

Basic Social Rights - Belgium

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 information provided.

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

Yes, an undocumented migrant can legally sign a lease.

2. Right to Health Care

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

Undocumented migrants in Belgium have the right to urgent medical care, according to the Royal Decree of 12 December 1996. This decree states that urgent medical care can be both preventive and/or curative. Therefore, “Urgent Medical Care” refers to a wide variety of urgent care provisions. An operation, childbirth, an examination, physiotherapy, medication, etc., can all be considered in regard of the above-mentioned decree.

“Urgent Medical Care” must be differentiated from “Emergency Medical Assistance.” The latter is the assistance required immediately in case of an accident or illness. Emergency Medical Assistance is specifically regulated by another law and applies to everyone, including undocumented migrants.

In the past there has been considerable confusion about the term ‘urgent’. Mostly doctors are rather restrictive when first confronted with the procedure. However, it seems that the more the doctors use it, the more they enlarge the term. One can say that the common interpretation of the term ‘urgent’ is evolving towards ‘necessary’. Doctors consider e.g. regular follow-ups as urgent medical help, as well as vaccinations. In this way, the rather inaccurate description in the law gives in the end the possibility to a broad interpretation, which is also the experience of Médecins Sans Frontières (MSF) and Medimmigrant.

Organisations working for undocumented migrants like MSF and Medimmigrant see it as their task to inform hospitals and doctors on the term of Urgent Medical Care. MSF for example had a project in Verviers (a small town in the East of Belgium), informing the general practitioners (GPs) in the region on the Royal Decree and access to health care in general. After some time, MSF stopped the project since all the GPs and the regional hospital understood the law and acquired some experience in practicing and applying it. Also in the city of Ghent there are good experiences, but in places like Brussels, Antwerp or Liege it seems to be more complicated.

Access to mental health care for undocumented migrants is problematic, since in Belgium this is provided mostly by psychologists and not by psychiatrists. Psychologists however are not allowed to sign for urgent medical care, and as a consequence medication cannot be provided.

For more information on medical care in Belgium, visit <http://www.medimmigrant.be>.

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

No.

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?**

Yes, they have the right to a grant from the Fund for Work Accidents, with certain conditions to be fulfilled. In reality, it is unlikely that an undocumented worker will begin such a procedure.

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

Ordinary law still applies with regard to general rights and duties of the employee.

4. Right to Organise

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

Foreigners, also those without papers, have the right to association. For an official association, the law stipulates that at least three-fifths of members must be Belgians or foreigners with legal residence.

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

No information provided.

5. Right to Education and Training

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

Undocumented minors have the right to education. There is an official agreement stating that children under the age of 18 can go to school unconditionally.

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

No, schools do not have to report these children or their parents to the authorities. There is even an agreement between the federal and regional authorities and the schools on this matter. The police will not use the schools to trace undocumented children (and their families).

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

Schools receive public funding for all their pupils, including undocumented ones.

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

For adults, there is no right to education and training. Undocumented adults can go to university if they have the right diplomas. However, universities can decide to accept or refuse students as they wish. For training courses, undocumented adults can only attend those that are not government-funded. If the organization is government-funded, as is the case with e.g. language courses for the unemployed, undocumented adults are precluded.

6. Right to a Minimum Subsistence

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

Persons without legal residence in Belgium are exempt from the right to social assistance. Only rejected asylum seekers who are waiting for a decision on their appeal to the State Council, Belgium's highest administrative court, have the right to food

and housing assistance (but not monetary assistance). Undocumented migrants who have applied for regularization do not have the right to social assistance.

However, in principle the mission of public centers for social welfare (O.C.M.W./C.P.A.S.) is to ensure a decent existence for all residents in Belgium, including people without residence documents. In practice, though, the O.C.M.W./C.P.A.S. hardly ever grant support to undocumented migrants. This is due to the fact that the law does not compel them to do so, except for urgent medical care.

