



■ ACTIVEREND ONDERZOEK NAAR DE POSITIE VAN ILLEGALEN OP DE NEDERLANDSE ARBEIDSMARKT

Illegal immigrants and illegal labour An international issue

Brief summary of the results of the activating study on illegal immigrants and illegal labour

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A: Study

Motive

In the complex field of immigration, labour market and social security, it is obvious that various parties in society find it difficult deal with the issue of illegal immigrants and illegal labour. Actors such as the government, employers and trade unions do not only lack a coherent view on the meaning and consequences of the presence of an ever fluctuating group of illegal immigrants in Dutch society, but also on perspectives to act in order to face this issue in an adequate way and in consideration of the future. In the practical situation where decisions and choices have to be made, every actor applies its own perspective and the method of dealing with this issue is fragmented. In order to change this situation, the BMP foundation, with financial support of the GAK foundation institute, carried out an activating study on illegal immigrants and illegal labour. The results of this study will be discussed at the conference “Illegal immigrants and illegal labour, an international issue”.

Questions

1. To what extent are the ideas correct that are applied in the social and political discourse with regard to immigrants and illegal labour correct?
2. What are the ingredients for a more integral approach of the issue of illegal immigrants and illegal labour?
3. What are the possible perspectives for social and political actors to act in the short and long term with regard to this issue?

Four research lines

1. Literature exploration

At the request of BMP Will Tinnemans has examined recent publications about illegal immigrants and illegal labour. He tried to find more specific data information and analyses with regard to:

1. The position of illegal immigrants
2. The backgrounds and effects of the policy
3. Relevant broader social, economic and demographic developments.

The results of this exploration, which are based on thirty-six publications, ten articles and eleven websites, are represented in a separate publication.

2. In-depth interviews

Employees of the BMP foundation have conducted 22 in-depth interviews with persons who are involved in the issue of illegal immigrants and illegal labour because of their function and/or position. (See appendix 1). These persons were asked to not only state their functional view on the issue itself, but also their personal views and the issues they have to tackle.

3. Written panel discussion according to the Delphi method

Forty persons from various social sectors participated (anonymously) in a panel discussion in three rounds. In this panel discussion the issue was explored and analysed in different ways. In the first round there were many open questions with regard to the own experiences and assessments. It was based on the same three aspects as in the literature exploration:

1. position of illegal immigrants
2. policy
3. broader developments

In the second round the questions from the first round were further discussed and a few new subjects were added. The results from the first two rounds have been incorporated in this note. The third round, which focused on perspectives to act, will be presented during the conference. A separate report and a summary were drawn up of every round. (For the composition of the panel according to function, see appendix 2.)

4. Discussion in the initiative group

As part of the activating study an initiative group came together twice during the process to assess the content-related and positional aspects of the issue. The reports of these discussions are an input for this note. (See appendix 3 for the composition of the initiative group)

Structure of note

This note outlines the results of the study. These outlines are:

1. Illegal immigrants

- Motives and choices
- Changes in composition group, position etc.

- Important issues
- 2. Policy**
- Motives
 - Effects
 - Tenability
- 3. Broader developments that are relevant**
- Economic
 - Demographic
 - Social/cultural
 - Political

At the end of this note conclusions will be drawn on the basis of the first two research questions. The question regarding perspectives to act will be examined in particular during the conference. In addition to this summary, there will also be a broader publication about the results of the study.

B: Results

Illegal immigrants

When illegal immigrants are discussed, it often involves numbers and their threat to society. The literature, interviews and panel also place them in a broader context.

Motives and choices

The panel study shows that the group of illegal immigrants can broadly be divided into three, sometimes overlapping, categories

1. Labour migrants
2. Asylum seekers
3. Victims of trafficking in human beings.

It remains unclear what numbers are involved. Estimations vary between 46,000 and 225,000 persons. We have noticed that people often quote each other. Spijkerboer points out that political considerations also play a role with regard to the numbers that are mentioned. (You can make the problem as serious as you want and demonstrate how effective the policy is or not). In the literature it is also observed that the estimations applied in Europe regarding the number of illegal immigrants are often based on guessing and rumours.

