish (8 out of 16) were trapped in the sector of Turkish bakeries.

Mini Protocol 2003 – trapped illegally employed foreigners per sector					
Sector	Number of checks		Trapped illegally employed foreigners		Illegally employed foreigners linked to the number of checks (%)
	number	%	number	%	
Building	45	4,93	83	14,04	17,25
Meat processing	14	1,54	19	3,21	12,62
Old clothes processing	22	2,43	29	4,91	12,24
Particulars	14	1,54	16	2,71	10,66
Exotic retail trade	26	2,85	24	4,06	8,63
Markets	75	8,22	62	10,49	7,73
Chinese restaurants	184	20,17	131	22,17	6,66
Exotic restaurants	62	6,8	32	5,41	4,82
Agriculture and horticulture	219	24,01	110	18,61	4,7
Others	39	4,28	16	2,71	3,83
Prostitution	118	12,93	44	7,45	3,5
Night shops and telephone shops	44	4,82	13	2,2	2,76
Navigation	21	2,3	6	1,01	2,66
Horeca	29	3,18	6	1,02	1,94
TOTAL	912	100	591	100	100

Beside this direct collaboration, **the MERI** (human trafficking and risk sectors) cells also collaborate with other services[178] when their participation is advisable.

The prevailing sectors are: the prostitution sector, the agriculture and horticulture, the exotic restaurants, the clothing workshops, the old clothes processing companies, the cleaning companies. Equally striking in their annual report, is that the trapped illegal labour forces will

[178] The checking service from the Civil Service for Labour Provision, the inspection services of the FPA Finances, the Federal Food Agency (FFA), the regional Social Inspection Services and especially the Immigration Service juridical unit.

exceptionally declare to the social inspectors that they are victims of human trafficking. Most of the illegal workers were trapped in Brussels and the provinces of Antwerp, Walloon-Brabant and West-Flanders (where most of the checks were carried out too).

The sticking out a mile nationalities were Poland (234 or 22, 5%), China (134 or 12, 9%), Bulgaria (111 or 10, 7%) and to a lesser extent Morocco (52 of 5%) and Turkey (42 or 4%).

Almost half of all the Polish were busy in the building and the Polish were also at the peak of illegal employment in the particular households. Some 98% of the illegally employed Chinese seemed to be active in restaurants.

The majority (54%) of the illegal labour forces were natives from Europe, notably from the former Eastern block countries. The most numerous were consequently the Polish workers, who in 2003 represented some 42% of the trapped illegal European labour forces and some 22% of the total number of trapped foreign labour forces. The number of Bulgarian and Romanian illegal labour forces was considerable: respectively 20% and 13% of the trapped European illegal work forces (resp. 11% and 7% of the total population). Among Asian labour Forces, who represent some 31% of the total number of illegal labour forces, the highest position of the Chinese workers is noticeable (some 42% of the Asian illegal labour forces). The Moroccans constituted the biggest part (45%) among the trapped African illegal labour forces. As regarded Central and South American illegal labour forces, the number of Brazilians (49%) and Ecuadorians (38%) are striking too. The group of illegal Ecuadorian workforces, was mainly trapped on public markets; Brazilian illegal work forces in the building sector.

On the basis of the absolute numbers in the various sectors of trapped illegal labour forces, the authors of the report conclude that the building sector, the Chinese and other exotic restaurants and the horeca generally, the agriculture and horticulture sector and the prostitution sector are the main risk sectors.

Also striking in these statistics is the relatively high number of illegal labour forces who were trapped in particular households. Among only some controls carried out in the province of Walloon Brabant, some 29 illegal labour forces were trapped mainly as domestic helps of Polish nationality. In the building sector the highest number of trapped illegal work forces (some 250 out of the 1041 trapped illegal workers and freelances, or 24% of the population). The large majority (88%) of the illegal labour forces in the building sector was formed by the East European nationals. The Polish workers represented 45% of the trapped illegal labour forces in the building sector. Among the illegal work forces in the building sector, an astonishing group was formed by the 6% Brazilian workers, the large number of whom were trapped in Brussels (see also: assisted voluntary return - REAB). In the global horeca sector, 30% of the illegal work forces were trapped.

In the sectors of agriculture and horticulture 74% of the trapped illegal labour forces had the East European nationality, with the Polish as the largest group (30%), followed by Romanians and Bulgarians. Also in the prostitution sector, the East European nationals constituted the largest majority (79%) of the trapped illegal workers, with Polish (23%) and Hungarian (19%) women as the largest group. Moreover, 13% of the trapped illegal labour forces in this branch were represented by African women. The part of Central and South American women was only a tiny (7%); Asian women were not trapped, except for 1 Thai woman.

From the report, it seems that since 1999 a continuous increasing of illegal foreign labour forces has been trapped (in different regions, more controllers were entrusted to the cells human trafficking).

Another important observation is that when the data of the time period 2001-2003 are compared, the relation between the catching of legal and illegal foreigners remains constant: where many legal foreigners were trapped, most illegal foreigners were trapped too.[179]

The employment of illegal foreigners is however certainly not a recent phenomenon and would have been all the rage since 1963[180]. The lack of work forces during the *golden sixties* would have entailed that the Authorities accepted the use of foreign labour forces even when these did not have an official authorization. This situation first started in the mine sector and slowly extended to other sectors: the steel and building sectors and later the textile, care and catering. Between 1962 and 1965 some 33% of the mine workers would have been employed on the basis of a simple tourist visa. This tolerance came to an end in 1967.[181] According to Slimane however, the illegal employment of foreigners would not have slowed down because of the low penalties provided by the new RD dating from 1967. Also this research (Slimane) highlights that undocumented migrants live in the same neighborhoods like regular migrants: easier to find a housing, easier to hide, solidarity of the same community, etc.

Also following Leman the phenomenon of illegal labour immigration has mainly to be struggled by catching the "black niche".[182] Also according to Boeri and others, one can slow down the question of illegal immigrants by catching the workers in a harder way. The other option is to decrease the supply of undocumented migrants by promoting more temporary labour migrants as well as more regularization campaigns but the result of this is naturally uncertain because it depends on the impression of employers whether potential migrants see temporary labour migration as a valuable substitute to illegal migration: the chance is indeed important that these temporary work migrants choose afterwards to stay in the illegality. This option also supposes an efficient, closing frontier checking. It is also probable according to Boeri that illegal immigrants who reside in the country for a longer period will invest more in human and physical capital (than temporary labour migrants), so it is possible that eventually illegal immigration is chosen beyond temporary, legal migration for the host country.[183]

CRIMINALITY, GLOBAL COSTS, THEORETICAL CONSIDERATIONS ABOUT (ILLEGAL LABOUR) MIGRATION

[179] From another research, it also seems that the legal resident foreigners were often concentrated in some sectors like the (large) sector of advice and assistance to people and enterprises, selection and putting at disposal of personnel and industrial cleaning. The horeca sector is also typical for legal foreigners. Other sectors of activities are also typical for some other nationality groups: The Romanians, the Bulgarians and especially the Turkish in the agriculture, horticulture and building sectors; Asians (incl. Middle East) can be noticed in the horeca. (TRATSAERT, Katrien, "*Zoek de gelijkenissen, vind de verschillen. Diversiteit en participatie naar nationaliteit op de arbeidsmarkt*", Steunpunt Werkgelegenheid, Arbeid en Vorming, 2004).

[180] Information from LEMAN J e.a. « *Sans document. Les immigrés de l'ombre* », Brussel, 1995, 141pp.

[181] SLIMANE, Lotfi, *L'immigration clandestine de main-d'oeuvre* in Sans Document. Les immigrés de l'ombre, p23.

[182] LEMAN J a.o., *Sans Document. Les immigrés de l'ombre*, p134.

[183] BOERI T, a.o. *Immigration Policy and the Welfare System (summary*), Oxford University Press, 2002, pp46-49

The amount of illegal foreigners who keep living by criminal activities is naturally unknown. Neither is it possible to assess the costs for the public order and no publication or study about this is available. The fact that illegal migrants cannot apply for the welfare state provision means that they, as already mentioned, have to live by either humanitarian assistance, illegal labour or criminality (or a combination of these). We confine ourselves to the description of some theoretical considerations. There are two hypotheses about the relation between illegality and criminality:[184]

- Since the illegal, as a consequence of the current regulations, has little chance to be able to provide for his primary needs of life, he is consequently, more or less forced to fall into a criminal behaviour (marginalizing thesis)
- Others, on the contrary, state that the illegal will just try to do his best to remain outside the view of the police not to jeopardize his residence (dissuasion thesis)[185]

Following J. Kaizen and W. Nonneman segregation, expatriation, limited assimilation or integration can be a cause of organized ethnic crime. Assuming the role allotted to the state, which often constitutes an important part of some criminal organizations, may be explained by the fact that migrants sometimes cannot fully benefit of the state services in which they arrive and this is expressively the case of illegal migrants.[186]

Following other authors (Cloward § Ohlin; Schuyt) an informal tolerance policy and/or powerless foreigner apparatus would help a certain indifference which as a generative mechanism serves criminality: a feeling of bureaucratic invulnerability as a consequence of a government which is not able of removing (e.g. by changing identity).[187]

Mindful of the theory of network-effects/chain migration, it also seems to prove that the newer groups of undocumented migrants are more present in criminality than the traditional ones, which could be linked to less strong networks and these have consequently no legal community behind them.[188]

Since a calculation of the costs for the society deriving from (legal) migration is not already univocal and controversial and is the subject of many discussions, the total costs (public order, health, education, contribution losses, etc.) as a consequence of the illegal migration existence is absolutely unknown, not in the last place because the number of undocumented migrants in Belgium is not known. One should think about a great variety of factors: salaries of officials and police agents who are busy with the fight against illegal immigration, illegal employment and border guarding, costs for removing illegal migrants[189], cost of detention centres, urgent medical assistance, pro deo lawyers, granted subsidies to education institutions, the competition disadvantage for companies and sectors which do not use illegal labour migrants, the loss of contributions as a consequence of the employment of people without legal residence, costs resulting from criminal activities as a consequence of the

[184] ENGBERSEN G, STARING R, e.a., *Illegale Vreemdelingen in Nederland. Omvang, overkomst, verblijf en uitzetting*, p5.
[185] This exemplifies the fact that the anxiety due to removal would be stronger for many people in the first period of migration because the migrant has not collected enough to return.
[186] KAIZEN Julie and NONNEMAN Walter, *Misdaad en etniciteit: een economische benadering*, p13.
[187] VAN BROECK, A-M, p224.
[188] ENGBERSEN e.a., *Illegale vreemdelingen in Nederland*, p34 en 124.
[189] For example, the costs of forced removals (flight tickets, costs to obtain documents, escorts by the Federal Police, other costs of police services, medical costs for checking medical damages as well as control of supposed minors, escorts on flights – but without the costs of closed centres) amounted in 2001 to 5.741.685 Euro (Parliamentary question nr. 574 from April 30th 2002).

impossibility to take benefit of social provisions ('survival strategy'), the (possible) laying off of the local population (unemployment benefits), etc.

The (financial) interests, on the face it, seem less numerous, so one especially thinks about: the cheap employment for companies and households/the cheaper production of particular goods (e.g. renovation of houses) and services; the 'ultimate' labour forces (the exercise of necessary jobs which are denied by the Belgians or legal foreigners), the payment of indirect taxes (VAT) the remittances (money) that illegal migrants sent to their country of origin and are consequently a source of development (and which, in the long term, can restrict illegal migration flows).[190]

Briefly, such figures are not available (in Belgium) and would be the subject of a very large scientific study.[191]

Some other studies rather emphasize the importance of the informal economy which partly supports on illegal migrants. Some doubt whether it is first possible or if it is preferable that the underground economy fully disappears: "*The optimal degree of underground economic activity is probably greater than zero. Putting informal enterprises totally out of business will probably cost more than just tolerating the damage that is caused by these businesses. The closure of these businesses will not only end its informal employment but also its regular employment. Reducing shadow employment puts more pressure on regular labour markets and may increase regular unemployment*."[192]

The existence of a large shadow economy works consequently as an important pull-factor for illegal immigration, though it is naturally empirically impossible to know exactly the relation between the two. The causal relation is not completely clear either: "*A flourishing shadow economy probably attracts illegal immigrants but the presence of illegal immigrants will also stimulate the shadow economy*".[193] The study concludes in any case that only frontier checks can never stop illegal immigration: the fight against work on the side, among others by a reduction of income taxes and social security contributions for example[194], is very important to struggle against illegal immigration.

Professor W. Nonneman (University of Antwerp) starts from a similar point of departure: since the labour mobility of the EU nationals is so small in Western Europe, the (legal and illegal) migrants, who are much more mobile, fulfil the utmost important role of *lubricant* for the labour market. Immigration and the extra costs for the social provision linked to it constitute an additional tax that must be paid for the immobility of the European labour

[190] The question of the role of remittances in relation to a decreasing or increasing of (illegal) migration is double: while on the one hand, a substantial economic growth can be realized in the country of origin which consequently can result, in the long term, to a decreasing of the migration pressure, it can also, on the other hand be the cause of jealousy which can drive some others to migrate, which is, among others, made easier by the greater financial potential as a consequence of remittances. See: LOOBUYCK P., *Vreemdelingen over de (werk)vloer. Het debat over arbeidsmigratie en de migratiestop in kaart*, pp113-116, Academia Press, 2001.

[191] A clear difference must be made between the advantages and the disadvantages of legal immigration and illegal immigration. It is mainly the degree of employment which is of utmost importance for a net fiscal return (European Commission, *First Annual Report on Migration and Integration*, p4).

[192] OKKERSE, Liesbet, *Migration and the shadow economy*, p13, Universiteit Antwerpen 2004.

[193] idem, p9

[194] Since there is a correlation between the informal economy and the tax pressure: Spain, Italy, Greece and Belgium have the greatest informal economy and also the highest tax pressure (In Belgium, the part of work on the side amounts, following a foreign inquiry, to 21, 4% of the Gross National Product – the Belgian official national accounts do not contain such a high level of shadow economy).

forces. This immobility is exemplified by the fact that in some rich EU countries a high average living standard goes hand in hand with a considerable unemployment and is for a large part a consequence of the institutional post-war developments (CLAs, social security systems based on national and regional solidarity). Since the production factor capital is much more mobile than labour, the latter is much more taxed, which constitutes an important stimulus for irregular and illegal employment. Since the shadow economy is far more dynamic than the official one, the salaries fit the market circumstances: the available quantity of labour fits the labour demand (and among others the number of illegal migrants). Since illegal immigration offers more room for immigration of low-skilled people, immigration has simply become (tout cours) unpopular because the immigration of lower educated people has an important weight on the labour market as well as on the system of social provisions. Following this professor it is then also unrealistic to believe that illegal immigration can be turned back, certainly not without structural reforms on the labour market and a more realistic system of social security. A more open immigration policy is seamlessly linked to these reforms.[195]

Some of them go further and claim that West European governments do not (effectively) struggle against illegal employment because it is advantageous to some sectors (so the question of low-cost and flexible labour is solved) and politics were too sensitive to open the labour market to legal labour migration: "*...the best response to the phenomenon of illegal labour is to make labour markets flexible, such that employers have no incentives to cut costs through hiring irregular labour. In the absence of such reforms, it is simply too costly and inefficient to enforce zero illegal immigration and work.*"[196] Among the costs the authors do not only mean the fiscal costs but also the political costs, costs for the frontier checks, damages to the economy and tourism, discrimination towards legal labour migrants and weakening of civil liberties. For the last decade the European states have been more and more aware of the negative aspects of illegal immigration, especially under the pressure of human trafficking and human smuggling. Legal labour migration is more and more seen as a means to stop illegal immigration[197]. Other authors ask themselves the question to know if more legal labour migration will make the employment of undocumented people decrease: at the level of demand, the advantages of illegal employment (request of low salaries, low social costs and flexibility) will not disappear, at the level of supply the (new) legal community of labour migrants can be a stimulus for further illegal immigration.[198]

The literature lay the emphasis of the "family and friends effect" as already mentioned before, as one of the most important factors explaining the migration phenomenon: "*the first wave of migrants forms a network that provides information and support for prospective migrants, also illegal migrants. This support provided by earlier migrants can take different forms: economic, cultural and emotional*".[199] High-skill immigration has the following consequence on illegal immigration: high-skill immigrants may be perceived to be the "scouts" who pave the immigration path for their less-skilful relatives and friends. This happens because of two types of "family and friends" effects:

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[195] NONNEMAN Walter, *Immigratie en de arbeidsmarkt*, April 2005.

[196] BOSWELL C. and STRAUBHAAR T., *The back door: temporary migration and illegal employment of workers*, Hamburg Institute of International Economics.

[197] Or the "model of the interconnected pipes" – see Jandl, Thesimrapport, p19).

[198] Moreover it is not sure that those who possibly apply to the labour immigration official channels are the same as those who currently emigrate illegally (or apply for asylum).

[199] There is also a relation between the way of arriving and the possibilities that these newcomers have afterwards, once arrived in the destination country. (See Engbersen a.o., Illegale vreemdelingen in Nederland, p80).

- The first increases the demand for low-skill immigrants through the arrangement and creation of jobs for the low-skilled immigrants by their relatives and friends, high-skill, earlier immigrants.
- The second effect increases the supply of low-skill immigrants through positive financial transfers made by earlier high-skill immigrants in favour of their low-skill relatives and friends in the country of origin, so as to induce their emigration.

When the effect of the immigration networks on the supply of low-skill immigrants dominates their effect on the demand for low-skill immigrants, the current number of illegal immigrants increases with the number of earlier high-skill immigrants.[200] When, by the impact of networks (built up by prior immigration), the supply of low-skilled people is greater than the impact of the networks on the creation of new jobs, the illegal migration would consequently increase. Following a researcher of an important bank institution, this depends very much on the balance between push and pull factors. When the first have the preponderance, the migrants who are confronted with a country that takes into account the situation on the (national) labour market, such as Belgium, will choose illegality.[201] Following some economists, the most efficient way to slow down illegal immigration in the long term is the development of free trade (combined with official aid) since free trade and migration are substitutes.[202] Following the researcher of the same bank institution, illegal migrants create economic value since they hardly put pressure on the government finances but they maintain a parallel labour market in which the jobs have become unpayable by the extensive social security system and the consequent salary contributions (labour market of which the jobs would otherwise no longer be fulfilled).[203]

The relation between legal and illegal immigration reveals that more research need to be carried out, among others on the basis of the discussion about the recent Green Paper from the EC about economic migration[204]. The High Council for Employment put forward a recommandation in relation to a communiqué from the European Commission dating from November 25th 2000 about the migration policy[205]. There, they expressed their doubts concerning the opening of legal migration channels as a resolution for a proportional decrease of clandestine immigration and leading to a better management of the whole immigration among others because the profile of the concerned migrants is generally relatively different and immigration depends on a.o. the differences in the employment degree between the host country and the country of origin.[206]

[200] RICARDO FARIA, J en LEVY A: *Illegal immigration and migrant networks: is there an optimal immigration quota policy?*, 2003, 17 pp, University of Wollongong.
[201] VAN DE CLOOT Ivan, Economic Research ING, mail van 15 maart 2005.
[202] But possibly complementary in the short-term (by which it is possible that in the short-term, both free trade and illegal immigration increase). Or the so-called J-curve paradox (migration hump): The approach of the causes of unwished migration induces the probability of more migration in the short-term.
[203] This only concerns here the economic considerations which do not take the social, cultural and political impact of migration into account.
[204] So, in other words, how far can additional legal migration decrease for example the pressure on the asylum system and slow down the illegal migration.
[205] The High Council referred to the US as an example, where a soft immigration policy would go hand in hand with a stronger illegal migration.
[206] High Council for Employment (de Hoge Raad voor de Werkgelegenheid), *Advice concerning the Community policy in relation to migration and the execution of the European employment strategy*, pp 8-9, 2001.

Some others also bring up for discussion the problem field of the relation between legal and illegal (labour) migrants: massive regularization of illegal migrants without coupling it with strengthened checks on the labour market and rights protection for all the workers, shows a lack of foresight and naïveté, because the question is whether the informal economy needs labour forces or illegal (cheap) labour forces. The point is not whether a high- technological society could not do it without immigration but that this society cannot do it without informal provision of services and illegal employment in certain economic sectors.[207]

Following The Economist the argument is that authorizing again labour migration could stimulate the informal and illegal migration, '*a risk that Europe should be ready to take*'.[208] Following the geographer J. Salt (Migration Research Unit, University College London) the problem of illegality will not be solved by authorizing more labour migration since there is a trend in Europe to attract high-skilled people while developing countries, facing a demographic surplus, will (want to) let the lower skilled people emigrate (while those wanting to emigrate to the West are young and dynamic people).

It is again necessary to emphasize that these considerations approach the problem field mainly from an economic point of view and let the cultural, social and political impact aside.

Other reports seem anew to suggest the contrary: more legal possibilities to migrate will make illegal migration decrease.[209]

The European commission, on the basis of their report "*Study on the links between legal and illegal migration*" comes to the conclusion that "*There is a link between legal and illegal migration but the relationship is complex and certainly not a direct one since a variety of different factors has to be taken into consideration"*. According to Professor Nonneman migration flows, so also the irregular ones, are determined by push and pull factors rather than by strict frontiers checks. Restrictive measures only aim at changing legal migration into illegal forms of immigration and have far less effect than thought.[210]

Also according to demographers the relation between legal and illegal migration is certainly not univocal and a great many factors must be taken into account. Following Jandl there are, theoretically, at least five possible relations:

i. There could be a link between legal and illegal migration flows but statistically these flows appear to be positively, rather than negatively, correlated (or the model of the interconnected pipes).

ii. There is presumably a strong link between the legal and illegal residence status (stocks) of migrants (for example: overstayers; effect of a regularization campaign)

[207] LOOBUYCK, pp31-34.
[208] LOOBUYCK, p63.
[209] European Commission (DG Justice, Freedom and Security), *Report of the experts group on trafficking in human beings*, 2004.
[210] NONNEMAN Walter, *Immigratie en de arbeidsmarkt (Immigration and the labour market)*, April 2005.

iii. There might be a link between legally (or illegally) resident migrant populations and flows of illegal migrants: already present migrant societies can facilitate new illegal migration (cfr. “family and friends effect”)

iv. There might be a link between stocks of illegal migrants in different countries (for example, when migrants move to another country in order to participate in a regularization programme)

v. There is the possibility of a link between (increased or decreased) legal or illegal migration possibilities to one country and illegal migration flows to another country.

