



Safeguarding irregularly present migrants from discrimination

ECRI General Policy Recommendation No. 16: Key Topics

” Currently, hundreds of thousands of irregularly present migrants in Europe are at risk of their rights being denied or abused.

All persons, regardless of their immigration status, have human rights which must be guaranteed in law and practice, without discrimination. No human being is “illegal”.

ECRI’s guidelines for safeguarding irregularly present migrants from discrimination can help governments, civil society and all social services providers – public and private – avoid discrimination against migrants who may be irregularly present.

KEY MESSAGE

— Governments must uphold the rights of all people who are present within their borders, regardless of their immigration status. These rights include access to education, health care, housing and justice.

— Governments should establish personal data “firewalls”, which would prevent all social services providers, public and private, from sharing the personal data of irregularly present migrants for the purposes of immigration control and enforcement. In this way, migrants will enjoy their rights without fear of being reported to immigration authorities.

SELECTED RECOMMENDATIONS

1. Do not criminalise the provision of social and humanitarian assistance to irregularly present migrants.

- ▶ This applies to all areas of public and private services, including renting accommodation to irregularly present migrants.

2. Educate migrants, service providers and public authorities about the right of all persons, including irregularly present migrants, to access basic services.

- ▶ Ensure, for example, that migrants who are victims of crime are aware of their rights and feel they can seek help from the police, regardless of their immigration status.
- ▶ Ensure that the civil society organisations are available to assist irregularly present migrants who believe they have been subject to discrimination.



3. Ensure that no public or private service providers are required to report people they suspect to be irregularly present for the purposes of immigration control and enforcement.

- ▶ This applies in particular to providers of education, health care, housing, social security and assistance, labour protection and justice.
- ▶ Irregularly present migrants should be able to access these services without having to prove their immigration status.

4. Pay special attention to protect the human rights of children who are irregularly present, as they are especially vulnerable.

- ▶ Guarantee their access to preschool, primary and secondary education under the same conditions as nationals of the host member State, and ensure that school authorities do not require proof of immigration status for enrolment.
- ▶ Ensure that all children regardless of their immigration status have full access to national immunisation schemes and paediatric care.



ECRI – USEFUL LINKS

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<http://hudoc.ecri.coe.int/eng?i=REC-16-2016-016-ENG>

FACTS AND FINDINGS

“ECRI, in its country monitoring reports, has frequently recommended the creation of comprehensive and long-term strategies on migration, addressing also the issue of irregular migration, with the necessary human and financial resources and training for personnel dealing with irregularly present migrants to ensure full respect for international and European human rights standards. Where irregular migrants fall into situations of destitution, this leads the general public to associate them with the decay and impoverishment of certain areas and contributes to increased racism and intolerance.” Explanatory memorandum to ECRI General Policy Recommendation No. 16.

“Children are a particularly vulnerable group who not only need protection on account of their age but also, in some cases, on account of their irregular presence which renders them especially vulnerable.” Explanatory memorandum to ECRI General Policy Recommendation No.16.

“Access to paediatric care and immunisation is important for all children, not only those who are regularly present within the jurisdiction. The health of the whole community depends on all children receiving these services. Similarly, all women may need medical services related to pregnancy and there should be no differentiation on the basis of the immigration status of the women in need.” Explanatory memorandum to ECRI General Policy Recommendation No. 16.