



CZECH
REPUBLIC

RESPONSES TO LONG-TERM IRREGULARLY STAYING MIGRANTS: PRACTICES AND CHALLENGES IN EU MEMBER STATES AND NORWAY

TABLE OF CONTENTS

COMMON TEMPLATE	3
THE CONTRIBUTION OF THE CZECH REPUBLIC	23
SECTION 1: NATIONAL LEGAL AND POLICY FRAMEWORK	26
SECTION 2: NATIONAL POLICIES AND APPROACHES REGARDING LONG-TERM IRREGULARLY STAYING MIGRANTS	34
SECTION 3: RESPONSES TO END LONG TERM IRREGULAR STAY	65
SECTION 4: CHALLENGES AND FUTURE ACTIONS	72
SECTION 5: CONCLUSIONS	75

COMMON TEMPLATE

1. BACKGROUND AND RATIONALE FOR THE STUDY

Member States are confronted with the situation of third-country nationals who no longer or have never fulfilled the conditions of stay, who were denied a residence permit or who have exhausted all legal options against the enforcement of their return decision. The Return Directive (Directive 2008/115/EC) sets the obligation for Member States to issue a return decision for third-country nationals once it has been established that they are not eligible for legal stay.¹ This is aimed at reducing situations of legal uncertainty for third-country nationals, so that any third-country national physically present in a Member State should be either considered as legally staying – and enjoying a valid right to stay – or as illegally staying and be issued a return decision.²

However, in practice, a certain share of third-country nationals issued with a return decision do not leave the territory of Member States. National authorities might be unable to proceed with removals due to either legal or practical obstacles. Issuance of a return decision allows for a period of voluntary departure, however, a third-country national could be unwilling to leave voluntarily. Forced return may be impossible to enforce without some level of co-operation from the third-country national. In other cases, national authorities postpone return to respect the principle of non-refoulement, individual circumstances or other practical reasons impeding the enforcement of a return decision.³ Additionally, there are cases of third-country nationals whose residence permits expire and renewal is not secured, or who for other reasons do not or no longer fulfil conditions for legal stay, and who were not issued

¹ Article 6 of the Return Directive. The directive applies to all EU countries except Ireland, nevertheless, the concepts covered by the study are also relevant to the Member State.

² European Commission, Return Handbook (section 1.2 'illegal stay'). For the purpose of this study, illegal stay and irregular stay (as used in the EMN Glossary) will be used interchangeably.

³ According to Article 9 of the Return Directive, Member States should postpone removal where it would infringe the respect of the principle of non-refoulement or where the return decision is reviewed by a competent national authority. Member States may postpone return by taking into account the specific individual circumstances of the third-country national or for practical reasons impeding removal (lack of identification of the third-country nationals or transport capacity).

a return decision for a variety of administrative and practical reasons. In some cases, third-country nationals may disappear from the supervision of the competent authorities involved. In other cases, migrant who entered illegally remained undetected by migration authorities.

These situations may result in long-term or protracted situations of illegal stay and legal uncertainty over several years, as well as deplorable living conditions.⁴ Examples include homelessness, (mental) health issues, addiction issues, falling victim to organised crime (i.e. labour and sexual exploitation) or involvement in crimes, all of which contribute to the detriment of the third-country national concerned, national governments and the communities in which irregular migrants reside.

In terms of practices, the actions of national governments, and local authorities (cities, regions) may be contradictory. Central authorities are responsible for achieving the objectives of the national migration policy, such as ensuring the prevention and fight against illegal stay and enforcement of return decisions. Local authorities (municipalities and regions) are at the forefront of the practical consequences of third-country nationals irregularly staying for a prolonged time and are confronted with challenges such as ensuring access to basic services and public order. Accordingly, complementarity or tension can result between policy objectives at the central level aimed at achieving the return of irregular migrants and the practical realities faced at the local level. That is, having to accommodate the presence of irregular migrants and provide basic services when return does not happen and when access to mainstream services is not legally possible due to their residence status. Ultimately, the applicable legal framework, demarcation of competences and institutional structure also play a role in the process of cooperation and communication between central authorities and municipalities.

⁴ Refugee Law Initiative in cooperation with the Centre for International Criminal Justice (2016) *Undesirable and Unreturnable Migrants*. This research concerned excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed. Available at: <https://cijj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf>.

Recent research was carried out by the City Initiative on Migrants with Irregular Status in Europe (C-MISE) examining policies and measures implemented in 11 cities across 10 Member States considering the applicable legal framework.⁵ It showed that cities' responses ranged from adopting policies aimed at discouraging irregular migrants from residing in their territories to adopting measures that include them in the provision of some municipal services.

While existing research offered some insights into approaches adopted by Member States towards long-term irregular migrants, policies and practical measures are changing rapidly and there is currently no recent and comprehensive EU-wide overview regarding this group of third-country nationals. This study aims to respond to this gap.

2. EU LEGAL AND POLICY CONTEXT

The return of illegally staying third-country nationals has been an important issue in the EU's policy agenda on migration over the past 20 years and has accentuated since 2015, as illustrated by the emphasis on enforcement of return in the European Agenda on Migration. There is little recent information available on the number of persons staying illegally in the EU Member States.⁶ Eurostat data provides only rough estimate of 'third-country nationals found to be illegally present' in the EU as it covers persons who are apprehended or otherwise come to the attention of national immigration authorities. Accordingly, not all irregularly staying migrants are included in these figures. In 2017, the European Commission (in its communication on the delivery of the European Agenda on Migration) estimated that around 1 million third-country nationals were irregularly staying in the EU. More specifically,

⁵ Delvino, N. (2017) *European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*, Oxford: Centre on Migration, Policy and Society (COMPAS) – University of Oxford. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf>

⁶ A EU-wide research project on this topic carried out in 2008 found an estimate of around 3.8 million of persons were staying illegally in the EU ('Clandestino' project, http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report_-november-2009.pdf)

extrapolating from statistics on the numbers of return decisions which could not be enforced (amounting on average to ca 60% out of 500 000 per year), one can assume that the issue concerns up to 300 000 migrants per year.⁷

In terms of the applicable legislative framework at EU level, the return of third-country nationals as set by the Return Directive is the relevant starting point for this study.⁸ The Return Directive lays down common EU standards on forced return and voluntary departure. It has a two-fold approach: on the one hand, it provides that Member States are obliged to issue return decisions to all third-country nationals staying irregularly on the territory of a Member State. On the other hand, it emphasises the importance of implementing return measures with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of 'non-refoulement'. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.

The Return Directive provides a framework which imposes an obligation on Member States to issue a return decision to any third-country national illegally staying on their territory, unless there are compassionate, humanitarian reasons not to do so, or if there is a pending procedure for renewing a residence permit.⁹ The respect of this obligation aims at reducing situations of legal uncertainty for third-country nationals since they can be either considered as legally staying, and enjoying a valid right to stay, or illegally staying and subject to a return procedure.

The Directive provides several cases where Member States should or may postpone return of a third-country national. According to Article 9

⁷ Commission Staff Working Document Fitness Check on EU Legislation On Legal Migration {SWD(2019) 1056 Final}, 2/2, p. 84. See also Eurostat data on non-EU citizens found to be illegally present (*migr_eipre*), ordered to leave the EU (*migr_eiord*), and returned (*migr_eirtn*, *migr_eirt_vol*, *migr_eirt_ass*).

⁸ Ireland does not participate in the Return Directive. National legislation in relation to return applies.

⁹ Article 6 of the Return Directive.

of the Return Directive, Member States *should* postpone removal where it would infringe on the respect of the principle of non-refoulement or where the return decision is reviewed by a competent national authority. Member States *may* postpone return by taking into account the specific individual circumstances of the third-country national or practical reasons that impede removal (e.g. lack of identification of the third-country nationals or transport capacity).

While postponement of removal of irregular migrants is allowed under the Directive, the legal situation of this category of third-country nationals is only partially addressed.¹⁰ In cases of postponement of return, the Return Directive refers to a set of minimum basic rights and procedural guarantees for third-country nationals.¹¹ These 'basic rights' include family unity, emergency health care, basic education for minors and taking into account the needs of vulnerable persons.¹² In a 2014 case, the Court of Justice of the EU (CJEU) ruled that Member States must cover other basic needs to ensure that emergency health care and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal.¹³ Additionally, according to the Return Directive, Member States should also provide a third-country national with a written document confirming the postponement of their removal, in order for that person to be able

¹⁰ Recital 12 of the Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (hereafter the Return Directive): "*The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive*".

¹¹ Article 14 of the Return Directive.

¹² Article 14 of the Return Directive.