The second and fourth possible relation leads for example to the regularization campaign of 2000, which will be discussed in Annex I.

CONCLUSION

Broadly speaking, there are 3 major groups of illegally residing foreigners:
- illegal labour migrants;
- refused asylum seekers;
- other overstayers.

Although illegal streams of immigrants are obviously affected by the rules of entry of the receiving countries – for such rules function as streams of migration regulating mechanisms – illegal immigration (as far as the pull factors are concerned) is difficult to counter owing to the following circumstances:
- the extension and cheapening of the international transport facilities, which led to some degree of democratisation of the migrating process;
- the demand for cheap and flexible labour in some sectors;
- the existence of settled communities of migrants who by the mechanism of chain migration make the arrival of new illegal migrants easier;
- the existence of transnational human smuggling networks and, on a larger scale, of the migration industry as a whole (travel agents, labour recruiters, brokers, interpreters, housing agents), who are often able to act 'just in time' due to modern technology.

When illegal foreigners hide their identity and the countries of origin do not co-operate properly, many of them become *de facto* unremovable. Co-operation with the transit countries and the countries of origin is particularly crucial to the fight against illegal immigration.

There is clearly a demand for flexible, cheap and semi- and unskilled workers. It remains to be seen whether this demand could be met by illegal immigrants only (the problem may rather be related to the tax burden, that is to say labour costs for certain forms of semi- and unskilled labour and seasonal work.). By evading payment of employer's contributions the labour costs and so the price of the final product can be kept down. In the building industry, more than in other sectors, illegal workers are in great demand, a situation that has its roots in the past: the first regularisation campaign in Belgium (1974) affected for almost two thirds people who were active in the building industry.

Three structural and interdependent factors create the demand for illegal foreigners: labour costs, need for flexibility and (legal) personnel shortage (i.e. shortage of people wanting to accept a job under the given employment conditions). Inquiry on this matter has revealed that the tendency towards flexible and precarious jobs, more than the price advantage, is the decisive factor in taking on illegal immigrants. For an undocumented foreign worker is usually highly flexible, willing and motivated, given the fact that this is one of a limited range of survival strategies (he or she cannot fall back on unemployment benefits or a subsistence level of income). Nevertheless, the causal relationship between supply and demand is not always clear; it may well be that employers adjust their demand to the available workforce. There exist mechanisms that play a role in the regular formal economy (examples from the study: a tendency to wage reduction for South American domestics halfway the 1990's caused by the arrival of new groups of East Europeans; the position of Polish women who are/were better off than Polish men because the demand for the services of these women is/was higher, so there is/was less competition) and mechanisms that have a logic of their own (for example, wages according to nationality). Sometimes wages for undocumented migrants are far below those of native workers, but this has a 'logic' explanation: an undocumented migrant is less

interesting for the employer because often he or she does not speak the language and is less experienced, because of the power relations (it seems quite unlikely that an illegal immigrant would appeal to the theoretical protection provided for in the Belgian legislation) and, most of all, because of the risk for the employer (fines). From an economic point of view – leaving aside any ethical issue – illegal migrants (certainly in certain sectors) seem to be even more advantageous than (temporary) legal aliens because of their greater flexibility, owing to the fact that they do not have access to welfare provisions.

The report has made it clear that it is very difficult to draw up a standard profile of the illegal migrant. There are indications that the age, for the greater part of the illegal migrants, averages around 30 years. This confirms inquiries abroad showing that illegal aliens are younger than legal migrants. Among illegal migrants men are in the majority, although the number of female labour illegals should not be underrated (e.g. Latin America, the Philippines, the former Polish illegal migration). Given the fact that in the past 10 years about two thirds of the asylum seekers were men, it is obvious to presume a majority of men among the asylum seekers who have exhausted all legal procedures (there is indeed no reason to assume that they would more voluntarily leave the country or have their residence situation regularised in some other way). Nonetheless, the participation of women in illegal migration seems to increase in comparison with a few decades ago. Estimations of the number of male illegal immigrants in both the U.SA. (1981) and France were around 80 % (1981-1982); during the Belgian regularisation campaign of 1974, 94% of the applicants were men. This could be explained by the fact that previously illegal immigrants were irregular *guest workers*, employed in sectors requiring heavy bodily work (mining, building industry, metal industry). The increasing number of women is a result, among other things, of sociological changes in Western society (women working outside the home can use a domestic aid).

Additional (scientific) research on the subject is needed, especially macroeconomic studies on the effects of illegal migration, about the link between legal and illegal migration and about the profile of undocumented migrants. In any case, also the interrelation between legal and illegal migration is more complex than it is sometimes conceived and cannot be defined in a uniform way.

Although the government continues to fight illegal immigration, making laws and imposing rules amount, according to some, to window dressing, more than in other policy matters, by which the authorities rather aim at achieving a symbolic effect. The gap between the restrictive legislative framework and its implementation is conceptualised, according to the same research workers, by means of the concept of *tolerating* (S. Bouckaert). Tolerating occurs both on the local and the national level and is chiefly motivated by practical considerations (limited removal capacity). With respect to the problem of illegal aliens whose order to leave the territory is extended, a partial solution will likely be found by the conversion the European Directive on subsidiary protection into national legislation.

During the past decades numerous measures have been taken, regarding border checks as well as control within the territory, to make Belgium less attractive for illegal migrants, measures such as the abolition of the right to work for all asylum seekers (only asylum seekers declared admissible may now work legally), increase of the removal capacity, abolition of the financial aid for asylum seekers, more checks on illegal work and higher penalties, imposing administrative fines on transport companies, higher penalties for human trafficking and smuggling networks, and so forth. The measures aiming at accelerating the asylum procedure are equally important, given the obvious fact that asylum seekers who have

exhausted all legal procedures, after having awaited for many years the final result of their application, are very difficult to convince to leave the Belgian territory voluntarily.

It is clear that irregular migration is rarely the result of purely individual actions of the illegal migrant only. With regard to certain persons or certain countries of origin, acquaintances and family members seem to play a big role, yet for other countries of origin the role of human smugglers is more important (which of course does not exclude that both, family/friends and smugglers, can be involved in one and the same migration). Examples of the first possibility are countries who have a certain tradition of migration to Belgium, such as Morocco, Turkey and Yugoslavia, traditional countries of origin of foreign workers. So this is connected, as it turned out, with the existence or non-existence of a network that provides the necessary relief. In that sense and by way of extrapolation illegal migration will continue to increase in the future – in the assumption that all other factors staying equal – since the established (legal) migrant communities continue to grow as well.

Chain migration is linked to the traditional (solidarity) values from the country of origin: already present migrants consider it as a matter of social obligation to help candidate migrants when they decide to emigrate. The assistance of the already long-time resident foreigners is very precious to greet the new undocumented migrants.

Social networks not only explain why people migrate to a given country, but also why a stream of migration, once it has started, becomes continuous. An important additional force of attraction is exercised by the possibility to create in the host country a community of their own with its own social structures. Thus the disadvantages which (legal and illegal) immigration may bring about can be kept to a minimum for undocumented migrants and combined optimally with its material advantages. Anyway, the lacking access to social benefits can only be partially compensated by these social networks.

Inquiry made by J. Leman has revealed that within certain communities (Poles, Nigerians, Filipinos, Latin Americans) religious institutions, at least certainly in the 1990's, exerted quite some influence on the life of the undocumented migrants, and not only in their capacity of "religious and ethnic guardians". In the case of the Poles, for instance, these institutions functioned as extensions of social life and seemed to be informal meeting places where migrants could exchange information (about job opportunities, for instance).

It is not clear to what extent the presence of illegal migrants is harming the Belgian economy. It is beyond doubt that the extensive Belgian shadow economy has a harmful influence on the official economy. However, it should be noticed that the large majority of the moonlighters are Belgians and legally residing aliens. Some research workers point out that they fill up necessary jobs that have become prohibitively expensive and that they put hardly pressure on government finances. In any event, the negative consequences of illegal labour migrants must be viewed in the much broader context of the moonlighting problem. As for the allegation that undocumented migrants cause a rise in unemployment figures and a tendency to wage reductions, much depends on whether or not the undocumented migrants are substitutes (interchangeable) for the native workers. Studies seem to confirm an influence of illegal immigration on the unemployment figures and the wages, though this influence is very small. Sometimes the suggestion is made that illegal labour (temporarily) acts as a brake on economic restructuring, because otherwise enterprises could introduce more labour saving technology (but it remains to be seen to what degree sectors where illegal migrants work are capital-intensive).

Illegal migrants are rapidly associated with human smuggling, human trafficking, problematic integration, trouble and insecurity, which, of course, does not fail to have an impact on the global policy regarding aliens and security. Moreover, a surplus of illegal aliens in certain neighbourhoods can cause (social and political) tensions, both among autochthons and newcomers. The abuse of the asylum procedure and the residence procedures (pseudo-legal migration) is a considerable waste of resources for the authorities. Finally, the national sovereignty is affected.

The costs for preserving the public order are totally unknown. If it is true that criminality among illegal foreigners is higher than the average crime rates for the global population, this may well fit in with the "framework of limited survival strategies". In that context a more repressive government intervention (exclusion of undocumented migrants from the welfare state; more checks on illegal labour;..) would have the dire consequence of paving also the way to criminal behaviour (and creating a greater dependence on the so-called gift economy). Others point out that migrants without legal stay have all interest in staying out of sight of the police services, to avoid a removal.

Although voluntary return is still preferable to forced return, this study also reveals how few illegal aliens are interested in returning on a voluntary basis if they consider their migration project (i.e. earning a certain amount of money and/or acquiring a European residence title) as unaccomplished; this is also strengthened by their fear of "moving down" (shame) in case of a possible return with empty hands.

Even though there is a link between forced and assisted voluntary return, certainly for specific nationalities, the impact of forced removals on voluntary return is rather limited according to IOM and does not seem to play a significant role when returnees make up their mind.

In the case of labour illegality in particular the accumulation of as many savings as possible in the shortest period of time possible seems to be the priority. This explains the long working hours of some and also why some try to live as frugally as possible.

Obviously, a considerable part of the labour illegals chooses to settle in Belgium permanently. In practice, the initial duration of migration plans often changes, for which the lack of information before departure is one of the main causes. Theoretically, an initial migration project of labour illegals can be formularised as follows:

$$T = \frac{S + C}{W - M}$$

S represents a fixed sum of money the migrants have in mind before they come to Belgium ("Savings"), C the transport costs (the transport to Belgium and back), W the expected annual wages, M the expected consumption of the necessary means of sustaining life and T the unit of time, i.e. the duration of the migration project (first estimation of the time they think it takes to save their target amount S). In this context, bad communication and optimistic representations in the country of origin (S seems not as easy to achieve as expected and/or M is also higher than expected), or more repressive government intervention by way of pressurising the employers (causing a lower W because the employers will pay less and/or

limit the recruitment of undocumented migrants), or more severe border checks (which makes C rise), brings on an increase of T. If T is repeatedly extended, temporary migrant projects may evolve into permanent ones as the idea not to return takes root. The formula shows the importance of prevention campaigns in the countries of origin.

The building industry, the meat-packing industry, old clothes industry, housekeeping, markets, agriculture and horticulture, ethnic shops and restaurants seem to stay the high-risk sectors for the employment of illegal migrants. In 2003 for example, the high-risk countries of origin as regards workforce were in particular Poland, China, Bulgaria, Romania, Morocco, Turkey, Brazil and Ecuador.

At first sight there seems to exist little margin between the current policy and a more tolerant policy (in the sense of allowing more basic rights to undocumented migrants) that in practice would run the risk of creating additional incentives for illegal migration flows. For research has shown that even allowing certain (minimal) basic rights, such as free and guaranteed education for minors, if not a pull factor, at least often affects the motivation with regard to the return. In any case, additional research on how to reduce the humanitarian problems linked to illegal residence without changing (significantly) the legal framework could be encouraged. According to the Centre for Equal Opportunities and Opposition to Racism for example, there is a risk that 'hunting' undocumented migrants encourages human smuggling. Such a hunt is counterproductive, it would rocket up the prices of the human smugglers and the profits of the (smuggler) gangs.

The relations of undocumented migrants with the local communities are apparently primarily situated in the economic area and far less in the socio-cultural field. Leisure time is mainly spent within the own ethnic community. This may be connected with the fear of removal or the so-called "strategic operating in the public space". The Polish example seems to indicate that highly qualified migrant workers have a better chance of integration in the host country and there are no reasons why such should not be the case with other nationalities. "*Migrants better equipped in individual (especially cultural) capital were more independent from social support provided by compatriots or relatives. These more educated, trained and linguistically adept workers do not need so much ethnic and family capital to successfully operate on the Belgian informal market. In practice, they concentrate less on developing relationships based on ethnicity or kinship, and invest more in establishing and strengthening social and cultural links with the Belgian host society*" (Grzymala-Kazlowska Aleksandra, 2005). According to other research conclusions however it seemed that the expectations and perceptions of professional integration in Belgium did not differ between a *sans papier* with a university degree and an illiterate person. The priority is simply the access to an income.

Chain migration (social networks/family and friends-effect) is not only important with regard to the mere transport to the country of destination. Being able to rely on a network in the country of destination is equally important to the living conditions of an illegal migrant: lonely undocumented migrants in particular are liable to deception and exploitation. Undocumented migrants are generally a young and healthy population, yet many of them seem to have physical, mental and psychosomatic complaints. These may be attributed to over-fatigue, stress, unhealthy food, homesickness, bad working conditions, as well as to lack of social support and medical care.

So the living conditions of undocumented migrants are, by and large, rather awkward. Perception and sense of relativity are adding to the problem: many are aware of their difficult

living conditions, but most of them prefer their situation as it is in Belgium to the situation in their country of origin, which, of course, strongly reduces the chance for a voluntary return. As for the working conditions, Leman puts it this way: "*Many undocumented migrants also realise that they owe their jobs to the fact that they work at times of the day or night, and with a flexibility that native workers or their legally resident compatriots would not consider for the same salary. They thus understand all too well that they are in employment because others do not want to work under such conditions. They are able to accept and tolerate this situation because their ideas are permanently set on their region of origin and because sometimes they do not feel as if they 'live' in the host country*". People who are (economically) exploited often do not experience this as such.

The regularisation law of 22 December 1999 has put an end to the bad living conditions of tens of thousands of migrants. However, research has also revealed that such campaigns – certainly if not backed up with more severe border checks and controlling of employers – can become a pull factor for new potential migrants. If regularisation programmes are frequently used, there is a real chance that undocumented aliens start thinking of illegal stay as a waiting room for legal status.

As for the stock of illegal without legal residence, obviously little information is available. If any estimations have been made at all and insofar as they can be reliable, the number of illegal aliens should not have increased since the 1990's (at that time the number was estimated by different sources at 70,000 to 100,000) until the beginning of 2000. This is remarkable, seeing that in this period only almost 150,000 asylum seekers have exhausted all legal procedures. Anyway, estimations of the sizes of sub-groups of illegally resident migrants seem to be a better approach than estimations of the total number (for example: mid-nineties: 25.000 Latin Americans of which most Colombians; period 1995-2000 estimations from illegal Poles varied from 15.000 to 50.000; etc.). According to some, estimations tell us more about the estimators than about the estimated thing. The (minimum) numbers of interceptions of illegal aliens indicate an upward trend, certainly until 2003. Interception numbers however should be interpreted very cautiously, because of four reasons: firstly, it is not known how many times one and the same person has been intercepted; secondly, there is the possibility of identity hiding (giving a false identity/nationality); thirdly, interceptions are the result of police actions, which therefore can be steered by the authorities (for example, actions in certain districts or harbour areas) and, finally, taking charge of aliens under the Dublin Convention is included. In other words, it is not known whether the increasing number of interceptions is due to the fact that more controls are carried out or to an increase of the number of illegal migrants or to both factors. After all, the chances of being intercepted (in harbours) have increased in recent years through the use of technological innovations. In some cases interception rates are linked to international events, as was clearly demonstrated by the high number of interceptions of Yugoslavians after the war in Kosovo started. Nonetheless, the connection with the number of asylum applications is not unequivocally clear: it depends of the country or region of origin. There are for example few Latin American asylum seekers, yet they make up a considerable part of the illegal population. We see an important decline of the number of illegal entries (national airport) since 2001, attributed mainly to the fact that airline companies are making more effective checks on their passengers. If there has been an increase of the number of illegal migrants over the past decade, this increase is likely due to the spectacular migration burden on Belgium during the years 1998-1999 until 2002 (spectacular, also in comparison with the global average increase in the EU). Several reasons have been put forward to explain this: the crisis in Kosovo, the announcement and organisation of the regularisation campaign, the decrease in the removal

rate after a fatal accident at the end of 1998, the backlog in the offices of the asylum authorities combined with the granting of financial assistance.

In the last few years, attention for the so-called pseudo-legal migration is ever more growing, because of its expansion, for one reason. This pseudo-legal aspect should be taken into account to get a better overall picture of the phenomenon of illegal migration.

Most undocumented migrants live in districts of large towns that typically house large number of foreigners. This is due both to the housing rent levels there and to the fact that these migrants are more likely to go unnoticed in such an environment. In some more rural areas though – where flexible workforce are in demand in the agriculture and horticulture – undocumented migrants can also be found. Some indicators (REAB, regularisation campaign of 2000, interception rates) seem to suggest that roughly half of the illegal population lives in two cities, Antwerp and Brussels. On the other hand, concentrations of so-called "transit illegals" are mainly intercepted in the coastal area (although their numbers seem to have fallen in the course of 2004, as a result of government measures).

So the distinction between residence illegality and employment illegality, made by J. Leman, appears to be very useful. It explains, in some respects, fundamental differences in the living conditions of the illegals. Moreover, the fact whether or not people residing illegally have ever resided in Belgium legally can also have substantial consequences for the living conditions and/or survival strategies.

"Migrant employment illegals" try to stay with employers who pay them adequately and, in their opinion, treat them well. Their lifestyle depends on their jobs. At the same time however, in certain sectors such as the domestic staff and the hotel business, the employer/employee relationship is very important since there may be very close contact between them. Sometimes, if no network exists, this relationship is the only form of contact illegal migrants have with natives of the host country. In this way the said relationship can also be important in terms of resolving a series of practical problems which are unrelated to the job itself. Leman and his team of researchers had the impression (mid-nineties) that "migrant employment illegals" find work more easily and are better paid than most "migrant residence illegals". It remains to be seen, though, to what extent the difference between the two categories has further vanished since the moment that financial assistance for asylum seekers was abolished and administrative measures were taken aiming at a more active file management by the asylum authorities (for instance, adoption of the LIFO-principle, "Last In, First Out"). Meanwhile, experience has sufficiently shown that many aliens try to mask their intention to reside in Belgium as an employment migrant by applying for the refugee status, for instance.

Usually the illegal migrant has to pay off a debt to the community he left behind in the country of origin, mainly in the form of remittances (transfers of money and, to a lesser extent, of goods). This debt can also be settled, if possible (geographical proximity), by rendering assistance when others want to come over to the host country, an alternative sometimes preferred by the undocumented migrant because it would enable him to reach his migration goal (save as much money as possible in the shortest period of time) more rapidly.

The jurisprudence of the Court of Arbitration reveals that the authorities are always obliged to respect the principles of reasonable justification and proportionality between objectives and means, even if they judge it permissible to discriminate on the basis of the

nationality or the residence title. The proportionality check rises the (fundamental) question whether the authorities may use provision of social services as a means to fight illegal migration and, if so, if they have to respect certain limits. The judgment of the Court of 29 June 1994 holds the principle of subsidiarity as a basic rule for proportionality evaluation: the authorities are obliged while maintaining a restrictive migration policy to use as a priority all the direct means contained in the Aliens Act itself. Only after it has become clear that this set of instruments is not or scarcely efficient, it can be justified for the authorities to try to achieve their policy goals regarding migration restrictions indirectly, in this case by the suspension of the provision of social services.

According to the analysis of a jurist (S. Bouckaert), the discrepancy the authorities have increasingly created between nominal alienship (the rights connected to a legal residence title in their entirety) and substantial alienship (claims on the basis of an actual – illegal – stay) has been put under pressure. This discrepancy means that for aliens in the course of the 1990's, just as in other West European countries, the exercising of the right to socio-economic participation and the access to most levels and forms of social protection have more and more explicitly been linked in our legislation to the holding of a legal residence title. The federal state of Belgium is an example of this. On the one hand, the federal government sets rules to limit illegal migration as much as possible, on the other, projects are being developed by the Communities in order to limit the damaging consequences (both for a community as a whole and for the undocumented migrants themselves) when residence rules are contravened (cf. the Minority Decree of the Flemish Community).

The minimum rights Belgium grants to undocumented migrants are sometimes enhanced by case law resulting from the violation of international treaties (e.g. Convention on the Rights of the Child). Undocumented migrants are granted the following basic rights: right to urgent medical care (that must be differentiated from emergency medical assistance); legal assistance; education for school-age minors and, depending on the situation and/or subject to certain conditions, admittance to higher education and vocational training (usually depending on the board of trustees of the educational institute); in some cases right to social services (if the order to leave the territory is extended or after conviction by a court); the right to marry (if the illegal can produce the required documents and can be traced – as a result of a judgment of the European Court of Justice dating from 2002, there is also an important difference between a marriage with a Belgian/EU national and a marriage with a non-EU national who is residing legally); to a certain extent the right to family life; and, in very exceptional circumstances – the rare cases where an illegal is employed in a legal way – certain labour and social security rights.

Belgium remains a firm advocate of a co-ordinated European approach to the problem of migration, an approach that is more than the sum of the national policies on the matter. A variety of obstacles, such as self-interest, geographical situation, institutional restrictions, may delay but not stop the ambition for a common European policy that is needed. The dimensions and characteristics of the phenomenon of illegal migration seem to be such that a continued European approach is absolutely necessary.

