

# Guaranteeing Access to Health Care for Undocumented Migrants in Europe: What Role Can Local and Regional Authorities Play?

- FR Garantir l'accès aux soins de santé aux immigrants en Europe : quel rôle peuvent jouer les autorités locales et régionales ?
- ES Garantizando el acceso universal a la sanidad en Europa a las personas migrantes irregulares: ¿Cuál es el rol de las administraciones locales y regionales?
- IT Garantire l'accesso alle cure sanitarie per i migranti privi di documenti che si trovano in Europa: Quale ruolo possono svolgere le autorità locali e regionali?

Sincere thanks to all of the organisations and individuals who contributed to this report, as well as the PICUM team and volunteers for their assistance with the finalisation of this report, including Alexandrine Pirlot de Corbion for the coordination, as well as Maite Daniela Blanco De Loco, Greta Faggiani and Mathilde Laroussi for translations of part of this report and Mercedes Miletta, Maria Giovanna Manieri and Sidonie Pauchet for the proof-reading.

Report produced by Maria Giovanna Manieri, Kadri Soova and Michele LeVoy.

This report was made possible with the generous support of:



This project has received funding from the European Community under the PROGRESS FUND. The information is the sole responsibility of the author, and the Commission is not responsible for any use that may be made of the information contained therein.



SIGRID RAUSING TRUST

PICUM  
Platform for International Cooperation on Undocumented Migrants  
Rue du Congrès / Congresstraat 37-41, post box 5  
1000 Brussels  
Belgium  
Tel: +32/2/210 17 80  
Fax: +32/2/210 17 89  
info@picum.org  
www.picum.org

August 2013

Design: [www.beelzepub.com](http://www.beelzepub.com)

# Contents

<b>Introduction</b>	<b>3</b>
<b>Setting the Scene: Examples of Proactive and Progressive Policies Adopted by Local and Regional Governments</b> , <i>Michele LeVoy, Director of PICUM</i>	4
<b>The Role of European Institutions in Guaranteeing Undocumented Migrants' Fundamental Rights</b> , <i>Pierluigi Brombo, European Economic and Social Committee (EESC), Employment, Social Affairs and Citizenship Unit (SOC)</i>	5
<b>Institutional Perspectives: Gaps to be Filled</b>	<b>6</b>
<b>Mapping Access to Health Care for Undocumented Migrants in the European Union</b> , <i>Ann-Charlotte Nygård, member of the Asylum, Migration and Borders Team within the European Union Agency for Fundamental Rights (FRA)</i>	7
<b>EU Policy Focus: Returns Directive</b> <i>Manfred Hähnel, Directorate General Home Affairs, European Commission</i>	8
<b>Local and Regional Authorities' Approach Towards Restrictive National Policies</b> <i>Ramón Sanahuja, Chairman of the Migration and Integration Working Group at EUROCIITIES</i>	9
<b>European Commission's Key Concerns: Ensuring Access to Health Care for Undocumented Migrants</b> , <i>Walter Wolf, Directorate General Employment and Social Affairs, European Commission</i>	10
<b>Local and Regional Perspectives: Good Practices</b>	<b>11</b>
<b>The Role of Local Authorities in Italy: A Creative Approach</b> <i>Nicola Fratoianni, Regional Minister Responsible for Migration Policies of the Region of Puglia (Italy)</i>	12
<b>The Role of Local Authorities in Spain: A Proactive Approach</b> <i>Josefa Ruiz Fernández, Secretary General of Public Health, Social Inclusion and Quality of Life of the autonomous region of Andalusia (Spain)</i>	14
<i>Xavier Alonso Calderón, Representative of the General Directorate for Immigration of the Government of Catalonia (Spain)</i>	15
<b>Health Care Professionals: A Key Role</b> <i>Anne Sjögren, Rosengrenska (Sweden)</i>	16

---

**Conclusion** **17**

**Gaps to be Filled and Future Perspectives**  
*Klaus Boele, CIVEX Commission Secretariat, Committee of the Regions* 18

**Gaps to be Filled and Future Perspectives**  
*Ana Feder, Policy Advisor at EUROCITIES* 19

---

**Recommendations** **20**

GARANTIR L'ACCÈS AUX SOINS DE SANTÉ AUX IMMIGRANTS EN EUROPE : QUEL RÔLE PEUVENT JOUER LES AUTORITÉS LOCALES ET RÉGIONALES ?

---

**Introduction** **23**

---

**Recommandations** **26**

GARANTIZANDO EL ACCESO UNIVERSAL A LA SANIDAD EN EUROPA A LAS PERSONAS MIGRANTES IRREGULARES: ¿CUÁL ES EL ROL DE LAS ADMINISTRACIONES LOCALES Y REGIONALES?

---

**Introducción** **31**

---

**Recomendaciones** **34**

GARANTIRE L'ACCESSO ALLE CURE SANITARIE PER I MIGRANTI PRIVI DI DOCUMENTI CHE SI TROVANO IN EUROPA: QUALE RUOLO POSSONO SVOLGERE LE AUTORITÀ LOCALI E REGIONALI?