¹³ CJEU, *Abdida*, case C-562/13 of 18 December 2014, ECLI:EU:C:2014:2453. See also Opinion of Advocate General Bot that includes means to secure accommodation as part of 'decent standard of living' (ECLI:EU:C:2014:2167). While there is no general legal obligation under EU law to provide for the basic needs of all third-country nationals pending return, the Commission encourages Member States to do so to ensure humane and dignified conditions of life for returnees (Return Handbook, p. 75).

to prove his or her situation in the event of administrative controls or checks.¹⁴ In practice, such a document is not always issued although in another case, the CJEU stated that while Member States have wide discretion concerning the form and format of the written confirmation, they must provide it to third-country nationals when there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of the Return Directive.¹⁵ Lastly, the Return Directive prohibits detention where prospects for removal no longer exist.¹⁶

There is no political consensus nor harmonisation at EU level on the approach to this category of third-country nationals.¹⁷ While the Return Directive foresees some basic rights, also referring to the respect of the Charter of Fundamental Rights, international law and the European Convention for Human Rights in the implementation of the Directive, the way Member States approach this category of third-country nationals is largely determined by domestic law and practices.

Studies have shown that practices vary considerably across Member States. Several trends were identified, considering that a combination of these situations may be encountered in the same Member State:¹⁸

- Third-country nationals are only issued a return decision and do not have rights that are in addition to those referred to in the Return Directive.
- Third-country nationals receive a certificate or other written confirmation to stay in the territory of the Member State until they are removed, yet it is not considered as a fully-fledged residence permit. This is sometimes referred to as a 'toleration status'.

¹⁴ Article 14(2) of the Return Directive.

¹⁵ CJEU, *Mahdi*, case C-146/14 PPU of 5 June 2014, ECLI:EU:C:2014:1320.

¹⁶ Article 15(4) of the Return Directive.

¹⁷ Lutz, F. (2018) *Non-removable Returnees under Union Law: Status Quo and Possible Developments*, in *European Journal of Migration and Law* 20 (2018) 28–52.

¹⁸ EMN 2010 Study, FRA 2011 Study on the situation of third-country nationals pending return/removal and 2013 Study on the situation of third-country nationals pending return/removal.

- Third-country nationals may have their return postponed but do not receive a written confirmation. In practice, their presence is 'tolerated' until the return decision can be implemented.

As mentioned in the Return Directive, third-country nationals may receive a decision granting temporary residence to persons who are not or cannot be returned for humanitarian or other policy considerations.¹⁹ In this event, any pending return procedures should be closed, and if a return decision was already issued, it should be withdrawn or suspended. Thus, Member States can either withdraw or suspend the return decision, considering the nature and duration of the right to stay granted as well as the need to ensure effective return procedures.

The framework provided in the Return Directive should be read in conjunction with other legal instruments which also apply to the category of third-country nationals falling under the scope of the study. For example, national authorities' approach to vulnerable persons should also consider obligations stemming from the 1989 UN Convention on the Rights of the Child²⁰, from the EU's framework on victims of trafficking in human beings.²¹ Additionally, albeit the Return Directive is silent on access of irregular third-country nationals to other social assistance than emergency healthcare and access to education, other instruments may nonetheless apply. For instance, the European Committee

¹⁹ Article 6(4) of the Return Directive and CJEU ruling in the *Mahdi* case, C-146/14. The Return Handbook provides a number of criteria that Member States may take into account for granting permits related to the individual and policy situation. These criteria can consider the cooperative/non-cooperative attitude of the returnee, the length of factual stay of the returnee in the Member State, the integration efforts made by the returnee, the personal conduct of the returnee, its family links, etc. (Return Handbook, p. 77).

²⁰ UN Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

²¹ As consolidated in Directive 2011/36/EU and Council Directive 2004/81.

of Social Rights²² laid down further specifics on the situation of irregularly staying migrants in their decision in the case *Conference of European Churches vs. the Netherlands*.²³ This decision made clear that, in light of its established case-law, shelter must be provided not only to migrant children but also to adult migrants in an irregular situation and even when they are requested to leave the country.

3. STUDY AIMS AND PRIMARY QUESTIONS

The overall aim of this study is to provide an overview of existing policies and practices in Member States and Norway towards third-country nationals in a prolonged situation of illegal stay. The study aims to explore the responses and approaches to bring such situations to an end both by central and local authorities, and to mitigate the social consequences for the affected third-country nationals. As mentioned, these could range from providing access to basic services or support, other indirect measures to encourage eventual return to their country of origin or other non-EU country, or options to obtain a legal status.

More specifically, this study covers the EU Member States and Norway and aims to:

- Determine the legislation and policies of central, regional and local authorities towards long-term irregular migrants;

²² The European Committee of Social Rights (previously, the Committee of Independent Experts on the European Social Charter) is a regional human rights body that oversees the protection of certain economic and social rights in most of Europe. The European Committee of Social Rights was established under the auspices of the Council of Europe, pursuant to articles 24 and 25 of the 1961 European Social Charter. The Committee monitors implementation of the 1961 Charter, the 1988 Additional Protocol, and the 1996 Revised European Social Charter. It is unique among regional human rights mechanisms for its collective (as opposed to individual) complaint mechanism, and the flexibility it allows States in deciding which provisions of the Charter to accept.

²³ For more information please see: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFKJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false

- Examine the policies and practices in place to provide access to public services and rights to long-term irregular migrants in the realm of Member States' obligation to cater for basic needs;
- Examine existing practices in Member States and Norway to identify cases of exploitation and abuse among long term irregular migrants;
- Explore cooperation mechanisms between central, regional and local authorities if and when implementing policies targeting this category of third-country nationals;
- Examine the policies and practices in place in Member States and Norway to end long term illegal stay, including return and granting authorisation to stay;

To this end, the below primary research questions will be addressed:

- What is the political and policy debate on the situation of long-term irregularly staying migrants?
- What are the characteristics of the group of third-country nationals who remained in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?
- To what extent are central, regional, and local authorities in your (Member) State confronted with the issue of long-term irregularly staying migrants?
- Which rights and public services are long-term irregularly staying migrants provided access to?
- What is the role of cities dealing with this group of migrants? To what extent are cities involved and cooperate with the central government?

- What is the role of NGOs regarding access to public services for long-term irregularly staying migrants?
- Which measures (e.g. policies, practical tools, guidance) – if any – were implemented to bring protracted situations of illegal stay to an end?
- Were there any studies or research published on the effectiveness of these measures?
- What are the key challenges and good practices in terms of policy regarding long-term irregularly staying migrants?

4. SCOPE OF THE STUDY

The overall focus of this study is on **long-term irregular migrants** in a situation of protracted illegal stay, namely:

- Third-country nationals subject to a return decision and whose return, despite the return decision becoming final, was not enforced or was postponed for legal (non-refoulement principle, medical or humanitarian reasons) or other practical reasons (e.g. non-cooperation on the part of the person concerned or of the country of origin or other administrative reasons), and
- third-country nationals who do not or no longer fulfil conditions for entry and stay in the territory of a State (as set out in the Schengen Borders Code (Regulation (EU) 2016/399) or other conditions for entry, stay or residence in that EU Member State), and who were not issued a return decision because they were unknown to the authorities.

In the latter case, despite the complexity in the determination of the duration of stay of the irregular migrant, authorities are usually able to distinguish between newly arrived irregular migrants and those that have already been in the Member State for a considerable amount of time before detection (of their illegal stay).

The study will focus on the cooperation between central authorities and municipalities in the implementation of national policies on irregular migration, as well as the margin of discretion of local authorities in the provision of services to third-country nationals. Where relevant, cooperation between municipal authorities and civil society organisations will also be explored.

More specifically, the study aims to examine the type of access to mainstream services of these target groups. It also aims to identify the type of services accessible to a person without a residence permit or other form of authorisation.

The study thus aims to map possible responses to end such long-term irregularity. Various measures directly relate to the enforcement of a return decision such as Assisted Voluntary Return (AVR) programmes or other incentives to return were already captured in numerous other studies and discussions at expert group level and are not the primary focus of this study.²⁴ This study will rather investigate measures which may indirectly relate to the promotion of return – either in the country of origin or another third-country – such as restricted access to mainstream services or specific programmes geared towards third-country nationals in a prolonged situation of illegal stay. Other possible responses to be explored include legal stay options for third-country nationals based on an integration criterion (e.g. length of stay, work, social and family ties, or education reasons). Additionally, Member States may also consider granting a temporary residence permit to migrants in an irregular situation who cooperate with the justice system, either as victims of trafficking in human beings or as witnesses of other offences or crimes.²⁵

²⁴ Reference is made to the activities on these topics carried out by the EMN Return Experts Group.