ANNEXES

Annex I: The regularization campaign of 2000 (Law from 22/12/1999):

During the negotiations about the bill the minister of Internal Affairs of the time, admitted that is (naturally) difficult, actually impossible to stick a figure on the number of people in illegal residence. Nevertheless he gave, on the basis of a method/evaluation used by France and the International Labour Organisation, a hypothetical number from 50.000 to 75.000 foreigners without legal status (in 1999).[211]

During the preparation of this bill, the government had contacts with among others the "National Movement for the regularization of undocumented people and refugees". This movement was born at the beginning of 1998 and got especially more audience after the death of Sémira Adamu, a former Nigerian asylum seeker. This young women died dramatically during her failed removal.

For the great number of undocumented migrants, their socially uncertain and marginal situation, the disadvantages caused by this illegality on the labour market, particularly the important part of work on the side and the possible problems of public order, the so-called "rainbow coalition" (liberals, socialists and greens) consented to a large regularization. The extended regularization seemed to be the means to make the dissenting situation healthier. The regularization campaign had to consist in a unique 'one-shot' operation and aimed, among others, at putting an end to the uncertain social and marginal situation in which a great number of foreigners were stranded and who were active in the clandestine economy. Moreover, the campaign had to strengthen the social cohesion and had to prevent these illegal migrants from being exploited by criminal networks.

The increasing number of illegal migrants at that time in Belgium was, among others, due to the increasing number of asylum applications and the considerable delay in their treatment, the impossibility to effectively remove the former asylum applicants, the massive influx of certain specific groups of population and the lack of co-ordination at international level.

It is important to point out that following the government, the organization of a large-scale regularization campaign had also to be coupled with the intensification of the removals of undocumented migrants: "*the preliminary note relating to an overall immigration policy adopted by the Council of Ministers at the end of 1999 explicitly specifies as a "consequence" that a "regularisation policy would be hypocritical and inconsistent if it passed over the resulting forced removals in silence. The two are inextricably linked: there can be no regularisation without a procedure for removal*".[212]

So, the regularization operation was on the one hand launched from a humanitarian point of view[213] caused by a situation from the past but also had to be the point of departure of a

[211] "*The government policy concerning immigration, Report on behalf of the Commission of Internal and Administrative Affairs, introduced by Mr Wille, Mrs Nagy and M. Heer Daif*", Parl. St. Senaat 1999-2000, 28 March 2000, nr. 2-112/1.
[212] DE BRUYCKER P, APAP A, BERNARD F a.o., *Regularisations of illegal immigrants in the European Union*, 2000.
[213] And also had to assist in the fight against criminal networks and human trafficking.

new immigration policy by which, among others, the effective removals of illegal foreigners was seen as a sine qua non condition of an effective foreigners policy.

In order to avoid the birth of a vacuum effect, meaning the massive influx of illegal migrants mainly from the neighbouring countries, a three-week period was settled for the introduction of the applications and the inside frontiers were again temporarily established in conformity with article 2 of the Schengen Execution Agreement.

The law from December 22nd 1999

Following the provisions of the law and as far as they effectively resided on the territory of the Kingdom, on October 1st 1999, four categories of foreigners could apply for the regularization of their residence in Belgium:

1° Those who had applied for the status of refugee without having received an applicable decision within a four-year period; This period was brought down to 3 years for families with minors who resided in Belgium on October 1st 1999 and who were in age to go to school;

2° Those who, because of reasons beyond their control, could not return to the country or the countries where they had regularly resided before their arrival in Belgium, nor to the country of which they had the nationality;

3° Those who were seriously ill;

4° Those who could assert humanitarian reasons and/or had developed durable social linkages.

While the first and the fourth criteria are rather based on the integration features and the residence duration, the second and the third criterion were based on the impossibility of removal (respectively by the situation in the country of origin and the health situation of the concerned person).[214]

In the practice, each candidate for regularization had to introduce a regularization file to the town council of their residence place between January 10th and 31st January 2000. More than 33.000 (new) files were introduced; the files had to contain a certain number of evidence documents depending on the foreigner's situation and following the regularization criterion by which he applied.

The regularization applications were examined afterwards on the basis of the procedure described in the law dating from December 22nd 1999 by an independent commission specially set up for that purpose. This Commission had to provide the minister of Internal Affairs with an opinion after an investigation coupled with numerous procedural guarantees. The minister afterwards took the decision, taking into account, in principle, the exceptional and extended nature of the operation as well as the opinion of the Regularization Commission. Each Chamber of the Commission for Regularization was composed of a magistrate sensu lato, a lawyer and a delegate active in the domain of human rights. The procedure in a Chamber offered all the guarantees of a legal procedure. The only stated limitations by the law in relation to the applications analysis were motivated by the public order and fraud.

[214] BERNARD F, *La regularisation des étrangers illegaux en Belgique in Regularisations of illegal immigrants in the European Union*, 2000, pp137-138.

The activities of the Commission for Regularization led to a (regularization/acceptation) percentage of approximately 80% (the 'aimless files' ('without goal') set apart).

Figures:

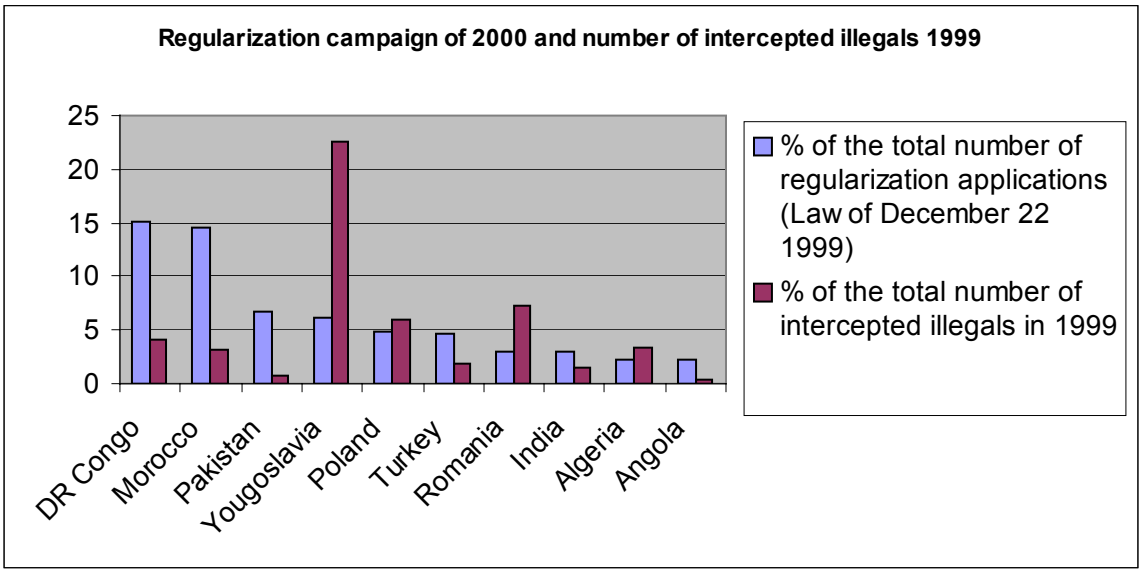
On January 31st 2000 some 37.152 dossiers[215] had to be treated while the minister expected something between 50.000 and 70.000. These 37.152 files concerned largely 50.000 people among whom more than 23.000 minors.

The application division on the basis of the set criteria is the following:

Criterion 1: 24%
Criterion 2: 23%
Criterion 3: 9%
Criterion 4: 77%
(The sum of these percentages is higher than 100%, since 33% of the applications fulfilled more than one criterion).

The countries from which the largest number of applications came, were:

- Congo:	15,2%	- Turkey: 4,7%
- Morocco:	14,5%	- Romania: 3%
- Pakistan:	6,7%	- India: 2,9%
- Yougoslavia:	6,2%	- Algeria: 2,5%
- Poland :	4,8%	- Angola : 2,3%



[215] Approximately 33.000 new applications and 4000 "old 9§3" (regularisation demands on basis of the Alien's Act) files who were re-considered by the Regularization Commission.

Situation on June 28th 2005:

25.597 files received a positive decision (70%)
6.177 files received a negative decision (17%)
810 files were excluded of the application of the law because of reasons of public order (2%)
4016 files were declared "unfounded/aimless" (double application, foreigners who in the meantime were recognized as refugees or had become Belgian, ...) (11%)

The first regularization campaign which took place in Belgium was proclaimed in 1973 on the occasion of the announcement of the immigration stop. Between August 1974 and October 1975, some 8420 applications were introduced among which 7448 (88, 4%) were accepted.[216]

After this, Article 9 of the Law of 15th December 1980 by which an alien already on Belgian territory could, in exceptional circumstances, request the minister to grant authorisation, formed the only possibility of regularisation in existence in Belgium. Following numerous criticisms made against the arbitrary nature of this procedure, due in particular to the fact that the criteria for assessment used by the Aliens Department were not made known to the applicant, different circulars were published in 1997 and 1998[217] to make these known to the interested parties. These circulars covered illegal aliens in seven situations.[218]

It is not clear whether and to which extent, this regularization campaign created additional illegal immigration.[219] Evidence about this problem field – if large-scale regularization campaigns generate additional illegal immigration - seems hard to find in the European literature. There are, however, indications (information at the IS' disposal) that this regularization campaign provoked new illegal migration: by the public knowledge that had been given to the campaign since the summer 1999, this would have attracted a number of undocumented people mainly from the neighbouring countries. Since one of the criteria was also long-term illegal residence (completed by durable social links and/or humanitarian reasons), it is also possible that hereby a false signal was given to potential emigrants in the countries of origin ("It is enough to wait for the following regularization campaign").[220] A

[216] DE BRUYCKER P, APAP A, BERNARD F e.a., "*Regularisations of illegal immigrants in the European Union*, 2000.
[217] And again in 2002.
[218] - asylum seekers who had waited an unreasonable long time for a decision
- people who could not obey an order to leave the territory due to circumstances beyond their control and independent of their will
- those seriously ill
- humanitarian cases
- foreigners who were victims of human trafficking
- those who were in a long term extra-marital relationship with a Belgian or a legal alien
- Bosnian displaced persons.
[219] Anyway, the legal immigration increased via family reunification. The publicity, which was already given to the campaign since the summer 1999, made have attracted indeed a number of undocumented people mainly from the neighbouring countries.
[220] See also about this subject: European Commission, *Etude sur les liens entre immigration légale et immigration clandestine*, 2004.

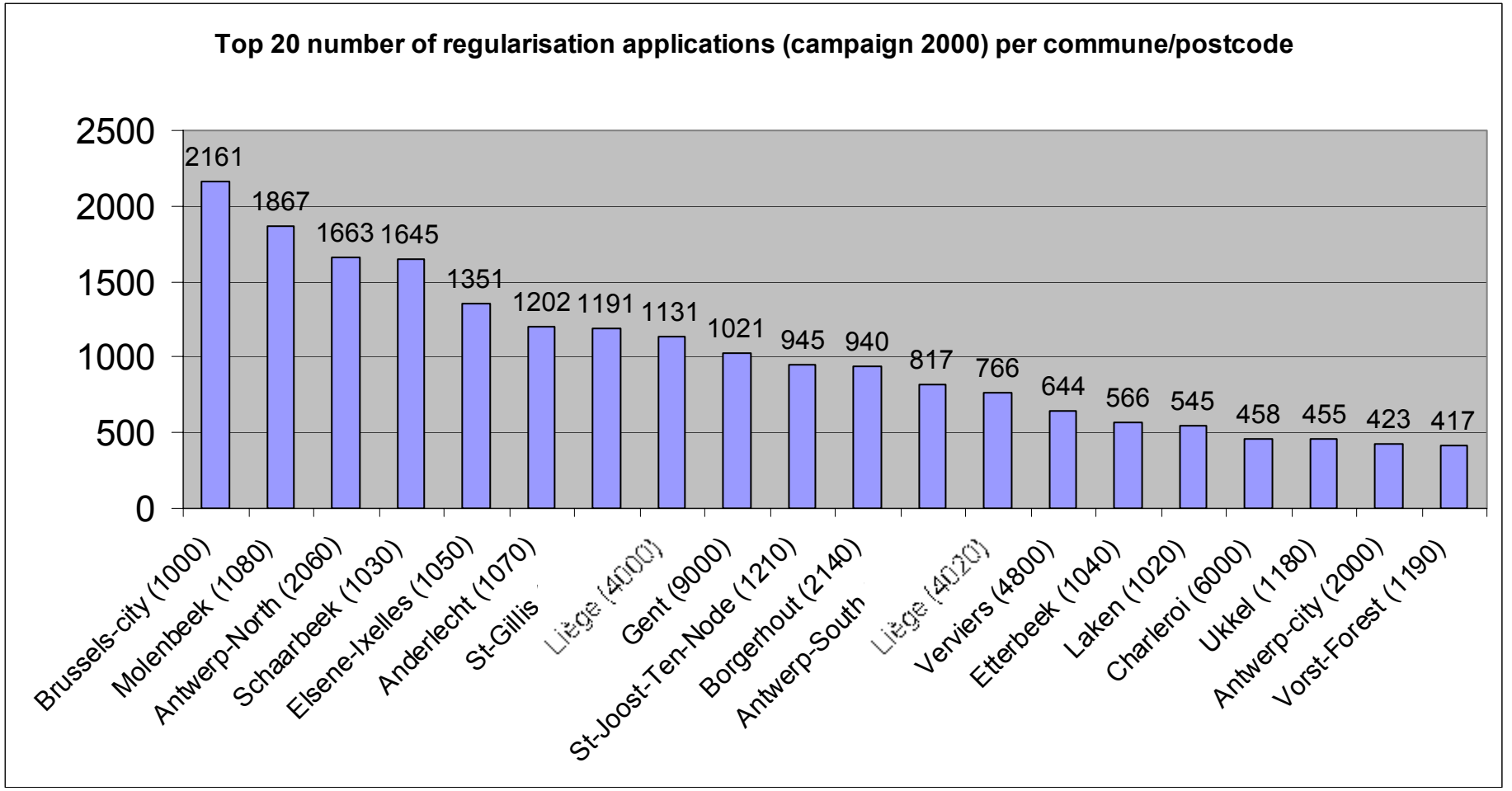
research in the US demonstrated that regularization campaigns would not have created additional illegal immigration.[221]

Approximately 15% of the total number of regularization applicants came from Antwerp. On the basis of the statistical processing of the files, a profile of the regularization applicants from Antwerp could be drawn up.[222] Without amazement, it could be observed that some districts and areas knew considerable higher concentrations of applicants than others. Nevertheless, it is worth mentioning that a third of applicants lived in one single district (of the 13 in total) – and, so did the people in illegal or precarious residence. Another district, for its part, counted 19% of the applications. The illegal migrants lived especially in disfavoured neighbourhoods; in some areas even one out of ten effective inhabitants was applying for regularization. Nearly half of the applicants (from Antwerp) were African natives among whom 20% from Morocco. Turkey (8,2%) and Poland (7,9%) followed respectively. It is also important to mention that the applicants of different nationalities were also settled in different places in the city: so, there were strikingly many Pakistanis, Turkish and especially Senegalese living in one single district (number in relation to the average), while the number of Moroccan illegal foreigners in the same district was lower. 37% of the Moroccan illegal migrants were settled in a district where the Moroccan (legal) community has been living since decades and more than 73% of the illegal Israelis were living in the so-called Jewish area. Research about the age revealed the following information: 59% were between 30 and 50 years old; 33% between 18 and 30. 1% was minor and 1, 6% older than 65. There were especially more youngsters among the East Europeans.

As an illustration: the top ten of introduced files (for the whole of Belgium) compared to the number of intercepted undocumented migrants (broken down per nationality). It seems to be that especially Yougoslavians and Romanians were not very eager to introduce a regularization application and/or that they were operating less strategically within the public space.

[221] The 1986 Amnesty granted by the Immigration Reform and Control Act for a short time saw to make the number of illegal entries (interceptions) decrease – perhaps because migrant candidates feared strengthened frontiers checks or thought that it would be more difficult to find a job – but came back to the usual level afterwards. It could however also be that the number of interceptions first decreased because of the circular migration of illegal migrants (between Mexico and the US) because they feared, on the basis of the new (and sterner) immigration law, not to have the possibility to enter afterwards: so, perhaps the number of illegal migrants increased indeed but not the interceptions (since the number of interceptions of already present illegal migrants had decreased). See: ORRENIUS Pia M and ZAVODNY Madeline, "*Do amnesty programs encourage illegal immigration? Evidence from the Immigration and Control Act (IRCA)*" in Working Paper 2001-19 from the Federal Reserve Bank of Atlanta, November 2001, 21pp.

[222] GELDOF D., "*De Regularisatieprocedure in Antwerpen. Een voorlopige stand van zaken en profiel van de aanvragers*", in Migratie- en Migrantenrecht, 2001, pp329-344, Die Keure.


Top 20 number of regularisation applications (campaign 2000) per commune/postcode
2500
2000
1500
1000
500
0
2161
1867
1663
1645
1351
1202
1191
1131
1021
945
940
817
766
644
566
545
458
455
423
417
Brussels-city (1000)
Molenbeek (1080)
Antwerp-North (2060)
Schaarbeek (1030)
Elsene-Ixelles (1050)
Anderlecht (1070)
St-Gillis
Liège (4000)
Gent (9000)
St-Joost-Ten-Node (1210)
Borgerhout (2140)
Antwerp-South
Liège (4020)
Verviers (4800)
Etterbeek (1040)
Laken (1020)
Charleroi (6000)
Ukkel (1180)
Antwerp-city (2000)
Vorst-Forest (1190)

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TABLES AND GRAPHS

Table: **Types of work and average wages (mid-nineties)**. Source: J. Leman : undocumented migrants in Brussels : diversity and the anthropology of illegality, 1997

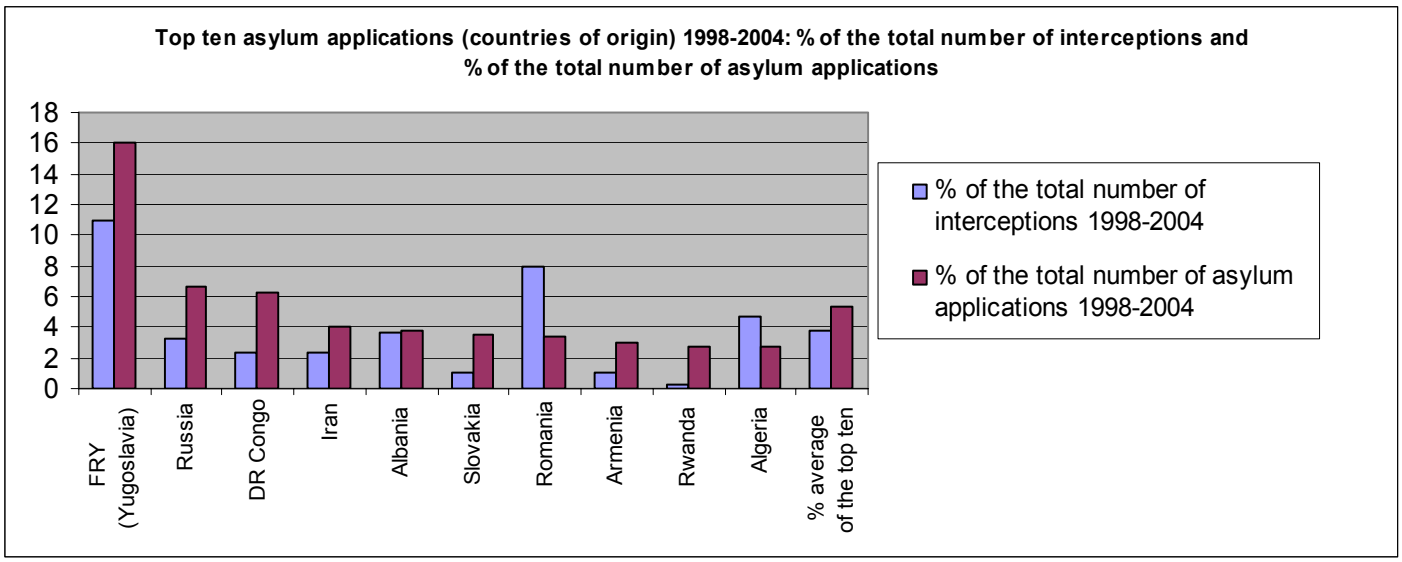
Origin	**Women**	**Men**
Poland	240 BF [223] (6 Euro)[224]	extremely varied (2.5to15 Euro)
Colombia	270 BF (6.75 Euro)[225]	extremely varied[226]
Philippines	330 BF (8.25 Euro)[227]	as Filipinas
Nigeria	/	extremely varied

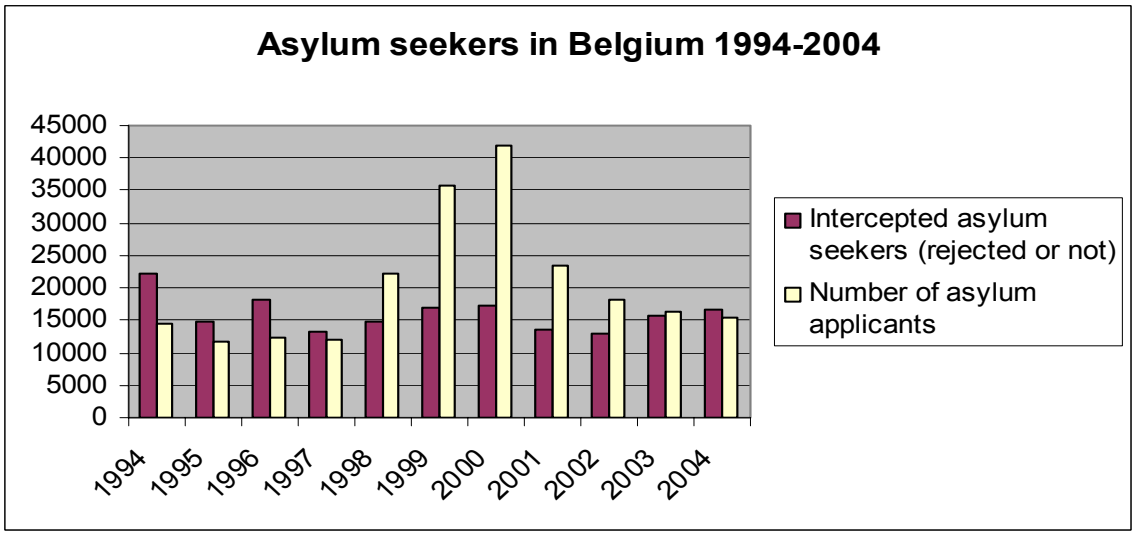
Table: accommodation of undocumented migrants (mid-nineties). Source: J. Leman : undocumented migrants in Brussels : diversity and the anthropology of illegality, 1997

