

Access to Health Care for Undocumented Migrants in Europe



 **PICUM**
PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

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'Access to Health Care for Undocumented Migrants in Europe'

PICUM: Platform for International Cooperation on Undocumented Migrants

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Introduction

The result of an intensive two-year project co-funded by the European Commission, this report identifies the legal and practical barriers encountered by undocumented migrants when trying to access health care within eleven EU Member states. A series of expert meetings and field trips provided this unique insight into current situation in Austria, Belgium, France, Germany, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

PICUM's project involved nineteen partners representing a variety of interests; local authorities, responsible for public health and implementing legislation at the local level; NGOs, witnessing barriers and working hard to fill the gaps in state health services; and health care professionals, struggling to fulfil their ethical obligation of providing care to those in need. This approach has resulted in a thorough and objective account of the situation facing undocumented migrants attempting to exercise one of the most basic human rights; the right to health.

Access to Health Care for Undocumented Migrants

Undocumented migrants in Europe face serious problems in receiving health care. The climate of repression in Europe and the existing link between immigration control policies and access to basic social services create a tremendous fear of discovery among undocumented migrants, deterring them from exercising their entitlements and seeking health care.

While numerous international instruments in human rights law have been ratified by EU member states and refer to the right of *everyone* to health care as a basic human right (regardless of one's administrative status), the laws and practices in many European countries are shown to deviate from these obligations.

Undocumented migrants are not yet formally considered as being one of the most marginalized and socially excluded groups in Europe. Very few documents of the European Institutions acknowledge this fact and there is almost a total invisibility of the problem in the member states plans to combat social exclusion.

The Report

This publication gives visibility to the problems arising from inadequate access to health care. The situation facing undocumented migrants in terms of law and practice is provided through the country profiles; each providing an overview of the most common problems and obstacles preventing a realization of the right to health.

Good policies and practices within each of the eleven countries are highlighted to provide inspiration for new health care strategies and actions which can continue to address the problems facing undocumented migrants in Europe.

The information contained in this publication will be useful in convincing the governments of EU member states to speak more, to do more, and to take on their responsibilities and comply with international human rights obligations instead of continuing to rely upon civil society as an alternative provider of health care for undocumented migrants.

Making a strong case for action, this report may be used as a tool of influence, pressure, empowerment and innovation. Ten practical recommendations are provided to help national and European policy-makers to better address the problems arising from a lack of or an insufficient access to health care for undocumented migrants in the EU.

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RECOMMENDATIONS

1. Respect international obligations

EU member states should comply with international obligations and therefore progressively guarantee that the right to the highest attainable standard of physical and mental health is enjoyed by *all* regardless of administrative status.

The right to health care for undocumented migrants is guaranteed in the following United Nations conventions and declarations and European conventions:

- UDHR - Universal Declaration of Human Rights, Art 25
- ICERD - International Convention on the Elimination of All Forms of Racial Discrimination, Art 5 (e-iv)
- ICESCR - International Covenant on Economic, Social and Cultural Rights, Art 12 (1) and General Comment 14 to the ICESCR, para 34
- CRC - Convention on the Rights of the Child, Art 24(1), 25, 39
- CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women, Art 14 (2b)
- ESC – European Social Charter (Revised), Art 13
- ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms, Art 3.

Member states should not deny or limit equal access for all persons to preventive, curative and palliative health services.

2. Particularly vulnerable groups of undocumented migrants

Member states should especially address the health care needs of particularly vulnerable groups of undocumented migrants (e.g. children, pregnant women, the elderly, disabled, people with severe chronic diseases e.g. HIV-AIDS) and strive to equally meet their needs on the same basis as for the comparable national population.

3. Ensure implementation of entitlements

Member states should take the necessary measures to guarantee that undocumented migrants' entitlements to health care are uniformly implemented by regional and local authorities.

4. Ensure access to information about entitlements

Member states should ensure that information about undocumented migrants' entitlements is accessible to all actors involved and eliminate all practical barriers that prevent undocumented migrants from enjoying their entitlements to health care.

5. Detach health care from immigration control

Patient-related medical confidentiality should not be undermined by direct or indirect reporting mechanisms. Member states should detach health care from immigration control policies and should not impose a duty upon health care providers and health administrations to denounce undocumented migrants.

6. Civil society should always play a complementary role

The ultimate responsibility in providing health care to undocumented migrants rests on the national government. Civil society plays a role of facilitating health care to undocumented migrants, but this shall only be complementary to the duties of the government.

7. No criminalization of humanitarian assistance

Providing humanitarian assistance to undocumented migrants should not be criminalized. Member states should not criminalize civil society for providing health care and health-related assistance to undocumented migrants.

8. Include undocumented migrants in Social Inclusion-Social Protection Process

Member states and EU institutions should include undocumented migrants within the European Social Inclusion-Social Protection Process and the National Action Plans (NAPs).

9. Civil society involvement in consultation processes

Civil society organizations, health care providers working with undocumented migrants and local authorities responsible for public health should participate in regular reporting and consultation processes, to inform authorities and policy makers about barriers encountered by undocumented migrants in accessing health care.

10. Ratify the International Migrant Workers' Convention

Member states should ratify and implement the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, which stipulates in Article 28:

Migrant workers and the members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.