²⁵ Under Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

While the reasons for issuing the return decision as well as the reasons for the return decision not being enforced or postponed could play a role in the measures implemented by national authorities, their examination does not fall within the scope of this study.

The Study covers the period from 2015 – October 2020.

5. RELEVANT SOURCES AND LITERATURE

EMN Studies and other sources

- EMN (2017) The effectiveness of return in the EU. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_return_study_synthesis_report_final_en.pdf
- EMN (2016) Approaches to rejected asylum seekers. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf
- Report EMN Expert Seminar Latvia (2017) Non-removable Returnees under European Union Law. Accessible: http://www.emn.lv/wp-content/uploads/1.Lutz_non-removables-EMN-seminar-handout.pdf
- EMN (2012) Practical Measures to Reduce Irregular Migration. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf

EMN AHQs

- EMN (2017) Ad-hoc query on the cost of a forcible removal of the irregular third country nationals. Accessible: http://www.emnitalyncp.it/wp-content/uploads/2018/02/029_hr_ad-hoc_query_on_the_cost_of_a_forcible_removal_of_the_irregular_tcns_wider.pdf
- EMN (2019) Ad-hoc query on children with prolonged stay without a permanent right of residence.

Other policy documents, reports and studies (chronological order)

- European Commission (2020) *Compilation of national practices related to Covid-19 related extensions of legal stay*. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/handbook-annex-41_en.pdf
- European Commission (2017) *Communication on a more effective return policy in the EU – a renewed action plan* and Recommendation (EU) 2017/432 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, COM (2017)200. Accessible: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32008L0115>
- Return Directive 2008/115/ EC, complemented by ECJ case law and the European Commission’s “Return Handbook” (Commission Recommendation C(2015)6250 of 1.10.2015)
- European Committee on Social Rights (2014). Decision *Conference European Churches vs. The Netherlands*. Accessible: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false
- European Commission (2013) *Situation of third-country nationals pending postponed return/removal in EU MS*. Accessible: <https://ec.europa.eu>

[eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_immigration_return-removal_en.pdf](https://europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_immigration_return-removal_en.pdf)

- CJEU, Judgment of 14 December 2014, case C-562/13 [GC], *Abdida*, EU:C:2014:2453
- Ataç I, Schütze T., Reitter V. (2020) *Local responses in restrictive national policy contexts: welfare provisions for non-removed rejected asylum seekers in Amsterdam, Stockholm and Vienna*, *Ethnic and Racial Studies*, 43:16, 115-134.
- Leerkes A., Van Houte M. (2020) *Beyond the deportation regime: differential state interests and capacities in dealing with (non-)deportability in Europe*, *Citizenship Studies*, 24:3, 319–338.
- Timmerman, R., Leerkes, A., & Staring, R. (2019) *Safe reporting of crime for migrants with irregular status in the Netherlands*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- González Beilfuss, M. (2019) *Safe reporting of crime for migrants with irregular status in Spain*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- Taverriti, S. B. (2019) *Safe reporting of crime for victims and witnesses with irregular migration status in Italy*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

- Van Den Durpel, A. (2019) *Safe reporting of crime for migrants with irregular status in Belgium*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

- Hinterberger K.F. (2020) *Regularisierungen irregulär aufhältiger Migrantinnen und Migranten. Deutschland, Österreich und Spanien im Rechtsvergleich*, Nomos. Accessible: <https://www.nomos-elibrary.de/10.5771/9783748902720/regularisierungen-irregulaer-aufhaeltiger-migrantinnen-und-migranten.>

- Hinterberger K.F. (2019) 'An EU Regularization Directive. An effective solution to the enforcement deficit in returning irregularly staying migrants', *Maastricht Journal of European and Comparative Law*, n 26, 736–769.

- Lutz, F. (2018) *Non-removable Returnees under Union Law: Status Quo and Possible Developments*, in *European Journal of Migration and Law* 20 (2018) 28–52

- Menezes Queiroz, B. (2015) *Illegally staying in the EU: an analysis of illegality in EU migration law*, Accessible: https://cadmus.eui.eu/bitstream/handle/1814/38145/2015_Queiroz.pdf?sequence=1&isAllowed=y

- Fundamental Rights Agency (2017) "Fundamental rights of migrants in an irregular situation who are not removed", available at <https://fra.europa.eu/en/publication/2017/fundamental-rights-migrants-irregular-situation-who-are-not-removed>

- Rosenberger, S., Koppes, S. (2018) *Claiming control: cooperation with return as a condition for social benefits in Austria and the Netherlands*. *Comparative Migration Studies* 6, 26, available at: <https://comparativemigrationstudies.springeropen.com/track/pdf/10.1186/s40878-018-0085-3>

- Delvino, N. (2017) *European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*, Centre on Migration, Policy and Society (COMPAS), University of Oxford. Accessible: <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf>
- Peyronnet, C. (2017) *Undesirable and Unreturnable Migrants under French Law: Between Legal Uncertainty and Legal Limbo*, *Refugee Survey Quarterly*, 2017, 36, 35–60
- Centre for International Criminal Justice (2016) *Undesirable and unreturnable? Policy challenges around excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed*. London: University of London. Accessible: <https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf>
- Fundamental Rights Agency (2012) *Practical guidance in the area of asylum, migration and borders*, available at: <https://fra.europa.eu/en/publication/2013/practical-guidance-area-asylum-migration-and-borders>
- Fundamental Rights Agency (2011) *Fundamental rights of migrants in an irregular situation in the European Union*, available at: <https://fra.europa.eu/en/publication/2012/fundamental-rights-migrants-irregular-situation-european-union>
- Kox M. (2009) *Het leven gaat door. Een onderzoek naar de effecten van het illegalenbeleid op het leven van uitgeprocedeerde asielzoekers in Utrecht*. Stichting LOS, Available (in Dutch) through: <http://www.stichtinglos.nl/sites/default/files/los/files/Het%20leven%20gaat%20door-def.pdf>

6. DEFINITIONS

There are several key terms used in this template. The definitions listed below are defined with help from the **EMN Glossary**,²⁶ version 6. Please see the table below.

Term	Definition
Entry ban	An administrative or judicial decision or act prohibiting entry into and stay in the territory of the EU Member States for a specified period, accompanying a return decision.
Family members	A third-country national, as specified in Article 4(1) of Directive 2003/86/EC (normally members of the nuclear family – i.e. the spouse and the minor children), who has entered the territory of the European Union for the purpose of family reunification.
Forced return	The process of going back – whether in voluntary or enforced compliance with an obligation to return – to one’s country of origin, a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted (Article 3(3) of the Return Directive).
Illegal or irregular stay	The presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.
Irregular migration	The movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.

²⁶ Available at: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en.

Term	Definition
Non-refoulement	A core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.
Overstayer	A person remaining in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered an EU State, but who has stayed beyond the expiry of his/her visa and/or residence permit.
Regularisation	State procedure by which illegally staying third-country nationals are awarded a legal status.
Residence permit	An authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State.
Return	The movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.
Return decision	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
Social protection benefits	For the purpose of this study please refer to the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.

Term	Definition
Postponement of removal	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national's physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin's refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Art. 13(2) of Council Directive 2008/115/EC (Return Directive).
Third-country national	Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.
Trafficking in human beings	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
Voluntary departure	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.
Vulnerable person	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21 of Directive 2013/33/EU (Recast Reception Conditions Directive)).

THE CONTRIBUTION OF THE CZECH REPUBLIC

TOP-LINE FACTSHEET

The study is focused on the long-term irregular migrants staying in the territory of Member States and Norway. In the Czech Republic, this group constitutes of:

- > irregular migrants who are subject to a return decision but the return cannot be enforced due to legal obstacles (e.g. non-refoulement, medical or humanitarian reasons, etc.),
- > irregular migrants who are subject to a return decision but the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents, etc.),
- > former (rejected) applicants for international protection who absconded,
- > third-country nationals whose short-stay visa or residence permit expired and/or was not renewed,
- > other irregular migrants who were not (yet) detected by national migration authorities.

The study is focused on the national legal and policy framework introducing this group of migrants, possible statuses they might possess and how their situation might be solved if a return is not possible at the moment. Next section of the study describes national policies and approaches such as rights and access to services for the irregular migrants, mainly their possibilities and conditions under which they receive an accommodation, healthcare, social assistance, employment, education, legal aid or assistance. It also attempts to put some light on a role of other entities (charities, NGOs, etc.) in providing some of these services. An important part of this section is also the question of cooperation between central, regional and local authorities, where certain tools of the integration policy might be used (e.g. regional integration centres). Third section of the study explains options of responses to end long-term irregular stay such as return and ways of legalisation of stay, while the fourth section focuses on challenges and future actions.