Origin	**Families**	**Married with spouse in country of origin**	**Single**
Poland	flat	separate	3-5/room
Colombia	flat	separate	1-2/room
Philippines	flat	live-in with employer or separate female friend	live-in or continuously moving with

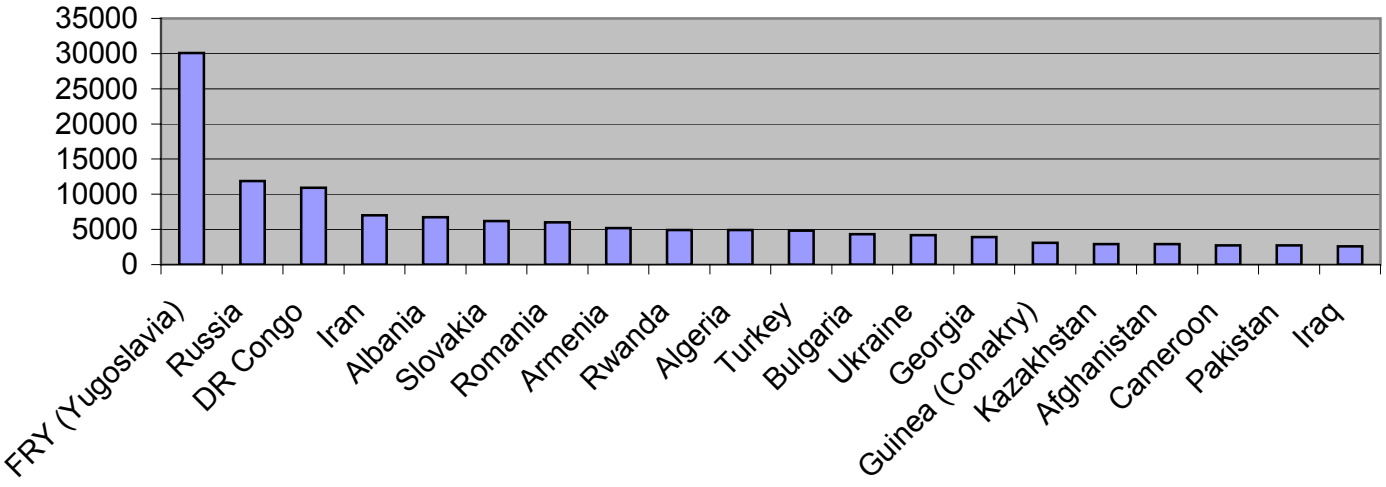
Notes:
- Polish and Nigerian illegal migrants tend(ed) to be found in the most working-class immigrant districts. The Colombians live(d) in slightly better immigrant areas and the Filipinos in better parts of town.
- Single Polish illegal migrants move(d) very frequently.

[223] Belgian Franc.
[224] Roughly 80 per cent of Polish women are (were) employed as domestic helps and the sum cited refers to them. The others, primarily those employed in textile factories, but also those working as waitresses in cafés, earned significantly less.
[225] Almost all are (were) domestic helps
[226] The range of work for Polish and Colombian illegal migrants varies (d) from painter, bricklayer, construction worker and odd-job man to general workman. Intermediaries, who provide(d) work in return for payment, play(ed) an important role amongst Polish illegal migrants.
[227] Almost all are (were) domestic helps, while their male compatriots do (did) similar domestic work.

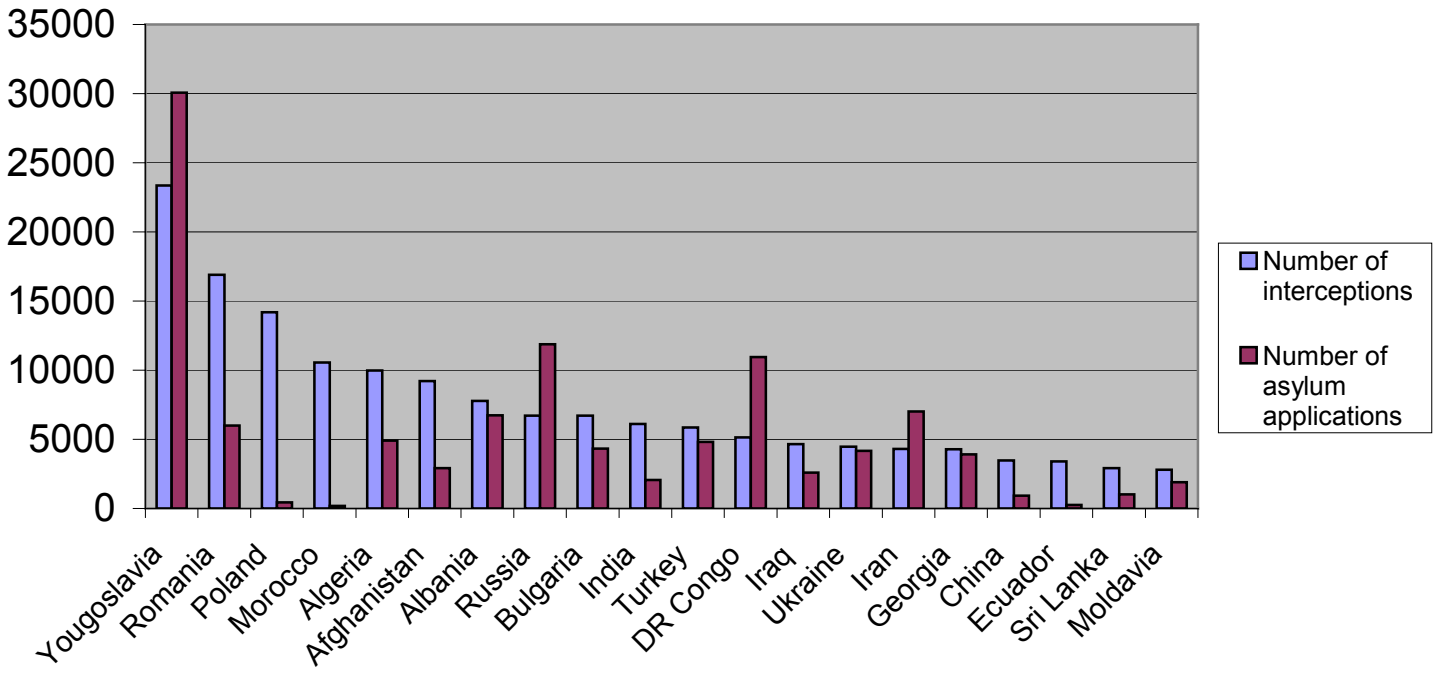

Top ten asylum applications (countries of origin) 1998-2004: % of the total number of interceptions and % of the total number of asylum applications
18
16
14
12
10
8
6
4
2
0
FRY (Yugoslavia)
Russia
DR Congo
Iran
Albania
Slovakia
Romania
Armenia
Rwanda
Algeria
% average of the top ten
% of the total number of interceptions 1998-2004
% of the total number of asylum applications 1998-2004


Asylum seekers in Belgium 1994-2004
45000
40000
35000
30000
25000
20000
15000
10000
5000
0
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
Intercepted asylum seekers (rejected or not)
Number of asylum applicants

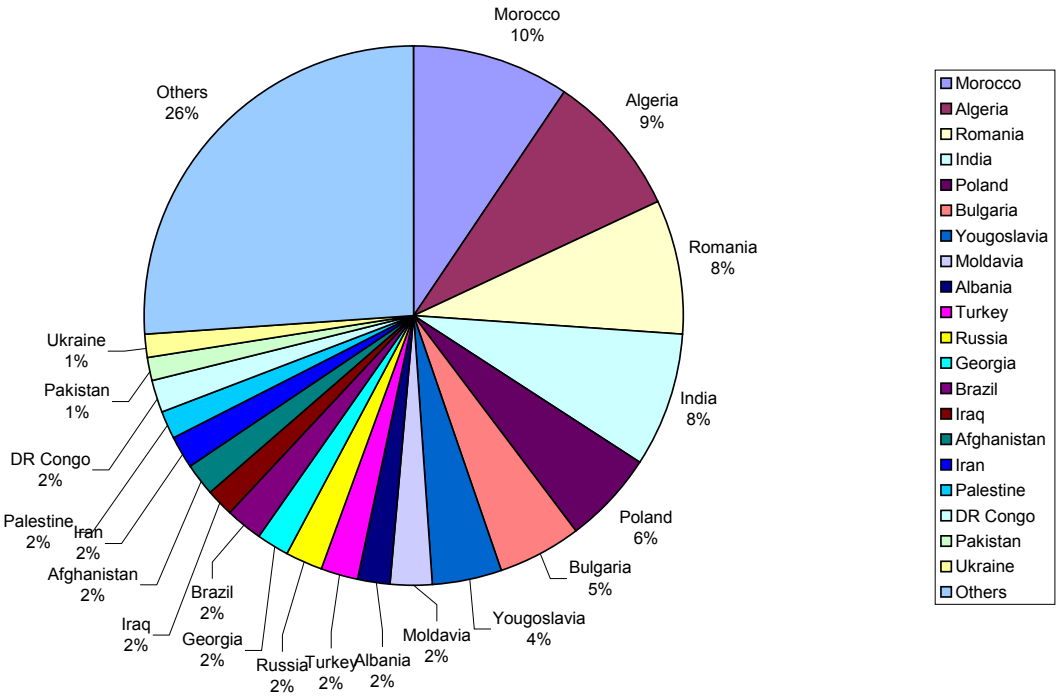
Top 20 asylum applications received from all countries of origin by Belgium for period 1998-2004 (source: IGC-website)



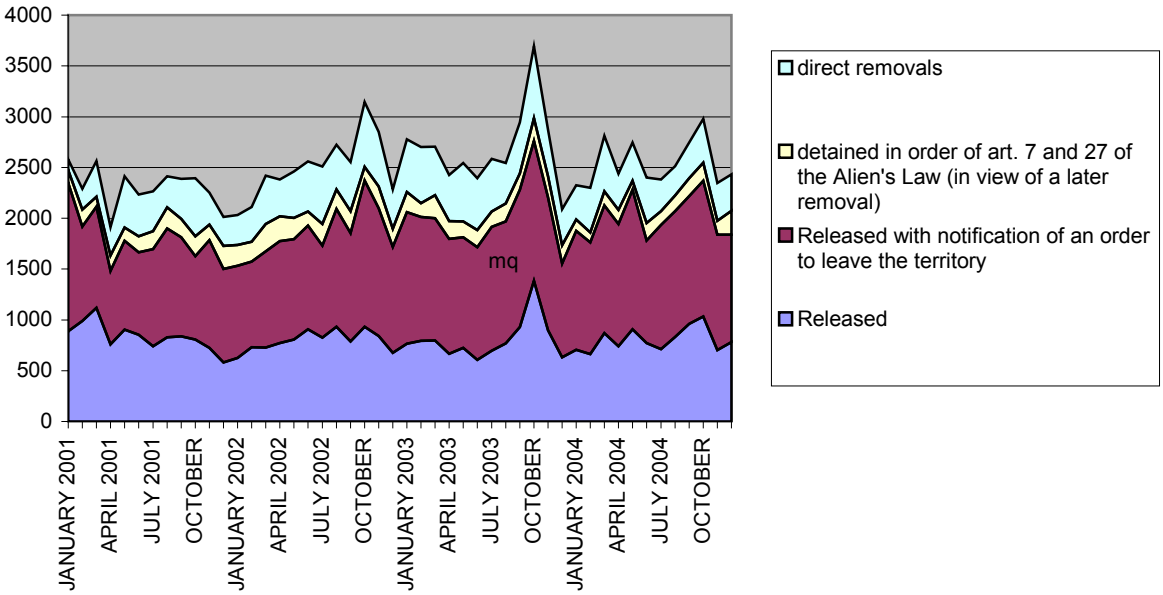
Top 20 interceptions compared to asylum applications (1998-2004)



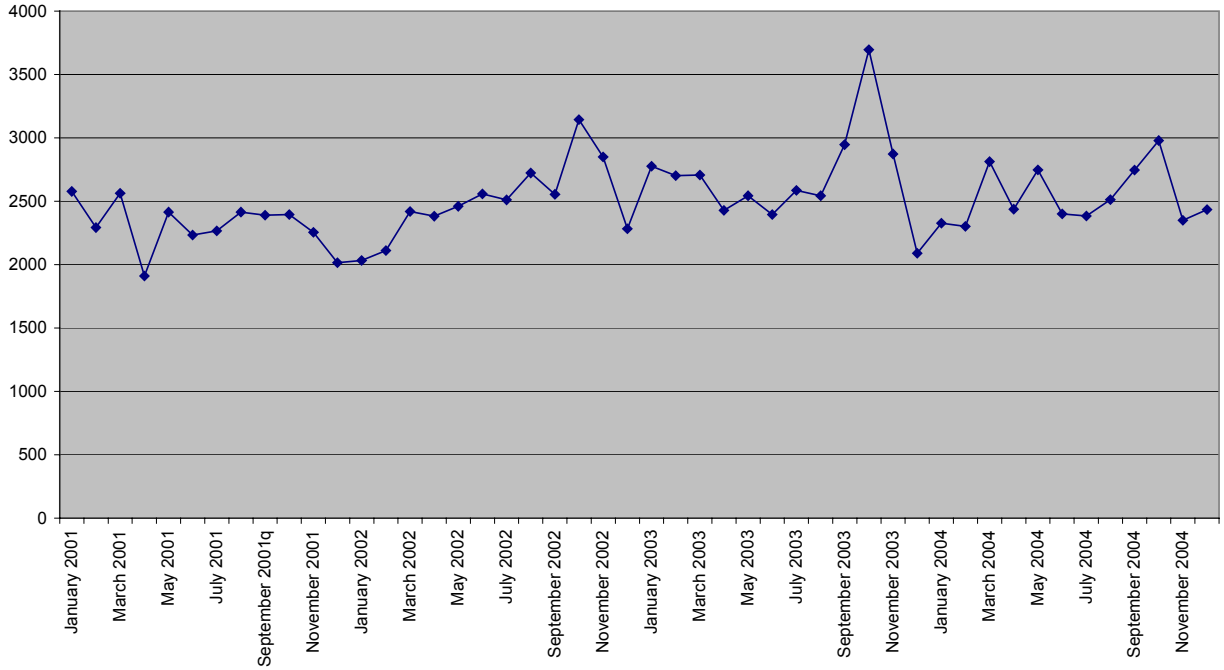
Top 20 apprehended nationalities year 2004



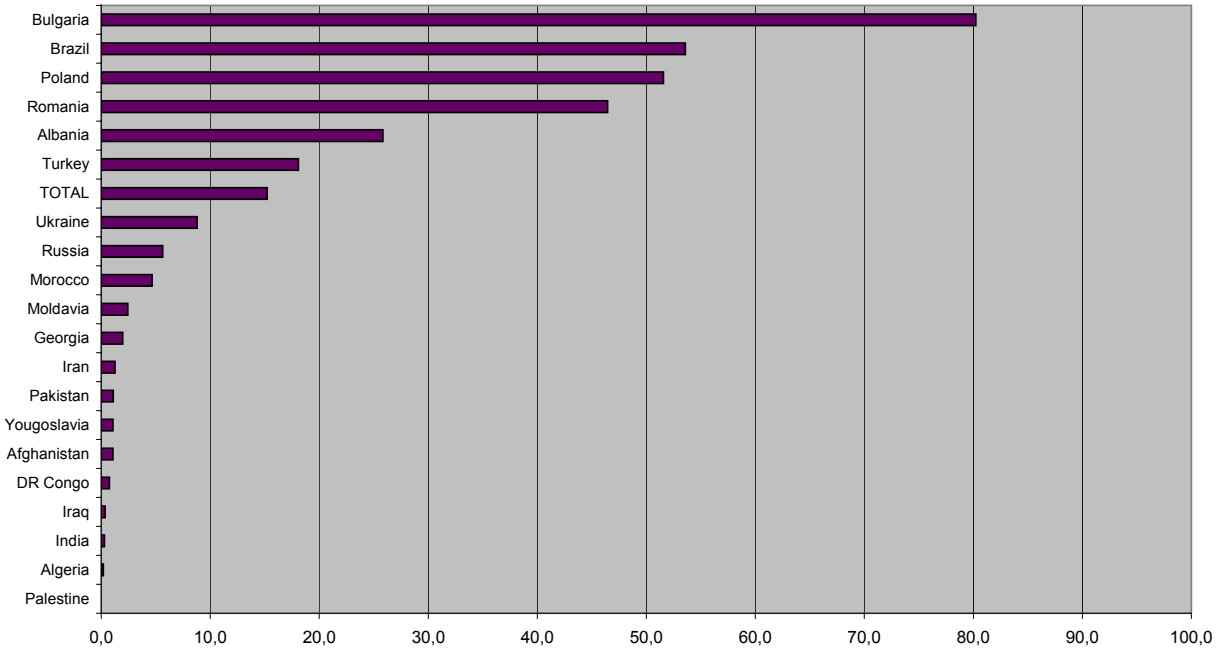
Monthly evolution of apprehensions 2001-2004

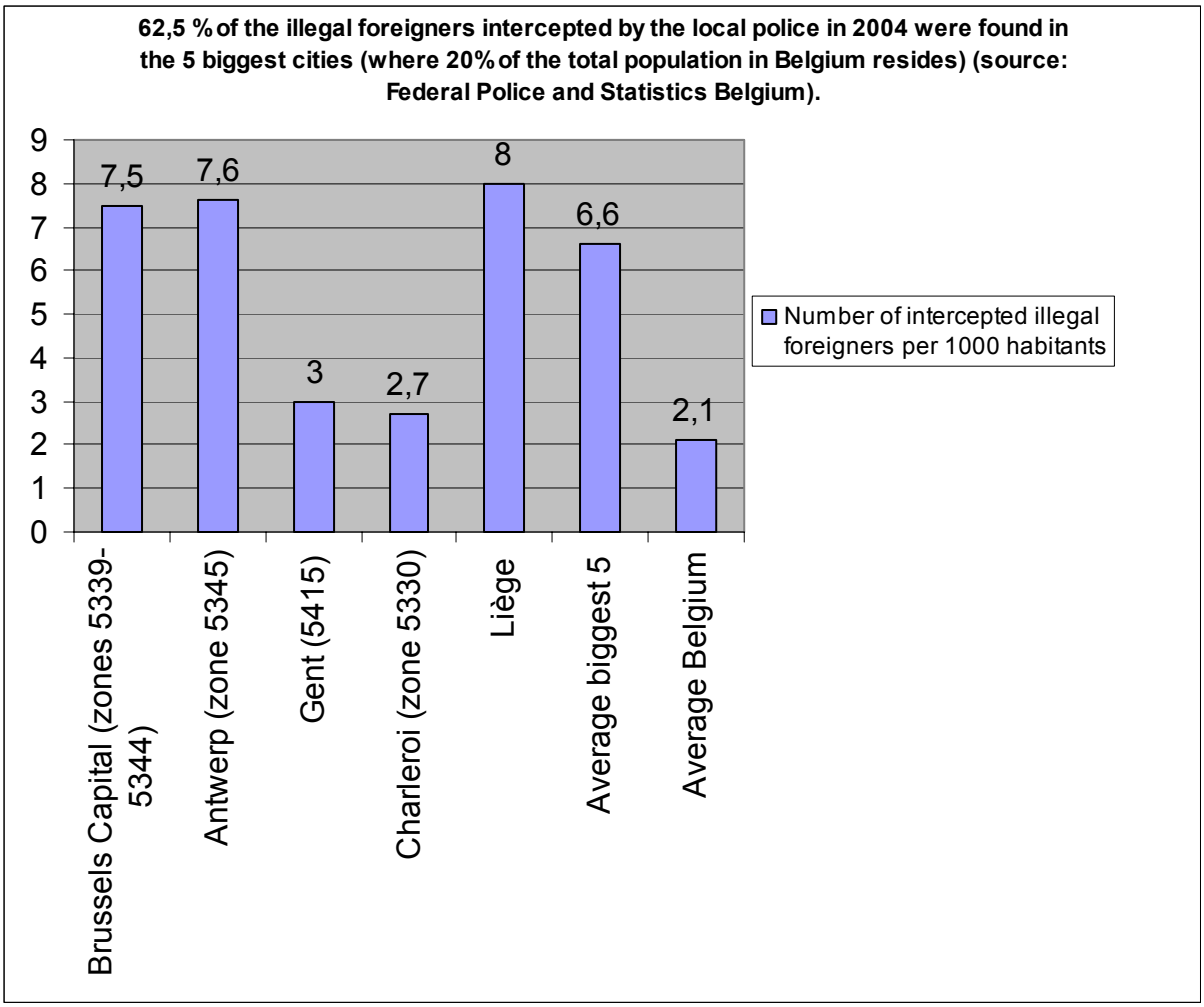


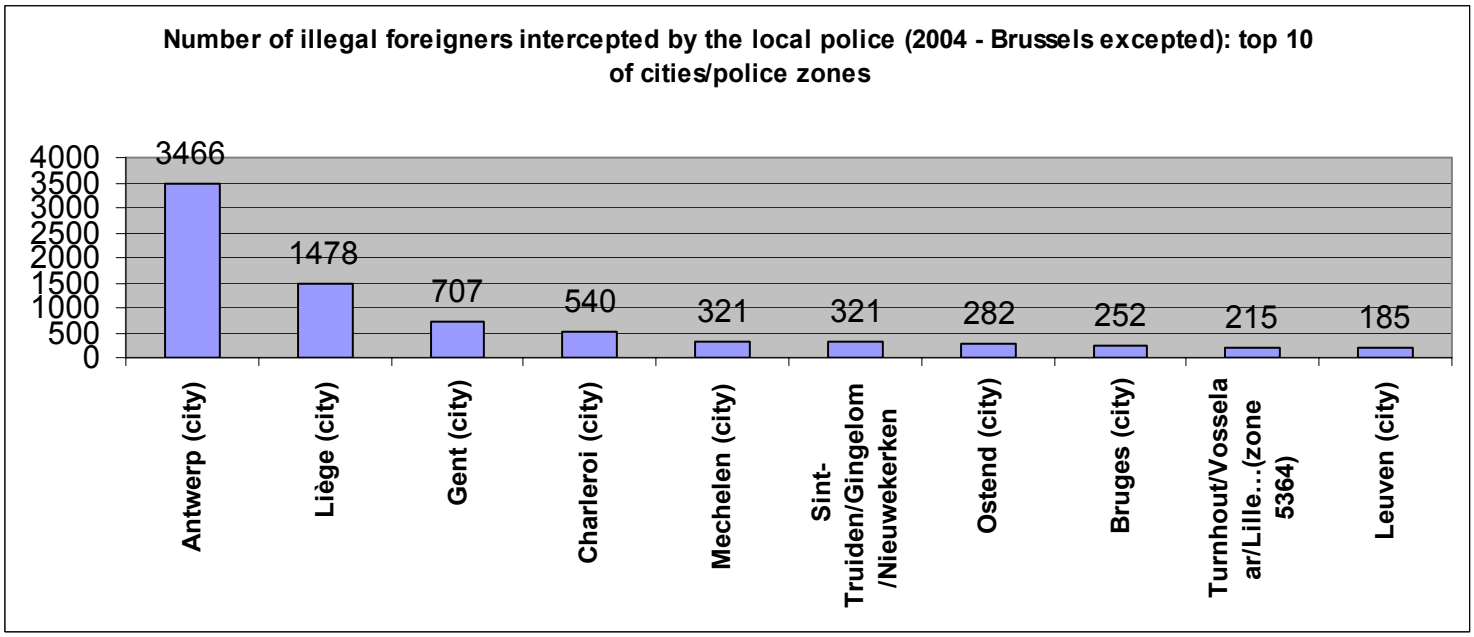
Interceptions of aliens illegally present (2001-2004)



