



Netherlands Helsinki Committee

Human Rights for Irregular Migrants in the Netherlands

Text prepared by the National Support Service for Migrants (LOS), August 2008

I Introduction

The number of irregular migrants living in the Netherlands is estimated at 100,000 to 150,000. The Dutch policy towards them is considerably strict. In her recent letter concerning migrants with irregular status, the Secretary of State for Migration Affairs, Ms. Albayrak, wrote that she will “fight against illegal stay, because irregular migrants tend to be more criminal, cause nuisance and are vulnerable.” Since ten years, the principal means to fight illegal stay in the Netherlands have been the detention of aliens and the denial of basic rights to them, most importantly their rights to shelter and social protection. As a result of this policy, migrants with irregular status are afraid to be detected and therefore keep a low profile. They are difficult to reach and are often not aware of their rights.

National Support Service for Migrants (in Dutch: LOS) welcomes the 2006 recognition by the Parliamentary Assembly of the Council of Europe (PACE)¹ that it is necessary to clarify which basic rights are to be guaranteed to irregular migrants despite the fact that this is a “difficult and sensitive issue” for member states. The European minimum standards cover civil and political rights as well as economic and social rights. According to PACE, the *minimum economic and social rights* to be granted to irregular migrants are:

- *Adequate housing and shelter* guaranteeing human dignity;
- *Emergency health care*;
- *Right to primary and secondary education* for all children;
- *Social protection with focus on alleviating poverty and preserving human dignity*. Migrant children, in particular, should be able to enjoy social protection on the same footing as children who are Dutch nationals;
- *Employment-related rights*, including fair wages, reasonable working conditions, access to court to defend one’s rights, and engagement in trade union activities. The state should ‘rigorously’ pursue employers breaching these terms;

Since the enactment of the *Koppelingswet* (Linkage Law or Benefit Entitlement Act, 1998), irregular migrants have been excluded from most public services, including the public health insurance system, social services, social housing schemes, payment of taxes and so on. Because of the Netherlands’ international human rights commitments, the law’s provisions were formulated so as to ensure irregular migrants access to necessary health care, education of minors, and legal counsel. In the next paragraphs, I will first deal with these ‘accepted’ rights and then address the rights not enjoyed by irregular migrants.

¹ Parliamentary Assembly of the Council of Europe, Resolution 1509 (2006), adopted on 27 June 2006, at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1509.htm#1>.

In the following, the rights guaranteed to irregular migrants and those they are unable to enjoy are elaborated in more detail.

II ‘Accepted’ rights of irregular migrants

1. Emergency health care should be available to irregular migrants

Irregular migrants are excluded from the Dutch health insurance system in violation of the fact that health care providers are obliged to help everybody without discrimination. In order to compensate health care providers for their efforts for uninsured irregular migrants, a fund was established in 1998 (*Koppelingsfonds*).

Unfortunately, however, this fund has not been able to reimburse to hospitals the costs of medical they had delivered to irregular migrants, and since 2004 also nursing homes and psychiatric treatment have been excluded from this funding. At the moment, this system is being reconsidered and in 2009 it will hopefully be able to cover the costs of all health care provided to irregular migrants.

The remaining problems include the following:

- *Lack of knowledge among health care providers:* As most of them rarely come across irregular migrants, they are not aware of the *Koppelingsfonds* and are therefore reluctant to accept irregular migrants as their patients;
- *Lack of knowledge among migrants:* Since most of them have little contact with the Dutch society, they are not aware of their rights either. What is more, they are afraid to disclose their immigration status to medical personnel fearing that their irregular status will be revealed to authorities;
- *Dutch health care system is increasingly market-oriented,* and especially hospitals are keen to ask patients to pay before they start any treatment. There is little sensibility for patients without health insurance.

2. Right to primary and secondary education for all children

Migrant children with irregular status should be accepted by all schools, and they should be able to complete their education. Currently, they are given a special ‘school number’, instead of a social security number that other children have. Schools are compensated for education given to irregular children in the same way as for children with legal status.

