

3rd Annual Dialogue on Multi-Level Protection and Promotion of Fundamental Rights

Implementing fundamental rights of irregular migrants – towards multi-level
governance

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Welcome address by Morten Kjaerum

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Check against delivery!

Ladies and gentlemen

I would like to begin by thanking Ms Bresso and Mr Van den Brande for organising our 3rd Annual Dialogue. A very warm welcome to all of you on behalf of the Fundamental Rights Agency, and a special welcome to our keynote speaker Stefano Manservigi from the European Commission.

Estimates put the number of migrants with an irregular migration status in the EU today at somewhere between two and four million. A considerable number of persons – and it is obvious that Europe finds itself in a dilemma or some would say that double standards are applied: on one hand our societies are happy to tolerate irregular migration.

Irregular migrants make easy targets for exploitation in the workplace where cheap, unregulated labour keeps costs down. We are happy to eat the fruits and vegetables that irregular migrants put on our tables, we are happy to employ cheap domestic workers who take care of our children and our elderly relatives, and clean our homes.

On the other hand, despite their contribution to our societies, when irregular migrants try to access healthcare or education services or try to seek justice they often face a closed door, or worse, deportation.

One could ask: What is it that entitles each of us here to our human rights?

Is it the fact that we are citizens of the EU?

Is it because we live, work and pay taxes here?

Is it because we were born in Europe?

Human rights are the ‘birth right’ of everyone here. But it is not because of *where* we were born. It is the fact *that* we were born. We have human rights because we are human beings. And we remain human beings even if we do not have a passport, or a visa or a residence permit.

Of course, every State is within its right to regulate who enters its territory and who remains.

But, while a person is within a State’s jurisdiction, that State has to guarantee their human rights. And this basic rule of international and European human rights law has to define our approach to irregular migration.

Ladies and gentlemen

During 2011 the agency is publishing the results of its research on the fundamental rights of irregular migrants. The topic will be the focus of the agency’s Fundamental Rights Conference in November which is hosted together with the Polish Presidency of the EU Council. My colleague Ann-Charlotte Nygard will have the pleasure of going into the details of the key findings of this work later this afternoon.

The role of the local and regional authorities that are represented in this Committee is crucial if we are to deliver solutions to the problems that we have identified, for two reasons. While governments agree to law and policy at EU level, to a large extent these are actually implemented at the local level. The way those rules are interpreted by the nurse and the teacher can determine whether an irregular migrant child can get a vaccination or enrol in school.

In this context, the Committee of Regions has a unique voice in law and policy-making at the EU. No other institution can claim to speak for local and regional authorities. Where you face common problems, you can help the EU to formulate common solutions that are effective when *you* implement them: in practice on the ground.

If we are to develop effective solutions, we need an approach that involves the European, national, regional and local levels working in cooperation.

For now, I would like to briefly address two problems faced by irregular migrants.

1. Firstly, practices for detecting irregular migrants.
2. Secondly, access to health care and education.

1. So, firstly, turning to 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 irregular migrants are often too afraid to seek even emergency health care, or to send their children to school because public authorities have a practice, and in some cases are under a duty from central authorities, to report irregular migrants to immigration authorities.

Similarly, law enforcement agencies in some Member States engage in detection practices that can block access to healthcare or education in a more direct way. Namely, by conducting enforcement operations at or near hospitals and schools.

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

2. Turning to my second point: access to health care and education.

Aside from detection practices, the agency's research has also found that in many Member States there is often limited access to health care and education under national law to begin with. Irregular migrants – who are not usually permitted to work – are often required to pay, even for emergency medical care, which is available cost free to nationals.

And in some Member States even a pregnant woman has to ask herself if she can afford to go to a hospital to give birth.

Similarly, in several Member States children will not have access to medical care, including immunisations, on the same basis as nationals. And frequently they are unable to get a free primary education. Either because of legal or practical obstacles.

Ladies and gentlemen, these are two of the challenges faced by irregular migrants. I would now like to address three questions.

Firstly, what is the impact on local and regional authorities when irregular migrants are denied access to basic services?

- If increasing numbers of children do not have basic skills such as reading or writing, and if they are out on the street instead of in school, this can have a negative impact on social tension or crime.
- Where individuals cannot get access to health care this can create public health risks.
- It can also mean higher costs for health authorities where treatment of medical conditions is left until they reach the stage of being an emergency.

My second question: what can be done to address this situation?

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 discontinued, 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 in fact do carry out detection measures *without* using these kinds of practices. Immigration rules can be enforced without undermining access to basic human rights.

The agency has also recommended that necessary healthcare be available to irregular migrants on the same basis as nationals, which 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 care for childbirth. And in accordance with the Convention on the Rights of the Child, children should have free access to health care and primary education on the same basis as nationals.

And my final and decisive question for you: what role do local and regional authorities have in delivering these solutions? You are in an extremely important position as *gate keepers to basic services*.

The agency's research showed that national rules are often vague and leave discretion to local authorities on how to interpret access to healthcare and education. Many local authorities do in fact interpret the rules in such a way as to guarantee access to irregular migrants. For example, an entitlement under national law to 'emergency' healthcare has been interpreted broadly by some city authorities to include 'immediate necessary care'.

In some Member States education and health authorities have a practice of reporting irregular migrants to immigration authorities, even though they are not obliged to do

so under national law. Sometimes healthcare professionals are actually under the mistaken impression that they have to do so. Here local authorities are in a position to issue Guidelines and raise awareness among these service providers, explaining that they are not obliged to and should not report them to immigration authorities.

Ladies and gentlemen

Human rights are not conditional on one's migration status. Access to services such as necessary health care and education for all are basic entitlements under European and international human rights law. Local and regional authorities have a key role to play in ensuring access to these basic rights. There are many examples of where they are actually doing so, and these should serve as inspiration for others.

Times of economic crisis are also times where we all have to be particular vigilant in protecting human rights for all: So in this case, our societies cannot 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.