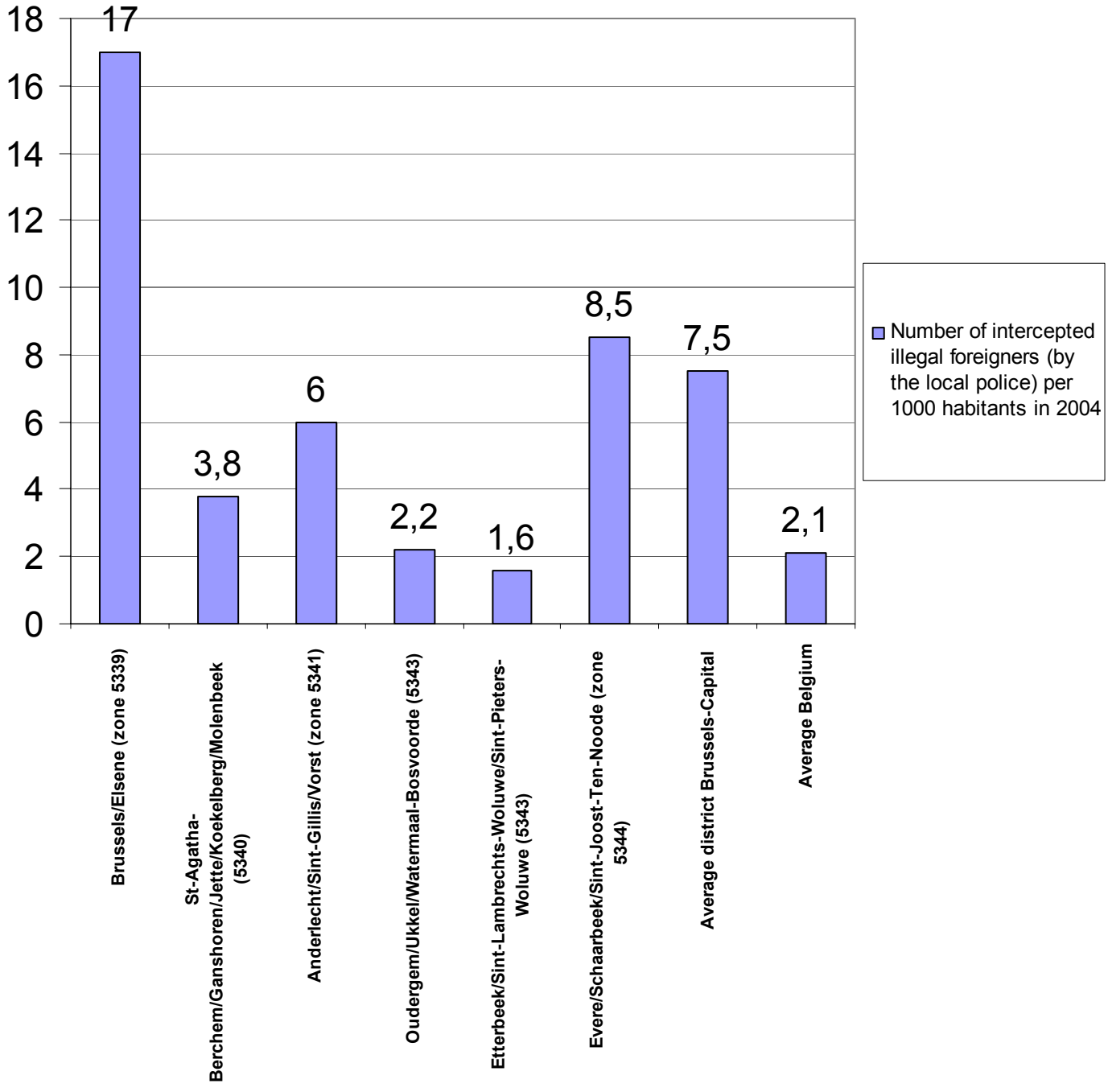
Intercepted aliens (2004)
by proportion of (immediate) removals

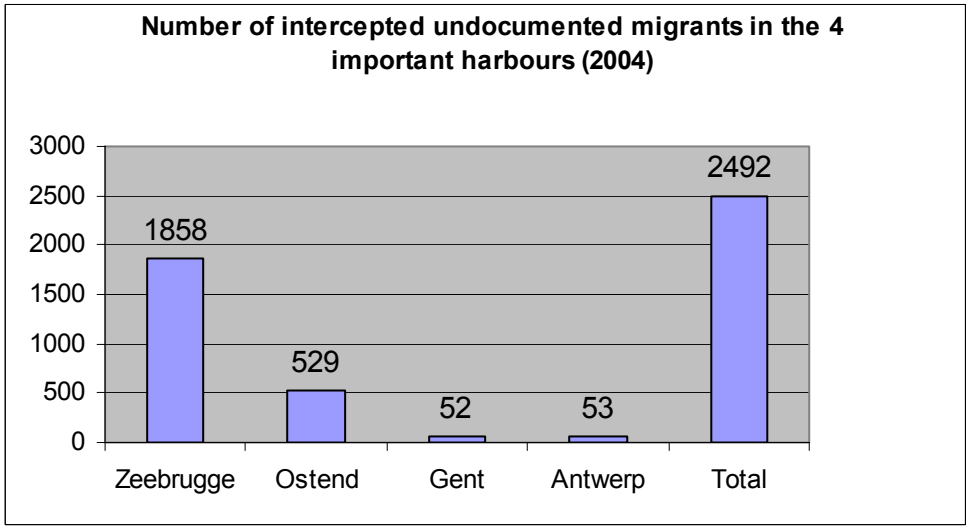


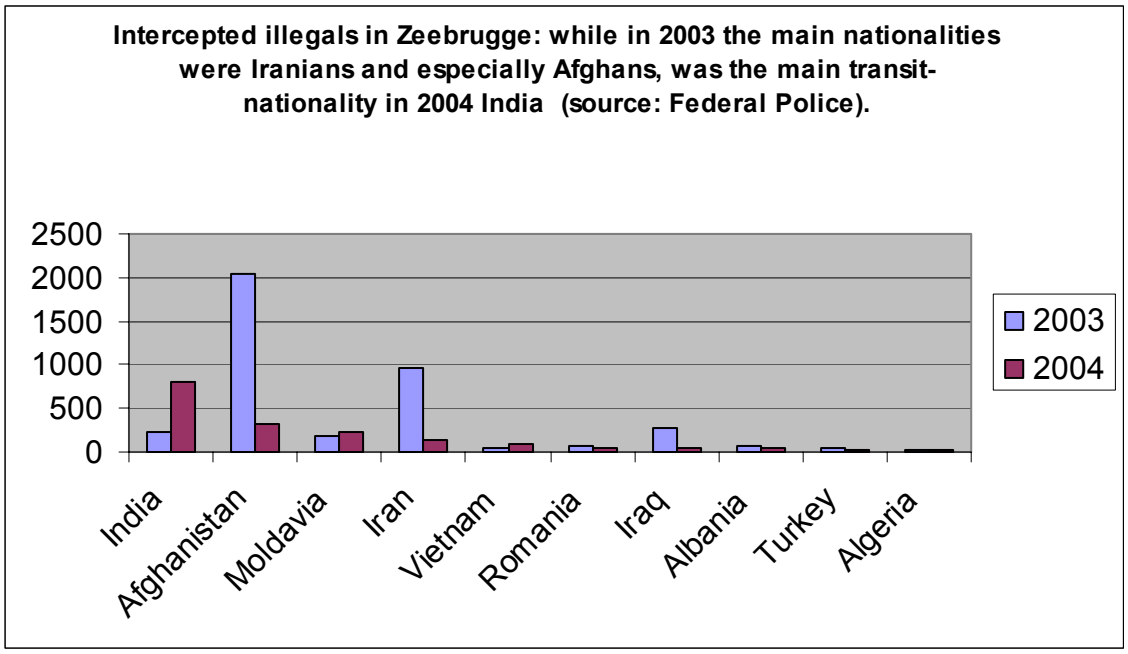

62,5 % of the illegal foreigners intercepted by the local police in 2004 were found in the 5 biggest cities (where 20% of the total population in Belgium resides) (source: Federal Police and Statistics Belgium).
9
8
7
6
5
4
3
2
1
0
7,5
7,6
3
2,7
8
6,6
2,1
Number of intercepted illegal foreigners per 1000 habitants
Brussels Capital (zones 5339-5344)
Antwerp (zone 5345)
Gent (5415)
Charleroi (zone 5330)
Liège
Average biggest 5
Average Belgium

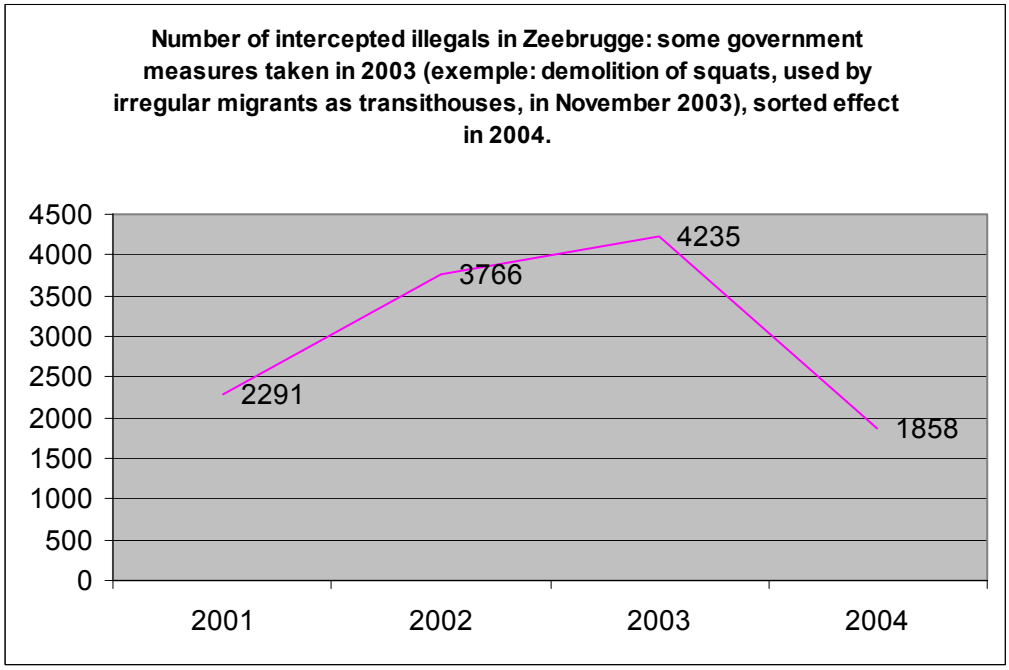

Number of illegal foreigners intercepted by the local police (2004 - Brussels excepted): top 10 of cities/police zones
4000
3500
3000
2500
2000
1500
1000
500
0
3466
1478
707
540
321
321
282
252
215
185
Antwerp (city)
Liège (city)
Gent (city)
Charleroi (city)
Mechelen (city)
Sint-Truiden/Gingelom/Nieuwekerken
Ostend (city)
Bruges (city)
Turnhout/Vosselaar/Lille...(zone 5364)
Leuven (city)

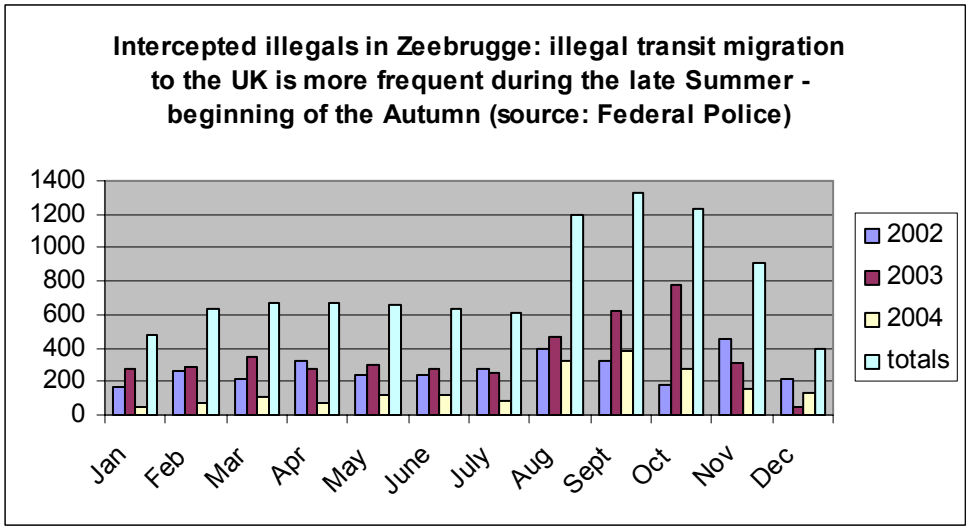
Differences in the number of apprehensions in Brussels are the result from police actions (against prostitution, begging, etc.) and are at the same time an indication that the concentration of illegal migrants is higher in the poorer communes.

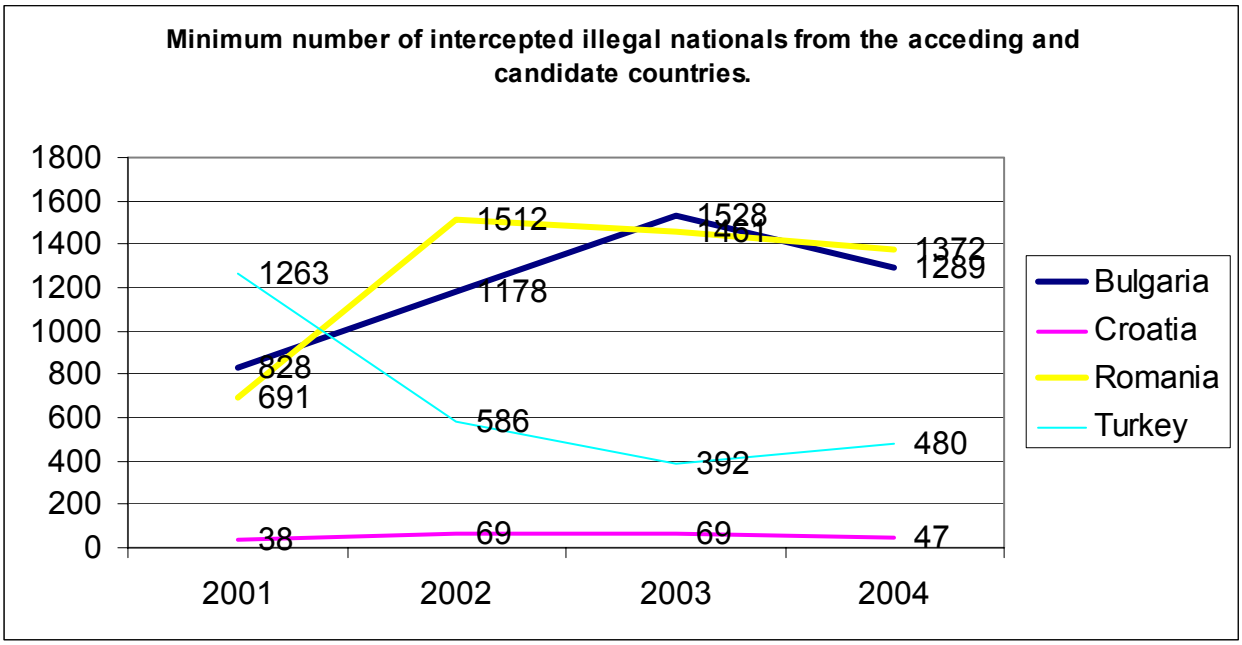


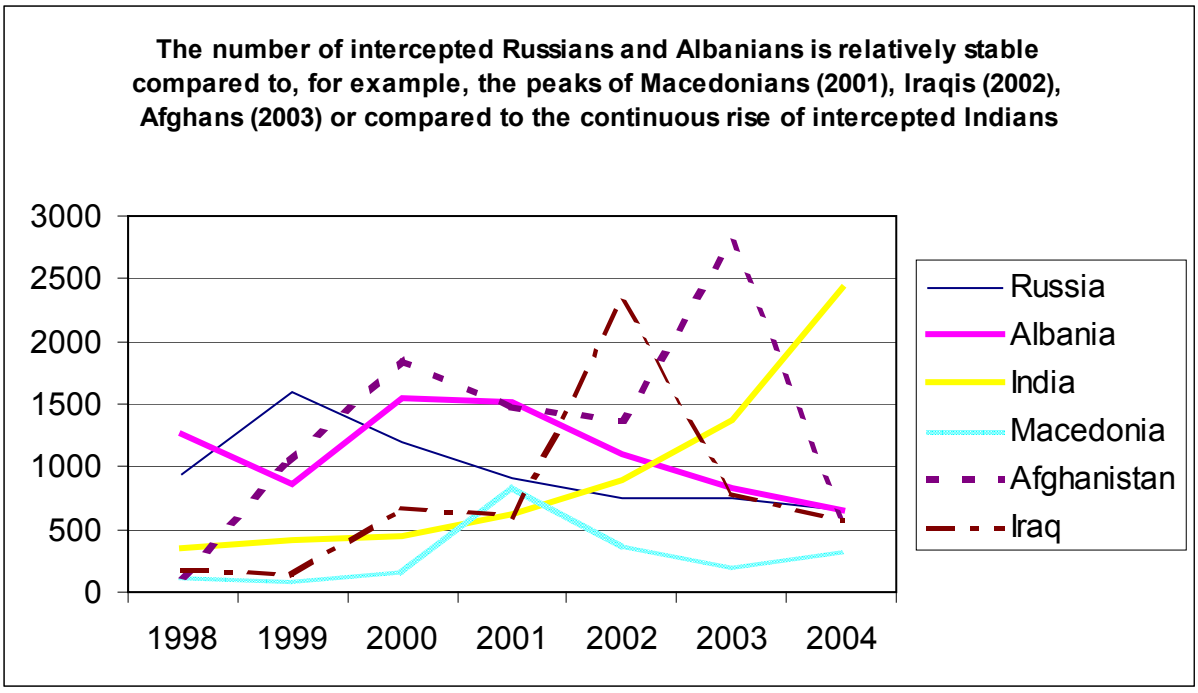

Number of intercepted undocumented migrants in the 4 important harbours (2004)
3000
2500
2000
1500
1000
500
0
1858
529
52
53
2492
Zeebrugge
Ostend
Gent
Antwerp
Total

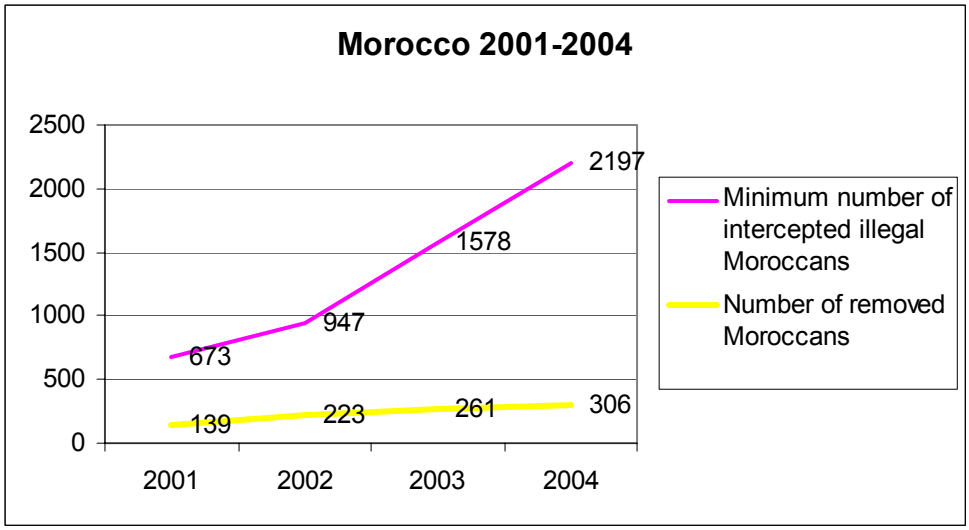

Intercepted illegals in Zeebrugge: while in 2003 the main nationalities were Iranians and especially Afghans, was the main transit-nationality in 2004 India (source: Federal Police).
2500
2000
1500
1000
500
0
India
Afghanistan
Moldavia
Iran
Vietnam
Romania
Iraq
Albania
Turkey
Algeria
2003
2004