Again, problems remain and they include:

- *Schools require identity documentation or municipal registration,* which is sometimes impossible for children of irregular migrants;
- *Unawareness among irregular migrants of their rights* and fear to disclose their status as well as the fact that they do not possess a social security number;
- *Irregular migrants feel social pressure* to pay school fees although these fees are not obligatory;
- *Children of irregular migrants are unable to complete their education after turning 18.*

III ‘Excluded’ rights of irregular migrants

1. Adequate housing and shelter guaranteeing human dignity:

Rejected asylum seekers are forced out of asylum centres as soon as their procedure is finished.

However, since, by law, irregular migrants are not eligible for social housing, nor are they accepted in residential (women’s) shelters or (in most cities) in night shelters, the only option for them is to look

for accommodation on the private market or subletting schemes. This usually results in an unacceptable housing situation, with substandard conditions, high rents, overcrowded spaces, and abuse by landlords. Housing subsidies are not available to people who provide shelter to irregular migrants even when they are family members (e.g. children or a partner). Recently, the Secretary of State for Migration Affairs even proposed punishments to people who sublet to irregular migrants.

2. Social protection with focus on alleviating poverty and preserving human dignity

Migrant children should enjoy social protection on the same footing as children who are Dutch nationals:

Exclusion of irregular migrants from the social protection system was the main reason for the introduction of the *Koppelingswet* and the law is the most important tool used to fight illegal stay. The only exception from this principle is a system of social protection established for children of irregular migrants awaiting the first decision on an admission procedure.

Other irregular migrants must rely on odd jobs or their social environment for survival, a dependency that makes them vulnerable for exploitation and abuse.

The denial of adequate housing and social protection to irregular migrants leads to unacceptable situations especially for vulnerable groups such as:

- *Children in general:* Together with Defence for Children, LOS filed a complaint under the European Social Charter to protest against the denial of the right to shelter for undocumented children;
- *After turning 18, unaccompanied minors are forced out of asylum shelters and left destitute.* It appears that the official policy to seek to prevent human trafficking, and in particular trafficking of unaccompanied minors, ends with the age of 18;
- *Women with irregular status or without children who want to escape domestic violence are not accepted in women's shelters.* Despite the promises of December 2007 by the Secretary of State for Migration Affairs to solve this problem, no progress has been seen to date. The official policy to support victims of domestic violence apparently does not apply to irregular migrant women;
- *People who are undergoing an admission procedure and are allowed to stay in the Netherlands pending the decision have no access to housing and social protection even when they are ill or in need special care.* This especially affects families with children. In the past few years some courts have ruled that local governments must compensate families with children for the rent, but these judgments have had no effect on the official policy. Nor can these judgements improve the quality of housing available to this group of people;
- *People who are ordered to leave the country but are not accepted by their former home country.* These people include in particular rejected asylum seekers who are forced to leave asylum centres after a certain period of time and left destitute;
- *People who are released from aliens detention centres without a possibility of removal from the Netherlands are provided no support at all and are left destitute.*

3. Employment-related rights, including fair wages, reasonable working conditions, access to court to defend one's rights and engagement in trade union activities. The state should 'rigorously' pursue employers breaching these rights:

Although the minimum employment-related rights are guaranteed to irregular migrant workers as well, there have been almost no cases in which legal remedy has been sought for violation of these rights. In practice, most irregular employees work either without a written contract, in which case it is difficult to prove a work relationship, or on fake documents, in which case they cannot prove that they were the ones who worked. Lawyers are reluctant to take on such cases to defend migrants.

IV Conclusion

The Dutch policy to fight illegal stay by means of denial of minimum social and economic rights such as the right to adequate housing and social protection to irregular migrants relegates migrants with irregular status to situations that can only be considered inhuman. Such a policy is unacceptable, especially when it affects vulnerable people like families with children or people unable to return to their countries of origin.