---

**Introduzione** **39**

---

**Raccomandazioni** **42**

# Introduction

---

The Platform for International Cooperation on Undocumented Migrants (PICUM), together with EUROCITIES, held a roundtable discussion on 12 December 2012 at the Committee of the Regions, hosted by Mr Nichi Vendola (Region of Puglia, Italy). The roundtable aimed at addressing discrepancies between national and local level regulations and practices on access to health care for undocumented migrants.

This event allowed for an in-depth discussion on the proactive role taken by many regional and local governments across Europe in improving health care provision for undocumented migrants beyond the level of access guaranteed by national legislation despite financial and political constraints. In other situations, local and regional governments have attempted to alleviate central governments' decisions to restrict existing protections.

The role of local and regional authorities is crucial, especially because the provision of basic social services, including health care, is usually a competence of local or regional governments, who are responsible for first-line assistance and are thus well informed of the health care needs of residents. Compelled by restrictive legal frameworks at national level, local and regional authorities are often able to react with creativity and flexibility, proposing inclusive policies and setting positive practical precedents that promote cohesion and integration within society at both local and regional levels.

## ABOUT PICUM

Founded as an initiative of grassroots organisations, The **Platform for International Cooperation on Undocumented Migrants (PICUM)** represents a network of more than 140 organizations and 160 individual advocates working with undocumented migrants in more than 38 countries, primarily in Europe, as well as in other world regions. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

## OPENING PANEL

### Setting the Scene: Examples of Proactive and Progressive Policies Adopted by Local and Regional Governments



**MICHELE LEVOY**, Director of PICUM



Local and regional governments play a key role in guaranteeing access to basic social rights for undocumented migrants and often adopt proactive and progressive policies that ensure inclusive access to social rights irrespective of residence status.

In Belgium, several local authorities guarantee access to compulsory level education to undocumented children. Improving the level of access to fundamental rights guaranteed at national level, the Italian municipalities of

Genoa, Turin, Florence and Milan currently ensure access to preschool education for undocumented children.

When highlighting the important role played by local authorities in ensuring the realisation of the human rights of undocumented migrants, it is relevant to refer to the concept of “sanctuary cities” in Canada and in the United States as encouraging examples of local and municipal governments offering comprehensive protection measures for undocumented migrants’ human rights.

## OPENING PANEL

## The Role of European Institutions in Guaranteeing Undocumented Migrants' Fundamental Rights



**PIERLUIGI BROMBO**, European Economic and Social Committee (EESC),  
Employment, Social Affairs and Citizenship Unit (SOC)



The role of European Institutions in guaranteeing migrants' fundamental rights and in debating the issue of access to fundamental rights for undocumented migrants is of key relevance, especially in a political context where, as a result of the financial crisis, **not only budgets, but also access to fundamental rights are cut.**

In this context, the EESC, being a consultative body that represents civil society organisations, plays an important role in delivering three key messages in relation to guaranteeing access to health care for undocumented migrants:

1. Member States need to provide better protection of the fundamental rights of undocumented migrants and the European Union should consider undocumented migrants as one of the most vulnerable social groups, ensuring their access to health care and to other social services such as education.
2. Access to medical treatment and preventive care should be considered a fundamental right in line with the Charter of Fundamental rights of the European Union, which guarantees access to preventive and medical care.<sup>1</sup>
3. Local and regional authorities play a key role within the implementation and development of consistent immigration policies, as they often have political, regulatory and budgetary competences that allow them to effectively integrate national immigration policies at local or regional level.

<sup>1</sup> See Article 35 of the Charter of Fundamental Rights of the European Union, which states that "Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities".

# Institutional Perspectives: Gaps to be Filled

---

The roundtable follows important advances made in specific policy documents at European level in 2011 concerning access to health care for undocumented migrants, including a European Parliament resolution on reducing health inequalities<sup>2</sup>; the Council of Europe's Committee of Ministers' recommendation on mobility, migration and access to health care<sup>3</sup> and a report by the EU Fundamental Rights Agency (FRA) on access to health care for migrants in an irregular situation.<sup>4</sup>

The Committee of the Regions has also correspondingly taken initiative on this issue by holding its annual dialogue with the FRA, in October 2011, on implementing the fundamental rights of irregular migrants and by commissioning a key study entitled "*Protecting and Delivering Fundamental Rights of Irregular Migrants at Local and Regional Levels in the European Union*".<sup>5</sup>

The first session of the roundtable aimed at discussing the existing institutional perspectives in relation to guaranteeing access to health care for undocumented migrants.

<sup>2</sup> European Parliament resolution of 8 March 2011 on reducing health inequalities in the EU (2010/2089(INI)), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:199E:0025:0036:EN:PDF>.

<sup>3</sup> Recommendation CM/Rec(2011)13 of the Committee of Ministers to member states on mobility, migration and access to health care, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1872157>.

<sup>4</sup> FRA, "*Migrants in an irregular situation: access to healthcare in 10 European Union Member States*", available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_irregular-migrants-healthcare\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_irregular-migrants-healthcare_en.htm).