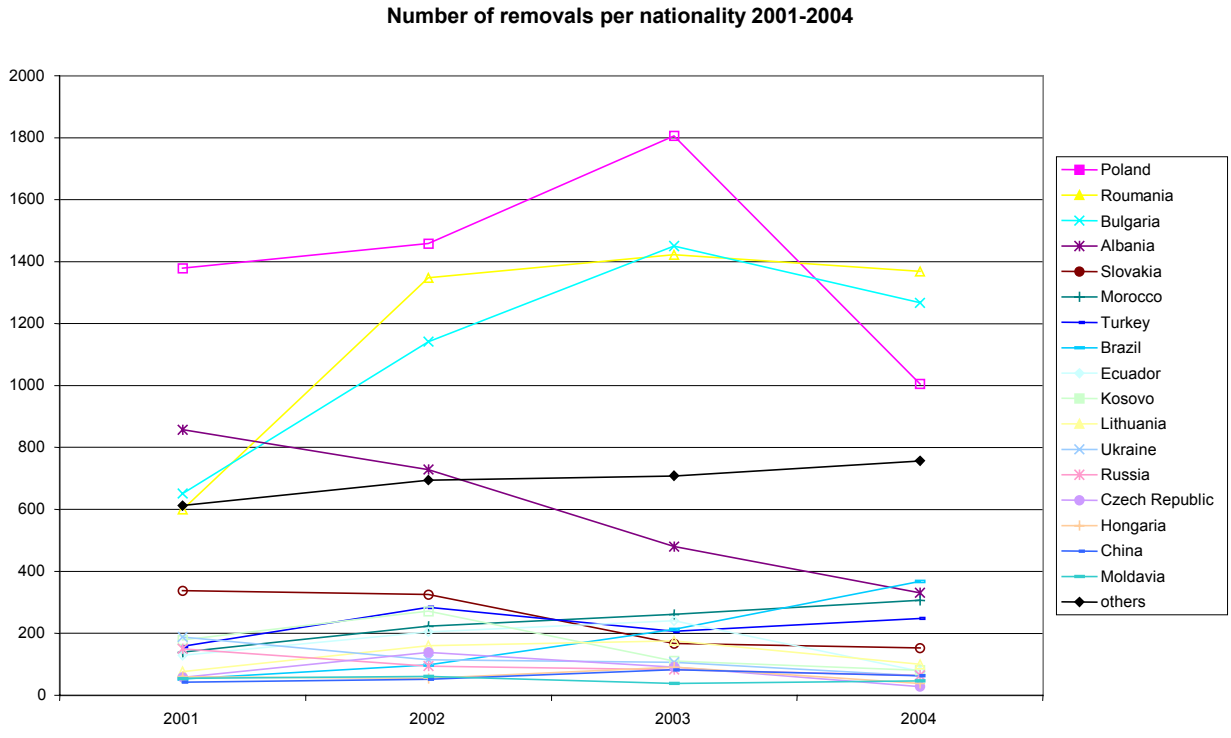

Number of intercepted illegals in Zeebrugge: some government measures taken in 2003 (exemple: demolition of squats, used by irregular migrants as transithouses, in November 2003), sorted effect in 2004.
4500
4000
3500
3000
2500
2000
1500
1000
500
0
2291
3766
4235
1858
2001
2002
2003
2004

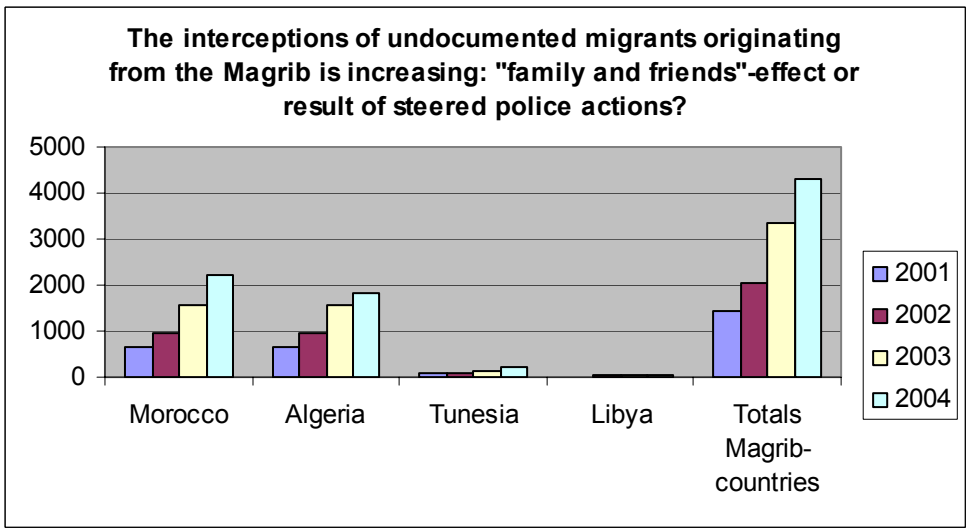

Intercepted illegals in Zeebrugge: illegal transit migration to the UK is more frequent during the late Summer - beginning of the Autumn (source: Federal Police)
1400
1200
1000
800
600
400
200
0
Jan
Feb
Mar
Apr
May
June
July
Aug
Sept
Oct
Nov
Dec
2002
2003
2004
totals

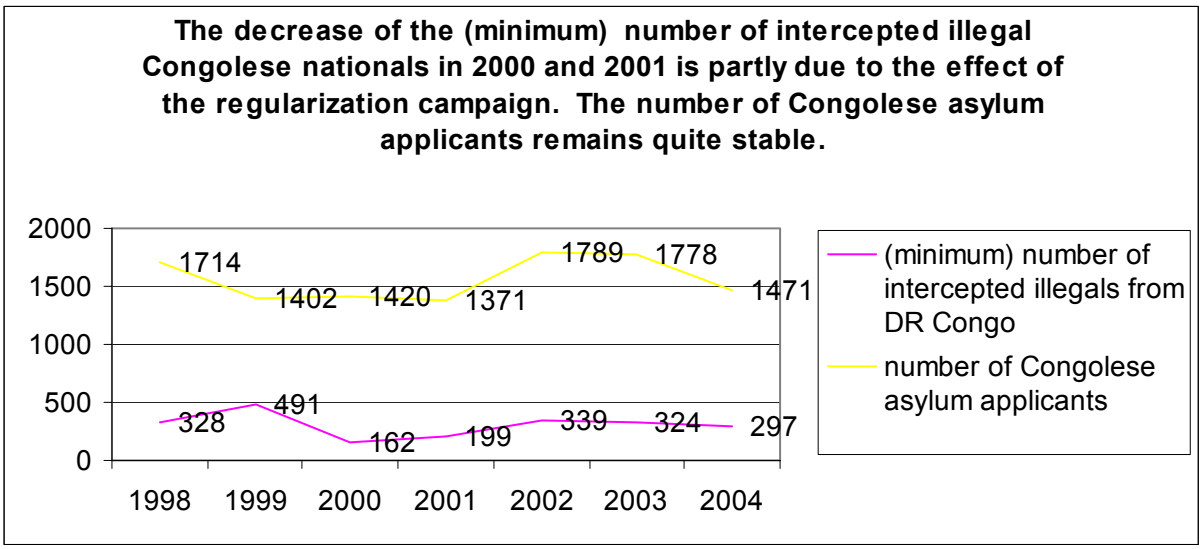

Minimum number of intercepted illegal nationals from the acceding and candidate countries.
1800
1600
1400
1200
1000
800
600
400
200
0
2001
2002
2003
2004
1263
1512
1528
1461
1372
1289
1178
828
691
586
392
480
38
69
69
47
Bulgaria
Croatia
Romania
Turkey


The number of intercepted Russians and Albanians is relatively stable compared to, for example, the peaks of Macedonians (2001), Iraqis (2002), Afghans (2003) or compared to the continuous rise of intercepted Indians
3000
2500
2000
1500
1000
500
0
1998
1999
2000
2001
2002
2003
2004
Russia
Albania
India
Macedonia
Afghanistan
Iraq

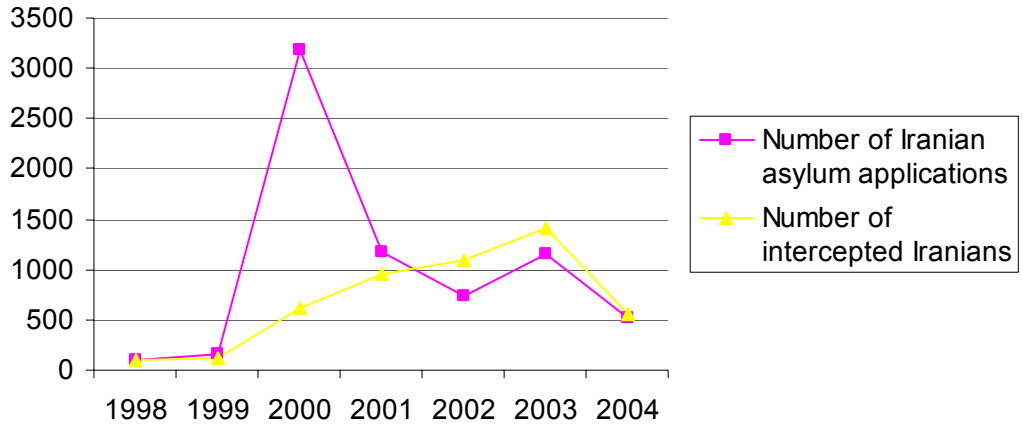

Morocco 2001-2004
2500
2000
1500
1000
500
0
2001
2002
2003
2004
673
947
1578
2197
139
223
261
306
Minimum number of intercepted illegal Moroccans
Number of removed Moroccans


Number of removals per nationality 2001-2004
2000
1800
1600
1400
1200
1000
800
600
400
200
0
2001
2002
2003
2004
Poland
Roumania
Bulgaria
Albania
Slovakia
Morocco
Turkey
Brazil
Ecuador
Kosovo
Lithuania
Ukraine
Russia
Czech Republic
Hongaria
China
Moldavia
others

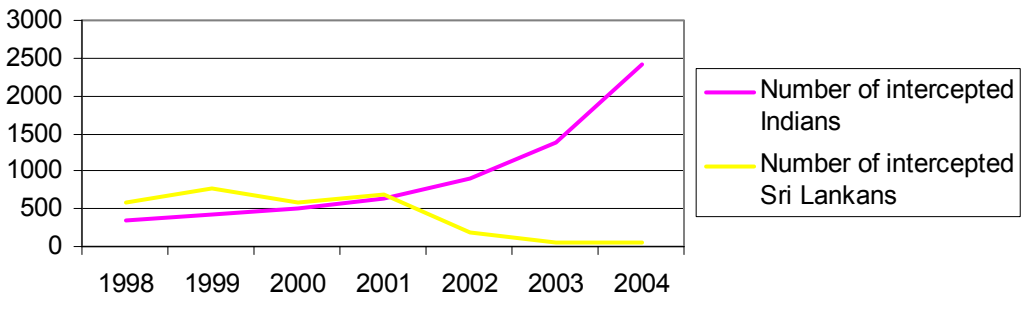

The interceptions of undocumented migrants originating from the Magrib is increasing: "family and friends"-effect or result of steered police actions?
5000
4000
3000
2000
1000
0
Morocco
Algeria
Tunesia
Libya
Totals Magrib-countries
2001
2002
2003
2004

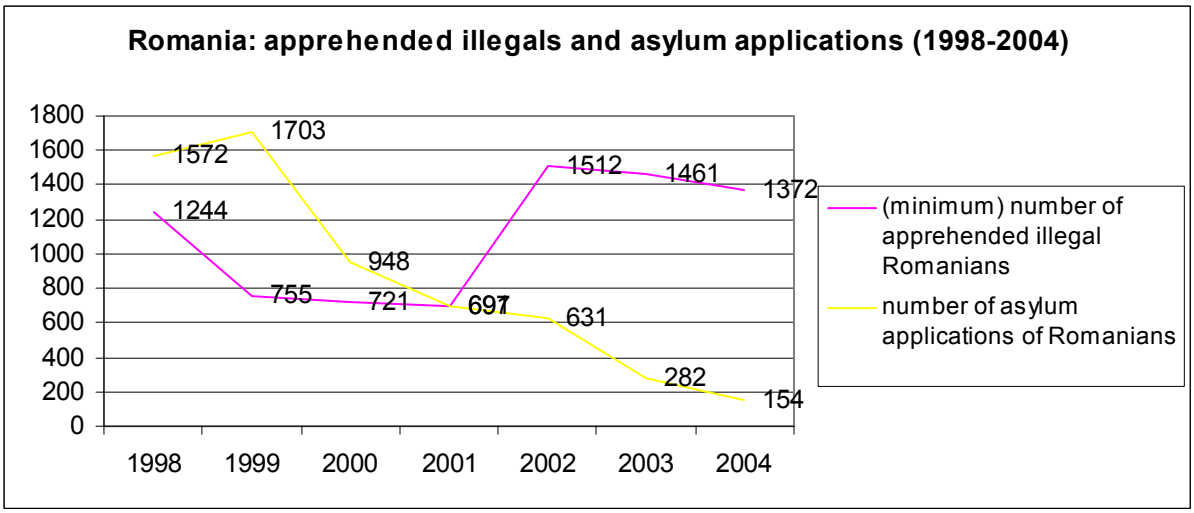

The decrease of the (minimum) number of intercepted illegal Congolese nationals in 2000 and 2001 is partly due to the effect of the regularization campaign. The number of Congolese asylum applicants remains quite stable.
2000
1500
1000
500
0
1714
1402
1420
1371
1789
1778
1471
328
491
162
199
339
324
297
1998
1999
2000
2001
2002
2003
2004
(minimum) number of intercepted illegals from DR Congo
number of Congolese asylum applicants

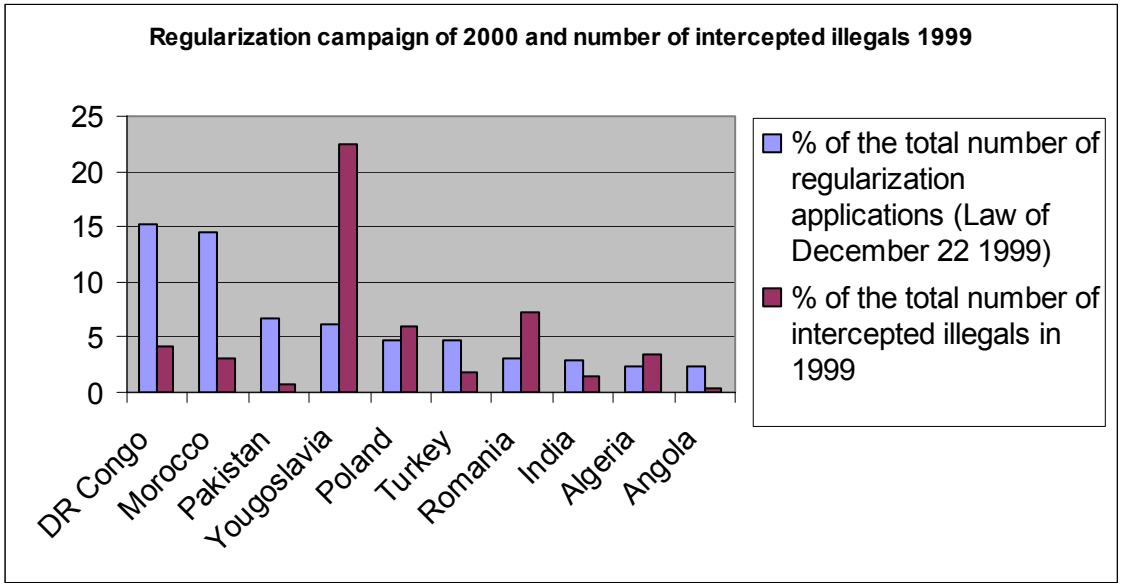
The very sharp rise of the number of Iranian asylum applicants in 2000 has been followed by a continuous but less pronounced rise of the number of interceptions



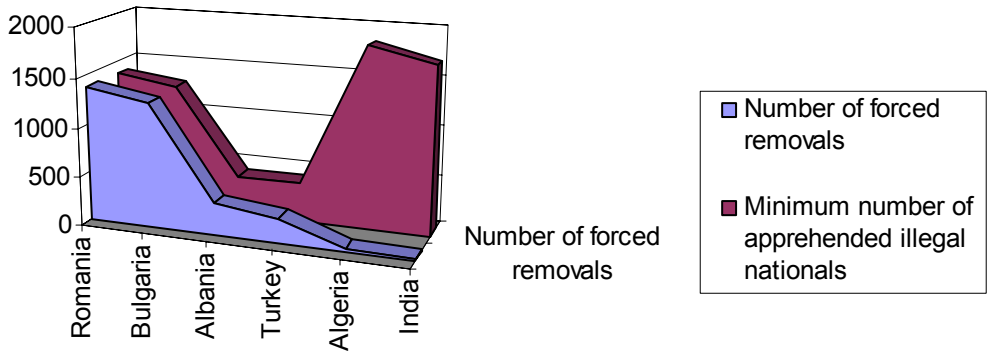
While the number of intercepted Indians is in continuous rise, did the number of intercepted Sri Lankese fall drastically. An example of identity camouflage?




Romania: apprehended illegals and asylum applications (1998-2004)
1800
1600
1400
1200
1000
800
600
400
200
0
1998
1999
2000
2001
2002
2003
2004
1572
1703
948
1244
755
721
697
631
1512
1461
1372
282
154
(minimum) number of apprehended illegal Romanians
number of asylum applications of Romanians

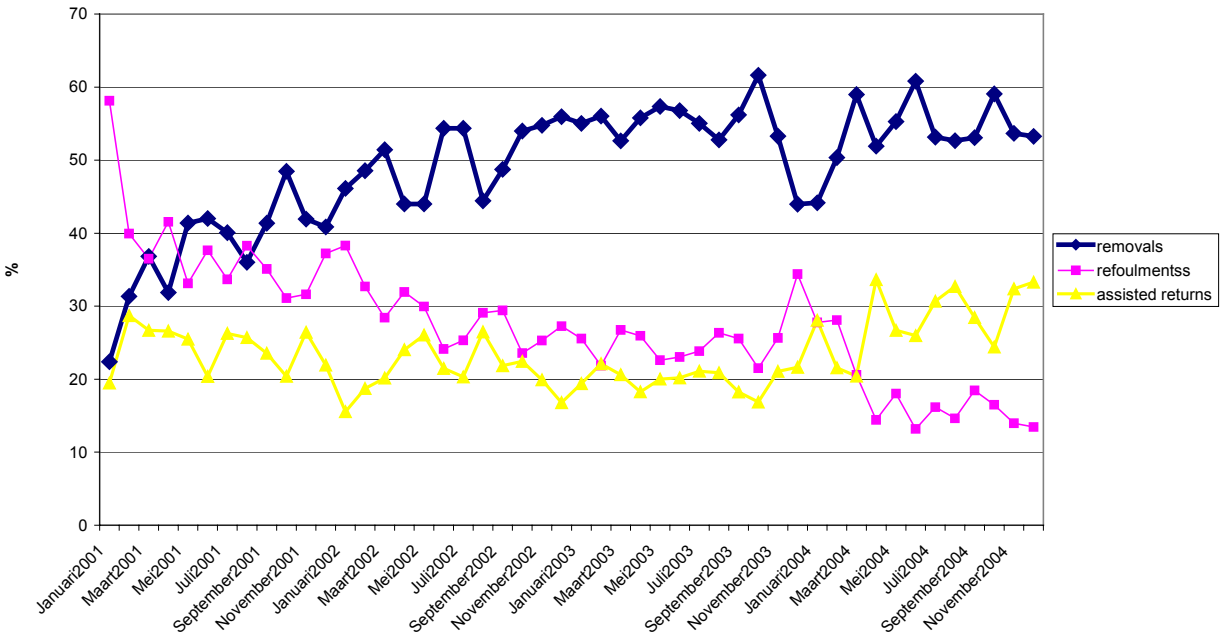

Regularization campaign of 2000 and number of intercepted illegals 1999
25
20
15
10
5
0
DR Congo
Morocco
Pakistan
Yougoslavia
Poland
Turkey
Romania
India
Algeria
Angola
% of the total number of regularization applications (Law of December 22 1999)
% of the total number of intercepted illegals in 1999

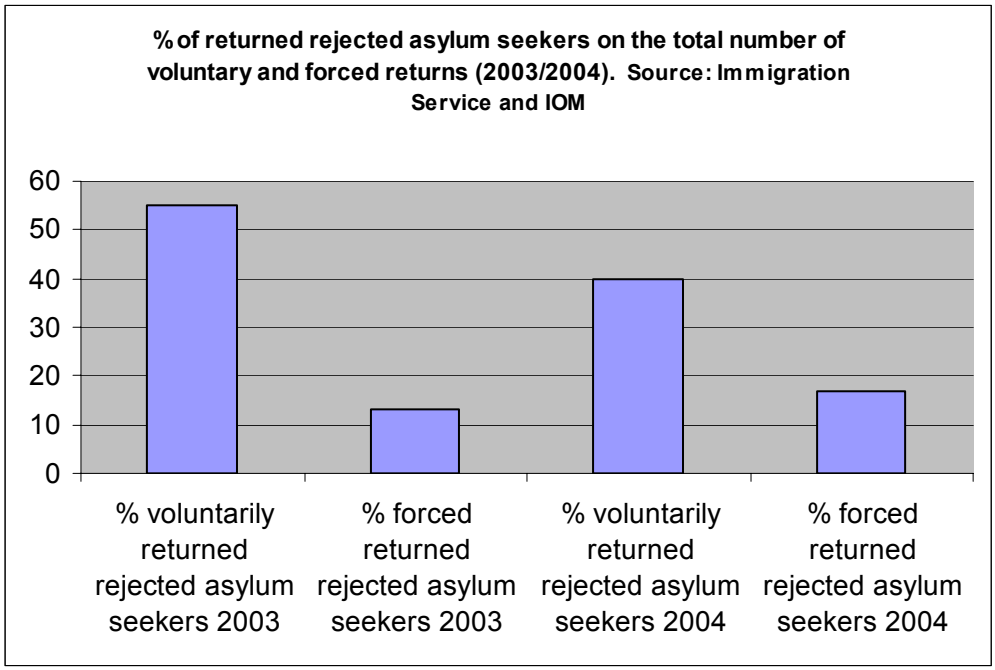
Some country nationals are far more "removable" than others. Effects of identity camouflage, non-collaboration of countries of origin and readmission agreements (data 2004).