The majority of the panel members and interviewees think that illegal immigrants come to the Netherlands to find work here. They state that there is a difference between traditional labour migrants, who either went to the Netherlands through recruitment or first came here as legal migrants and later became illegal migrants, and the current influx of migrants who often come here illegally (Joanne van der Leun et al.). Other motives why illegal immigrants come to the Netherlands, apart from work, are also mentioned, such as: seeking asylum, family reunification, love, study etc. Various panel members noted that the motives of illegal immigrants do not basically differ from those of other migrants. In the interviews and literature it is argued that poverty in itself is not a sufficient explanation for migration behaviour (Boomkens, Staring, the Haas and Leerkens). The demand for labour, the presence of legal fellow countrymen and availability of housing also play a role. In this respect Boomkens and Doornik also mention the assessments that people make of their chance of

progress and development and the (whether or not distorted) ideas that exist with regard to the modern, free west, which can be heard and seen everywhere through modern means of communication. Illegal immigrants themselves experience that whoever ends up as an illegal immigrant in the process of migration is largely the plaything of fortune. According to most panel members, interviewees and researchers, the question who are legal immigrants and who are illegal immigrants is greatly determined by the policy decisions of the government.

Changes

The group of illegal immigrants is changing, in the sense that:

- There is an increasing shift in the countries of origin: from traditional countries of labour migration such as Morocco and Turkey to African countries and countries on the borders of (Eastern) Europe.
- The groups are more diverse: more children (some have already been here illegally for twenty years), more women, more elderly people.
- The motives of illegal immigrants to go to the Netherlands have become more diverse (apart from immediate work, also general improvement of one's situation, fleeing violence etc.).
- The psychological and general health condition of illegal immigrants is deteriorating
- An increasing number of people are entering the Netherlands through trafficking in human beings and human smuggling.
- There is a shift from work for undeclared payment in the formal economy to work for undeclared payment in the informal economy.

Important issues

Marginalisation

The panel was asked about the most important issues as regards the position of illegal immigrants. They referred to the increased marginalisation of illegal immigrants in the sense of growing poverty, desperation and fear, general lack of rights and poor health. Many panel members link this development to the policy implemented by the government with respect to illegal immigrants (the policy stimulates marginalisation). This view is supported by the literature and in-depth interviews that referred to this subject.

Competitive conditions

A second issue mentioned by the panel members concerns the competitive conditions between legal and illegal employees and companies who are willing to work with illegal immigrants or not. In the interviews most parties do not consider this to be a major issue. In fact, only union representatives mention competition (and in particular the displacement of employees by cheaper workers) as a major issue in connection with illegal immigrants. In the second panel round this subject was further explored (see page 7)

Nuisance and health care

A limited group of panel members and also a few interviewees also state that nuisance in the large cities is a major issue. In particular representatives of local politics mention rack-renting and inconvenience as a problem related to illegal immigrants.

Panel members and interviewees employed in the health care note that they have the feeling that they are the “drain” of politics. (They can just about help the most difficult cases. In their view the problems are caused by current policies.) Illegal immigrants state that they do not have any access to the health care, because they have to pay for everything and therefore often

wait until it is too late. The existing entitlement to benefit hardly seems to offer relief in practice.

Crime

In the social debate illegality is often equated with crime. This study puts this view very much into perspective. Criminal acts of illegal immigrants mainly concern violating the Aliens Act (no valid residence permits or no work permit) fraud (with tax and social insurance number etc.) and offences such as theft and drug trade. A significant part of the panel refers to this as 'survival crime'. This term is also used in the literature. A few interviewees (for example Paul Scheffer) warn that the term 'survival crime' is a veiled term. Joanne van der Leun points out that current policies contribute to the increase in crime among illegal immigrants.

