



European  
Social  
Charter

Charte  
Sociale  
Européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

18 July 2012

**Case Document No. 6**

**Defence for Children International (DCI) v. Belgium**  
Complaint No. 69/2011

**OBSERVATIONS BY  
PICUM  
Platform for International Cooperation on Undocumented Migrants**

**Registered at the Secretariat on 13 July 201**



PLATFORM FOR INTERNATIONAL COOPERATION ON  
UNDOCUMENTED MIGRANTS

## **REVISED EUROPEAN SOCIAL CHARTER**

*NGO Comment for the case of:*  
**Defence for Children International (DCI) v Belgium**  
**Complaint No. 69/2011**

*Submitted by:*  
**PICUM**  
**Platform for International Cooperation on Undocumented Migrants**

13 July 2012

# Undocumented Migrant Children's Social, Medical, Legal and Economic Protection in Belgium

## 1. Introduction to PICUM

Founded as an initiative of grassroots organisations, The Platform for International Cooperation on Undocumented Migrants (PICUM) represents a network of more than 150 organizations and 150 individual advocates working with undocumented migrants in more than 30 countries, primarily in Europe, as well as in other world regions. With ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

## 2. Populations Concerned

The complaint of *DCI v Belgium*<sup>1</sup> focuses on alleged violations of rights committed by the Belgian state against unaccompanied and accompanied children<sup>2</sup> in with an irregular<sup>3</sup> migration status.<sup>4</sup> These children are triply vulnerable, as migrants, as persons in an irregular situation, and as children.

There is virtually no official data for the number of undocumented children in Europe. While it is estimated that there are between 1.6 and 3.8 million irregular migrants in the European Union,<sup>5</sup> there are no reliable EU-wide estimates of the percentage which are children, due to issues of reliability, comparability and accuracy. In Belgium, there are an estimated 100,000 undocumented migrants, 18,000 of whom are children.<sup>6</sup>

---

<sup>1</sup> European Social Charter Complaint No 69/2011

<sup>2</sup> Following the UN Convention on the Rights of the Child (CRC), a child means every human being below the age of eighteen years.

<sup>3</sup> 'Irregular' and 'undocumented' are used synonymously throughout this Comment and refer to people having an irregular migration status.

<sup>4</sup> Children's migration status is usually linked to their parents. Children may be undocumented because their parent or caregiver is undocumented, for example, because the family's visa or permit expires, their application for international protection is refused, or they entered Belgium irregularly. Children born in Europe can also be undocumented, because their parents are undocumented. It is also possible for the parent(s) or caregiver(s) to have a regular migration status, whilst the child is undocumented, such as when a child comes to Belgium to be reunited with family, but does not satisfy the official family reunification scheme criteria. Some children may be sent to Europe by their families, have runaway or decided to migrate independently, but remain outside the reception systems for unaccompanied children, and are therefore alone. Some children are trafficked into Europe, either alone or with their families, and may also be undocumented.

<sup>5</sup> European Commission DG Research CLANDESTINO project: Anna Triandafyllidou, "CLANDESTINO Project Final Report", November 2009, p.11, available online at <http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report-november-2009.pdf>

<sup>6</sup> Leerkes, A., G. Engbersen, et al. (2007). "Shadow Places: Patterns of Spatial Concentration and Incorporation of Irregular Immigrants in the Netherlands" and Bouckaert Steven, "Documentloze vreemdelingen. Grondrechtenbescherming doorheen de Belgische en internationale rechtspraak vanaf 1985" (2007).

### **3. Observations on the Situation of Accompanied Undocumented Children in Belgium<sup>7</sup>**

#### **a. Application of National Laws Protecting Undocumented Migrant Children**

In most EU member states, there are constitutional provisions and national legislation in place to protect the rights of the child, as well as policies and strategic action plans to promote and improve protection of children and families.

However, the tension between migration control and protecting children's rights results in children with an irregular migration status being treated separately and differently from 'all' children. This is true of both separated and accompanied children. Children with their families are often entirely excluded from national mechanisms for protecting child rights.

