

# Basic Social Rights - Netherlands

## 1. Right to Shelter

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

Public housing services have been effectively denied to undocumented migrants since the introduction of the Linking Act (Koppelingswet). Municipalities, however, often decide to offer reception facilities for certain undocumented migrants (Dublin claimants, repeat applicants).

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

No information provided.

## 2. Right to Health Care

The 'Koppelingswet', translated as the 'Linkage Law', which entered into force on 1 July 1998, deprives undocumented migrants of the right to health insurance. The law links this right, together with all other claims to collectively financed provisions, to the residence status.

It took a few years for this law to be passed mainly due to the resistance of human rights organisations and organisations of physicians (such as the Royal Dutch Doctors Organisation). All these organisations realised that denying the right to insurance for undocumented migrants would cause problems with accessing health care. In addition, there has been a critical review of the first draft of the law in the light of children's and women's rights.

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

### Urgent Medical Care

The 'Koppelingswet' changed Article 8b of the Dutch Aliens Act. This article says in its new version that undocumented migrants are only entitled to collectively financed provisions in case of 'urgent medical care' or for the prevention of breaches of public health. It was a precondition in the implementation of the law that urgent medical care would still be available, and that the costs of this would not be charged to providers.

Due to strong resistance, the minister responsible has changed the definition of 'urgent medical care', and stated on many occasions that every doctor has an obligation to help anybody regardless of his or her position in society, race, belief, etc. Instead of the word 'urgent', the term 'necessary' is used.

The official description of 'urgent medical care' is the following:

1. In case – or for prevention - of life threatening situations, or in case – or for prevention - of situations of permanent loss of essential functions.
2. In case there is a danger for a third party, e.g. certain contagious diseases (in particular TB) and for psychological disturbances and consequent aggressive behaviour.
3. Pregnancy care (before and during birth).
4. Access for children without a status to preventive Health Care and to a vaccination programme similar to the national vaccination programme.

Since the passing of the law, there have been a lot of misunderstandings of the meaning of 'urgent medical care' among doctors but especially by the financial departments of the hospitals. Human rights organisations such as the Johannes Wier Stichting see it as their task to inform health service staff of the exact meaning of the term.

## **The Linkage Fund**

Two provisions have been taken to ensure that the costs for health care do not fall on the shoulders of the providers. The first provision is for the most costly part of the health care system, which is hospitalisation. Hospitals have a special write-off for unpaid bills ('dubieuze debiteuren'). Since the entering into force of the Linkage Law, the amount of the budget of 'dubieuze debiteuren' is determined every year; before this happened on a three-yearly basis. It should be noted that the costs for hospitalisation of undocumented migrants are, by way of this provision of 'dubieuze debiteuren', in fact paid from the collectively financed provisions.

The second provision is the 'Linkage Fund' (Koppelingsfonds), installed for 'first line aid' (like doctors, obstetricians, pharmacies). This Fund, which contains 5 million Euro, does not serve to pay the bills of the patients, but rather to compensate the doctors for a loss of earnings. The 5 million Euro of the Fund are basically the savings from the other part of the law. The savings from social security, child support etc, were estimated at 5 million. It was a neutral budget solution, not based on an estimated need.

The Fund has been used now for two years. At first NGOs were fearing that 5 million Euro would not be enough, but it turns out that even these 5 million are not fully used. The problem is that it is very difficult to get an application accepted by the Fund. First, there are several cumulative conditions that have to be fulfilled. The health care provider should prove that the person is actually undocumented, that the costs for the health care cannot be claimed in any other way, that the provided care was urgent, and that the financial burden on the provider was 'excessive'. Furthermore, it is not possible for individual doctors to 'declare' unpaid bills of their patients. Applying for money from this Fund has to be seen as applying for subsidies. Applications have to be made by an institution, in the framework of a regional cooperation [1][2]. The money applied for should be an estimation of the costs in the coming year, based on the costs in previous years. In practice NGOs found the GGDs (Gemeentelijke Gezondheidsdiensten/Communal Health Services) prepared to organise admission to health care.

Volunteer organisations (such as the Johannes Wier Stichting and many more) have done a lot of work on emphasising the difficulties of accessing this money. As a consequence, some adaptations have been made. The method of sending in financial claims to the fund is getting easier and the criteria of the board of the fund are becoming looser and looser. The tendency is toward a more normal claims system.

## **Access to GPs and Hospitals**

The system in the Netherlands requires that every law has to be evaluated after 3, 4 or 5 years. For this reason, the government has commissioned some investigations on access to medical care for undocumented migrants. Based on the results of these investigations, the following can be stated.