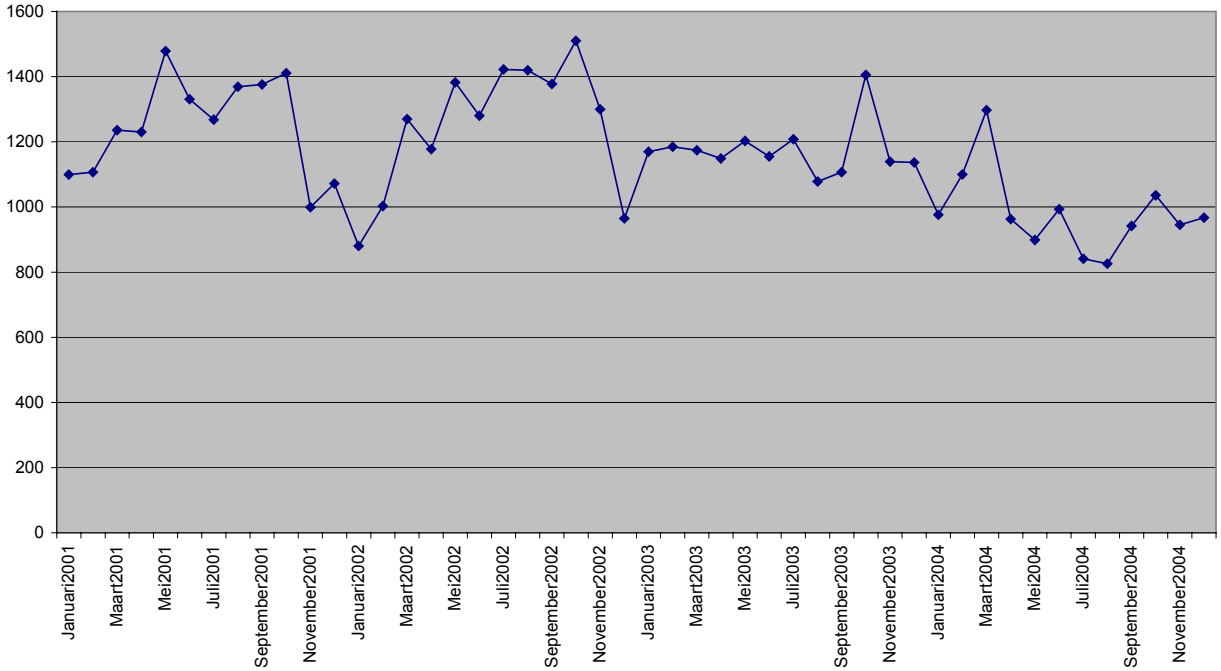
Iraq and Afghanistan 1998-2004: the number of asylum applications remains stable although there are some sharp peaks in the number of interceptions. Influence of smuggling networks, identity camouflage and/or steered government measures?

Proportion of removals / refoulments / assisted returns (aliens illegally present / 2001-2004)

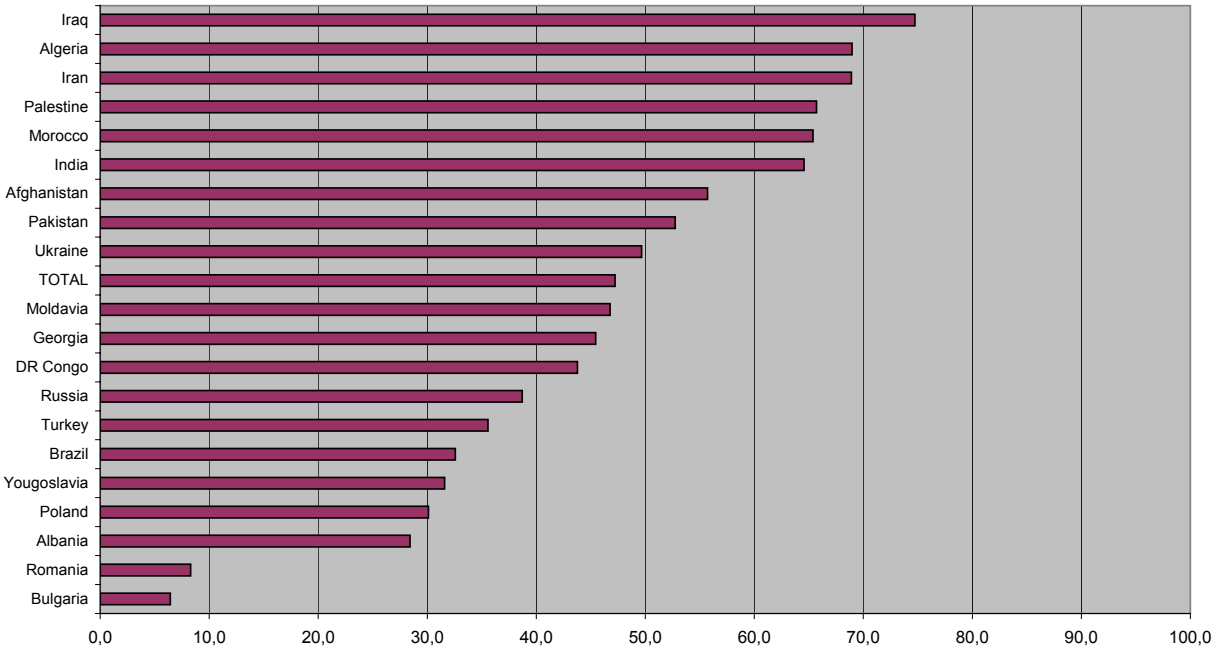




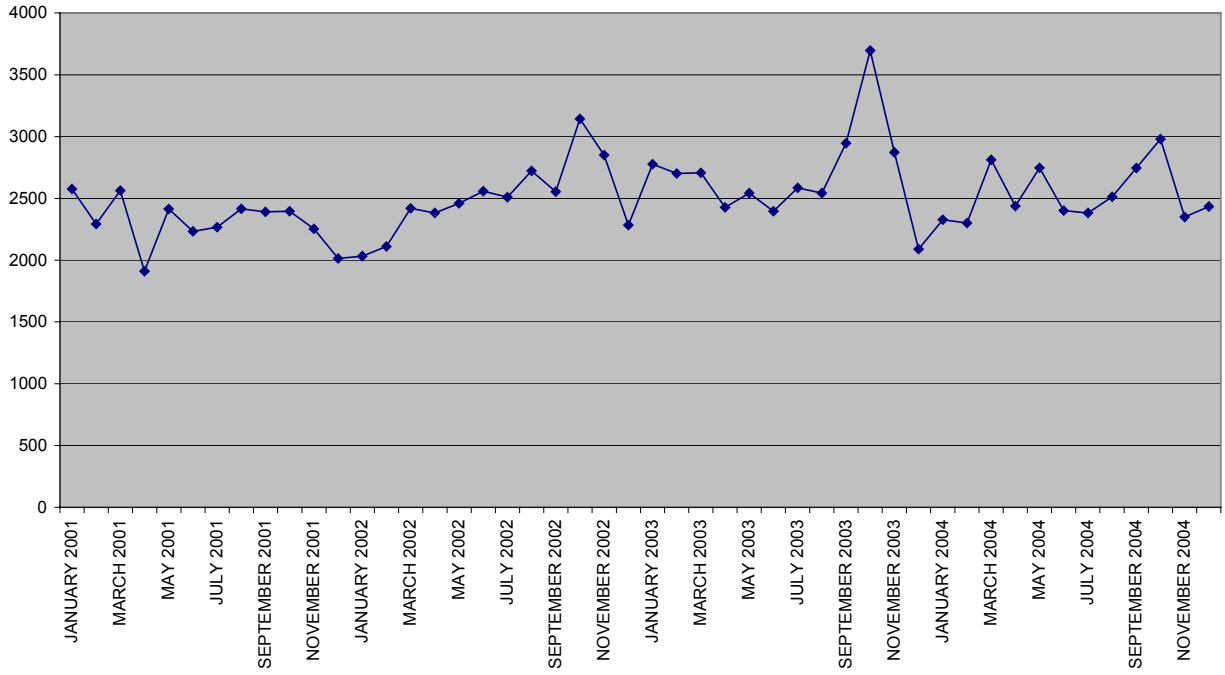
Evolution of forced and voluntary assisted returns (2001 - 2004)



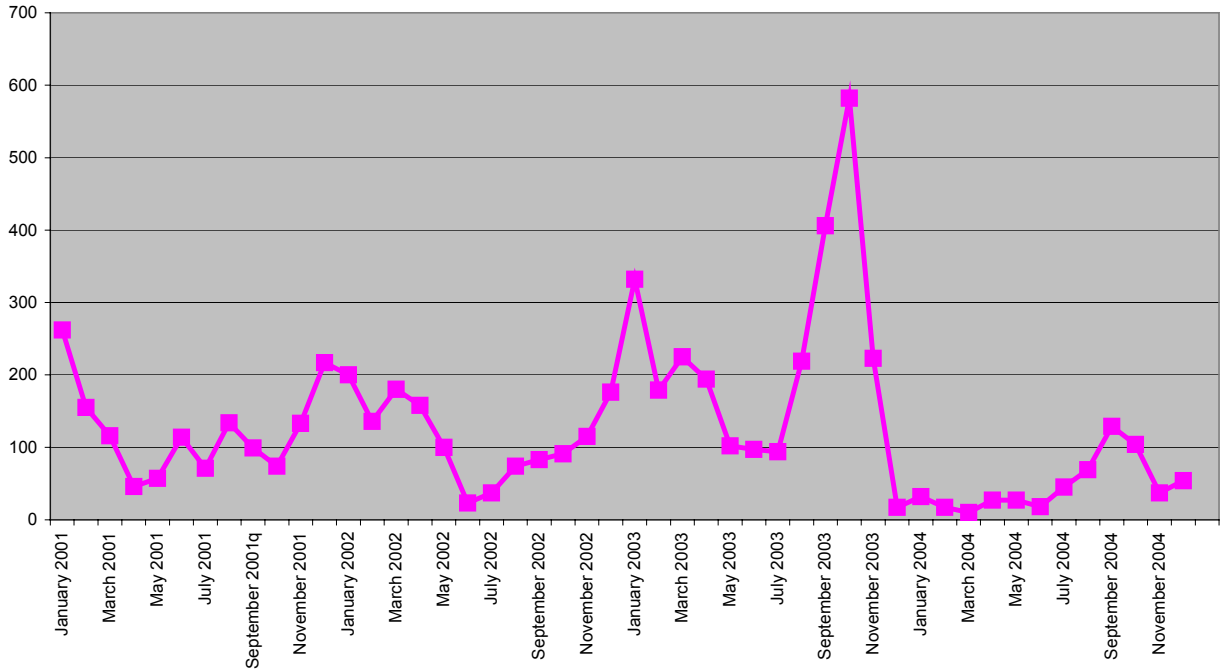
Intercepted aliens (2004)
by proportion of Orders to Leave the Territory



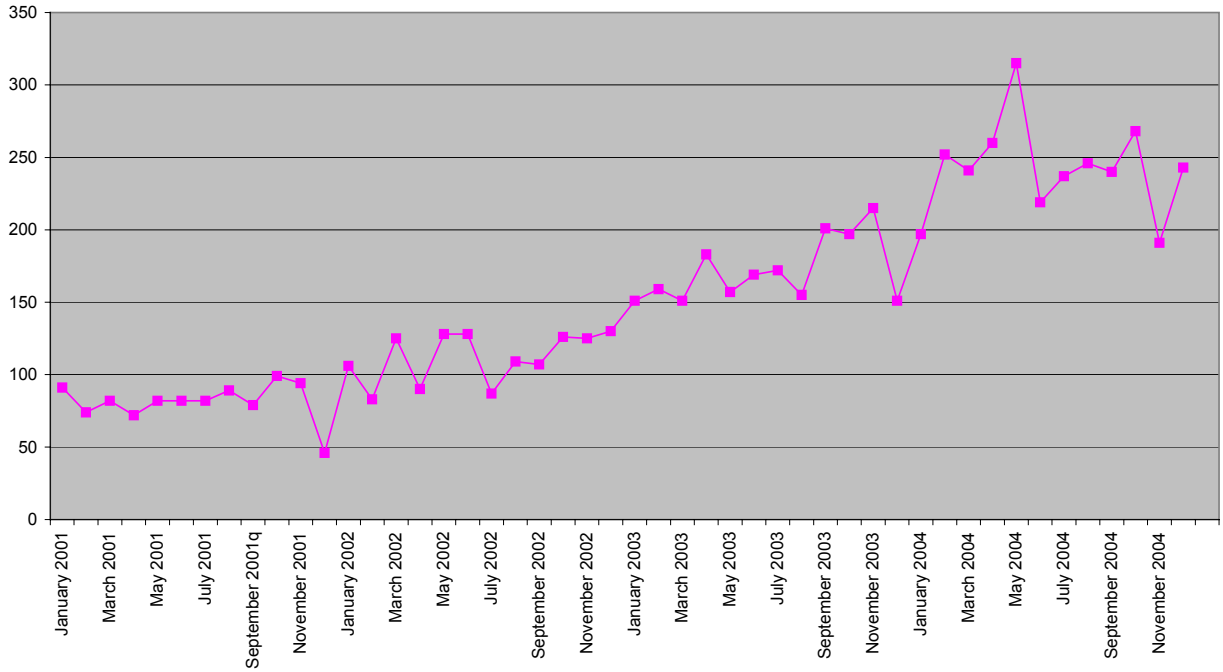
Interception of illegal migrants by month (2001-2004)



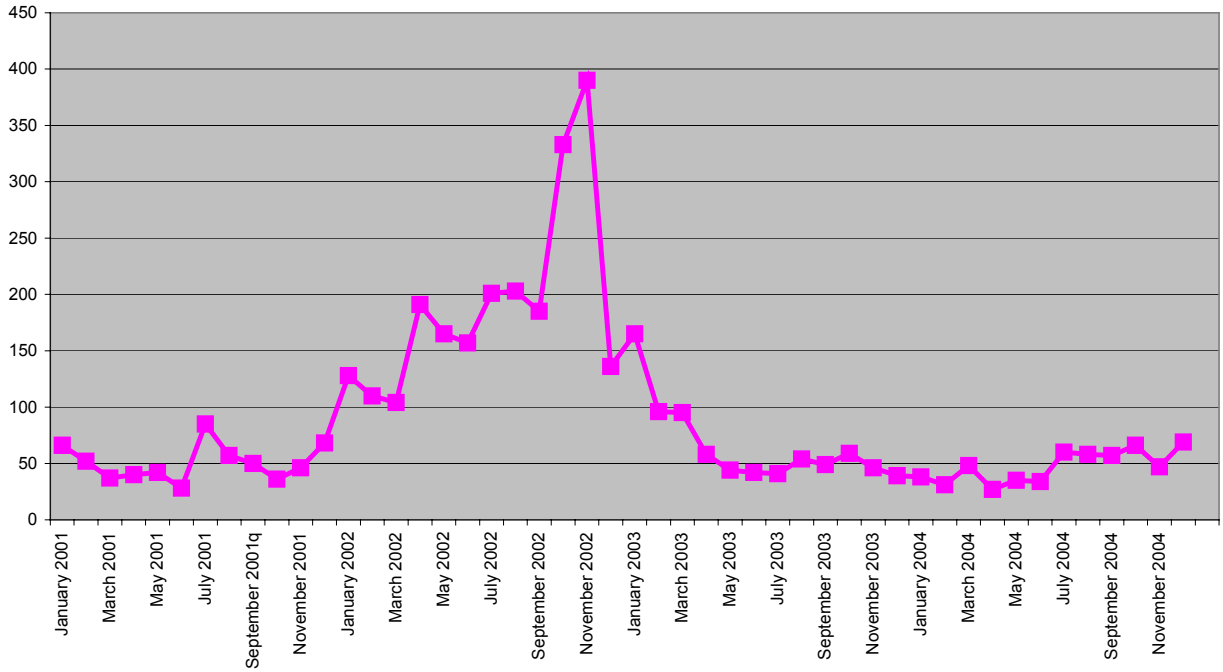
Apprehensions of Afghans illegally present (2001-2004)



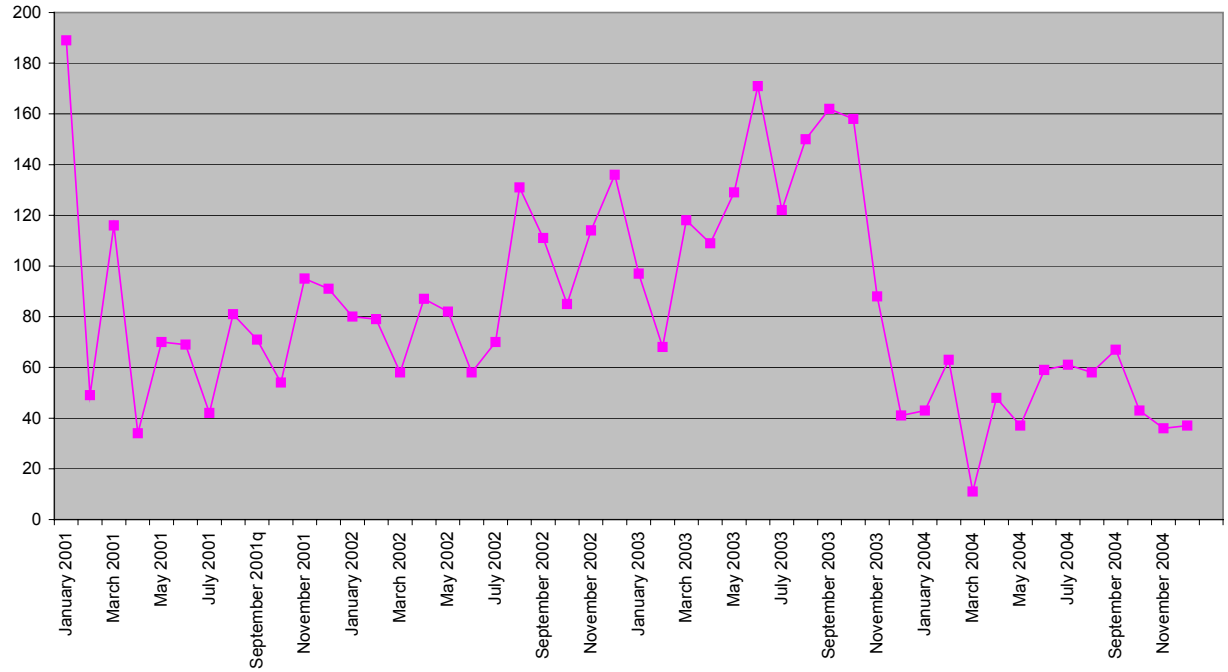
Interceptions of illegally present Moroccans (2001-2004)



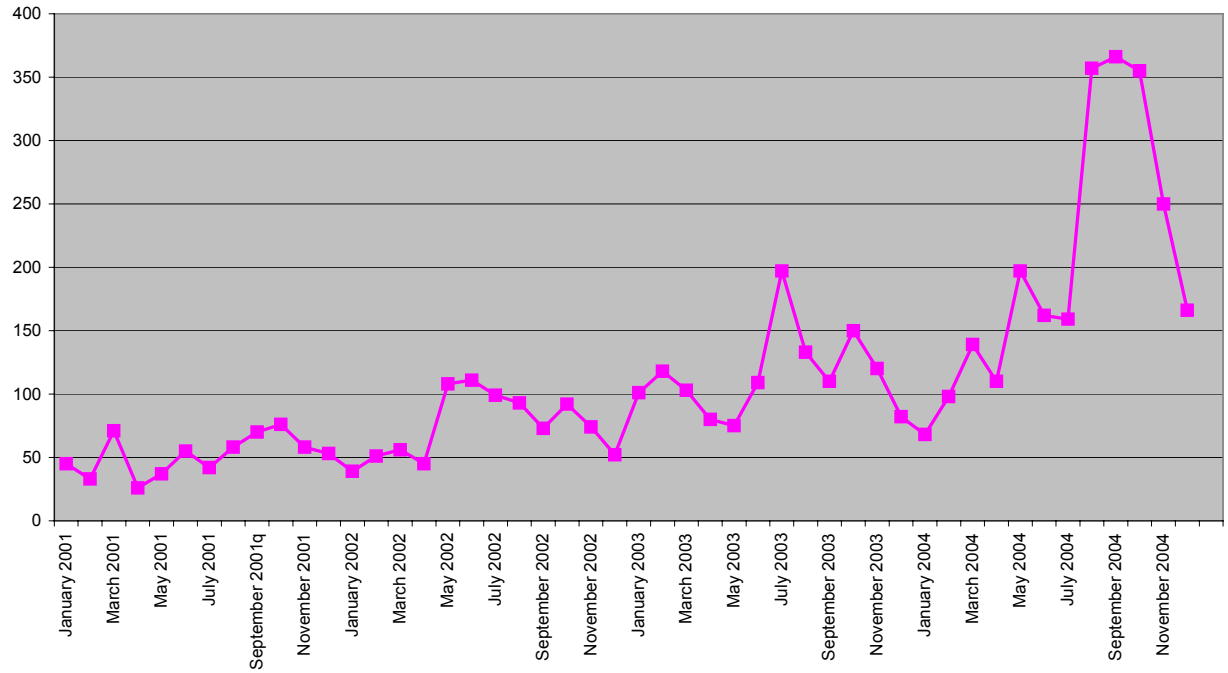
Apprehensions of Irakis illegally present (2001-2004)