<sup>5</sup> "Protecting and Delivering Fundamental Rights of Irregular Migrants at Local and Regional Levels in the European Union", Centre for European Policy Studies (CEPS), 2011, available at: <http://cor.europa.eu/en/documentation/studies/Documents/protecting-fundamental-rights-irregular-migrants.pdf>.



## expert insight



### Mapping Access to Health Care for Undocumented Migrants in the European Union



**ANN-CHARLOTTE NYGÅRD**, member of the Asylum, Migration and Borders Team within the European Union Agency for Fundamental Rights (FRA)



Local and regional level initiatives aiming at ensuring access to health care for undocumented migrants arise in the context of restrictive national policies. When approaching the issue of access to health care for undocumented migrants in the European Union, it is important to analyse the reasons for this. Inclusive policies at local level are usually adopted in light of public health reasons, cost effectiveness and human rights concerns. They are sometimes implemented in co-operation with community-based initiatives. The FRA research findings highlight the crucial role played by local authorities in ensuring access to health care for irregular migrants. As part of proposed key recommendations on this issue, the FRA has identified the following:

1. Migrants in an irregular situation should be entitled to necessary health care;
2. Full access to health care services should be guaranteed for children and pregnant women;
3. Awareness should be raised amongst health providers on entitlements to health care services (i.e. qualifying conditions, reimbursements etc.);
4. Member States should refrain from apprehensions at or near health providers and medical establishments should not be required to share migrants' personal data with immigration law enforcement authorities for eventual return purposes.

In particular, fear of detection and data exchanges are serious obstacles to irregular migrants' ability to access health care services, even when they are entitled to access care. In order to face the issues raised in relation to data exchanges and the disproportionate effect on fundamental rights of some law enforcement practices, the FRA has together with Member State experts, the European Commission and PICUM developed "dos and don't" for law enforcement officials. The practical guidance document "*Apprehension of migrants in an irregular situation – fundamental rights considerations*"<sup>6</sup> has been handed over to the EU institutions for further consideration. It was presented in the Contact Committee for the Member States, convened by the European Commission under the Return Directive, and in the Council Working Party on Integration, Migration and Expulsion under the Cypriot Presidency. Finally, depending on the constitutional set-up, local and regional communities may have the dual role of being responsible for delivering public services, but also for apprehending undocumented migrants.

<sup>6</sup> The FRA practical guidance on "Apprehension of migrants in an irregular situation – fundamental rights considerations", published on 9 October 2012, are available at: <http://fra.europa.eu/en/news/2012/fundamental-rights-considerations-apprehending-irregular-migrants>.

## expert insight



### EU Policy Focus: Returns Directive



**MANFRED HÄHNEL**, Directorate General Home Affairs,  
European Commission



In order to analyse the current focus of European policies that impact on undocumented migrants' access to health care, the impacts of the Returns Directive<sup>7</sup> on guaranteeing access to fundamental rights for undocumented migrants have to be assessed. As a starting point, it is important to note that the European Commission aims at showing its commitment in promoting, wherever possible, access to health care for migrants within the Community *acquis* and has stated that access to health care should be in full respect of the principles stated within the Charter of Fundamental Rights of the EU (Articles 21 and 35).

The Returns Directive plays an important role in the context of ensuring access to fundamental rights for migrants within the process of being returned to countries of origin. In particular, amongst other guarantees, the directive requires member states to provide emergency health care and essential treatment of illness to third-country nationals during the return procedure and during periods for which removal has been postponed.<sup>8</sup> All EU member states (except Iceland) have to date notified the full transposition of the directive into national law. The European Commission is currently assessing the legal transposition of the directive within Member States' national legislations. The Commission has assessed to date the situation in 18 member states and will present a full report on the transposition of the Returns Directive and on the returns policy in December 2013.

The European Commission has also launched a study<sup>9</sup> that aims at analysing the implementation of Article 14 of the Returns Directive, establishing specific safeguards and guarantees pending return, such as ensuring access to education, health care, protection of the family unit and addressing special needs of vulnerable persons.

Finally, it is important to specify that member states' policy on the apprehension of irregular migrants is subject to the principle of proportionality expressly recognised by the Return Directive in its recital 20. Therefore the member states should not use the Returns Directive as a justification for increased apprehensions of migrants at any price.

<sup>7</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:pdf>.

<sup>8</sup> See Article 14 of Directive 2008/115/EC.

<sup>9</sup> The study was completed in the meantime and is published on the EC website ([http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/return-readmission/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/return-readmission/index_en.htm))

## expert insight



### Local and Regional Authorities' Approach Towards Restrictive National Policies

**RAMÓN SANAHUJA**, Chairman of the Migration and Integration Working Group at EUROCITIES



In a context of budget restrictions, the approach of local governments and municipalities varies greatly. A significant example of the different approaches that local and regional governments might adopt towards restrictive national policies is provided by the reform of the health care system that recently took place in Spain. In this context, Spanish autonomous regions and local governments are currently taking proactive steps in order to counter the restrictive legal framework established at national level. Although the system in place prior to the reform proved to be very inclusive and was successful in promoting social cohesion, the new law establishes a national legal framework that implies a shift towards a less inclusive health care system in Spain.

