EMN-Study: Long-term irregular staying migrants in Austria. Practices and challenges
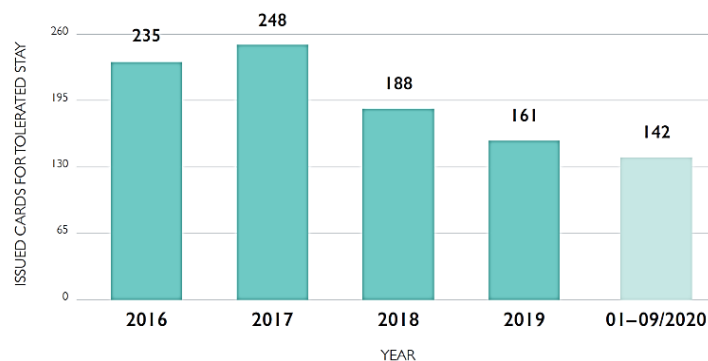
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SUMMARY

Due to the specific aspects of irregular migration, exact figures on the number of individuals staying irregularly in Austria are not available. However, irregular migration in Austria is a recurring topic in the political and media debate. Nevertheless, this issue is only dealt with selectively by Austrian policy-makers. The focus is predominantly on preventing further irregular migration to Austria and the return of irregular staying migrants, whereby the Austrian political decision-makers focus, among other things, on voluntary return.

In contrast, a political prioritization of regularization is not apparent in Austria. This conclusion results, among other things, from the fact that so far there have been no general regularizations of certain groups of irregular staying migrants, as they have been implemented in other European countries. The possibilities to regularize residence are also limited on the individual level. Under applicable law, the most promising route to regularization appears to be tolerated stay. Since the authorities apply highly restrictive principles when granting such a stay, however, irregular staying individuals face challenges in achieving this status. Even when tolerated, an individual's stay remains unlawful, as this status is only a basic prerequisite for obtaining a residence permit at a later point in time and thus actually being regularized. It thus comes as no surprise that specialists active in this policy area have not identified any good practices relating to the regularization of stay.

Number of Cards for Tolerated Stay issued in Austria (2016–2020)

Note: Data on tolerated stays are available only from 2016 onwards.
Source: Written input: Federal Ministry of the Interior, 20 October 2020.

In Austria, there is no (legal/practical) distinction between short-term and long-term irregular staying persons – as envisaged in the context of this EMN study – so that the duration of stay does not play a role in the categorization as irregular staying person. Other circumstances are decisive – for example, that asylum seekers have evaded the procedure and continue to stay in Austria. Another category is formed by those persons whose right of residence has ended and who have thus come into an "irregularized" situation, as well as persons against whom a return decision has been issued, which cannot be enforced for legal or practical reasons. A continued stay is therefore tolerated for these individuals. Finally, there is also a group of migrants in Austria who remain outside the purview of the authorities. The specific circumstances of irregular residence can make a significant difference, especially in terms of access to social benefits for irregular staying persons.

There are areas that are open to all irregular staying migrants, such as school attendance and legal counselling. In the case of accommodation and health care, on the other hand, the focus lies on the closer circumstances of the irregular stay, and persons without a right of residence who cannot be returned for legal or practical reasons are given a better position.

Those persons who are irregularly staying for other reasons generally have no access to public services and are therefore dependent on care provided by non-governmental or religious organizations, unless they are able to provide for themselves. In order to reduce the disadvantages associated with (long-term) irregular stay for all sides, experts suggested developing common standards at the European level. These uniform standards should define the criteria for immigration to Europe, for a standardized residence permit and a coordinated return strategy.