### *GPs*

For access to general practitioners, the last investigation was done only very recently. (NIVEL, 2000) Interviews were held with general practitioners, midwives and first aid departments of hospitals in order to get an overview of this access. The conclusion of that investigation was that GPs are in general easily accessible. It is noted however that in certain areas in big cities with a concentration of foreigners (more than 10%), a limited percentage of GPs (5%) very regularly have undocumented patients in their consultations. Often there are a few GPs that have a reputation for rendering services to undocumented migrants; as a consequence the share of uninsured patients in their practice can be huge. (NIVEL, 2000:38)

As it is the individual caregiver who decides whether they take a patient or not, patients themselves have no possibility to argue or to complain to any institution about not getting the help needed. Undocumented migrants are becoming more and more dependent on the few people who are willing and able to render these services, even though there are no juridical or financial obstacles.

In this context it has to be mentioned that 'De Witte Jas Health Centre' in Amsterdam, which has been providing medical care for undocumented migrants, announced that it would close down. Among the reasons given it was said that it was time that GPs took over responsibility for treating uninsured persons. By putting an end to its services, the Health Centre hopes to

force members of the medical profession to provide care to clandestine immigrants and uninsured persons. (MNS, March 2001)

### *Hospitals*

In practice access to hospitals is rather difficult. It might happen that the financial advisor of the hospital has an interview with the undocumented migrant as soon as they arrive to make an agreement on the bills. If they cannot agree and there is no life-threatening situation, the hospitals will not help. Certain hospitals accept payment in instalments afterwards. Some keep sending bills but never really pursue them; however it may happen that a person who did not pay earlier bills is refused further treatment.

According to research cited above, 20 percent of all referrals to hospital are unsuccessful. (NIVEL, 2000: 39) Three reasons are given: the patient refuses to go to the hospital, the GP decides to treat the patient himself because of their uninsured status, or the hospital asks for a financial guarantee. These facts prove that sufficient knowledge of the existence of the 'dubieuze debiteuren' is still lacking. It is still necessary for the doctor who makes the referral to phone the financial directors of the hospitals, to inform them that this system exists.

In his extensive study on the life of undocumented migrants in the city of Rotterdam, Prof. Engbersen notes that the method of entering the hospital is crucial. (Engbersen and Burgers, 1999) If the patient enters via an outpatients' clinic, help can be refused, whereas if the person comes in via the emergency care, help is always given. Engbersen states furthermore that access to hospitals is more problematic than to general practitioners, since the tension between medical-ethical and financial-administrative aspects is bigger when they are not (like for a GP) united in one person.

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

No information provided.

### **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?**

No information provided.

- **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?**

No information provided.

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

No information provided.

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

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

No information provided.

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

Yes.

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

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

Yes, education for children up to the age of 18 is accessible. Nevertheless, a lot of parents are wary of sending their children to school, as they could be traced through their children.

There have been cases where schools have been reluctant to enrol undocumented children, or even refused to do so.

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

Although the “Koppelingswet” (Linking Act) stipulates that all information concerning undocumented migrants is linked in order to exclude them from government provisions, the schools are not obliged to report on undocumented migrants.

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

Yes.

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

No, not in government schools and universities. The exception is that s/he has started a course before reaching the age of 18. There are a few other exceptional cases, like asylum seekers who started to attend university before losing their asylum case and thus becoming illegal, where it is possible to complete at least part of their studies. There are, however, NGOs and other organisations which offer courses (language courses, etc.).

For more information on undocumented children’s rights in the Netherlands: [www.defenceforchildren.nl](http://www.defenceforchildren.nl)

Other relevant sites for the Netherlands:

[www.rechtoponderwijs.nl](http://www.rechtoponderwijs.nl)

<http://english.minocw.nl/>

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

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

People who were receiving social benefits before the Koppelingswet was introduced and whose procedure is still continuing receive benefits either from the social service or from special funds created by local governments. However, in all other cases undocumented migrants cannot receive benefits.

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

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

Yes, but if an undocumented migrant wants to live legally with his/her spouse or partner and apply for a residence permit, s/he has to return to their country of origin and ask for a M.V.V. (authorisation of temporary residence) at the Dutch embassy. Only with this M.V.V. can s/he apply for a residence permit at the foreign police. Furthermore they will ask for a valid passport (at least one year) and the partner will have to have a working contract (at least valid for one year). These demands make it very difficult or simply impossible for ex-asylum seekers to get married.

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

If the family entered the country together, then they cannot be deported separately. However, if they entered separately and one of the members is a Dublin claimant, they can and will be separated with very few exceptions.

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

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

No, and even nowadays, there is a discussion on whether to do dental or DNA research on asylum seekers to establish their age (minors) or the family relation in the case of a demand for family reunification.

- **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?**

In many detention centres only the Vluchtelingenwerk groups are allowed. A visitor can only enter upon request by the prisoner.

## 9. Right to Legal Aid

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

Publicly funded legal assistance is open to undocumented migrants.

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

Yes, if it is a matter relating to their residence status.