Local communities in Spain are taking legislative steps in order to counter the negative impact of the new proposed federal regulation and to guarantee access to health care for undocumented migrants in their territory. Four main reasons for these local actors' actions can be identified:

1. Maintaining social cohesion and social inclusion;
2. Considering access to health care as a basic fundamental right;
3. Ensuring public health and preventing transmission of infectious diseases;
4. Economic efficiency: in the long term it is more cost-efficient to maintain a system of social care and social assistance that ensures an equal level of treatment amongst everybody within the society.

## expert insight



### European Commission's Key Concerns: Ensuring Access to Health Care for Undocumented Migrants



**WALTER WOLF**, Directorate General Employment and Social Affairs, European Commission



The European Commission recognises that working closely with member states and civil society partners towards the identification of good practices and the exchange of experiences in relation to access to health care for undocumented migrants is crucial in order to develop inclusive legislative and policy frameworks at EU level.

In a context of budgetary constraints, it is crucial to adopt both realistic and practical approaches that would ensure social cohesion and it is in the interest of national authorities to ensure a good level of public health through granting access to health care services for all persons, including undocumented migrants. Disadvantaged groups of migrants are an issue of great concern within the European Union. In this sense, two key examples of policy frameworks calling for inclusive social and health care services for migrants at European level are: the Commission Communication on "*Solidarity in health: Reducing health inequalities in the EU*"<sup>10</sup> adopted in 2009 and the Council Conclusions of 26 November 2009 on the education of children with a migrant background<sup>11</sup>.

The European Commission is showing an on-going concern for ensuring the promotion of the social inclusion of migrants as well as other vulnerable groups within the framework of the Community Action Programme to Combat Social Exclusion. In this context, PICUM's publication "*Access to Health Care for Undocumented Migrants*" represents a good research tool that gives more visibility to the issue of marginalization of undocumented migrants arising from their inadequate access to health care and demonstrates the involvement of local and regional actors in promoting and implementing inclusive policies for disadvantaged and vulnerable social groups.

<sup>10</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - *Solidarity in health: reducing health inequalities in the EU*, COM/2009/0567, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0567:FIN:EN:HTML>.

<sup>11</sup> Council Conclusions of 26 November 2009 on the education of children with a migrant background, 2009/C 301/07, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:301:0005:0008:EN:PDF>.

# Local and Regional Perspectives: Good Practices

---

Highlighting the key complementary role played by local and regional authorities, the second panel focused on presenting some of the progressive and inspiring examples adopted by regional governments to fill the gaps created by national legal provisions and policies on health care. Being able to identify the key practical issues and barriers that undocumented migrants have to face when seeking access to health care, local and regional authorities usually provide for dynamic legal and policy responses that enable flexible, effective and sustainable solutions for inclusive health services.



## expert insight



### The Role of Local Authorities in Italy: A Creative Approach

**NICOLA FRATOIANNI**, Regional Minister Responsible  
for Migration Policies of the Region of Puglia (Italy)



The phenomenon of irregular migration has been present in Puglia for over a decade, especially within the region's agricultural sector, where undocumented migrants are often exploited as agricultural seasonal workers. The regional government's approach has been to ensure inclusive access to health care for undocumented migrants, beyond the basic guarantees established at national level.

In 2009, the regional government of Puglia introduced an inclusive legislative measure that grants undocumented migrants full access to health care and the right to choose a family doctor and a paediatrician for their children<sup>12</sup>. The region of Puglia also developed effective responses to overcome the practical barriers undocumented migrants face and, in particular, to avoid apprehensions of undocumented migrants seeking access to health care. It is important to underline however that in Italy, irregular entry and stay is still formally considered a criminal offence under Decree Law no. 94/2009. Although this provision is, according to the Court of Justice of the European Union, in breach of the principles established within the EU *acquis*<sup>13</sup>, Italian law has not yet been amended and criminalisation of irregular stay still serves as a significant deterrent for undocumented migrants seeking access to health care services. In order to effectively address this barrier, the regional government of Puglia, in cooperation with the NGO "Emergency" and the ASL of Foggia, started offering health care services through a mobile clinic. This initiative has a relevant and positive impact within the region and serves as an important tool for raising awareness on the issue amongst both undocumented migrants and health care professionals.

#### The Complementary Role of Civil Society Organisations

In order to address the issue of providing access to health care for undocumented migrants, in April 2011 the Italian NGO *Emergency* set up mobile clinics, named "*Polibus*", to guarantee timely medical assistance where needed. These mobile units are in use for definite periods in areas where undocumented migrants face specific barriers in accessing health care services, such as agricultural areas. *Emergency's Polibus* operated in the region of Puglia from June to November 2012. During that period, the mobile clinic received a total of 1,709 patients. Only four patients had to be referred to a hospital in order to receive emergency treatment and three were hospitalized.

<sup>12</sup> See Regional Law 32/2009.

<sup>13</sup> *El Dridi*, C-61/11, European Union: Court of Justice of the European Union, 28 April 2011, available at: <http://www.unhcr.org/refworld/docid/4dde46cb2.html>.





