

# HOW TO MODEL THE ACCESSIBILITY TO A MINIMAL PACKAGE OF HEALTHCARE THAT SHOULD BE AVAILABLE TO ALL?

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# RESEARCH QUESTION

How to model the accessibility to a minimal package of healthcare that should be available to all people staying on a state's territory?

- determine the content of this healthcare package
- determine how irregular migrants can get access to this package

## ‘Minimal’ implies evaluating the situation of irregular migrants:

The Council of Europe prefers to use the term ‘irregular migrant’ to other terms such as ‘illegal migrant’ or ‘migrant without papers’. This term is more neutral and does not carry, for example, the stigmatisation of the term ‘illegal’. It is also the term increasingly favoured by international organisations working on migration issues. It is wide enough to cover all those in an irregular situation, whether tolerated or not tolerated by the authorities, whether they entered the country legally or illegally, whether they work or do not work, whether they are independent or dependent (children, aged), whether they are failed asylum seekers or persons who have failed to apply for asylum, etc

# HEALTH RESOURCES ARE LIMITED

- conception that anybody is entitled to a state's healthcare system is not maintainable
- restrictive admission to a state's territory as well as restrictive admission to social security and welfare benefits = means of deterring people to come to the country
- still, high numbers of irregular migrants in the EU: estimates from 3 to 5 million or sometimes even higher
- these people fall under the jurisdiction of the state where they reside
- every state needs to respect the human dignity of all people staying on its territory

# PLAN OF ACTION

- I. Health Care concept
- II. International standards
- III. Belgian situation
- IV. Specific recommendations

# I. THE HEALTHCARE CONCEPT

Healthcare includes :

- strictly medical care
- the provision of drinkable water, sanitary facilities, shelter and essential food (= broad interpretation of preventive medicine)

## II. INTERNATIONAL STANDARDS

- a diversity of international and European instruments covering this topic
- varying degree of signatures and ratifications regarding these instruments
- implies a complete lack of clarity as to what the minimum standards exactly are
- Council of Europe: need for unification

# International Covenant on Economic, Social and Cultural Rights (UN) and the (Revised) Social Charter (CoE)

## 4 lines of force:

- the absence of discrimination
- physical availability of healthcare
- economic availability of healthcare
- information



## 2 important questions:

- **only medical care or medical care + drinkable water, sanitary facilities, shelter and essential food?**
- **emergency, urgent or necessary medical care?**

**FIDH v France: necessary medical care for irregular minors and urgent medical care for irregular adult migrants**

# European Court of Human Rights

- important evolutions: testing the compatibility of social rights with fundamental rights (*Larioschina v. Russia* and *D. v. UK*)
- situational judgment against fundamental rights
- direct application - integrated into national legislation: formal complaints are possible
- art. 3: no one shall be subjected to torture or to inhuman or degrading treatment or punishment
- art. 8: right to private and family life, home and correspondence
- future evolutions might provide answers
- case by case reasoning = uncertainty

### III. CASE STUDY: BELGIUM

- urgent medical care = care of an exclusive medical nature
- urgent nature of this care needs to be demonstrated by a medical certificate
- hence: healthcare professionals' view = key to outline the term 'urgent'

- **no right to financial aid, housing or other social welfare benefits**

**exception: minors ~ Convention on the Rights of the Child (United Nations) minors (and their parents) are entitled to more than urgent medical care: all care necessary for own development, within special reception centre**

**still: a lot of uncertainty with regard to the position of minors**

- **insufficient information and communication**
- **raises doubt with regard to the respect for human dignity**

# OTHER EUROPEAN COUNTRIES

- when evaluating other European countries: always assess the way the law is interpreted in practice
- all EU countries provide some kind of healthcare to irregular migrants
- conclusion: again, no clear cut definition of what should be provided to
- irregular migrants

## IV. RECOMMENDATIONS

- find a balance between deterrence and respect for human dignity
- provide necessary medical care to all and clearly define and outline the term ‘necessary’
- provide drinkable water, sanitary facilities, shelter and essential food to irregular minors
- provide a minimum of drinkable water, sanitary facilities, shelter and essential food to the most vulnerable amongst the irregular migrants

- provide enough information to irregular migrants with regard to their rights
- respect the anonymity of irregular migrants when applying for healthcare
- support international efforts to codify the rights of irregular migrants and the right to a minimal package of healthcare to all