Children

In interviews with illegal immigrants the issue of illegal children has been repeatedly discussed. It hereby concerns children from traditional illegal labour migrants who have sometimes already been living in the Netherlands illegally for twenty years, children of asylum seekers who have exhausted their appeals and children of victims of trafficking in human beings who sometimes were born as a result of rapes. This issue was submitted to the panel in the second question round. The existence of illegal children places the panel members in a great moral dilemma. Some people are afraid that the consequence of the legalisation of these children is women will intentionally have children. However, in the end the majority of the panel decides that these children must be entitled to temporary residence on humanitarian grounds.

Migration as a permanent phenomenon

Although a number of authors and interviewees think that the illegal migration to the Netherlands can be countered, most authors, interviewees and panel members think that the migration to Europe will continue as long as underdevelopment exists in some parts of the world. They state that the motives and intentions of migrants are stronger than any border inspections. According to the panel, interviewees and literature, the Netherlands actually does not have any immigration policy or migration policy. Hence there are hardly any possibilities to enter the country legally, which means that many persons will try to do this illegally.

Policy

Motives for the policy

The policy as regards illegal immigrants has become much stricter since the 1990s. As a result of the introduction of the Benefit Entitlement Residence Status Act in 1998 and the Aliens Act in 2000 and the Foreign Nationals Employment Act of 2005, the possibilities of people to stay and/or work legally in the Netherlands have been greatly reduced. It is striking that in recent policy documents of the state government (for example, the Illegal Residents Policy Document by the Ministry of Justice) no real motives are mentioned for the policy with regard to illegal immigrants. The main line of reasoning is: it is illegal and it must therefore be fought. The focus is on the inconvenience caused by illegal immigrants. No other sector links the stipulation of what is prohibited so strictly to the bounds imposed by the policymakers. However, the whys and wherefores of the bounds between what is legal and illegal are not examined in policy documents. The measures advocated by the government mainly include higher fines for employers who employ illegal immigrants, picking up and deporting illegal immigrants (despite the fact that illegal residence is not punishable in itself), deporting

asylum seekers who have exhausted their appeals and actively deporting criminal illegal immigrants.

Political climate

According to the majority of the panel and of the interviewees the underlying motives of the policy are based on nationalism, the current political climate, fear of foreigners, fear in general and the demand for clarity. In general they qualify the policies as repressive. In this respect Van Kalmthout points out that it is surprising that very much work for undeclared payment (he calls this illegal labour) is carried out by students, people with a benefit and others, however the only form of illegal labour that is tackled so harshly is illegal labour by migrants. He regards this as an expression of fear of foreigners.

Persons in favour of the current strict policy with regard to illegal immigrants and illegal labour mention three arguments:

1. It is prohibited, so therefore not allowed
2. Illegality and crime go hand in hand, so illegal residence and illegal labour must be fought.
3. The country of the Netherlands is full

These arguments are countered by others. According to many, the proposition that it is prohibited and therefore not allowed does not apply in this case, because the boundary of who is an illegal immigrant and who is not is so random and, moreover, does not have any genuine moral basis (in contrast with the proposition that stealing is prohibited and therefore must be tackled).

The fact that illegality and crime do not automatically go hand in hand has already been discussed. The argument that the Netherlands is full is in particular used by Van Os van den Abeelen and to a certain degree by Paul Scheffer. They refer to the so-called absorption capacity in Dutch society. Others mention the more open American model as an example where these types of arguments do not play a role, because immigration is mainly regarded as a contribution to the economy, and therefore to the prosperity of others.

As a matter of fact, the advocates of the current policy also think that a more humanitarian approach is possible and even necessary in most cases.