### NATIONAL CONTEXT

Article 35 of the national law no. 286/1998 regulating migration in Italy guarantees medical care to all migrants, irrespective of their administrative residence status. Migrants have in principle access to treatment, including all essential treatments, diagnosis and rehabilitation. The continuity of care is provided by Article 35 (3).

The Italian health care system has undergone a process of decentralisation since a constitutional amendment of 2001, which conferred a larger autonomy to the regions for organising health care services. On 20 December 2012, the Italian State-Regions Permanent Conference adopted an agreement for the implementation of good standards in access to health care for foreign nationals. The agreement aims at ensuring that legislation on access to health care for migrants is applied equally throughout the country and is an important step forward towards the creation of an inclusive health care system in Italy. According to the agreement, undocumented children will have full access to health care and will be assigned a paediatrician. The agreement also reiterates that access to health care for undocumented migrants “*must not imply any duty to report*” residence status to public authorities.

Even though Italy has one of the most favourable legal systems concerning health care for undocumented migrants in the European Union, the situation in practice varies greatly from region to region with some seeking to significantly restrict the implementation of the law in practice.

Nevertheless, some regional governments in Italy have demonstrated that it is possible for local authorities to implement more generous policies than the current national government may be prepared to contemplate.

In February 2010 the Italian government contested the constitutionality of the regional law in Puglia that grants undocumented migrants access to health care, the right to a general practitioner and to a paediatrician for children. The Italian government claimed that the regional law was in breach of the constitutional set of national and regional competences in relation to health care services and migration policies. The Constitutional Court declared the Italian government’s claim against the regional provision inadmissible and unfounded.<sup>14</sup>

In this context, it is crucial to promote a renewed discourse on migration policies within the European Union and for the development of measures that aim at reducing irregular migration through the introduction of more regular routes for migrants to access Europe. In particular, the EU approach as regards to migration policies should not focus merely on removal but should rather focus on inclusive measures that would allow policy-makers to deliver effective policies on the still unresolved issue of irregular migration.

<sup>14</sup> See Decision No. 229/2010 of 22 October 2010.

## expert insight



### The Role of Local Authorities in Spain: A Proactive Approach



**JOSEFA RUIZ FERNÁNDEZ**, Secretary General of Public Health, Social Inclusion and Quality of Life of the autonomous region of Andalusia (Spain)



In Spain, the right of access to health care was in the past traditionally guaranteed to both Spanish citizens and to those habitually residing in Spain, irrespective of their residence status. The new reform<sup>15</sup>, approved on 20 April 2012 and in force since 1 September 2012, has now significantly restructured the health care system in Spain by linking the right of access to health care services to the condition of being a Spanish citizen or of being registered with the Social Security department, a requirement which undocumented migrants are not able to meet due to their lack of a regular administrative status.

The reform implies a significant breakdown of the universality model traditionally adopted in Spain for over a decade, thus causing a serious decrease in the level of protection of rights, through the implementation of an insurance-based health care system.

According to the reform, “only foreigners who are duly authorized to reside in Spain will be able to access the public health care service” whereas before the passing of the new law it was sufficient to be registered in the municipal census (*padrón*).<sup>16</sup>

The restriction does not apply when an undocumented migrant is in need of emergency treatment or during pregnancy, delivery and postpartum. Undocumented children are still granted access to both emergency and ordinary health care.

Reactions to the reform across the different autonomous regions (*Comunidades Autónomas*) have been very diverse depending on the political views of governing local authorities. Some regional governments expressed their refusal to implement a law that prevents undocumented migrants from having access to health care. Some autonomous regions have taken legal recourse to contest the constitutionality of the reform or have stated their intention to do so.

In this context, the regional government of Andalusia recently adopted regional policies that aim at ensuring access to health care for undocumented migrants in the context of the restrictive legal framework set out by the reform adopted by the national government in April 2012. It is worth noting that Andalusia was the first autonomous region which in 1999 started providing health care services to every person living in the Community. Since then, the situation has not changed.



<sup>15</sup> Royal Decree Act 16/2012 of 20 April 2012 on urgent measures to ensure the sustainability of the national healthcare system and improve the quality of its services. The reform has introduced substantive changes in the Spanish health care system. In particular, Article 1 of the Royal Decree modifies the content of Article 3 of the Law of Cohesion and Quality of the Health Care System 16/2003, which provided that “... all citizens and foreigners present in the country according to Article 12 of the *Ley Orgánica 4/2000*” (i.e. those who are duly registered as residents in the local municipality) have a right of access to health care. According to the new provision, “healthcare assistance in Spain, with charges to public funds, will be guaranteed to those who are duly insured”.

<sup>16</sup> In Spain, undocumented migrants can be registered in a municipal census (*padrón*), irrespective of their residence status.



### NATIONAL CONTEXT

According to Spanish Constitutional Law, the development of the broad **legislative framework and funding** for the health care system are, in general, competences of the State, whereas health care services are provided in practice by the autonomous regions, tasked with the competence of **implementing and providing health care services**. The issue of exclusion of undocumented migrants from the public health care system caused discrepancies between the national government's policies and the way in which autonomous regions implement them at a local level.