The reality in the Czech Republic premises two approaches to the irregular migrants:

- 1) irregularly staying migrants who are unknown to the migration authorities,
- 2) irregularly staying migrants who are known to the migration authorities and thus their status is somehow being solved – in fact, they cannot be irregular and known to the authorities at the same time (exit order/ return decision/ special leave to stay, etc. must be issued).

As for the first group, there are no relevant estimations on numbers of irregular migrants, no platforms or services designated purposely to them. From this point of view, it is not possible to distinguish between short-term and long-term irregularly staying migrants in the Czech Republic either. Most of the contribution is thus connected with the second group of migrants. Options to solve their situation might be the following:

- > Return (voluntary return is a priority).
- > Exit order (the foreigner is obliged to leave the Czech Republic within certain period of time).
- > Visa for stay over 90 days as a special leave to stay in the Czech Republic.
- > Prolongation of the above mentioned. In a case that the stay of a foreigner will be longer than 1 year, the foreigner can be granted long-term residence permit for purposes of special leave to stay.
- > If the long-term residence permit for purposes of special leave to stay will be longer than 3 years, standard long-term residence permit can be issued.

Section 1

NATIONAL LEGAL AND POLICY FRAMEWORK

The primary questions addressed in this section are:

- *To what extent are central, regional and local authorities in your Member State confronted with the issue of long-term irregular migrants?*
- *What is the political and policy debate on the situation of long-term irregular migrants?*
- *What are the characteristics of the group of third-country nationals who remained in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?*

SECTION 1.1: CATEGORIES OF LONG-TERM IRREGULAR MIGRANTS AT NATIONAL LEVEL

Q1a. Is there a **distinction** between 'short-term' irregular migrants and 'long-term' irregular migrants (as defined in the scope of this study) in your (Member) State?

No

Q1b. Are different categories of **long-term** irregular migrants (as defined in the scope of this study) – stemming from law or practice – present in your (Member) State?

Yes

Q1c. If yes to Q1b, are these:

irregular migrants subject to a return decision but the return cannot be enforced due to legal obstacles (e.g. non refoulement, medical or humanitarian reasons, etc.)?

irregular migrants subject to a return decision but the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents, etc.)?

- former (rejected) applicants for international protection who absconded?
- third-country nationals whose short-stay visa, residence permit expired and/or was not renewed?
- other irregular migrants who were not (yet) detected by national migration authorities?
- other (e.g. long-term irregular migrants with a criminal record, dependant family members)?

Q1d. If yes to Q1b, please also provide, if possible, an **estimation** of the numbers of persons (for each category identified in Q1a, 1b and 1c, as relevant) in your (Member) State, annually since 2015.

No data available.

Q2. If a third-country national is subject to a return decision but there are **legal obstacles to return** (i.e. for non-refoulement reasons, medical reasons, etc.), can they receive:

- Written confirmation of postponement of return (please briefly explain the procedure, conditions below):
- Temporary/tolerated stay (please briefly explain the conditions, application procedure below):
Visa for a stay of over 90 days as special leave to stay in the Czech Republic is granted.

According to the Section 120a of Act No. 326/1999, on the Residence of Foreign Nationals in the Czech Republic (hereinafter also referred to as the “Foreigners’ Act”) the Police, when deciding on administrative expulsion shall request a binding opinion from the Ministry of the Interior (hereinafter also referred to as “MoI”) as to whether a foreign national’s departure is possible. If a foreign national’s departure is not possible, the Police shall communicate this fact in the decision on administrative expulsion and the MoI shall grant the foreign national a visa for a stay of over 90 days as leave to stay in the territory. If grounds preventing a foreign national’s departure cease to exist, the Police shall issue a new decision only to prescribe a new time limit for departure pursuant to special legislation after requesting, and on the basis of, a new binding opinion from the MoI. On the date on which that decision becomes final, the visa for a stay of over 90 days as special leave to stay or the long-term residence permit issued as leave to stay in the territory shall expire; the Police shall issue the foreign national with an exit order. A foreign national whose departure is not possible shall be entitled to apply for international protection, no longer than 2 months after the decision on the administrative expulsion becomes final.

Section 179 of the Foreigner’s Act defines grounds preventing departure of a foreign national. The departure of a foreign national shall not be possible if there are reasonable concerns that the foreign national would be at genuine risk of serious harm if the return is carried out. Serious harm pursuant to this Act shall be regarded as: (a) the imposition or enforcement of the death penalty; (b) torture or inhuman or degrading treatment or punishment; (c) serious threat to life or human dignity by reason of indiscriminate violence in situations of international or internal armed conflict; or (d) cases where the departure of a foreign national would conflict with the Czech Republic’s international commitments.

Residence permit (please briefly explain the conditions, application procedure, duration of status below):

Extension of the short-stay visa

- Extension of the voluntary departure period

Yes, if the prospect of voluntary return is viable within the period set by law. Each case is assessed individually taking into account all aspects of return including health, logistical or legal obstacles.

- No return decision issued (for administrative or other reasons including non-refoulement)
- Other (e.g. no other form of certificate/tolerated stay/residence permit granted)

Q3. If a third-country national is subject to a return decision but there are **practical obstacles to return** (i.e. lack of means of transportation, lack of identification or travel documents, lack of cooperation of the third-country national, absconding, etc.), can they receive:

- A written confirmation of postponement of return (please briefly explain the procedure, conditions below):

Applicable only due to COVID-19 situation, i.e. exceptional measure.

- A temporary/tolerated stay (please briefly explain the conditions, application procedure):

Applicable only due to COVID-19 situation, i.e. exceptional measure.

- A residence permit (please briefly explain the conditions, application procedure, duration of status below):

- An extension of the short-stay visa
- No return decision issued (for administrative or other reasons including non-refoulement)
- Other (e.g. no other form of certificate/tolerated stay/residence permit granted)

SECTION 1.2: PRIORITIES AND DEBATES AT A NATIONAL LEVEL

Q4. Has the issue of long-term irregular migrants been subject to **policy or legislative debate** (i.e. discussions) in your (Member) State since 2015?

- No

Q5. Has the issue of long-term irregular migrants been subject to **inter-institutional debate** between local (municipal, regional, federal) and central level authorities in your (Member) State since 2015?

- No

Q6. Has the issue of long-term irregular migrants been subject to **public debate** (i.e. media/NGOs) in your (Member) State since 2015?