A number of interviewees and panel members do not necessarily support the current policy with regard to illegal immigrants, but mention certain arguments for restricting the admission of (new) labour migrants. They refer to:

1. the protection of the welfare state
2. the protection of the economy against dishonest competition

Welfare state

In the second round of the panel discussion and also in a number of interviews it is argued that the protection of the welfare state can only be partly used as an argument. The problem only occurs with regard to the aspect of the payment of contributions. If employers do not pay contributions for certain labour, this undermines the system in a certain sense. However, illegal employees do not rely on this system and, moreover, this argument does not in particular apply to illegal immigrants, but also to work for undeclared payment in general. It is also pointed out that the Netherlands is busy reforming the welfare state and allowing a greater market mechanism. Representatives of employers and trade unions state that it is also wise to include a future perspective on labour migration in these reforms.

Competitive conditions

The panel mentions various sectors in which competition exists between companies because they work with illegal immigrants. The horticulture, the building sector, the hotel and catering industry are often mentioned in this respect. However, only a few interviewees and panel members see a clear argument for the current policy of protecting competitive conditions in relation to illegal immigrants. There are several aspects to this issue. For example, Joanne van der Leun and Marijke Bijl point out that illegal labour helps to maintain the competitive position of, for example, the Dutch horticultural sector (the third motor of the Dutch economy) compared to other countries where labour is cheaper. However, Paul Scheffer and Piet Emmer do not think that this is an argument. They think that if certain branches cannot survive anymore in the Netherlands, they will have to go elsewhere, instead of employing illegal immigrants here.

In the panel it is argued that the admission of East European countries to the EU creates a competition on many fronts between more expensive labour and cheaper labour. Many panel members expect a realignment of economic activities in the near future and a related redistribution of welfare within Europe. They do not necessarily regard these changing economic relations as negative. It will also bring about many new challenges. In addition to this, a few economists state that the contribution of illegal labour to the Dutch economy is so small that it is not necessary to be concerned about this.

Displacement

At this moment expensive workers are being displaced by cheaper employees. This hardly involves illegal immigrants, however, but rather legal workers from Poland, for example, (lorry drivers). This is because employers and local authorities were not able to find Dutch employees for the work that is now being done by illegal immigrants. In this respect Sip Nieuwsma is very concerned about the future chances of the current generation of students at the pre-vocational secondary education (VMBO), whose work ethic and know-how do not fit in very well with the business sector. Many interviewees and panel members think that the displacement of workers is a short-term effect and that trade unions will be ignored by emphasising this argument too much.

There is one sector where competitive conditions can certainly be disrupted by employing illegal immigrants: the temporary employment branch. Since everybody can start their own temporary employment agency, many illegal temporary employment agencies have their own recruitment systems and sometimes even recruit illegal immigrants abroad. According to Hans Kamps, chairman of the ABU, bona fide temporary employment agencies are greatly affected by the practices of these illegal mediators.

Effects of the current policy

Not many persons are happy about the effects of the current policy. Many panel members are of the opinion that the current policy leads to an increasing polarisation in society. Opponents of the policy point out that the policy itself creates illegal immigrants and that it contributes to the further marginalisation of illegal immigrants and drives people into the hands of human traffickers. Illegal immigrants are increasingly going underground and the risk that they resort to crime is increasing. It is also argued that the current policy violates the human rights of illegal immigrants in many ways. Illegal immigrants are locked up in prisons and hardly have any rights. It seems as if human rights in the Netherlands are not particular civil rights.

People who view this issue from an economic perspective think that human capital and economic creativity are not used as a result of the current policy. Those who are involved in

the policy and the system of deporting illegal immigrants point out that the costs of tracing, locking up and deporting are very high in comparison with the number of “successful” deportations.

The advocates of the current policy are also not very satisfied with its results. They think that there are too few actual deportations and that the various inspection services and tiers of government are working alongside each other.

Many interviewees and panel members refer to the policy as ambiguous. For example, they mention:

1. The difference between the policy and practice (for example, tolerating and prosecuting)
2. Difference between the national and municipal policy
3. Difference between the economic policy and aliens policy

Rianne Weesenbeek has experienced in practice that the Benefit Entitlement Residence Status Act and the emphasis on legitimatisation create a fear within health organisations to help illegal immigrants. After all, everything is registered and all costs are passed on. This means that the help to a small number of illegal immigrants, which is important from a human perspective, sometimes threatens the existence of a whole mental health care institute.