In line with Naomi Klein's "*Shock Doctrine*", according to which a good crisis provides an ideal cover for national governments to drive through the changes that they have long wanted to make, it can be argued that the Spanish Government is currently taking advantage of the economic crisis in order to promote a new model of health care services, based on social exclusion rather than social inclusion.

The regional government of Andalusia contested the constitutionality of the reform both with regards to the form and the substance of the Royal Decree. The autonomous region bases its claim to the Constitutional Court mainly on the ground that the reform overruns regional competences granted under the Statute of Autonomy of Andalusia and claims that the provisions set out in the Royal Decree violate the fundamental right of access to health care. The regional government of Andalusia and the Secretary General of Public Health of the region have expressed their reluctance to exclude undocumented migrants from the health care system, as this would be in breach of basic human rights and public health principles and would imply a significant increase of costs for the overall health care system.

**XAVIER ALONSO CALDERÓN**, Representative of the General Directorate for Immigration of the Government of Catalonia (Spain)



The role of regional and local authorities in ensuring access to health care for undocumented migrants is crucial as denying access to health care to a whole social group of particularly vulnerable and disadvantaged people is in breach of fundamental rights principles and might, in the long term, imply a severe threat to public health.

To counter the restrictive legal framework established at national level, the Government of Catalonia adopted complementary regional provisions according to which undocumented migrants will be provided with a special health card and thus granted access to health care services. In particular, public health care services in Catalonia will continue to be granted to anyone who has been residing in the territory of the region for a minimum period of three months, irrespective of their residence status. The Government of Catalonia also stated their intention of filing a constitutional complaint against the above mentioned national restrictive legal framework. The population of Catalonia is 7.570.908 people (2012).

## expert insight



### Health Care Professionals: A Key Role

ANNE SJÖGREN, Rosengrenska (Sweden)



Health care practitioners play an important role in ensuring that undocumented migrants have adequate access to health care.

According to the Swedish law of 2008<sup>17</sup>, and also according to its recent reform implemented in July 2013<sup>18</sup>, the right of access to health care is directly linked to the patient's administrative status. Until the implementation of the new law in July 2013, undocumented migrants in Sweden had the right to receive emergency care only and were always required to pay the costs for receiving emergency care. As an example, a pregnant undocumented woman, before the passing of the new law on 22 May 2013, had to pay a fee of €5,000 in order to give birth in a public hospital.

The Swedish Government introduced significant reforms to the health care system on 22 May 2013. The provisions set out in the reform entered into force in July 2013. The new reform grants access to health care, including ordinary care, to undocumented children below the age of 18 and grants access to health care "that cannot be postponed", including dental care, maternity care, contraceptive counselling and sexual and reproductive care to all undocumented migrants. In addition, the new reform stipulates that county councils would be able to offer undocumented migrants the same level of care that is available to residents.

As a result of the restrictive national legal framework in place until July 2013, undocumented migrants in Sweden were denied access to public health care and often had to rely on health care services provided by volunteer organisations across the country. Rosengrenska, in cooperation with the Swedish Red Cross, runs a voluntary clinic in Gothenburg that provides health care assistance to undocumented migrants. In order to address the issue of social exclusion, more than 65 organisations in Sweden have joined together since 2007 to promote the "Right to Health Care Initiative" which called for the implementation of an inclusive health care system that would guarantee undocumented migrants access to health care on the same basis as Swedish nationals and residents.<sup>19</sup>

In this context, discrimination of undocumented migrants in Swedish national legislation has forced, and is still forcing, health care professionals to deal with the ethical, humanitarian and scientific dilemma of whether or not to provide health care assistance to all those in need of medical attention.<sup>20</sup>

Mr Paul Hunt, the former UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, claimed, in his report presented in February 2007 to the UN Human Rights Council, that undocumented migrants are amongst the most vulnerable groups in Sweden. National legislation that excluded vulnerable social groups is not consistent with the human rights principles of equality and non-discrimination. The UN Special Rapporteur has brought attention to the barriers undocumented migrants face when seeking access to health care in Sweden and called on the government to reconsider its position with a view to guarantee undocumented migrants access to health care.<sup>21</sup>

<sup>17</sup> Health and Medical Care for Asylum Seekers and Others Act (Lag om hälso- och sjukvård åt asylsökande m. fl. SFS 2008:344).

<sup>18</sup> See: Riksdagsskrivelse 2012/13:230, Parliamentary Letter of 22 May 2013, available at: [http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Riksdagsskrivelser/Riksdagsskrivelse-201213230\\_H00K230/](http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Riksdagsskrivelser/Riksdagsskrivelse-201213230_H00K230/)

<sup>19</sup> The "Right to Health Care Initiative" adopted in 2010 a common standpoint on asylum seekers and undocumented migrants, available at: <http://www.vardforpapperslosa.se>.

<sup>20</sup> The Swedish Government released, in September 2011, a report addressing this issue. For more information see: "Vård efter behov och på lika villkor – en mänsklig rättighet", Statens Offentliga Utredningar, Stockholm 2011, available at: <http://www.regeringen.se/content/1/c6/16/98/15/1ce2f996.pdf>. A summary in English is available at pp. 31 to 47 of the report.