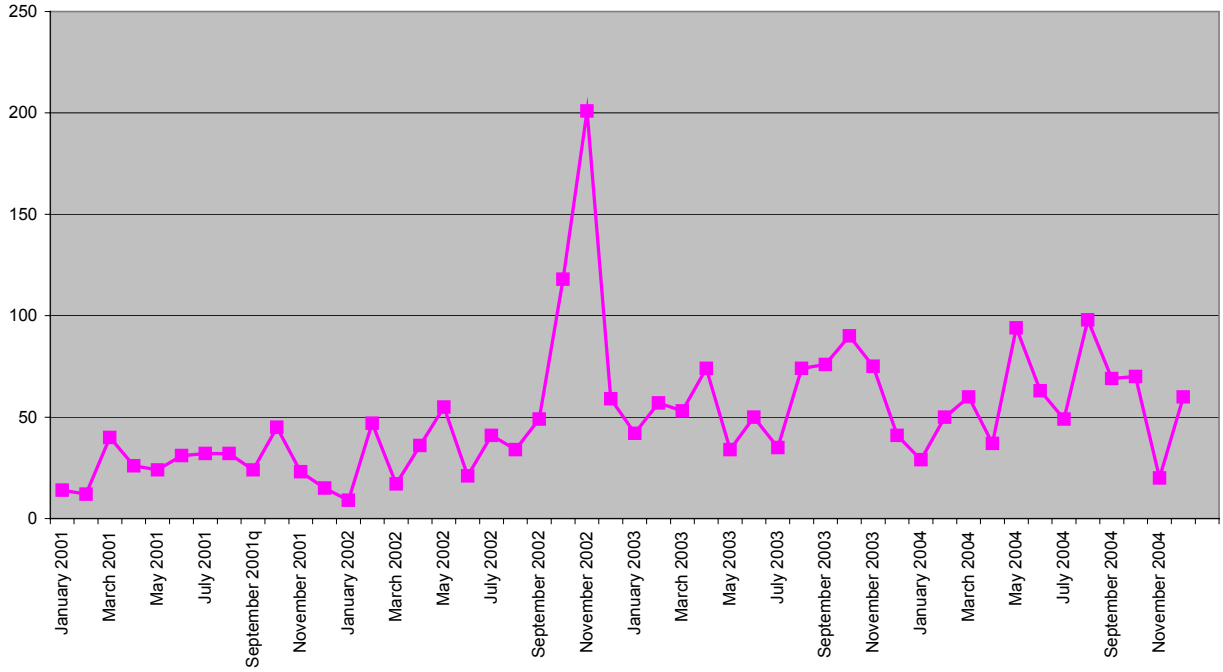
Monthly evolution of intercepted illegal Iranians (2001-2004)



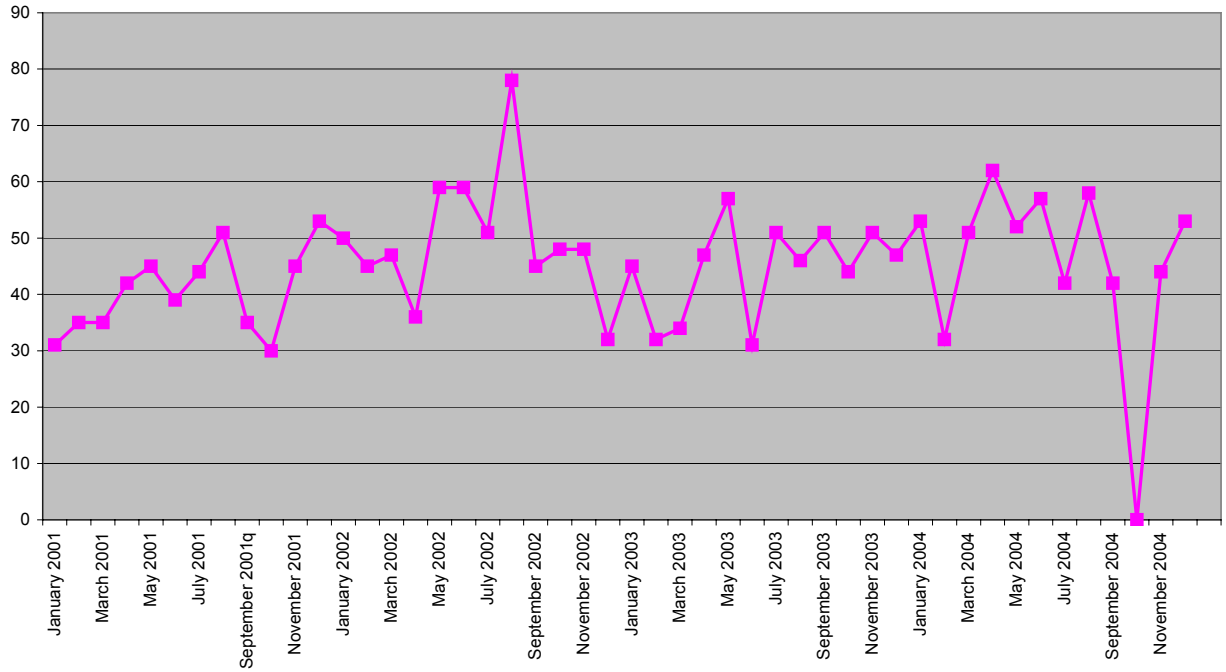
Monthly evolution of illegally present Indians (2001-2004)



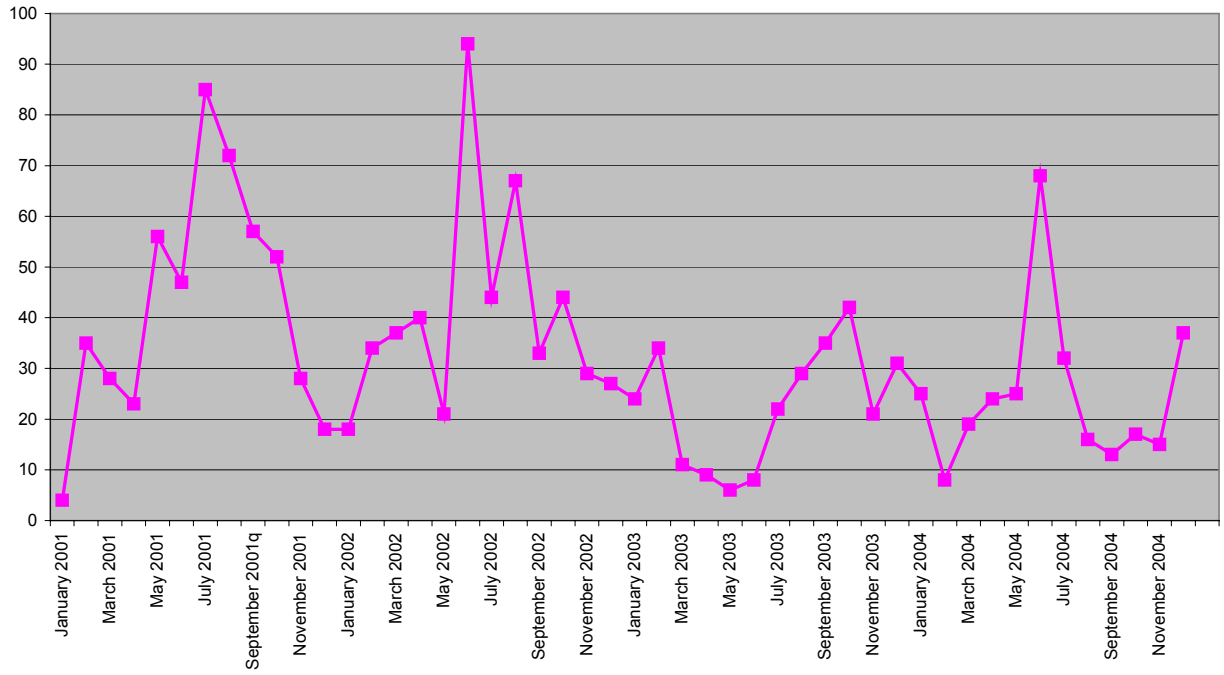
Monthly evolution of intercepted illegally present Moldavians (2001-2004)



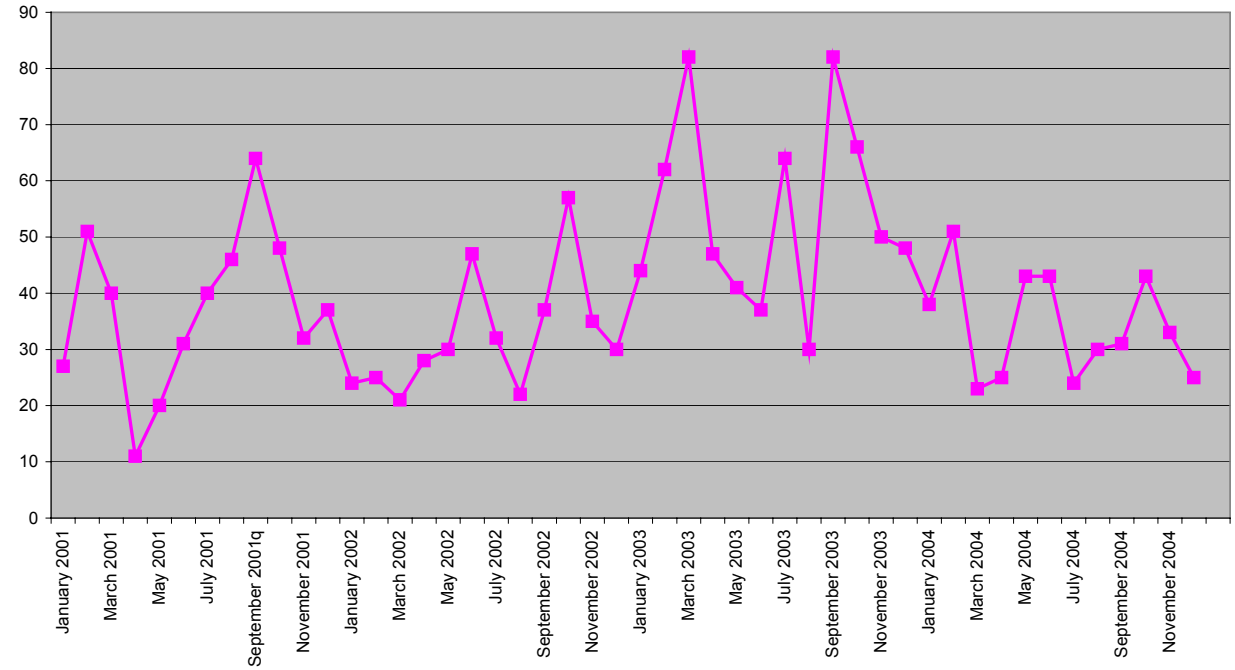
Monthly evolution of illegally present Congolese citizens (RDC) (2001-2004)



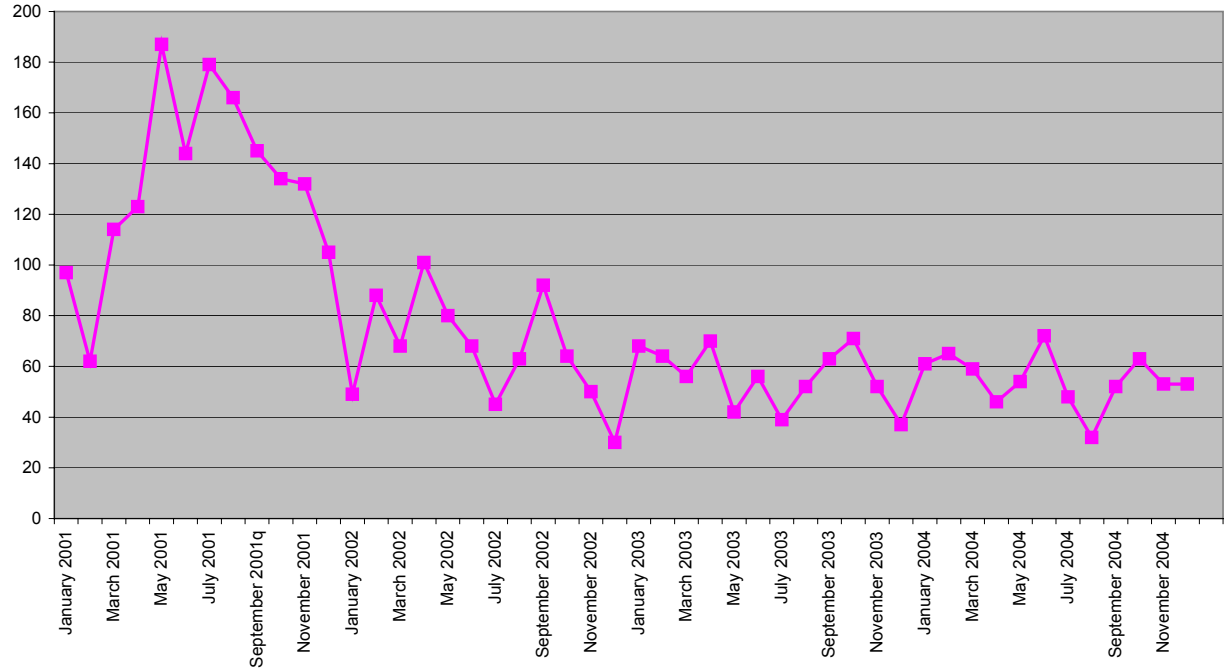
Most Slovaks are intercepted during the summer months (2001-2004)



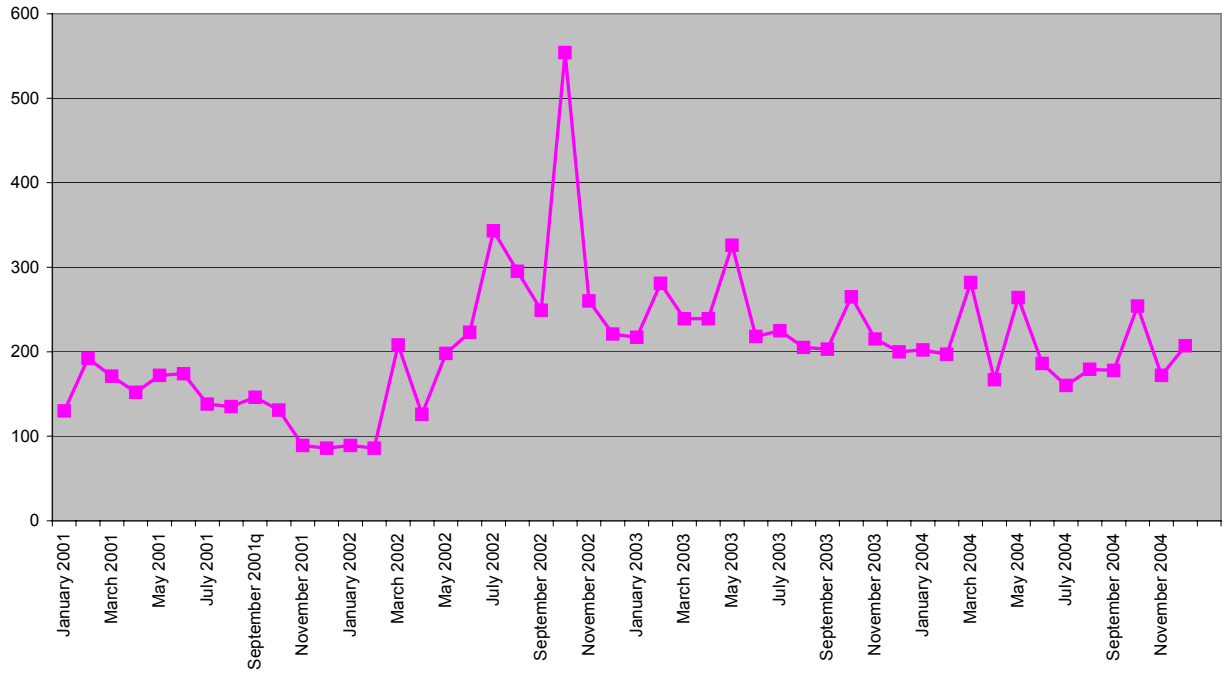
Monthly evolution of intercepted Chinese nationals (2001-2004)



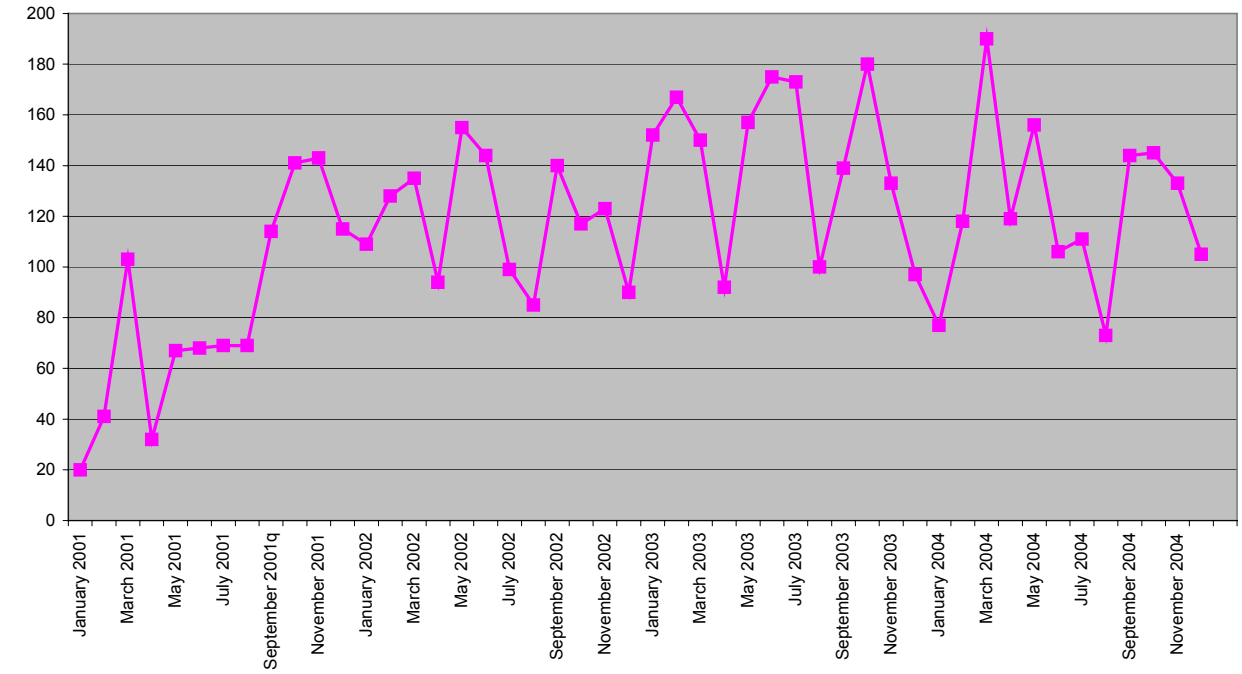
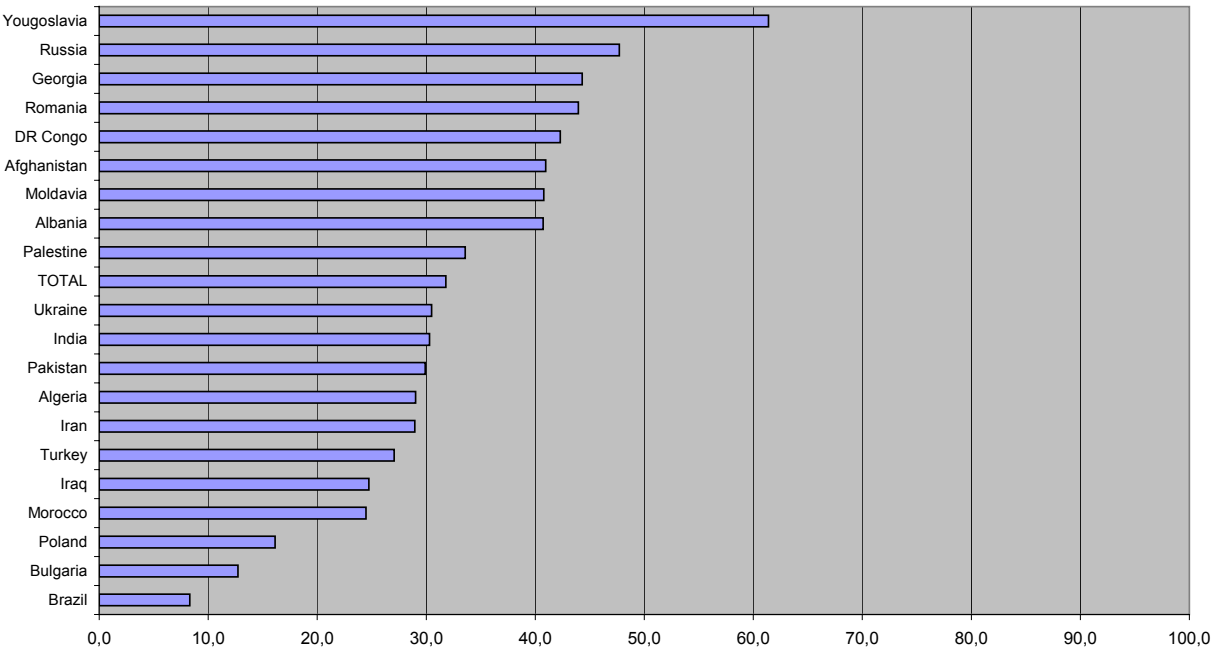
Monthly evolution of intercepted Turkish nationals (2001-2004)



Monthly evolution of intercepted Romanians (2001-2004)



Monthly evolution of intercepted Bulgarians (2001-2004)



Intercepted illegally present aliens (2004)
by proportion of releases