7. Right to Family Life

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

Yes.

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

No, a married couple has the right to live together.

8. Right to Moral and Physical Integrity

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

No, not specifically.

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

Yes. Belgium has been condemned by the Committee against Torture for the way its prisons are run.

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

Yes, but only if they receive permission from the Ministry of Interior Affairs.

9. Right to Legal Aid

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

Yes, they are entitled to free legal aid by a lawyer through a pro-deo system. However in practice it is not easy to fulfill the necessary requirements. Lawyers are trying to change the system. You need a document from the police stating that you do not have an income.

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

Yes, though in practice there are a number of problems.

Books and Reports

- Main aims of a reception policy for undocumented migrants in Flanders (Dutch version only), June 2002. Text prepared by the administration of the Flemish government.
- Foblets, M.-C. en De Muynck, A Migrantenonderzoek voor de toekomst. Leuven, Acco, 1997.
- Foblets, M.-C. en Pang, C.-L., (eds.) Cultuur, Etniciteit en Migratie Leuven/Heusden, Acco, 1999

- Gijsekom, E. Onderwijskansen voor kinderen van illegale verblijvers (Een kwalitatief onderzoek naar de problemen in de opvang van kinderen van illegale verblijvers in het lager onderwijs.) Ongepubliceerde verhandeling, KUL, Fac Sociale wetenschappen, Dep. Sociologie, 2000
- Kagné B., Martiniello M. Les Sans-Papiers en Belgique: Trajectoires et Difficultés d'une Vie en Marge de la Société. Liège, 2000
- Kagné B., Martiniello M. Easy Scapegoats. Undocumented Immigrants in Europe. Belgian Report. Liège, 2000
- KOSOVA vzw, HAVEN vzw Huisvesting van Mensen Zonder Papieren (Eindverslag Actie- onderzoek) Antwerpen, 2000
- Leman, J. Sans Documents. Les immigrés de l'ombre. Latino-américains, polonais et nigériens clandestins De Boeck, Brussel, 1995.
- Medisch Steunpunt Mensen zonder Papieren Brussel Ziek en zonder papieren; Een praktische handleiding over gezondheidszorg voor vreemdelingen zonder wettig verblijf Brussel, 1999 (order at med.steunpunt.mzp@ping.be)
- Pickels, A. (ed.) A la lumière des sans papiers. Editions Complexe, 2001, Collection : (Revue de l'Université de Bruxelles ; 2000/2)
- Slimane, L., L'immigration clandestine de main d'oeuvre dans la région bruxelloise. Bruylant, Brussel, 1995
- Steunpunt Mensen zonder Papieren A Legal guide for people in an illegal stay Brussels, 1999 (order at steunpunt.mzp.bru@wanadoo.be)
- Van Broeck, A.-M. Transnationalisme bij Colombiaanse migranten . Tussen Brussel en Medellin doctoraatsthesis, K.U.Leuven, 1999.

Basic Social Rights - Belgium - Articles

- Evaluation Report of the Working Group on Reception of Undocumented Migrants of the Flemish Community. Dutch version only
- Kagné, Bonaventure, La régularisation des sans-papiers: 1 an déjà. Aide mémoire , n°15, Oct-nov-Dec 2000, p 1-7
- Kagné, Bonaventure, Qui sont les sans- papiers en Belgique? Osmoses 19, Avril-Mai-Juin 2000; 20-23
- Leman, J., Siewiera, B en Van Broeck, A.-M., Documentloze immigranten te Brussel. Cultuur en Migratie, 1994-2.
- Leman, J., Undocumented migrants in Brussels: diversity and the anthropology of illegality. New Community 1997, 23 (1), 25-41
- Vangenechten, Johan: De scheepvaartpolitie van Zeebrugge en illegale migranten. October 2004. (The author works at the Belgian "Project Netwerk Hulpverlening Mensenhandel", johan.vangenechten@steunpunt.be)