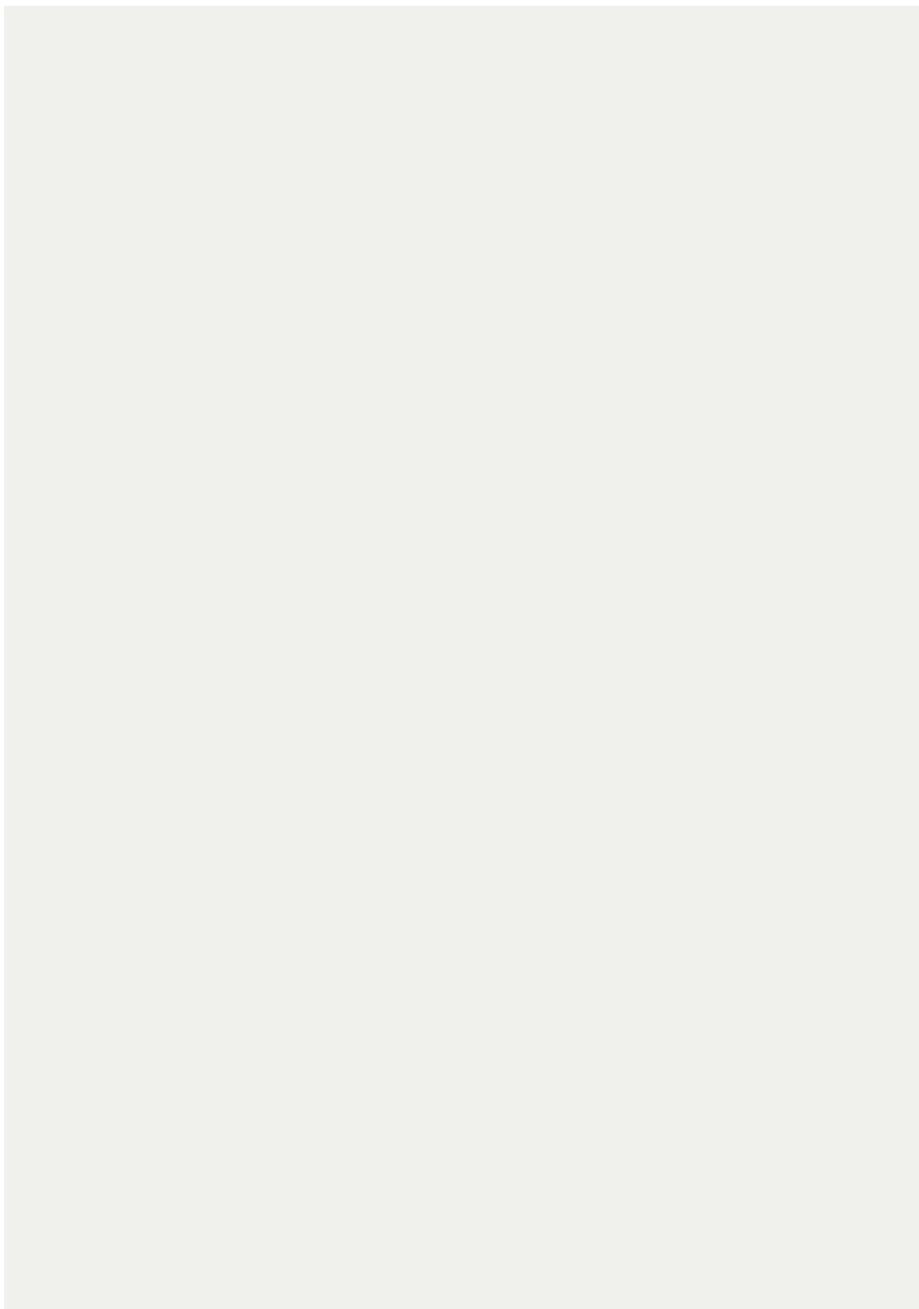
No

Q7. Has the issue of long-term irregularly staying migrants been subject to **policy or public debate** in your (Member) State specifically in connection with the measures taken in responses to **COVID-19** and their impacts?

No.

Q8. Are there any **planned changes** in law/policy/practice regarding long-term irregular migrants in your (Member) State?

No.



Section 2

NATIONAL POLICIES AND APPROACHES REGARDING LONG-TERM IRREGULARLY STAYING MIGRANTS

This section will address the following research questions:

- *Which rights and public services are long-term irregularly staying migrants provided access to?*
- *What is the role of central, regional and local authorities in dealing with this group of migrants?*
- *To what extent are regional and local authorities involved and cooperate with the central government?*
- *What is the role of civil society organisations or other entities regarding the access to public services for long-term irregularly staying migrants?*

SECTION 2.1: RIGHTS AND ACCESS TO SERVICES OF LONG-TERM IRREGULAR MIGRANTS

Q9. What **services are accessible to long-term irregular migrants** who were issued a return decision, but return cannot be implemented for legal or practical obstacles?

Firstly, we would like to point out that regarding social services in general the situation in the Czech Republic is as follows. There are social services which, due to their nature, are provided anonymously (e.g. telephone crisis assistance, street work programmes – outreach work, etc.). Street work programmes refer to services provided to people who lead a risky lifestyle or are endangered by this lifestyle. The service is intended for users of addictive substances, homeless people, people living in socially excluded communities and other socially vulnerable groups. The aim of the service is to look for these people and minimize the risks of their way of life. If the person fulfils the conditions for the provision of such a service (he is in an unfavourable social situation/ crisis/ in danger of life or health), the provider is obliged to provide the service if he has free capacity, even without a reliable identification of his/her true identity or even the legality of his/her stay in the Czech Republic. This mostly concerns services such as dormitories, street work programmes and emergency intervention services.

Table 1: Rights and services available to long-term irregularly staying migrants who have been issued a return decision**Type of stay or status as identified in Q2 and/or Q3:**

Type of service	Service provided (Y/N)	Is the provision of service mandatory or discretionary?
-----------------	---------------------------	--

Accommodation

Accommodation <i>If yes, please briefly describe</i>		
Special accommodation facilities (i.e. shelter for victims of violence, children, etc.) <i>If yes, please briefly describe</i>	Y	
Other forms of accommodation or shelter or specialised centre	Y	

<p>Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to:</p> <p>i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice?</p> <p>ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc.) as service providers on behalf of the national or local authorities?</p>	<p>Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?</p>
	<p style="text-align: right;">Less <input type="checkbox"/> / Same <input checked="" type="checkbox"/> / More <input type="checkbox"/></p>
<p><i>Dormitories (receptions centres) or shelters are part of social services as mentioned above. Providers of such services are not obliged to determine real identity of the person or his/her residence status. The provision of such services arises from international liabilities and it is rather about a "de facto" service than a right based on legal regulations.</i></p>	
<p><i>As mentioned above.</i></p>	

Healthcare

<p>Emergency healthcare</p> <p><i>If yes please describe, as this notion can be understood in a large or restrictive way</i></p>	<p>Y</p>	
<p>Basic medical care</p> <p><i>If yes, please briefly describe</i></p>		
<p>Specialised care</p> <p><i>If yes, please briefly describe</i></p>		
<p>Other healthcare services</p> <p><i>If yes, please briefly describe</i></p>		

Responses to long-term irregularly staying migrants:
practices and challenges in EU Member States and Norway

Less / Same / More

Provided in disregard of the residence status of the person.

Social assistance

<p>Are long-term irregularly staying migrants entitled to receive social benefits?</p> <p><i>If yes, please briefly describe what these benefits are</i></p>	<p>Y</p>	<p><i>Discretionary</i></p>
--	----------	-----------------------------

Employment

<p>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	<p>Y</p>	
---	----------	--

Less / Same / More

As follows from Act No. 111/2006 Coll. (on Assistance in Material Need), irregularly staying migrants can benefit from exceptional immediate assistance provided in a situation where a person is at risk of serious harm due to his income and overall social and property circumstances. They may be provided a benefit up to the amount that equals the existential minimum, in case of a dependent child up to the amount that equals minimum of subsistence.

The competent authority, which is the Labour Office of the Czech Republic, assesses each situation individually depending on the specific circumstances of the applicant. The amount of the benefit is also a matter of discretion.

Less / Same / More

If the TCN is not in possession of any residence permit, he/she is not entitled to access to the labour market.

A TCN in possession of Visa for a stay of over 90 days as special leave to stay must have a valid work permit issued by the regional branch of the Labour Office.

Education

<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	Y	Mandatory
<p>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</p> <p><i>If yes, what types of education and under which conditions?</i></p>	Y	

Less / Same / More

According to the Education Act (No. 561/2004 Coll.), section 20, the foreign nationals have access, under the same conditions as the citizens of the Czech Republic, to the compulsory (basic) education including institutional education and protective education provided that they reside in the Czech Republic, provision of meals that are provided at schools, and to leisure education provided in a school facility for leisure education in regular daily attendance, if they are pupils of a primary school, a corresponding year of secondary school or a corresponding year of a conservatory. A type of residence of pupil is not examined.

The Regional Authority having local jurisdiction at the place of residence of the pupil concerned and in cooperation with the founder of the school shall ensure that a pupil who has lived in the Czech Republic for a long period of time and is subject to compulsory school attendance under this Act, can attend free preparation for their inclusion in basic education including learning the Czech language adapted to the needs of such pupil.

As regards the higher (university/college) education the rules of access do not take the civil or migrant status of a person into consideration. Thus, irregular migrants have the same access to the university education as Czech citizens or legal migrants in case they fulfil conditions given by the Higher Education Act.

It is the same; with the exception of persons who have been granted international protection in the form of asylum or subsidiary protection or who must be regarded as a refugee or an exile or a person in a similar situation as refugees on the basis of international obligations of the Czech Republic who are not obliged to submit some documents and they are allowed to submit a sworn statement (e.g. regarding certifying of foreign higher education).

Legal aid or assistance

Do long-term irregular migrants have access to legal aid or assistance type of services?

If yes, please briefly enumerate and explain

Y

Mandatory.

If the applicant meets all criteria set down by law, the Czech Bar Association (self-governing legal professional organization) is obliged to choose a lawyer for providing legal assistance or legal service to this applicant. The only costs applicant pays are 100 CZK (approx. 4 EUR) as an administrative fee for processing the application. However, there is an exemption from paying this fee inter alia for foreigners placed in a detention facility for foreigners pursuant to the Foreigners' Act or at a reception centre pursuant to the Asylum Act.

Other?

Are any other rights relevant to mention here? Please describe.

Child without adequate care.

Y

Mandatory.