Belgium has an "interpretative declaration" of Article 2 of the UN CRC, the principle of non-discrimination. This allows the Belgian State to limit the enjoyment of the rights set out in the CRC for children not having Belgian nationality. The Committee on the Rights of the Child has recommended that Belgium withdraw this declaration. It has also expressed concern about "the continuous discrimination suffered by children of foreign origin."<sup>8</sup>

This exception seems to indicate recognition and acceptance of the fact that children with irregular migration status experience rights violations due to their status.

On the other hand, on national level, the Belgian Constitution states "Each child is entitled to have his or her moral, physical, mental and sexual integrity respected... Each child has the right to benefit from measures and facilities which promote his or her development. In all decisions concerning children, the interest of the child is a primary consideration."<sup>9</sup> The Law organising the Centre Public D'Action Sociale (CPAS) or Openbaar Centrum voor Maatschappelijk Welzijn (OCMW), states that "Every person has the right to social welfare. The aim of this is to allow every person to live a life in conformity with human dignity".<sup>10</sup>

In Belgium, competence for child rights is shared between the Federal State Authority, the three Regions and the three Communities. In both the French and Dutch speaking communities, the legislation on youth assistance is applicable, with undocumented children included in references to "all children".<sup>11</sup> The legislation for the Brussels Capital Regional also makes specific reference to the inclusion of children regardless of immigration status within the scope.<sup>12</sup>

---

<sup>7</sup> These observations are based on research that PICUM has collected on legal entitlements to education, health care and housing in Belgium and the divergence in practice. This contribution is based on input from undocumented migrants themselves; health, housing, and educational professionals; local authorities; NGOs; and migrant community organizations who have contributed to in-depth interviews as well as a national-level workshop held by PICUM in April 2012 on the situation of undocumented children in Belgium.

<sup>8</sup> Committee on the Rights of the child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, fifty-fourth session, Concluding Observations: Belgium" 2010.

<sup>9</sup> The Belgian Constitution also states that "Each child has the right to express his or her views in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity." and that "The law, federate law or rule referred to in Article 134 ensures these rights of the child.", Article 22(bis) (2nd modification), Constitution of Belgium, October 2007.

<sup>10</sup> Article 1 of the Organic Law Organizing the Social Welfare Centres (Public Social Action Centres) of July 8th 1976.

<sup>11</sup> In the French speaking community : the Decree of 4 March 1991 related to youth assistance (Décret du 4 mars 1991 Relatif à l'Aide à la Jeunesse) and in the Dutch speaking community : the Decree of the Flemish Government on the

Nevertheless, undocumented children do not have equal access to the policy measures in place to protect children from poverty and social exclusion. The right to social and economic protection, as enshrined in the CPAS law, is explicitly recognised for undocumented families. A Belgian Constitutional Court ruled on 22 July 2003 that the government is required to give children, regardless of immigration status, social assistance that is necessary for their wellbeing, including housing. The Court found that it was a violation of both the Belgian constitution and of the UN Convention on the Rights of the Child to deny all social assistance to children residing irregularly with their parents in Belgium.<sup>13</sup>

However, the subsequent Royal Decree of June 24 2004<sup>14</sup> restricted the provision of social assistance and shelter for families in an irregular migration situation, to only that provided in reception centres for asylum seekers. These reception centres are run and managed by Fedasil and their partner organisations, La Croix Rouge and Rode Kruis.<sup>15</sup> The applications for social assistance are managed by the municipal social welfare centres, the Centre Public D'Action Sociale (CPAS) or Openbaar Centrum voor Maatschappelijk Welzijn (OCMW).<sup>16</sup>

Due to a shortage of places, since 2009, in the reception network of Fedasil, the Agency has been systematically excluding undocumented families. A number of CPAS/OCMW offices are also refusing to accept applications for social assistance from undocumented families. Therefore in practice, undocumented children are systematically denied the right to social and economic assistance, including the right to housing.

Therefore, it is necessary to look at the situation facing undocumented children outside of the reception network, and their access to social, medical, economic and legal protection. The Comment provides observations of the law and situation in practice, as there are important divergences due to practical obstacles, as is evident from the lack of access to Fedasil centres in practice, despite clear rights in legislation.

The example of education provides similar illustration, as the law in Belgium is explicit<sup>17</sup> about the inclusion of children regardless of immigration status in compulsory education. However, there are still

---

Coordination of the Decrees Related to Special Assistance to Youth (Decreet van 7 maart 2008 inzake bijzondere jeugdbijstand).