<sup>21</sup> See also: Ds 2012:36, Health Care for People who reside in Sweden without Permission (Hälso- och sjukvård till personer som vistas i Sverige utan tillstånd), available at: <http://www.regeringen.se/sb/d/15860/a/200285>.

# Conclusion

---

As part of a final roundtable discussion, participants highlighted that improving access to health care for undocumented migrants remains an urgent priority in Europe despite the remarkable efforts made by regional and local authorities, health care professionals and civil society to fill the gaps within national legal frameworks and guarantee respect for human dignity.

## CONCLUDING REMARKS

### Gaps to be Filled and Future Perspectives

**KLAUS BOELE**, CIVEX Commission Secretariat,  
Committee of the Regions



In this context, various gaps still need to be filled within national and EU legal frameworks and possible and efficient perspectives have to be discussed for the near future. Local and regional authorities are often faced with conflicting criteria from different policy fields for the provision of health care to migrants. Local and regional authorities, tasked with the practical implementation of relevant policies, have often found creative solutions to ensure social cohesion and inclusive policies within these constraints. In particular, the core principles that should inform inclusive health care services could be identified as follows: public inclusion, human rights, cost-effectiveness and public health. In this context, all relevant actors in the EU should cooperate in a partnership approach in order to establish a comprehensive migration policy based on human rights that fully take into account the crucial role those regional and local authorities in this area.

## CONCLUDING REMARKS

## Gaps to be Filled and Future Perspectives

**ANA FEDER**, Policy Advisor at EUROCITIES



EUROCITIES, a network bringing together the local governments of over 130 of Europe's largest cities and 40 partner cities, reinforces the important role that local governments should play in a multilevel governance structure. Working closely with local authorities, with various EU Institutions and other stakeholders, EUROCITIES aims at ultimately shifting the focus of EU legislation in a way which allows city governments to tackle strategic challenges at local level.

Summarising the main points of the discussions developed as part of the conference, Ms Feder analysed the main gaps that still need to be filled within national and EU legal frameworks and identified possible perspectives for the future. Ms Feder highlighted that, as a result of the decentralisation of competences within many EU member states, implementation gaps between the wording of national laws and their implementation at a local and regional level can often be identified. Furthermore, local needs are often not met by national legislative and funding instruments and existing policies often lack an evidence-based approach, that would ultimately match policy to evidence and prevent the adoption of ineffective measures.

Local and regional authorities, tasked with the practical implementation of national policies, usually adopt pragmatic measures to ensure social cohesion and inclusive policies with the existing national constraints. Ms Feder identified fundamental rights, social inclusion, cost-effectiveness, public health and quality of services as the core principles that should inform inclusive health care services and called for the European Union to recognise the unique political leadership of local and regional authorities, based on evidence and on a pragmatic approach. Finally, although compelling evidence from the Fundamental Rights Agency of the European Union, the European Commission and statistics elaborated at local or regional levels show that guaranteeing inclusive access to health care for undocumented migrants is cost-effective and in line with fundamental rights obligations, national governments still tend to deny or limit undocumented migrants' access to health care. In this context, participants of the conference suggested that strategic litigation based on fundamental rights can be an effective tool to tackle the restrictions imposed at national levels on undocumented migrants' access to health care. It is also important that migrant communities are actively involved within public debates and that awareness is raised around the need for local and regional authorities to implement an integrated approach and to ensure inclusive social policies to promote social cohesion.

# Recommendations

As a result of the roundtable discussion, PICUM calls for the adoption and implementation at local, national and European levels of the following key recommendations:

## 1. Access to health care is and must be recognised as a human right.

European Union member states should comply with international obligations and progressively guarantee that the right to the highest attainable standard of physical and mental health is enjoyed by all, regardless of residence status. In line with international obligations, EU member states should not deny or limit equal access for all persons to preventive, curative and palliative health services.

The right to health care for undocumented migrants is guaranteed by the Universal Declaration of Human Rights<sup>22</sup>, the International Convention on the Elimination of All Forms of Racial Discrimination<sup>23</sup>, the International Covenant on Economic, Social and Cultural Rights<sup>24</sup> and by the Convention on the Rights of the Child<sup>25</sup>. Access to health care is considered as a fundamental right also according to various European legal instruments: the Charter of Fundamental Rights of the European Union<sup>26</sup>, the European Convention on Human Rights and Freedoms<sup>27</sup> and the revised European Social Charter.<sup>28</sup>

## 2. Ensuring that health care is provided to all members of the society is both a public health and an economic imperative.

Awareness has to be raised as to the importance of ensuring inclusive health care services for all members of the society, in order to promote a cohesive society founded on the respect and promotion of human rights. Denying access to health services for a specific group of persons undermines efforts to fight the spread of communicable diseases among the general population. Effective identification and treatment of communicable diseases requires access to preventive and general health services for all health needs. Reducing access to health services to the level of emergency care has a serious negative impact on the spread of communicable illnesses in the general population and undermines public health goals. Moreover, denying access to primary and secondary health care for undocumented migrants implies an overuse of emergency care services and the cost of exclusion will ultimately be much higher than inclusion, as the cost of emergency care greatly surpasses the cost for primary health care services.