Less / Same / More

Comprehensive system of state-funded legal aid came into force on 31 July 2018 and allows access to legal assistance not only in judicial or administrative proceedings, but also to general legal advice prior to litigation. This system provides legal consultation for an applicant, whose average monthly income does not exceed, for the period of 6 calendar months preceding the filling of an application, three times the living minimum for an individual or persons assessed jointly and who is not represented by another lawyer or a person according to provisions about free legal aid.

As for the abovementioned question (i) the rules are regulated by the Act no. 85/1996 Coll., on the Legal Profession, as amended, especially by Sections 18–18d of this Act. In connection to question (ii) legal assistance and legal service is provided by lawyers recorded in the Register of Lawyers maintained by the Czech Bar Association and the Czech Bar Association decides, whether the applicant fulfils all the criteria mentioned in the abovementioned Act on the Legal Profession.

The rights and access to state-funded legal assistance and legal service are set down at the same level for nationals as for legal migrants. Additionally the foreigners placed in detention facility or reception centre have special provision for getting access to the state-funded legal aid.

Less / Same / More

If a child, who is not allowed to stay in the Czech Republic based on any kind of permanent or long-term residence permit or other residence title (Art. 2 par. 3 of Act No. 359/1999 Coll., on Social Protection of Children), finds himself without adequate care, the municipal authority is obliged to ensure that the child's basic needs are satisfied and to take measures to protect his or her life and health.

Q10. What services are accessible to other long-term irregular migrants who were **not issued a return decision**, and remained unknown to migration authorities (see answer to Q1)?

Table 2: Services available to long-term irregularly staying migrants who were unknown to migration authorities (e.g. overstayers, irregular entry)

Type of stay or status as identified in Q2 and/or Q3:

Type of service	Service provided (Y/N)	Is the provision of service mandatory or discretionary?
-----------------	---------------------------	--

Accommodation

Accommodation <i>If yes, please briefly describe</i>		
Special accommodation facilities (i.e. shelter for victims of violence, children etc.) <i>If yes, please briefly describe</i>	Y	

Brief description

Please consider for each type of services the long-term irregular migrants are entitled or have access to:

- i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice?
- ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc.) as service providers on behalf of the national or local authorities?

Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?

Less / Same / More

Dormitories (receptions centres) or shelters are part of social services as mentioned above. Providers of such services are not obliged to determine real identity of the person or his/her residence status. The provision of such services arises from international liabilities and it is rather about a “de facto” service than a right based on legal regulations.

Accommodation

Other forms of accommodation or shelter or specialised centre	Y
---	---

Healthcare

Emergency healthcare <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	Y
---	---

Basic medical care <i>If yes, please briefly describe</i>	
--	--

Specialised care <i>If yes, please briefly describe</i>	
--	--

Other healthcare services <i>If yes, please briefly describe</i>	
---	--

Responses to long-term irregularly staying migrants:
practices and challenges in EU Member States and Norway

Less / Same / More

As mentioned above.

Less / Same / More

Provided in disregard of the residence status of the person.

Social assistance

Are long-term irregularly staying migrants entitled to receive social benefits?

Y

Discretionary

If yes, please briefly describe what these benefits are

Employment

Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?

Y

If yes, please describe any specific conditions attached to their employment.

Less / Same / More

As follows from Act No. 111/2006 Coll. (on Assistance in Material Need), irregularly staying migrants can benefit from exceptional immediate assistance provided in a situation where a person is at risk of serious harm due to his income and overall social and property circumstances. They may be provided a benefit up to the amount that equals the existential minimum, in case of a dependent child up to the amount that equals minimum of subsistence.

The competent authority, which is the Labour Office of the Czech Republic, assesses each situation individually depending on the specific circumstances of the applicant. The amount of the benefit is also a matter of discretion.

Less / Same / More

If the TCN is not in possession of any residence permit, he/she is not entitled to access to the labour market.

A TCN in possession of Visa for a stay of over 90 days as special leave to stay must have a valid work permit issued by the regional branch of the Labour Office.

Education

<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	Y	Mandatory
<p>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</p> <p><i>If yes, what types of education and under which conditions?</i></p>	Y	

Less / Same / More

According to the Education Act (No. 561/2004 Coll.), section 20, the foreign nationals have access, under the same conditions as the citizens of the Czech Republic, to the compulsory (basic) education including institutional education and protective education provided that they reside in the Czech Republic, provision of meals that are provided at schools, and to leisure education provided in a school facility for leisure education in regular daily attendance, if they are pupils of a primary school, a corresponding year of secondary school or a corresponding year of a conservatory. A type of residence of pupil is not examined.

The Regional Authority having local jurisdiction at the place of residence of the pupil concerned and in cooperation with the founder of the school shall ensure that a pupil who has lived in the Czech Republic for a long period of time and is subject to compulsory school attendance under this Act, can attend free preparation for their inclusion in basic education including learning the Czech language adapted to the needs of such pupil.

As regards the higher (university/college) education the rules of access do not take the civil or migrant status of a person into consideration. Thus, irregular migrants have the same access to the university education as Czech citizens or legal migrants in case they fulfil conditions given by the Higher Education Act.

It is the same; with the exception of persons who have been granted international protection in the form of asylum or subsidiary protection or who must be regarded as a refugee or an exile or a person in a similar situation as refugees on the basis of international obligations of the Czech Republic who are not obliged to submit some documents and they are allowed to submit a sworn statement (e.g. regarding certifying of foreign higher education).

Legal aid or assistance

<p>Do long-term irregular migrants have access to legal aid or assistance type of services?</p> <p><i>If yes, please briefly enumerate and explain</i></p>	Y	<p>Mandatory.</p> <p><i>If the applicant meets all criteria set down by law, the Czech Bar Association (self-governing legal professional organization) is obliged to choose a lawyer for providing legal assistance or legal service to this applicant. The only costs applicant pays are 100 CZK (approx. 4 EUR) as an administrative fee for processing the application. However, there is an exemption from paying this fee inter alia for foreigners placed in a detention facility for foreigners pursuant to the Foreigners' Act or at a reception centre pursuant to the Asylum Act.</i></p>
--	---	---

Other?

<p>Are any other rights relevant to mention here? Please describe.</p> <p>Child without adequate care.</p>	Y	<p>Mandatory.</p>
--	---	--------------------------

Less / Same / More

Comprehensive system of state-funded legal aid came into force on 31 July 2018 and allows access to legal assistance not only in judicial or administrative proceedings, but also to general legal advice prior to litigation. This system provides legal consultation for an applicant, whose average monthly income does not exceed, for the period of 6 calendar months preceding the filling of an application, three times the living minimum for an individual or persons assessed jointly and who is not represented by another lawyer or a person according to provisions about free legal aid.

As for the abovementioned question (i) the rules are regulated by the Act no. 85/1996 Coll., on the Legal Profession, as amended, especially by Sections 18–18d of this Act. In connection to question (ii) legal assistance and legal service is provided by lawyers recorded in the Register of Lawyers maintained by the Czech Bar Association and the Czech Bar Association decides, whether the applicant fulfils all the criteria mentioned in the abovementioned Act on the Legal Profession.

The rights and access to state-funded legal assistance and legal service are set down at the same level for nationals as for legal migrants. Additionally the foreigners placed in detention facility or reception centre have special provision for getting access to the state-funded legal aid.

Less / Same / More

If a child, who is not allowed to stay in the Czech Republic based on any kind of permanent or long-term residence permit or other residence title (Art. 2 par. 3 of Act No. 359/1999 Coll., on Social Protection of Children), finds himself without adequate care, the municipal authority is obliged to ensure that the child's basic needs are satisfied and to take measures to protect his or her life and health.

Q11. Do **authorities** (at central or local level) need to **check the migration status** (or the lack thereof) **before providing access to a service** (e.g. accommodation, healthcare, education), or are there 'firewall provisions' allowing persons concerned to access services without fear of being apprehended?

The Czech Policy for the Integration of Foreign Nationals (since 2000, updated 2006, 2011 and 2016) clearly states as target group only migrants staying in the territory of the Czech Republic legally. If migrants without legal permit contact integration services (i.e. 18 Integration Centres), it is generally recommended to link them with providers of voluntary return measures.

Q12. Is **cooperation to return to the country of origin an obligation** if one of the services are provided (under Q10 and Q11) to the long-term irregularly staying migrant?

Yes

If yes, please explain the applicable procedures and how it is carried out.

All returnees are being provided with basic safeguards as stipulated in Article 14 of the Return Directive. When it comes to a voluntary return, provision of some of the services mentioned in Q.10 and Q.11 might be conditioned by co-operation of the respective returnee. This concerns particularly accommodation and extra medical care.

