

# Basic Social Rights - France

Please note that most of the information in this document is found in ["Sans-papiers mais pas sans droits."](#) published by the French organization GISTI. This book is an excellent source of information concerning the rights of undocumented migrants in France.

## 1. Right to Shelter

- **Can an undocumented migrant receive accommodation in a public housing shelter or in a private shelter that receives public funding?**

### Rights stipulated by law

Article L 111-2 of the Family and Social Action Code stipulates that social assistance shall cover the costs of accommodation in a public housing shelter of foreigners without a residence permit.

In addition, the Ministry of Justice has confirmed that social workers and associations working in these public housing shelters shall not be affected by Article 21 of the ordonnance du 2 novembre 1945, which penalizes those who provide assistance in facilitating irregular residence in France.

### Application of rights in practice

In France, the public sector centrally organizes emergency shelters via a toll-free number (115). These shelters offer one night renewable accommodation. An undocumented migrant can call this number or request emergency housing for the night via the social worker at the town hall of their district. There are also public housing shelters for a longer time period (e.g. two weeks to six months) and shelters for women and children. These long-term shelters aim to achieve social and professional reinsertion of the person in need, and to facilitate the passage to independent housing. However, since undocumented migrants lack residence permits (and also working permits), many shelters do not want to accept them because “social and professional reinsertion” is not probable. To request housing in these shelters, undocumented migrants have to go via the social worker of their district. Faced with the enormous demand for housing in such shelters, as well as the improbable reinsertion of the undocumented migrant, it is not uncommon for social workers at the town halls to inform undocumented migrants that they don't have the right to access these shelters.

- **Is it legal for a landlord to rent out an apartment to an undocumented migrant?**

No information provided.

## 2. Right to Health Care

- **Do undocumented migrants have access to public health care / is there a special health service only for undocumented migrants?**

### Rights stipulated by law

Article L 251-1 of the Family and Social Action Code (Code de l'action sociale et des familles) stipulates that the “Aide médicale d'état” (AME) shall provide free health care for those who cannot benefit from health insurance and foreigners irregularly residing in France (it is thus largely directed at undocumented migrants). The AME entered into force in January 2001.

AME in public hospitals is accessible to all undocumented migrants in France, regardless of how long they have resided irregularly in France (commonly referred to as aide médicale hospitalière). This coverage includes any care undertaken in a health center (mainly hospitals) as well as any prescriptions. Undocumented migrants who have proof of three years of uninterrupted residence in France can qualify for treatment outside the public hospitals (les soins de ville). This covers

medical costs such as doctors' visits, pharmaceutical costs, laboratory exams, dental and eye care, abortion, and some other care.

### **Recent Developments concerning AME**

In December 2002, the French government, seeking areas in which budget cuts could be made, voted on amendments that would abolish undocumented migrants' right to free health care under AME. These measures are contained in the 2004 budget. On 16 December 2003, French senators approved a revision of AME for undocumented migrants. From now on, foreigners without a valid residence permit will not have immediate access to AME. They must first prove that they have been living in France continuously for three months. Emergency medical care will remain free, but beneficiaries of AME will have to pay a forfeit fee.

For more information: [www.medecinsdumonde.org](http://www.medecinsdumonde.org).

- **Do health care professionals have the duty to report an undocumented migrant to the authorities? If yes, why? If no, why not?**

No, they do not have the duty to report an undocumented migrant to the authorities, because the law stipulates that undocumented migrants have the right to health care, regardless of their residence status in France.

### **3. Right to Fair Labour Conditions**

- **Does national labour law stipulate that an employer is obliged to pay an undocumented migrant for work done, even if the worker does not have a legal residence or work permit?**

All workers have minimal protection, despite the fact that they are illegally employed. The worker's rights are restored as soon as s/he enters into a working relationship with the employer (even if it is illegal) by referring to the industrial tribunal (stipulated in Article L 341-6-1 of the Labour Code). The undocumented worker thus has the right to: a decent salary (that cannot be lower than the guaranteed minimum wage); payment for overtime; allowances foreseen by the collective agreement applicable to the business; compensation for annual paid holidays; and fixed compensation if the employment ends (this compensation cannot be less than one month's salary). All of these rights are guaranteed to undocumented workers.

- **If an undocumented migrant has an accident at the workplace, can s/he receive coverage from Social Security (via accident insurance) to cover the costs of treatment or care?**

If a worker has an accident due to or at his/her workplace, s/he can obtain coverage from social security via accident insurance. This coverage includes reimbursement of care and an income or capital. Not having a valid residence permit does not disqualify a worker from accident insurance from social security. Coverage for work accidents is not linked to the validity of the residence permit and the work of the concerned worker (stipulated in Article L 374-1 of the Code of Social Security).

- **Can an undocumented migrant bring a court case against an employer for withheld wages?**

Article L 341-6 of the Labour Code stipulates that the employer is the only party responsible for hiring an undocumented worker. The undocumented worker is thus seen as a victim. Thus, an undocumented worker can bring a court case against an employer for withheld wages. Nonetheless, French courts have an increasing tendency to consider undocumented workers as freelancers and thus condemnable. There is also less and less application of the above-mentioned law that stipulates that undocumented migrants that are irregularly hired are above all considered as victims, even if they are consenting. Legal protection for financial compensation of withheld wages and other labor-related matters is becoming increasingly difficult to obtain.

### **4. Right to Organise**

- **Do undocumented migrants have the right to organise?**

Active participation in a group or organization is a right that is not linked to a residence permit, thus undocumented migrants have the right to organize.

- **Can an undocumented migrant be a member of a trade union?**

Membership in a trade union is a right that is not linked to a residence permit, thus undocumented migrants can be members of trade unions.

