

DIGNITY AND RIGHTS OF IRREGULAR MIGRANTS

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Check against delivery!

Ladies and gentlemen,

I would like to begin by thanking the Polish Presidency of the Council of the European Union for welcoming us to Warsaw and for co-hosting this year's Fundamental Rights Conference.

Allow me to ask you:

- How many of us have sat down to a meal in restaurant that was cooked by an irregular migrant?
- How many of us have bought the fruits and vegetables that irregular migrants pick?
- How many of us know friends or relatives who employ an irregular migrant to clean their homes or look after their children?

In practice, our societies tolerate irregular migration. But we face a double standard.

Because despite their contribution to our economies, when irregular migrants try to access healthcare or education services or try to get access to justice, they often face a closed door, or worse, deportation.

How do we resolve this dichotomy?

Surely, the only way forward is to be guided by the most basic of rule of European and international human rights law. The Universal Declaration of Human Rights recognises ‘the inherent dignity and equal and inalienable rights of all’ human beings. You do not need a visa or a residence permit to qualify for human rights. Simply being born is your passport to human rights protection.

Of course, every State is entitled to regulate who enters its territory in the first place, and then, who remains. But once a person is within a State’s jurisdiction, that State has to guarantee their human rights. This is not a moral principle – this is the law.

Today the agency has launched the third of its reports on the rights of irregular migrants in the EU. This afternoon Adriano Silvestri of the agency will go into the details of our key findings. For now I would like to briefly address two of the many problems faced by irregular migrants:

1. Firstly, access to healthcare and education.
2. Secondly, practices used for detecting irregular migrants.

1. So, firstly, turning to access to healthcare and education.

The agency’s research gives us a clear picture. In many EU Member States, irregular migrants are unable to access free primary education. In some cases there is simply no legal entitlement. In other cases the barriers are more practical. For example, children are prevented from enrolling because they do not have the documents that schools require such as medical records, a birth certificate or a valid residence permit.

When it comes to healthcare, irregular migrants often have to pay for medical care that is available cost-free to nationals, including emergency care. This presents a huge barrier as irregular migrants are not usually entitled to work.

How many of us, or our partners, would ever contemplate giving birth at home, alone? And yet, in some Member States this is not a hypothetical question. If you decide to go to hospital to deliver your baby, you may also be deciding to accept a medical bill for several thousand Euros.

2. This brings me to my second point: practices for detecting irregular migrants.

As I have already said, States may, of course, take measures to regulate who remains on their territory, including measures to detect irregular migrants. At the same time, this must be done within the limits of their fundamental rights obligations.

Our research shows that law enforcement agencies in some Member States engage in detection practices that in effect directly block access to healthcare or education. Namely, by conducting law enforcement operations at or near hospitals and schools.

Similarly, irregular migrants are often too afraid to seek even emergency healthcare, or to send their children to school because public authorities have a practice, and in some cases are under a duty, to report irregular migrants to immigration authorities.

In these cases, the result will be that irregular migrants are in effect prevented from getting access to healthcare, or from sending their children to school for fear of deportation.

In some Member States these reporting practices also extend to the courts. And this makes irregular migrants more vulnerable to violations in the workplace. Our research highlights the exploitation experienced by those in labour market.

In particular, those employed in domestic work, who are mostly women, experience not only long working hours for low pay, but also physical and sexual abuse.

Unscrupulous employers know that there is little chance of being taken to court. Who will sue them for unpaid wages or for unpaid accident compensation if they risk deportation? If we add to this the absence of regulation by Labour Inspectorates in the area of domestic work, we have a perfect recipe for impunity.

The words of an irregular migrant, who we interviewed as part of our research, sum up the situation well. Asked if they found it possible to claim their rights, they said:

‘Yes, but you have to leave. That’s the price.’

So what can we do to address this situation?

Firstly, based on good practices from Member States, the agency has recommended: that the practice of service providers reporting irregular migrants to immigration authorities should be stopped; and that operations to detect irregular migrants should not be carried out near schools or healthcare services.

Does this limit the powers of the State to enforce its own immigration rules?

Yes, to some extent it does. However, many Member States do in fact carry out detection measures without using practices that block access to basic services. This shows that immigration rules can be enforced without undermining access to basic human rights.

Secondly, the agency has also recommended that necessary healthcare should be available to irregular migrants on the same basis as for nationals. This includes rules relating to payment and exemption from payment for medical care.

In accordance with the UN Convention on the Elimination of Discrimination against Women, pregnant women should have access to free antenatal and postnatal care and free care for childbirth. And in accordance with the Convention on the Rights of the Child, children should have free access to healthcare and primary education on the same basis as nationals.

Ladies and gentlemen,

In conclusion, allow me to repeat the challenge set by the agency's chairperson, Ilze Brands Kehris, this morning. That is: to find solutions to ensuring that migration policy is built on fundamental rights standards.

In a time of economic crisis, our governments are being forced to make cuts to public services. And irregular migrants are seen as an obvious place to start. But we must take into account that they *do* make a contribution to our economies.

To borrow the words of Mary Robinson, 'migration is the human face of globalisation'. A 'globalised economy has generated a heightened demand for [a] mobile' workforce. And 'irregular migrants are identified as a cheap, dispensable, unlimited source of labour'. Here. In Europe. Working in our homes, our restaurants, our construction sites, and our factories.

To an extent European governments have taken some steps towards recognising the gaps in our labour market that are filled by irregular migrants. The current proposal for a directive on seasonal workers does allow Member States to broaden legal channels for migration. Some Member States, such as our Polish hosts, have gone so far as to establish regularisation programmes. These are just two of the many paths that lie open to us to resolve the problems that I have highlighted.

Whatever solutions we adopt, what is clear is that our societies cannot continue to pick the fruit of irregular migration with one hand, while using the other hand to close the door to basic rights.

I would like to thank you for your attention.