## Books and Reports

- Fonseca, K., Hannani, G., Hammawandi, A., Glif, Y., "Wanneer ga je naar huis", oktober 2003. (in samenwerking met Fontys Hogescholen te Eindhoven en Netwerk Religieuzen voor Vluchtelingen)
  - Onderzoeksrapport
  - Handleiding
- Ontkend bestaan, Missionair Centrum (Landelijk Dienstencentrum SOW kerken, Nederland) June 2001. The video 'Denied Existence' (Ontkend bestaan) tells the stories of migrants that have been put on the streets in the Netherlands. The video highlights examples of the many groups and initiatives that are concerned with the plight of these migrants. A local government's representative is also interviewed on the dilemmas local governments face, caused by the restrictive national policy.
 

The video is meant for use in groups to have a discussion in the churches and the society at large about the asylum policy. The tape lasts 20 minutes and costs 35 Euro. The tape is accompanied by a brochure with background information. The video and brochure can be ordered at: Missionair Centrum/ Putgraaf 3/ 6411 GT Heerlen/ + 31 45 571 19 80/ [miscentr@cuci.nl](mailto:miscentr@cuci.nl)
- Burgers, J. en Engbergsen, G., De ongekende stad. (I): Illegale vreemdelingen in Rotterdam, Amsterdam, Boom, 1999
- De Witte Jas, Gezondheidszorg en Illegalen: Delen in de zorg?
- Engbergsen, G., van der Leun, J., Staring, R. en Kehla, J., De ongekende stad (II): Inbedding en uitsluiting van illegale vreemdelingen, Amsterdam, Boom, 1999
- Johannes Wier Stichting (Werkgroep Gezondheidszorg en Illegalen), Kwaliteit en toegankelijkheid van de gezondheidszorg voor illegalen, Verslag symposium 21 jan 2000
- Johannes Wier Stichting en Stichting GIL, 'Illegaal' en ziek: onrecht verzekerd, Verslag, symposium 14 November 1997
- Morelli, C. en Braat, K., Kinderen zonder Status. Een oriënterende studie naar de leefsituatie van "illegale kinderen" in Nederland Defence for Children International, Amsterdam, 1999.
- NIVEL, Illegalen aan de 'poort' van de gezondheidszorg: Toegankelijkheid en knelpunten in de zorg van huisartsen, verloskundigen en spoedeisende hulpafdelingen, Utrecht, December 2000
- UNCOVER (N.Ascoly & I. van Halsema) Navigating the new: Refugee women and their health care providers share their experiences on the pregnancy and delivery in the Netherlands Uncover 2001

- Voogt, W., Gedogen met andermans veren. scriptie 2001
- Engbersen, G., R. Staring, J. van der Leun, J. de Boom, P. van der Heijden, M. Cruijf, Illegale vreemdelingen in Nederland, Omvang, overkomst, verblijf en uitzetting, 2002, Rotterdam/Utrecht/Leiden, RISBO. Bestelling: RISBO, tel. 010 4082124, fax 010 4529734, [www.eur.nl/risbo](http://www.eur.nl/risbo)

## Articles

- Engbersen, G. & J. van der Leun. (1999). 'Het Nederlandse illegalenbeleid: gedogen tussen onvermogen en mededogen'. In: W. Bakker en F. van Waarden (Red.) Ruimte rond regels. Stijlen van regulering en beleidsuitvoering vergeleken. Amsterdam: Boom, pp. 71-97.
- Engbersen, G. and J.P. van der Leun (2001) 'The social construction of illegality and criminality'. In: European Journal on Criminal policy and Research. March 2001, Special Issue Crime and Migration), 51-70.
- Engbersen, G. & J.P. van der Leun (2001) 'De uitvoering van het illegalenbeleid. Gedoogbeleid en gedoogpraktijken' In: Abma, T en R. In t Veld (Eds.) Handboek Beleidswetenschappen II Amsterdam: Boom.
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- Leun, J. P. van der. (2000) 'Modes of incorporation. Undocumented immigrants in an advanced welfare state'. In: A. Gächter, H. Waldrauch and D. Çinar (Eds.) Irregular Migration: Dynamics, Impact, Policy Options Vienna: European Centre for Social Welfare Policy and Research, 31-54.
- Leun, J.P. van der en S. Botman (1999). 'Uitsluiting van illegale migranten na de Koppelingswet'. In: G. Engbersen, J. C. Vrooman en E. Snel (Eds) Effecten van armoede. Vierde jaarrapport armoede en sociale uitsluiting. Amsterdam: Amsterdam University Press, pp. 157-172.
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- Leun, J.P. van der, G. Engbersen & P. van der Heijden (1998). Illegaliteit en criminaliteit: schattingen, aanhoudingen en uitzettingen. Rotterdam EUR/FSW (rapport).