Q13. Are there **any specific projects and/or (ad-hoc) programmes** implemented at **local level** (by municipalities, regions, etc.) in your (Member) State specifically targeting the access to services for long-term irregularly staying migrants?

No

Q14a. With the exception of organisations acting as a service provider for public authorities (Q10 and Q11), are **other entities or organisations** (e.g. NGOs, charities, other private entities) involved in providing or facilitating access to services for long term irregularly staying migrants?

Yes

If yes, please specify which entities, what type of involvement and service (e.g. accommodation, health care, counselling) are they involved in and, which type of funding used to support their activities.

Usually, NGOs are able to provide legal and social counselling and charities can provide emergency help. In such a case, they have to provide services based on funding connected with the current situation of the person, not with his/her residential status. In such cases, their own independent resources are used very often (for example fundraising campaigns).

Q14b. Do these **entities or organisations** need to **report on the migration status** (or the lack thereof) **before providing access to a service** (e.g. accommodation, healthcare, education), or are there 'firewall provisions' allowing persons concerned to access services without fear of being apprehended?

In most of the cases subsidies are provided just for integration of legally staying migrants and often their status is checked before the provision of services.

Q15. If a long-term irregular migrant is a **victim of or witness to an offence** (e.g. labour exploitation, domestic violence, etc.), are there any available '**safe reporting**'²⁷ channels between the TCN concerned and public authorities to report the incident without divulging their situation of illegal stay?

Yes

If yes, please briefly describe the channel/reporting mechanism:

According to the Section 42e (2) of the Foreigners' Act, the foreigner who is likely to be a victim of a trafficking in human beings crime can apply for a long-term residence permit for the purpose of protection on the territory. As soon as the foreigner becomes aware of this right, he/she has 30 days reflection period to decide whether he/she will cooperate with law enforcement authorities or will not. During this period, foreigners cannot be removed from the territory of the Czech Republic.

²⁷ <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

Furthermore, it is worth mentioning – among other measures for the protection of victims – the Programme for Support and Protection of Victims of Trafficking in Human Beings (hereinafter referred to as “the Programme”), which is under the responsibility of the MoI since 2003. The Programme is a measure designed to provide support and appropriate protection to victims of trafficking based on an individual risk assessment. Specialised NGOs who come into contact with victims of trafficking in human beings can report such a case to the Programme. The victims of trafficking in human beings are granted a 60-days reflection period during which they can decide whether or not they want to come into contact with law enforcement agencies. A system of voluntary return is also included in the Programme. Within the Programme the MoI attempts to solve victim’s residence status.

Q16. Are there any **assisted voluntary return (AVR) projects or programmes** implemented in your (Member) State that also specifically foresee support to access to services (in the host (Member) State, thus before departure) for long-term irregular migrants?

No

If yes, please describe (e.g. please consider any specific conditions to access the service(s)):

Even though no special programmes aimed at the above mentioned target group are in place, plenty of initiatives and projects focusing on vulnerable foreign nationals are being implemented both by state bodies and non-governmental organisations. It concerns social care, legal consultancy, education, health care, etc., and as such they are also available for long-term irregular migrants with issued return decision.

Q17. Please provide if applicable **illustrative (and anonymised) case(s)** of measures adopted by authorities (a) at central, (b) regional and (c) local level (e.g. municipalities) to provide access to services (e.g. accommodation, health, etc.) – up to two examples.

N/A

Q18. Did any change happen in relation to access of long-term irregular migrants to social services as described above, as consequence of measures taken in response to the COVID-19 pandemic?

No

*If yes, please describe by referring to all relevant aspects and services covered in **Q10-Q17**.*

Just as a small remark, we would like to mention the situation of TCNs whose residence permit in the Czech Republic had expired after March 12th, 2020 – they had to leave the territory of the Czech Republic by July 16th, 2020 at the latest. For this period, the exit order for foreign nationals was not being issued and thus these persons were staying in the Czech Republic legally.

Q19. Is there any research available in your (Member) State on irregular migrants accessing rights and services listed above (conducted by relevant authorities, academics, NGOs, etc.)?

No

SECTION 2.2: COOPERATION MECHANISMS BETWEEN CENTRAL, REGIONAL AND LOCAL AUTHORITIES

Q20. Were specific measures (legislative, administrative, practices) implemented by central authorities to help regional and local authorities to anticipate and/or to respond to the situation of long-term irregular migrants in their territories?

Monitoring and follow-up approaches of long-term irregularly staying migrants

The regional Centres for the Support of the Integration of Foreigners (hereinafter referred to as the “Centres”) play the key role. They are operating in all 14 regions and they are established mainly in order to implement the integration policy in regions. They serve as information centres and offer a range of integration services, including the provision of legal and social consultancy, language and social-cultural courses for foreign nationals, or they organise cultural and community activities. Although they are primarily focused on assistance to legal migrants, they monitor situation in the related regions and they are in contact with local authorities, employers and schools.

- Information exchange between central and local authorities about long-term irregularly staying migrants

Regular meetings between officials from the Department for Asylum and Migration Policy of the Ministry of the Interior (hereinafter referred to as the "DAMP") and representatives of the Centres are being held. Based on the information exchange, important practical or legislative measures are being taken. Also, representatives of the DAMP regularly meet representatives of the local and regional authorities and of the Union of Towns and Municipalities of the Czech Republic.

- Guidance or any other form of established practice made available to regional and local authorities on how to assist long-term irregularly staying migrants (e.g. training sessions, guidance (e.g. written instructions or guidelines), other)

N/A

- Other measure(s)

The Czech Republic aims at improving infrastructure of return assistance and therefore, regional employees of the MoI have focused on implementation of voluntary return and return counselling has been established in selected regions of the Czech Republic this year. The project is co-financed by AMIF and one of its objectives is strengthening co-operation between local and regional authorities on one hand and the MoI on the other hand in the area of addressing situation of irregularly staying migrants with issued return decision.

Q21. Do local authorities in your Member State participate in **horizontal cooperation networks** (of local authorities) to develop good practices and/or programmes to address the situation of long-term irregular migrants?

No

Q22. Were there any studies or research published on the effectiveness of any of the measures mentioned in Q21?

No

SECTION 2.3: GOOD PRACTICES

Q23. What are **good practices** regarding policy measures concerning long-term irregularly staying migrants?

- Providing services (housing, health care, other measures)
- Exchanging information between national and local authorities on long-term irregularly staying migrants

Within the Police of the Czech Republic the information exchange is set by obligatory instruction of the police president regarding collection and evaluation of information and threats and risks in the area of regular and irregular migration. By the Regional Directorates of Police there are analytical teams established in order to secure regular information exchange.

Exchanging information between Member States?

Regular information exchange with neighbouring states, FRONTEX and other EU institutions takes place.

Other good practices

Section 3

RESPONSES TO END LONG TERM IRREGULAR STAY

This section aims to research the following:

- *What measures (e.g. policies, practical tools, guidance) were implemented to bring protracted situations of illegal stay to an end?*
- *Were there any studies or research published on the effectiveness of these measures?*
- *What are the key challenges and good practices in terms of policy regarding long-term irregularly staying migrants?*

Q24. What options are available in your Member State to end long-term illegal stay of third-country nationals (e.g. return, legalisation of stay, other)? Which are prioritized?

If the foreign national has irregular status and was issued a return decision, voluntary return is a priority.

There are also other options available stemming from the Foreigners' Act, which can be described in three steps:

1. Visa for stay over 90 days as a special leave to stay in the Czech Republic, please see Q2.

2. This visa can be prolonged. In a case that stay of foreigner will be longer than 1 year, the foreigner can be granted long-term residence permit for the purposes of special leave to stay.

According to the Section 43 of the Foreigners' Act the MoI shall grant a long-term residence permit as leave to stay in the territory to a foreign national who has been granted a visa for a stay of over 90 days as leave to stay provided that the foreign national has resided in the territory for longer than 1 year and grounds on which the visa was granted persist.

3. If the stay according to Section 43 (long-term residence permit for purposes of special leave to stay) will be longer than 3 years, standard long-term residence permit can be issued.

Section 42, par. 2 of the Foreigners' Act stipulates that an application for a long-term residence permit may also be submitted by a foreign national who has been residing in the territory on the basis of a visa for a stay over 90 days as leave to stay and is subsequently residing in the territory on the basis of a long-term residence permit as leave to stay, issued pursuant to Section 43, if he/she has been residing in the territory continuously for a period of at least 3 years.

SECTION 3.1. MEASURES TO PROMOTE RETURN OR DISCOURAGE ILLEGAL STAY

Q25. What measures to **promote return or discourage illegal stay** are in place in your Member (State) specifically for long term irregular migrants (as identified in this study)?