<sup>12</sup> Article 3.2, Ordonnance du 29.04.2004 de la Commission communautaire de la région de Bruxelles capitale relative à l'aide à la jeunesse.

<sup>13</sup> Arrêt n° 106/2003 de la Cour d'Arbitrage statuant sur une question préjudicielle relative à l'article 57, §2, de la loi du 8 juillet 1976 organique des centres publics d'aide sociale (M.B. du 04/11/2003, p. 53695).

<sup>14</sup> Royal Decree of June 24th 2004 Fixing the Conditions and Modalities For the Granting of Material Help for a Foreign Minor Residing Illegally in the Kingdom with his Parents, which was again later modified by the Royal Decree of July 1st 2006.

<sup>15</sup> For details of the development of the regulations, see B. Van Keirsbilck (2005) "Aide sociale aux familles séjournant illégalement sur le territoire belge: Le point sur la jurisprudence récente" JDJ n°242 (février 2005); Plate-forme Mineurs en exil (2011) "Familles en séjour irrégulier – protocole d'accord entre Fedasil et l'Office des Etrangers – Fiche Informatrice – Pistes de Reflexions" Mars 2011..

<sup>16</sup> Once a request for social assistance is lodged with CPAS/OCMW by or for a child in an irregular migration situation with their parents, CPAS/OCMW then carry out a 'social enquiry' to certify that the parents are unable to undertake their 'devoir d'entretien', and to ensure that the request is for expenses essential only for the development of the child. The centre then ensures that aid will be exclusively devoted to cover these expenses. This aid is provided on a voluntary basis. There is a three month delay between the application for social assistance, and the outcome.

<sup>17</sup> For the French-speaking community : Article 40 du Décret du 30 juin 1998 tel que modifié par le Décret du 27 mars 2002 and for the Dutch-speaking community : Circulaire du 24/02/2003 du ministre flamand de l'Éducation relative au droit à l'éducation pour les enfants sans statut de séjour légal (remplaçant la circulaire du 24/06/1999). Les bases juridiques de la circulaire sont le Décret relatif à la politique flamande à l'encontre des minorités ethnoculturelles (28/04/1998) ; la loi relative

numerous practical barriers to undocumented children's enjoyment of the right to education, including, inter alia, discretionary refusal of registration, segregation in specialised classes, and lack of access to vocational training.<sup>18</sup>

As the complaint DCI v. Belgium focuses on access to social, medical, economic, and legal protection, the following observations focus on the same. As stated, social and economic assistance, and thus protection against poverty and social exclusion, are limited to the provision of assistance within Fedasil centres. Therefore, the following sections provide observations regarding access to housing and to medical assistance.

## **b. The Right to Housing**

### **i. Access to Housing for Undocumented Children in Belgium**

Although Belgian law recognises undocumented children's right to shelter in reception centres, access is being systematically denied by Fedasil. It is possible for undocumented families to lodge an appeal in court, and cases taken against Fedasil are usually successful. However a positive result in practice requires efficient and proactive lawyers to ensure that the decision is implemented.<sup>19</sup> Engaging lawyers and bringing cases can be an expensive and daunting experience for undocumented families who may face financial and linguistic obstacles. Most undocumented families are unable to exercise this right.

It is important to note that the accommodation in Fedasil centres cannot be considered an appropriate housing solution for children. Families are often accommodated together in one room, not providing for individual space or adequate privacy. Shelters are often mixed, with both families and single adults accommodated together. Parents are often disempowered by the structure of social assistance, for example, without control over their meals or meal times. Furthermore, while education is provided in these shelters, children are segregated from mainstream education and from the local community, which is particularly true of shelters located in isolated locations in Belgium. Such divisive factors can negatively impact the family dynamic and child development.

