

Basic Social Rights - Germany

1. Right to Shelter

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

No. Not even homeless centres provide shelter to undocumented foreigners. Only organizations sometimes provide housing.

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

No, in principle a landlord has to make sure that his/her tenant registers with the municipality. In practice, this is often ignored and apartments are rented out to undocumented migrants. [1]

2. Right to Health Care

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

In theory, undocumented migrants in Germany have the right to public health care in case of illness, pregnancy and birth, according to the Asylum Seekers Assistance Law (Asylbewerberleistungsgesetz) § 4 with § 1 no. 5 and 6, or, in cases where this does not apply, the Federal Social Assistance Law (Bundessozialhilfegesetz) § 120, 1, 1. This stipulates that foreigners who actually reside in Germany, without reference to their legal status, have to receive help in the case of illness, pregnancy and birth. [2] However, in practice this right is usually difficult to fulfill, since public officials have a duty to report any information they obtain on undocumented migrants during their duty to the Foreigners' Office (see further explanation below). In addition, although undocumented migrants have the right to emergency treatment, hardly any will risk entering a hospital even in case of severe injuries. It is disputed among migration lawyers, if even health care providers in clinics and hospitals are required to report undocumented migrants under § 76 Foreigners Law. Many hospitals have reported undocumented migrants to the Foreigners Office in the past, though.

Any treatment is very costly for undocumented migrants, since they either have to pay in cash or they need private health insurance which covers health care in Germany. If the hospital administration fears that the bill will not be covered, this will be reported to the Social Security Office and could subsequently be reported to the Foreigners Office as well.

Therefore, undocumented migrants have to develop their own strategies to receive medical help. Some return to their country of origin for medical care, while others receive services by borrowing an official insurance card from a friend or relative. Most, however, get help from social networks that organize health care by circumventing controls. In general, these networks are based in local and migrant communities, while some are established by activists or church based groups. They provide counselors, doctors, medicine and in some cases they even co-operate with local hospitals and clinics.

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

German Foreigners Law stipulates that all public offices have to notify the Foreigners Office when they obtain information on undocumented foreigners while fulfilling their public office (German Foreigners Law § 76). As the law says that the information has to be obtained in this way, and the gathering of information on the residence status of the patients is not part of the fulfillment of their office, hospitals and doctors are not bound to report undocumented migrants. Sozialämter (Welfare Offices) on the other hand have to report undocumented migrants, as part of their duties is to establish the residence status of their clients.

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?**

Employers are obliged to pay the wages for the work done – regardless of the residential or work permit status of the employee. Undocumented work is understood to be a “factual employment relation,” and the employer thus has to offer all usual conditions of work and pay.

- **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?**

There was a recent case (in 2003) of a Polish undocumented worker who had a work accident. She was dismissed afterwards, and had to take her outstanding wage claim to court. She was also accorded a small pension by the professional organization (accident insurance). [3]

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

There is no juridical provision that excludes workers from their right to appeal to industrial tribunals. There is, however, an obligation for all public offices to notify the Foreigners Office with information on undocumented immigrants received during the course of public service (German Foreigners Law, Section 76). Industrial courts are not obliged to investigate the residence status. This distinction between the obligation to transmit but not to examine is a legal loophole, which enables undocumented workers to make their claims.

In practice, there have been some successful claims, though most undocumented workers still have well-founded doubts about this procedure. [4]

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?**

No information provided.

5. Right to Education and Training

General remarks

In Germany, federal law does not apply to primary and secondary schooling. Therefore, the Länder (federal states) each have their own laws regarding the education of undocumented minors.

Berlin: Undocumented minors under the age of 16 can be enrolled in primary and lower secondary schools on the request of their parents. They do not, however, fall under the compulsory school attendance otherwise enforced in Berlin.

Brandenburg: There is compulsory school attendance for “those foreign youngsters, whose residence in Brandenburg is permitted because of an application for asylum or whose residence is tolerated”. This seems to exclude undocumented minors. Nevertheless, a right to education can be deduced from the German Constitution. [5]

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

Schools are also required to report to the Foreigners’ Office if they receive any knowledge about irregularities concerning the immigration status of students or their parents. Before a migrant family can send their child to a public school, they first have to check with the local school department. The school department provides them with assistance, but also checks their immigration status.

However, many teacher and principals see education – not migration control – as their major task. They believe that children should not be punished for the undocumented status of their parents. With the involvement of as few people as possible – sometimes only the head teacher – they allow children of the undocumented to participate in class. There is a lot of pressure

on these children, since for security reasons they are not allowed to talk about their situation in school, but this is still better than staying at home.

There are two major constraints to this practice: first, undocumented pupils cannot receive official grade reports and diplomas; second, in case of an accident the children of the undocumented are not protected by the general accident insurance which covers all other students. The latter is often given as an argument by schools and kindergartens as to why they do not allow children of undocumented migrants in their institution: the school and the teachers could be held responsible in case of an accident.

Thus, the living conditions of undocumented migrants with children can be very difficult, especially if they are single parents and have only little time for their children due to economic restrictions and poor working conditions.

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

According to § 76, 1 and 2 of German Foreigners Law, public institutions have to report any information they receive concerning undocumented migrants to the relevant authorities, if they come across this information in the fulfillment of their office. Although in strictly legal terms, schools and their administration would not be required to inform on undocumented minors and their parents, this does occur. It is also possible that a school headmaster, by enrolling an undocumented minor at his/her school, may be liable to prosecution according to §§ 92, 93a of German Foreigners Law (criminalizing abetment of illegal residence in Germany), as the education of their children may constitute a decisive factor for the parents' wish to stay in Germany. [6]

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

Yes, schools are funded according to the number of children taught there, regardless of their residence status.

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

No, there is no right to education or training over the age of 16.

6. Right to a Minimum Subsistence

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

No, there is no right to benefits at all.

7. Right to Family Life

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

In theory, yes. Before an undocumented migrant can get married, s/he has to leave the territory and re-enter in a legal manner (family reunification). However, because of §76 of German Foreigners Law, which stipulates that all public bodies have to denounce the presence of undocumented foreigners when it comes to their attention, there have been cases of undocumented foreigners being arrested at the registry office, before the marriage had been performed. [7]

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

Families can be separated and be deported separately if the members have arrived at different times or for different reasons.

8. Right to Moral and Physical Integrity

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

No.

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

No, but there have been critical reports of the UN Committee Against Torture about prisons in Germany.

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

Specific individuals in detention centres can be visited, but not the detention centre as such.

9. Right to Legal Aid

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

With the exception of detention camps in Nordrhein-Westphalen, where there are regular consultation hours with a lawyer, there is no provision of free legal aid to undocumented persons.

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

No.

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Articles

- Zur Lage der Flüchtlinge in Deutschland (On the situation of Refugees in Germany): In this report, Professor Dr. Kühne (Dortmund) outlines six rules for a refugee policy of a different kind, one of which is the inclusion of undocumented migrants in the total picture, and the recognition and support for help structures for this group of migrants.
- Die Deutsche Bischöfe, Kommission für Migrationsfragen: Leben in der Illegalität in Deutschland - eine humanitäre und pastorale Herausforderung. 21 Mai 2001. This publication can be ordered at:

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