As the situation of irregularly staying foreign nationals might differ significantly, the measures promoting their return may have various forms. The aim of the Czech programme is to seek to conduct thorough consultations with as many irregular foreign nationals as possible in order to identify their needs and possible solutions. Many of them are in financial stringency and therefore, options for their smooth return to even very remote village in their country of origin can play a big role in their decision to return. Their smooth voluntary departure can be supported by some extra assistance in terms of providing temporary accommodation both in the Czech Republic and the country of origin, travel insurance or any medical examinations necessary for entry into the country of origin. Also, a co-operation with the International Organization for Migration (IOM) is established on additional assistance regarding the transport and post-return assistance in the selected third countries of origin. Promotion of all these activities and the voluntary return programme as a whole is of an utmost importance since long-term irregular migrants often do not have means or proper access to information sources. Therefore, sensibilisation of local and regional authorities (police, social departments of municipalities and hospitals, social care institutions) aimed at informing them about voluntary return and its advantages for irregular migrants is also one of the measures promoting the return.

Q26a. What are the **good practices as identified in your Member States to promote return or discourage illegal stay** for long term irregular migrants identified in your (Member) State?

Please see Q26.

Q26b. Is there any research available in your (Member) State on **promotion of return or the discouragement illegal stay** (conducted by relevant authorities, academics, NGOs, etc.)?

No

Q27. Please provide **illustrative example(s)** of responses and/ or good practices to **promote return or discourage illegal stay** adopted by authorities (a) at central level, (b) regional and/or (c) at local level (e.g. municipalities) – up to two examples, in the form of anonymised case studies of individual long-term irregularly staying migrants):

(a) An enhanced cooperation between MoI and selected consulates has been established, inter alia, in the area of identification and issuance of travel documents. The cooperation involves also informing the representatives of the consulates about voluntary return programme. Based on the provided information several third-country nationals with a valid return decision and interest to voluntarily return to their country of origin have been referred to the ministry by some of these consulates.

As the respective third-country foreign nationals are already in touch with their consulates, MoI does not need to further conduct any steps leading to their identification and issuance of valid travel document.

(c) Based on previous contacts and information campaign conducted by the MoI, an employee of social service of a local state hospital provided MoI, specifically its return unit responsible for implementation of voluntary returns, with an information about hospitalized third-country national whose stay in the Czech Republic was irregular for several years. The foreign national also benefited from an assistance by a local NGO who provided the ministry with complementary information about his status and background. Following the assessment of the case and after providing a detailed introduction of the programme to the respective foreign national and his/her consent to return to the country of origin voluntarily, the MoI assisted this person in his return back to the country of origin.

SECTION 3.2: LEGALISATION OF STAY OPEN SPECIFICALLY TO LONG-TERM IRREGULAR MIGRANTS

Q28. Are **options for legalisation of stay** open specifically to long-term irregular migrants in your Member (State)?

There are no options open specifically to long-term irregular migrants. For the general legal options for legalisation of stay please see Q25.

Q29a. What are the **good practices as identified in your Member States with regards to legalisation of stay** identified in your (Member) State?

N/A

Q29b. Is there any research available in your (Member) State on **practices with regards to options for legalisation of stay** available specifically to irregular migrants (conducted by relevant authorities, academics, NGOs, etc.)?

No

Q30. Please provide **illustrative example(s)** of responses and good practices related to the **legalisation of stay measures** adopted by authorities (a) at central level, (b) regional and/or (c) at local level (e.g. municipalities) – up to two examples, in the form of anonymised case studies of individual long-term irregularly staying migrants:

N/A

SECTION 3.3.: MEASURES TAKEN IN RESPONSE TO THE COVID-19 PANDEMIC

Q31. Were measures taken to end the situation of long-term irregular migrants specifically in connection to the responses to and **impacts of the COVID-19** (e.g. legalisation of migrant workers employed in specific sectors)? Please describe.

No.

Section 4

CHALLENGES AND FUTURE ACTIONS

Q32. What are the challenges regarding **policy measures** concerning long-term irregularly staying migrants?

- Providing services (e.g. housing, health care, etc.)
- Challenges exchanging information and/or cooperation between national and local authorities on long-term irregularly staying migrants
- Challenges exchanging information between Member States?
- Other challenges (e.g. other measures mentioned in Section 3)

Q33. What are the challenges regarding **policy measures** concerning long-term irregularly staying migrants specifically linked to the repeses to and impacts of the **COVID-19 pandemic**?

None.

Q34. What are the challenges of **promoting return or discouraging illegal stay** concerning long-term irregularly staying migrants? Please describe any additional challenges specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

As mentioned above, it is important to raise awareness about return options of both local authorities and the foreign nationals in questions. It might be challenging to reach particularly the latter. Those persons also might feel insecure and fear the communication with officials or their cooperation might be insufficient. Further challenges might arise with reintegration activities in the country of origin if implemented.

Q35. What are the challenges regarding the **options for legalisation of stay** available to long-term irregularly staying migrants? Please describe any additional challenges specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

N/A

Q36. According to (central and/or local) stakeholders in your (Member) State, what actions could be taken **at EU level** to support (Member) States to effectively cooperate and overcome the challenges faced in relation to long-term irregularly staying migrants?

Actions on EU level do not require any further steps above those which are already considered within overall EU return policy. An important

element is the sufficient cooperation of relevant third-country consulates even in cases of irregular long-term migrants where further assistance of health or social institutions in the country of origin might be required. Tools and mechanisms available in current EU acquis have a potential to positively impact such cooperation.

Section 5

CONCLUSIONS

The issue of the long-term irregularly staying migrants is not a principal topic in the Czech Republic, it is not a subject of a public, political, legislative or inter-institutional debate on any level and therefore, there are no measures taken towards them. Yet, in this contribution, as mentioned in the introduction, there are following options premised: (1) irregularly staying migrants who are unknown to the migration authorities and (2) irregularly staying migrants who are known to the migration authorities and thus their status is somehow being solved – in fact, they cannot be irregular and known to the authorities at the same time (exit order/ return decision/ special leave to stay, etc. must be issued).

As regards the first group, there are no relevant estimations on numbers of irregular migrants, no platforms or services destined purposely to them. From this point of view, it is not possible to distinguish between short-term and long-term irregularly staying migrants in the Czech Republic either. Thus, most of the contribution is related to the second group of migrants, known to the migration authorities.

Even though, there are no services purposely designated to the irregular migrants, they might be provided with some social services targeted for all persons regardless of their status on the territory such as a place in special accommodation facilities (dormitories, shelters, reception centres), emergency healthcare, social assistance, compulsory education, legal aid or assistance and, in case of a child without adequate care who

is not allowed to stay in the Czech Republic, the municipal authority is obliged to ensure that the child's basic needs are satisfied and to take measures to protect his/her life and health. Depending on the status of the person on the territory, also other services are available.

In the Czech context, several key facts concerning the topic should be raised:

- > Once the foreign national is in the irregular situation, his/her return is a priority. If the return decision is issued, voluntary return is preferred. In the area of voluntary returns, the programmes of assisted voluntary returns are implemented by the MoI's Department for Asylum and Migration Policy, the International Organisation for Migration, and the Refugee Facilities Administration of the MoI. The system of voluntary returns is also included in the MoI's Programme for Support and Protection of Victims of Trafficking in Human Beings.
- > General options how to end or avoid the irregular situation, except the return, are:
 - 1) Exit order (the foreigner is obliged to leave the Czech Republic within certain period of time).
 - 2) Visa for stay over 90 days as a special leave to stay in the Czech Republic.
 - 3) This visa can be prolonged. In a case that stay of foreigner will be longer than 1 year, the foreigner can be granted long-term residence permit for purposes of special leave to stay.
 - 4) If the long-term residence permit for purposes of special leave to stay will be longer than 3 years, standard long-term residence permit can be issued.

The content of this study

**RESPONSES TO LONG-TERM IRREGULARLY STAYING MIGRANTS:
PRACTICES AND CHALLENGES IN EU MEMBER STATES AND NORWAY**

represents the views of the author only
and is his/her sole responsibility.

The European Commission does not accept any responsibility for use that
may be made of the information it contains.

**RESPONSES TO LONG-TERM IRREGULARLY STAYING MIGRANTS:
PRACTICES AND CHALLENGES IN EU MEMBER STATES AND NORWAY**

Author: EMN Contact Point in the Czech Republic

Published by the Ministry of the Interior

Graphics by Jindřich Hoch

2020

ISBN 978-80-7616-080-4

www.mvcr.cz
www.emncz.eu

 [@EMNCzech](https://twitter.com/EMNCzech)