Undocumented children are not entitled to access subsidised housing with their family unless one member of the family has a residence permit. Undocumented families therefore turn overwhelmingly to the private market in order to access housing. There is a shortage of affordable, adequate housing in Belgium, making it difficult to find on the private market. In this context, landlords often discriminate by requesting a residence permit, although it is not required to rent on the private housing market. Undocumented families also often face racism and exploitation, being forced to live in sub-standard conditions which can be overcrowded, unsanitary, in squats, without heating, etc, and at exorbitant prices.<sup>20</sup> Undocumented migrants rarely report such exploitation to the authorities for fear of being

---

à l'obligation scolaire (29/06/1983) ; l'art. 26 du Décret relatif à l'enseignement fondamental (25/02/1997) ; le Décret relatif à l'égalité des chances en éducation (28/06/2002)..

<sup>18</sup> For more information see e.g. PICUM, *Élaborer des stratégies pour améliorer la protection des enfants en situation de migration irrégulière en Europe, Dossier Pays : Belgique, 2012*, (available at <http://picum.org/picum.org/uploads/publication/Belgium%20Workshop%20brief%20-%20FR.pdf>); Prof. Dr. Chr. Timmerman et al. « Quel droit à l'enseignement pour les enfants en séjour précaire ? Une analyse de la situation des enfants sans titre de séjour légal ou avec un titre de séjour précaire dans l'enseignement fondamental en Belgique. », *Droit de l'enseignement pour des enfants sans titre de séjour (UCARE)*, March 2010.

<sup>19</sup> Families may also introduce a complaint to the Federal Ombudsman who will send recommendations to Fedasil.

<sup>20</sup> Monica Pereira of the Belgian NGO Abraço gives one example of such a situation, *"In Anderlecht, an apartment block had been sub-let, the flats inside and been sub-let again, and finally the rooms were also sub-let. Each room was filled with six to eight people, and even the cellar was full. In 2006 the whole block was inspected. In the basement they found a mother*

identified, and fear of losing their housing, due to the difficulty and cost involved in finding alternative accommodation.

Maria, a Brazilian undocumented mother, who has been living in Belgium for seven years with her husband and their five year old child, has endured several of these difficulties.<sup>21</sup> All the housing her family has experienced in Belgium has been in some way defective, for example, beleaguered with a leaking sewage. In one of her homes in Wallonia, the landlord had promised to undertake work on the property, which was never conducted. With a young child at home, it was difficult for Maria to manage an unsuitable house. Maria stopped paying rent in the hope that this would catalyse work to be done on the property. The landlord took Maria to the magistrate, who found that Maria had breached the rental contract, and she was required to pay three months' rent as compensation for the breach.

Private housing arrangements are often insecure with families having to move frequently and rely at times on family and friends. Instability of housing contracts with private landlords and financial difficulties, mean that families often move regularly. Consequently, some families have become street homeless. Although there are temporary solutions implemented by NGOs, for example during winter, there are no structural solutions envisaged.

The living conditions described can have a significant strain on children, who are forced to live without stability and adequate personal space, space to do homework, etc. The right to family life is similarly jeopardised.

Further, lack of a fixed address can pose a significant barrier to accessing all other rights and services provided by the local social welfare centre and to maintaining regular communication with legal counsel and the foreign office (if, for example, the undocumented migrant is in the process of regularisation). Therefore, the denial of the right to housing can also result in violations of the right to legal assistance.

## **ii. Access to Housing for Undocumented Children Across Europe**

In a Europe-wide survey conducted by Médecins du Monde European Observatory<sup>22</sup> only 46% of undocumented persons interviewed had access to stable accommodation. Of those in insecure accommodation, 78% lived with family or friends and 14% lived in a property without a lease or legal contract. 86% of the undocumented migrants interviewed across Europe lived in overcrowded accommodation with children.

In the UK, local authorities are obliged to support people with No Recourse to Public Funds (NRPF) to avoid a breach of their human rights. Families supported are usually those with applications pending with the UK Border Agency (UKBA) for leave to remain on human rights grounds, so are in a process by which they will be granted leave to remain or be issued a deportation order, and be expected to leave the country. Accommodation provided is on a temporary basis and managed by the local authority. However, the local authority does not receive any central government funding for providing support and accommodation to these families. Therefore, areas with a high number of undocumented migrants, which tend to be poorer in any case, struggle to reallocate the necessary funds, and are able

---

*with a 15-week old child. The building was declared insalubrious and all of the occupants were expelled directly to his or her country of origin (most were from Brazil)*" Luca Bicocchi and Michele LeVoy "Undocumented Children in Europe: Invisible Victims of Immigration Restrictions" PICUM, 2009, p.79.