Tenability of the policy

Most of the interviewees and panel members are of the opinion that the current policy with regard to illegal immigrants is not tenable. This opinion is largely supported by the literature. (For example, Cornelius and Tsuda.)

The arguments mentioned in this respect are as follows:

- The policy does not offer any solutions to humanitarian issues (for example, with regard to asylum seekers who have exhausted their appeals, children of illegal immigrants, victims of trafficking in human beings)
- The policy is not linked to a migration policy, as a result of which there is no solution for labour market issues, for example.
- The policy and in particular the way in which it is implemented does not offer any room for discussion and development of viewpoints
- With such a policy and related political attitude the Netherlands isolates itself from the rest of the world and ignores major international economic developments.
- The costs of the policy are too high.

Frank Kornaat and Remco van Toorn point out that Europe may be regarded as a waterbed with respect to illegal immigration. When you push a waterbed down in the Netherlands, it comes up in another country. Throughout the years the illegal migration to Europe has remained rather constant. People who are excluded in the Netherlands will find their way to other countries. Kornaat and Van Toorn therefore advocate a common European policy.

The majority of the panel thinks that the issue of exploitation should be dealt with, even though illegal immigrants may think that they are better off in the Netherlands. In this respect the panel members want to tackle the exploiting parties and not so much the persons that are being exploited.

With regard to the future policy, a majority of the panel advocates a combination of legalisation of certain groups of illegal immigrants (on humanitarian grounds) with new (flexible) systems of admission to the labour market. In the literature and interviews it is argued that a more open and more flexible attitude with regard to labour migration means that

people will also leave the Netherlands sooner again, because they do not have to be afraid that they will never be able to return again and also because they are not bound by suffocating financial ties with human traffickers. (For example, see the relatively short labour cycles of legal Polish employees.). In addition, such a policy will also reduce the number of victims of trafficking in human beings, because it is also their primary motive to seek work and better living conditions (Ruth Hopkins).

C. Broader developments

Economic developments

Many interviewees, such as Sweder van Wijnbergen and Harry Garretsen, but also many panel members and various publications state that there are many economic arguments for a much more flexible attitude towards (illegal) labour migration. Not only are illegal immigrants hard workers, but it is also strange that a free movement of capital and goods is advocated, but not a free movement of labour. It would be better to consider developments in the field of demand and supply regarding workers from a European and worldwide perspective instead of solely a Dutch perspective. Developments such as the transfer of production to low-wage countries and the emergence of new economies such as India and China make it necessary to develop a broader view on the future. A more flexible attitude with regard to labour migration should be an integral part of this. This view is based on the idea that there should always be competition and that it is better to anticipate new developments than rigidly defending existing relations.

Globalisation

In the literature (for example, Saskia Sassen) it is argued that the advancing globalisation does not only result in a mobility of capital and goods, but also of brainpower, information flows, people, and creativity. In the past emigration really meant 'saying goodbye', according to Boomkens. However, nowadays it is much easier to remain in contact with one's country of origin through all the different means of communication. The time that migration had a definitive character is increasingly a thing of the past. International mobilisation irrevocably leads to more contacts with foreigners and a loyalty towards several countries and cultures. The new world cities are characterised by an extensive informal economy that offers ample opportunities to newcomers and are a stimulus for the formal economy. The question is what the position of, for example, the Dutch cities will be in the long term if such a development will not take place in the Netherlands, for example through its restrictive policies. Furthermore, it is to be expected that the fast information flows and related ideas that exist about the opportunities in the US and Europe will directly affect the choices of individual migrants in less developed areas. Migration flows will continue to take place as long as there is a structural inequality in the world.

Ageing/dejuvenation

Although a study of the Social and Cultural Planning Office (SCP) shows that importing labour is no solution to the issue of ageing, many panel members nevertheless expect that ageing will certainly result in an increasing demand for foreign workers. Some expect that this will take place in several sectors of the Dutch economy, while others think that it will mainly concern the demand for nursing staff. They think that if this cannot be arranged in a legal

way, the percentage of illegal immigrants in the service sector and the caring professions will certainly increase.

