

Briefing on mobilisation for fair regularisation procedures in Brussels

29 November 2021

Undocumented activists in Belgium have been organising [collectively](#) and through various groups for many years. This year, [campaigns](#), [calls](#) and occupations focusing on the need for the regularisation mechanisms in Belgium to be more accessible and fair, have ramped up, in the face of severe and increased precarity and exploitation of undocumented people and frontline workers due to COVID-19. In particular, undocumented residents and a broad range of civil society have been calling for clear and stable regularisation criteria. They are also calling for the re-instatement of the independent commission to hear people as part of the application procedure, that is already provided for by law, as a core element of the right to be heard and [good administration](#). Permits that enable undocumented residents and workers to file complaints and access remedy in the case of abuse are another key demand. These demands are in line with guidelines from [international](#) and [regional](#) institutions on good practice in regularisation procedures.

One of the movements, the Union de Sans Papiers pour la Regularisation (USPR) occupied various sites in Brussels to bring greater attention to the political demands around regularisation in early 2021. Despite large mobilisation around the movement, government institutions did not respond. In reaction to this inaction, over 430 people started a hunger strike, lasting nearly two months in the summer of 2021 (23 May to 21 July). The compelling case for regularisation combined with stories of the activists – most of whom have lived and worked in Brussels for many years – and their deteriorating physical and mental health, garnered significant attention in the media and public. There were [demonstrations](#), [petitions](#), letters from groups such as [the church](#), [social partners](#), [important Belgian and international personalities](#), a [UN expert](#) and [MEPs](#).

The government deployed a mediator, and [an agreement](#) was reached to end the hunger strike. While far from the much-needed structural reform, the government [encouraged](#) the activists to submit their applications under the current system and made [several statements](#) regarding how the applications would be treated. For example, one of the major problems with the current [9bis mechanism](#) is that, in many cases, the reasons why a person should remain in Belgium - their years of residence, work, social and family ties, etc. – are not even considered; the government only considers whether in theory the person could leave the country, and on this basis decides that applications are inadmissible. In the negotiations, the State Secretary for Migration [stated](#) that the hunger strikers' applications would be considered admissible and fully reviewed. The government also indicated they would consider positively proof of prior employment, including undeclared work, with no risks for the applicant or employer.

More than 400 applications have been sent. On 5 November, the Foreign Office announced it had sent a first package of replies. Of these 22, only 5 are positive, and the majority relate to applications for medical reasons, rather than residence and work permits under the 9bis mechanism. The responses indicate that several of the government's assurances around how the applications would be treated [have not been respected](#). People whose applications have been refused have been given an obligation to leave the territory, and are at greater risk of detention, deportation and being uprooted from their lives. Police harassment has increased on the strikers, especially on spokespersons, who are regularly stopped and their identities checked in front of the Church, and who have been picked up several times by the police and then released, once by the side of a highway.

The USPR, together with Belgian Ligue des Droits Humains and CIRE have filed in [a lawsuit](#) against the Belgian government and its State Secretary Sammy Mahdi. According [to them](#), their rights enshrined in the European Convention on Human Rights have been violated, given that the State Secretary did not fulfil his commitments presented in July to the strikers. Several in UPSR group are also now considering to re-start the hunger strike. There are various occupations in the city with undocumented people living in very poor conditions and winter weather setting in. The situation risks to quickly deteriorate if the government refuses to take further steps.

For more information about the 9bis regularisation mechanism in Belgium, excerpt from [PICUM Manual on regularisation for children, young people and families](#) (2018) is below.

Humanitarian regularisation – Article 9bis

For residence permits on humanitarian grounds, the law stipulates that applications should usually be submitted from the country of origin, but can - in exceptional cases - be submitted while present in Belgium. For an application to be considered admissible from within the territory, the person has to meet the following criteria:¹

- Able to prove exceptional circumstances, for example:
 - o the application from within Belgium is necessary to avoid a violation of the prohibition of torture, inhuman or degrading treatment, or the right to private and family life; or
 - o they are in an ongoing asylum procedure; or
 - o the application from within Belgium is necessary due to medical or administrative issues and other circumstances².
- Has identification documents, or official exemption from this obligation.
- Has declared their residence in Belgium. The application is filed through the local municipality (*gemeenten/commune*) and proof that local residence has been verified by the local authorities is required for the application to be processed.

While the criteria for an admissible application are clearly defined, the “humanitarian grounds”, the criteria on which a humanitarian permit will be granted, are not. Officially, the Secretary of State is authorised to assess the applications and consult a committee consisting of lawyers, a judge and social workers. However, in practice it is the Immigration Office that decides on the applications for regularisation. The Secretary of State and Immigration Office have a large degree of discretion to decide on each individual case.³ For adults, filing an application for residence on humanitarian grounds costs 350 euros. For children (i.e. people under 18), there is no application fee⁴.

¹ Agentschap Integratie & Inburgering, [Wat zijn de voorwaarden voor een ontvankelijke 9bis-aanvraag?](#), available [here](#).

² Other circumstances can be related to circumstances in Belgium and/or in the third-country of concern. For example, if returning to the third country to file the application would lead the person to lose their job or their children to miss an academic year, these are considered legitimate circumstances to file an application from Belgium. War or obligatory military service in the third country are also considered legitimate circumstances. See Agentschap Integratie & Inburgering, [Buitengewone omstandigheden](#), available [here](#).

³ See Agentschap Integratie & Inburgering, [Discretionaire bevoegdheid 9bis en criteria van de instructie van 19 juli 2009](#), available [here](#).

⁴ Federale Overheidsdienst Binnenlandse Zaken, [Contribution covering administrative costs of an application](#), section 5, available [here](#).