<sup>21</sup> Maria, Brazilian undocumented mother living in Belgium, gave testimony at the PICUM workshop "Building Strategies to Protect Children in an Irregular Migration Situation in Belgium" on 17 April 2012.

<sup>22</sup> Médecins du Monde, Survey Report "Access to Healthcare for Undocumented Migrants in 11 European Countries" (2008) p.59.

to meet their responsibilities in all cases. In practice, this means turning away families despite urgent need. There is a high level of discretion and divergence in practice in whether support is provided.<sup>23</sup>

### **c. The Right to Medical Assistance**

#### **i. Legal Entitlements to Health Care for Undocumented Children in Belgium**

In Belgium all children have access to free preventative healthcare up to the age of six. This includes consultations and vaccinations from the Office of Birth and Childhood (ONE and Kind en gezin Centres).

Although unaccompanied undocumented children have equal access to the national health insurance system as national children,<sup>24</sup> undocumented children living with their families are excluded.<sup>25</sup> Undocumented children who are accompanied therefore have access under the same conditions as adult undocumented migrants. They are eligible to access national health care services for “urgent medical care” free of charge, when medically certified as such. The Royal Decree regulating “Urgent Medical Assistance” (Aide Médicale Urgente – AMU / Dringende Medische Hulp – DMH) does not provide a concrete definition of this concept, only the following guidelines: that assistance should be exclusively of a medical nature; the ‘urgent’ character must be certified by a doctor; health care provided can be preventative and curative; medical help can be given both mobile or provided in a health centre; and that the assistance cannot consist of financial help, housing or any other provision of service in kind.<sup>26</sup>

The AMU/DMH procedure is managed by the municipal social welfare centres, the Centre Public D’Action Sociale (CPAS) or Openbaar Centrum voor Maatschappelijk Welzijn (OCMW). To obtain AMU/DMH, the family must register with their local CPAS/OCMW, who will provide the patient with a medical card allowing the care once (i) they have verified that the family lives in the local area and below a threshold considered ‘destitute’ (determined, for example, through a home visit by a social worker and other criteria, such as monthly income), and (ii) a medical certificate proving the urgent necessity of the care is provided by a doctor. The CPAS/OCMW has to make a decision within thirty days as to whether it will pay for the medical assistance. They will also specify the validity of the document, which can be just for the one consultation or for a longer, but determined, period of time. The care provided under AMU/DMH must be provided by a health care worker recognised by the National Institute for Health and Disability Insurance (INAMI).

Outside the AMU/DMH system, emergency care is provided free of charge to everyone, but undocumented families are liable to pay the full costs for any other treatments.

---

<sup>23</sup> Contributions from participants during PICUM and Praxis workshop “Building Strategies to Protect Children in an Irregular Migration Situation in the UK”, 6 October 2011, London.

<sup>24</sup> The Law Supporting Various Schemes Regarding Health Care” 13 December 2006 and Successive Circular OC n 2008/198 of 9 May 2008. There are several conditions to be eligible for health insurance, such as to have attended a primary or secondary school recognised by Belgian authorities for three consecutive months.

<sup>25</sup> Although there is nothing preventing them from accessing private health insurance, the premiums tend to be prohibitively expensive.

<sup>26</sup> Organic Law on Social Welfare Centres of July 8 1976.



## ii. Access to Medical Assistance in Practice

As there is no legal or medical definition of 'urgent medical care', interpretations vary widely at the local level in practice. The level of treatment that undocumented children therefore receive depends on the discretion of doctors.

Undocumented families also face a number of barriers to accessing the AMU/DMH procedure. They may lack awareness of their entitlements, or struggle with language and administrative difficulties. The procedures are very complex and vary throughout the country. Each CPAS/OCMW has its own procedures relating to AMU/DMH, has its own 'urgent medical assistance certificate' for doctors to complete, and applies different criteria to decide whether or not someone is entitled to the care and is destitute.<sup>27</sup> The duration of the medical card granted also varies considerably between the CPAS/OCMW. Given the variance between the CPAS/OCMW offices, it is easier for undocumented families to navigate the procedure and access AMU/DMH for their children from some CPAS/OCMW offices, rather than from others.