Reduced significance national state

Another point of attention is the reduced significance of the national state. In connection with the European unity, but also as a result of other social and political developments it is to be expected that the influence and power of the national state will decrease in significance. Boomkens emphasises that the Dutch politicians do not have any authority anymore and thinks that this phenomenon is caused by globalisation, as a result of which many drastic decisions are taken on other levels. This development implies that the idea that the current policy regarding illegal immigrants is solely a Dutch policy is not tenable and that the issue must be viewed in a broader perspective. Some people therefore advocate tackling the issue of illegal immigrants and illegal labour in a European context. For example, Hans Kamps expects that open borders within Europe will result in a legal supply of workers. Others argue that a shift from a Dutch fort to a European fort is no real solution to the issue, because worldwide developments and the forces behind migration flows are ignored: “then they will continue to shoot people who are trying to climb gates along the borders of Europe”.

D. Conclusions

Are the ideas of people correct?

As demonstrated above, the ideas people have about illegal immigrants and illegal labour are often not correct. The group of illegal immigrants is much more diverse than people often think. It does not only involve asylum seekers who have exhausted their appeals and criminals, but also persons for example who have already been living here for more than twenty years, and children and victims of trafficking in human beings. Although the main motive of many illegal immigrants is finding work, there are more motives that play a role, such as family reunification, love and an opportunity to develop one’s talents. In contrast with most politicians, the participants in this study are very worried about the marginalisation of illegal immigrants, which is considered to be a consequence of the current policy.

According to panel members, interviewees and the literature, the arguments that are mentioned for conducting a restrictive policy only partly hold in practice, or do not hold at all. They differentiate between illegality and crime, which is a link that is often made, and argue that protection of the welfare state and honest competitive conditions can only be regarded as arguments for a restrictive policy to a certain degree. Displacement on the labour market only occurs to a limited extent, because there are hardly any Dutch people who want to do the work that is done by illegal immigrants. According to many panel members and interviewees, the current strict policy is based on the current political climate, fear of foreigners, fear in general and a need for clarity.

Advocates and opponents of the current policy state that they only refer to the effects of the policy. It contributes to a further marginalisation of illegal immigrants, and forces people into the hands of human traffickers. Moreover, the costs are relatively high. The majority of persons who participated in the study think that the policy is not tenable. In particular the idea that you should place a gate around the Netherlands is considered to be inappropriate by many people.

According to them, the issue of illegal immigrants and illegal labour cannot be considered as an isolated issue, but it is interwoven in many ways with international economic, social and cultural developments. Scientists, employers, and even representatives of trade unions are gradually beginning to realise that the Netherlands is increasingly isolating itself because of its policy. According to them, this is a policy that creates inflexibility, as a result of which important opportunities are missed regarding innovation and development.

The study confirms the view that the issue of illegal immigrants and illegal labour is tackled in a fragmented way.

Integral approach

The study emphasises the importance of an integral approach on all fronts. First ideas must first be developed and then solutions must be sought. An integral approach definitely includes the following features:

- Monitoring international and European economic developments.
- A view on the future of the Dutch economy in a European and international context and the connected demand for workers (with a high and low education).
- Having an eye for international relationships and the motives and strengths of migrants.
- Assessing the opportunities that a modern welfare state, which is based on market mechanisms, can offer to labour migrants, without affecting basic social conditions.
- A link between humanitarian solutions, such as the legalisation of certain groups, and a flexible policy concerning labour migration.

Major points of special interest in the coming period include:

- A further development of ideas in a smaller and wider context (employers, employees, scientists, politicians etc.)
- Further explorations of certain issues (for example the future of the welfare state, competition, international perspective and social environment of illegal immigrants).
- Formulating discussions and policies on the basis of integral viewpoints of individual actors, such as trade unions, employers' organisations and others.