## **5. Right to Education and Training**

- **Can undocumented children under the age of 18 enroll in schools?**

### **Rights stipulated by law**

#### *Nursery school*

Any child over the age of three can enroll in a nursery school near his/her residence if his/her family requests enrolment (stipulated by the Law of 10 July 1989). No pre-requisite of citizenship can be asked and discrimination cannot be carried out against foreign children (stipulated by the Law of 10 July 1989 and the Circular of the Ministry of National Education of 16 June 1984 and 6 June 1991).

#### *Primary school*

It is compulsory for all children to attend school (stipulated in the Laws of 9 August 1936 and 11 July 1975). Non-discrimination towards foreign children is clearly stipulated in the circulars of the Ministry of National Education (16 June 1984 and 6 June 1991).

#### *Middle and High School*

Enrolment of children under the age of 18 should not be problematic. In fact, foreigners present in France are not obliged to have a residence permit until the age of 18 (Law of 2 August 1989).

- **Are schools obliged to report the presence of undocumented children/adolescents to the authorities?**

Since the law stipulates that school is compulsory for all children, regardless of their nationality or residence status, schools do not have the duty to report undocumented children to the authorities.

Nonetheless, it is not exceptional for mayors to demand the residence permit of the child's parents as part of the necessary documentation required for enrolment at school. If the child is refused enrolment at the nursery or primary school, appeals may be made to the town council and/or to the prefecture, and then to the tribunal dealing with internal disputes in the French civil service. If a child is refused enrolment at the middle or high school, an appeal can be made to the education authority and/or to the school inspectors, and then to the tribune dealing with internal disputes in the French civil service.

- **Do schools receive any funding for these children/adolescents?**

No information provided.

- **Do undocumented adults (over the age of 18) have the right to education and training?**

No. Education is compulsory for children until the age of 18, but the law does not guarantee the same right to adults over the age of 18.

## **6. Right to a Minimum Subsistence**

- **Do undocumented migrants have a right to welfare benefits from the government?**

Undocumented migrants do not have the right to welfare benefits from the government, unless they apply for benefits because they have children. Article 111-2 of the Family and Social Action Code (Code de l'action sociale et des familles) stipulates that the "Aide sociale à l'enfance" - welfare benefits granted in situations of extreme need and in the child's interest - are not determined by a valid residence permit or a minimal period of residence in France. These welfare benefits include financial assistance at home, educational assistance (a tutor who comes to the home), and accommodation of the child either in a center with his/her mother or via placement.

## **7. Right to Family Life**

- **Can an undocumented migrant legally get married or legally cohabit?**

The right to get married is a basic social right that is recognized, protected and governed by Article 144 of the Civil Code.

No pre-requisite of valid residence permit can be required of the future spouses. It is forbidden to impose any restriction on the right to get married, especially due to nationality (stipulated in Articles 12 and 14 of the European Convention on the Safeguarding of Human Rights and Basic Freedoms).

Article 9 of the Law of 29 October 1981 abrogates the measures in the Law of 12 November 1938, according to which foreigners could only get married in France if they obtained a residence permit with a validity of more than a year.

No particular obligation should be imposed on foreigners who wish to get married (Circular of the Ministry of the Interior of 31 August 1982).

Irregular residence does not affect the celebration of marriage (general instruction relative to the civil status).

- **Is it legal to deport an undocumented migrant without his/her spouse or child/ren?**

No information provided.

## **8. Right to Moral and Physical Integrity**

- **Are there rules and regulations upholding the right to integrity of undocumented migrants in this country?**

No information provided.

- **Has this country been condemned for not respecting international agreements concerning protection of the personal integrity of undocumented migrants?**

No information provided.

- **Are detention centres accessible to non-governmental organisations?**

The organisation CIMADE has an official agreement with the authorities to maintain a presence in the centers, to ensure that the rights of undocumented migrants are respected.

Concerning arrival zones, there is a joint association, ANAFE, which provides legal assistance to migrants in arrival zones. The authorities allow each participating organization to visit the arrival zones eight times a year.

## **9. Right to Legal Aid**

- **Are undocumented migrants entitled at any time to free legal aid from a jurist or lawyer?**

Jurisdictional aid allows for the covering of costs incurred during a case (lawyers fees, etc.). Under certain conditions, this aid is granted for all cases in the French courts. The Law of 10 July 1991 stipulates that jurisdictional aid is granted to French citizens, EU citizens and foreigners with a valid residence permit in France. Nonetheless, the following categories are exceptions concerning the pre-requisite of valid residence in France: foreign minors; foreigners who are witnesses, charged, defendants, condemned or those participating in a court action with the public prosecutor; certain cases linked to entrance, residence and deportation; asylum seekers that make an appeal on the condition of justifying regular entrance on French territory; and some cases of rejection of residence.

Undocumented migrants can also receive free legal aid from NGOs, many of which have legal experts or lawyers amongst their staff, or who can refer an undocumented migrant to a legal expert or lawyer to receive free legal aid.

- **Can undocumented migrants freely assert their rights in court and in the appeals court?**

No information provided.

## 10. Additional Information

### Articles

- A Call for the Regularisation of all Illegal Residents in Europe, September 2002, GISTI (France)
- SIMONIN Bernard direction, BRUN François, LAACHER Smaïn, GOMEL Bernard / De la régularisation à l'intégration : stratégies, atouts, obstacles.../ Migrations études, n° 97, janvier-février 2001, 12 p. Français

### Other

- Sans-papiers in general (website founded after the 1996 Saint Ambroise church occupation): [www.bok.net/pajol](http://www.bok.net/pajol)
  - Border detention zones for incoming undocumented migrants (zones d'attente): [www.anafe.org](http://www.anafe.org)
- Detention of undocumented migrants in France: [www.cimade.org](http://www.cimade.org)