These complexities and local variance exacerbate the lack of awareness on the part of both health care providers and undocumented families about children's entitlements and how the AMU/DMH system works and is accessed.

The home inspection can pose a difficulty for undocumented families, who may not have a fixed address. The inspection itself can also cause undocumented families to be fearful of detection, and/or possible repercussions for hosts. There have been reports of social welfare centres refusing to officially process applications for AMU/DMH from people who are squatting or on hunger strike.<sup>28</sup>

The process for reimbursement through AMU/DMH system is lengthy, complicated and bureaucratic which can act as a disincentive for doctors to treat undocumented children.

Another issue with the AMU/DMH system, is its temporality. The medical card is always granted on a temporary basis, which requires regular renewal of AMU/DMH coverage, and each time a patient changes status<sup>29</sup> or place of residence, a new procedure is required. This leaves gaps in health care coverage for children, especially as the process for migrants to access AMU/DMH can be lengthy. Thus, parents may delay accessing care for their child, or resort to accessing care from a doctor prior to having approval from their social welfare centre or from a hospital emergency department. This can lead to significant problems for undocumented families: they may be presented with a bill for treatment afterwards or have to pay a deposit to access emergency services.<sup>30</sup>

Specialist, dental, and optometry treatment falls outside the AMU/DMH procedure and has been noted by many undocumented migrants to be extremely difficult to access.

While some mental health services are available in Belgium, they can be very difficult to access (due, for example, to long waiting lists, lack of interpretation services, and lack of parental consent). For undocumented children, the lack of access to mental health care services can be a significant issue,

---

<sup>27</sup> Médecins du Monde European Observatory on Access to Healthcare (2009) "Access to Healthcare for Undocumented Migrants in 11 EU countries", 2008 Survey Report, September 2009, p. 25.

<sup>28</sup> HUMA Network, "Access to Health Care for Undocumented Migrants and Asylum Seekers in 10 EU Countries: Law and Practice," (2009), p. 39.

<sup>29</sup> Undocumented families may gain a temporary status, so experience different administrative statuses.

<sup>30</sup> A 100 Euro deposit is required of patients without AMU/DMH coverage to qualify for access to emergency services in Antwerp. See HUMA Network, 2009, op. cit., p. 39

given their vulnerability to mental health needs. Children may have experienced trauma over events in their countries of origin, on route, and in Europe itself (such as in detention). The uncertainties of living with an irregular status can be very traumatic for children, living with the threat of deportation, and uncertainty around what will happen when they reach the age of majority and about the future in general. Civil society organisations and health professionals are filling the gap. One example is the Brussels-based NGO Raiz Mirim, which provides psychological counselling for undocumented Brazilian parents and their children, as this is not a service accessible through AMU/DMH.

As a result of moving frequently, undocumented children rarely have proper medical records. Undocumented parents may give false names and contact details, or use insurance cards belonging to family members or friends because of fear of detection, or in order to access health care they would otherwise not be able to receive, again making it harder to maintain proper medical records.<sup>31</sup> Medical records may also not be kept when undocumented children access health care services informally.

At a hearing held in 2011 by the Council of Europe Parliamentary Assembly Committee on Migration on undocumented children, a Brussels-based paediatrician, Dr. Saphia Mokrane, reported a case<sup>32</sup> of one of her patients, a four year old undocumented child who had moved with her family through four different countries on their journey to Belgium, and had received different vaccinations in each one. Being afraid that her daughter was not protected, the mother considered it safer to have the vaccinations again. This is not only expensive and inefficient for destination country health care systems but can lead to negative health implications for the child. Two NGOs in the Netherlands, Pharos and Medecins du Monde Netherlands, have proposed the introduction of a medical file for undocumented children to carry with them if they move from place to place, so they are able to keep records of their health history.

In sum, undocumented children in Belgium face major barriers and are often unable to access continuous medical care, which is detrimental to their health and also more costly than preventative care.

### **iii. Access to Medical Assistance Across Europe**

National laws regarding access to health care for undocumented children at the national level vary enormously across Europe.<sup>33</sup> Emergency health care cannot be denied in any European Union Member State.<sup>34</sup>

Some member states provide undocumented children with access to health care on the same terms as national children. These include Spain, Portugal and Romania.<sup>35</sup> In Spain, Article 43 of the Spanish

---

<sup>31</sup> HUMA Network, "Migrants in an Irregular Situation: Access to Healthcare in 10 European Union Member States", 2011, p.49

<sup>32</sup> Presentation by Doctor Sophia Mokrane, General Practitioner, Council of Europe Hearing on "Undocumented migrant children in an irregular situation: a real cause for concern" 15 March 2011, Brussels.

<sup>33</sup> For an overview of undocumented children's legal entitlements to health care in the EU-27, see European Union Fundamental Rights Agency, *Fundamental Rights of Migrants in an Irregular Situation in the European Union*, November 2011, Vienna.

<sup>34</sup> The Belgian Law of 8 July 1964 concerning urgent Medical Assistance, referred to in Annex I (updated on 19 December 2011) of the European Convention on Social and Medical Assistance (1953) stipulates the requirement to not deny emergency assistance.

<sup>35</sup> For Romania: Romanian Law on the protection and promotion of the rights of the child/ 272/2004, Article 43; Romania, Law 95/2006 on healthcare reform, Article 213. For Portugal: Despacho do Ministério da Saúde number 25 360/2001; Decreto Lei Number 135/99, 22 April 1999. Both cited from: European Union Agency for Fundamental Rights (2011), *Fundamental rights of migrants in an irregular situation in the European Union*, page 78.

Constitution of 1978, Article 1(3) of the Ley General de Sanidad 14/1986 of 25 April 1986, and Article 12 of the Organic Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Aliens in Spain and their Social Integration guarantee undocumented children the same access to health care as national children. No distinction is made on the basis of immigration status. Further, undocumented children and undocumented pregnant women are entitled to access the Spanish national health care system free of charge and do not need to obtain an 'individual health card'<sup>36</sup> to be treated. On April 20, 2012, the Spanish government issued a Royal Decree<sup>37</sup> to limit adult undocumented migrants' access to health care to emergency health care only. While the decree does not affect undocumented children's legal entitlement to healthcare, health care professionals and civil society organizations working with undocumented migrants throughout the country are concerned about the impact that the new restrictions will have on undocumented children's access to health care in practice, as their parents' right to health care will be severely curtailed. For example, parents may delay seeking care for their children due to fear of contact with local authorities as well as hospitals and clinics. Children may also be negatively affected by their parents' poorer health conditions.

#### **d. Concluding Remarks**

Undocumented children have clear legal entitlement to social, economic, legal and medical assistance in Belgium. The fact that this protection is linked to provision from Fedasil, in reception centres, means that it is currently inaccessible to undocumented children accompanied by their families or other caregivers, due to a shortage of places in the reception network.

Undocumented children also face numerous barriers to enjoying their right to housing outside of the reception network. They frequently live in sub-standard and over-crowded accommodation, or even become street homeless, and have to move frequently. These housing conditions and mobility also jeopardise their right to legal assistance, enjoyment of family life, and personal and medical well-being. It can also cause significant administrative difficulties for their access to medical assistance, as a new AMU/DMH procedure is required each time the child moves. This can result in gaps in medical coverage and have implications for the child's enjoyment of health. Additionally, undocumented children are not guaranteed the highest attainable standard of health under the current AMU/ DMH provisions and associated administrative processes.

Examples provided from across Europe indicate legislation and practice which can ameliorate undocumented children's access to social rights and protection.

---

<sup>36</sup> All adult undocumented migrants who seek non-emergency health care have to obtain an 'individual health card' which allows access to free primary and secondary health care, hospitalisation and the treatment of infectious diseases. There are two conditions to apply for a health card: (i) proof of sufficient economic resources; (ii) registration with the local municipality. In order to register with the local municipality, migrants must show (i) proof of valid passport and (ii) proof of habitual residence. Both these documents can be difficult to obtain for undocumented migrants. Many also fear registration as this risks exposure to the local authorities. This registration process must be repeated every two years for the health card to remain valid. These conditions mean that in practice, many undocumented migrants do not obtain a health card.

<sup>37</sup> Real Decreto-ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones.