<sup>22</sup> Article 25.

<sup>23</sup> Article 5.

<sup>24</sup> Article 12.

<sup>25</sup> Article 24.

<sup>26</sup> Article 35.

<sup>27</sup> Article 3, as interpreted by the European Court of Human Rights in the case of *Pretty v. UK*, where the court found that “the suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment [...] for which the authorities can be held responsible”.

<sup>28</sup> Article 13. Recent case-law found that by employing a dynamic interpretation of the Charter, its rights cannot exclude undocumented migrants if their human dignity is found to be directly impacted. See for example International Federation of Human Rights League (FIDH) v France (Complaint no. 14/2003) and Defence for Children International (DCI) v The Netherlands (Complaint no. 47/2008).

**3. Coherent and inclusive legal frameworks have to be adopted and implemented homogeneously at a local and regional level.**

Member states should take all the necessary measures to guarantee that undocumented migrants' entitlements to health care are equally implemented by regional and local authorities and that the same standards of legal protection are applied at a national level. Strategic use of legal and policy instruments that are already available at national level should be made and good practices developed at a local and regional level should inspire the implementation of comprehensive and inclusive health care policies by national governments. Member states should ensure that human rights are upheld within all national legal and policy frameworks and that access to basic social services is guaranteed irrespective of citizenship or residence status.

**4. Access to health care services must be clearly detached from immigration control.**

In line with the guidelines issued in October 2012 by the European Union Agency for Fundamental Rights (FRA) on "*Apprehension of migrants in an irregular situation – fundamental rights considerations*"<sup>29</sup>, member states should detach provision of health care services from immigration control policies and should not impose a duty upon health care providers and health administrations to denounce undocumented migrants. Patient-related medical confidentiality should not be undermined by direct or indirect reporting mechanisms.

**5. All actors involved in providing health care services must have access to clear and reliable information about undocumented migrants' entitlement to health care.**

Member states should ensure that reliable and clear information about undocumented migrants' entitlements is accessible to all actors involved and eliminate all practical barriers that prevent undocumented migrants from enjoying their entitlements to health care. Awareness should be raised amongst medical practitioners, public authorities and immigration authorities as to undocumented migrants' right to receive health care treatment.

**6. Local and regional governments and civil society organisations should play a complementary role.**

It is crucial to ensure that the ultimate responsibility in providing health care to undocumented migrants rests on national governments. Local and regional governments and civil society organisations play a key role in providing health care services to undocumented migrants, but this shall only be complementary to the duties of national governments. Member states shall ensure that comprehensive, inclusive and coherent legal frameworks are established at a national level and implemented uniformly at local and regional levels.

**7. Assistance to undocumented migrants should not be criminalised.**

Member states should ensure that providing social services and other assistance to undocumented migrants is not criminalised. Member states should remove any sanctions against professionals, civil society actors or other persons for providing health care and health-related assistance to undocumented migrants.

<sup>29</sup> FRA, "Apprehension of migrants in an irregular situation – fundamental rights considerations", 2012, available at: [http://fra.europa.eu/sites/default/files/document-on-apprehensions\\_1.pdf](http://fra.europa.eu/sites/default/files/document-on-apprehensions_1.pdf).





# Garantir l'accès aux soins de santé aux immigrants en Europe : quel rôle peuvent jouer les autorités locales et régionales ?

# Introduction

Le 12 décembre 2012, la Plate-forme pour la Coopération Internationale sur les Sans-papiers - PICUM), a organisé, en partenariat avec EURO CITIES, une table-ronde présidée par M.Nichi Vendola (Région des Pouilles, Italie), au Comité des Régions. Cette table-ronde avait pour objectif de se pencher sur les divergences entre les réglementations aux niveaux local et régional d'une part, et les pratiques concernant l'accès aux soins pour les immigrants sans papiers d'autre part.

Cet événement a permis une discussion en profondeur sur le rôle proactif de nombreuses autorités locales et régionales en Europe, lorsqu'il s'agit d'améliorer l'accès aux soins des migrants sans-papiers, au-delà du niveau d'accès minimal garanti par la législation nationale, et cela malgré les contraintes financières et politiques. Dans d'autres situations, des autorités locales et régionales ont à l'inverse essayé d'atténuer les décisions des gouvernements nationaux afin de restreindre les protections existantes.

Le rôle des autorités locales et régionales est crucial, notamment parce que l'accès aux services sociaux basiques, dont les soins de santé, fait en général partie de leurs compétences ; parce qu'ils sont responsables de l'assistance directe ; et parce qu'ils sont ainsi bien informés des besoins en soins de santé de leurs habitants. En prenant en compte de la contrainte des cadres législatifs au niveau national, les autorités locales et régionales sont souvent en mesure de réagir de manière créative et flexible, en proposant des politiques inclusives et en mettant en place des solutions pratiques positives qui promeuvent la cohésion et l'intégration au sein de la société, aux niveaux local et régional, et qui servent d'exemple pour des applications futures.

## A PROPOS DE PICUM

Fondée sur l'initiative d'organisations du terrain, la **Plateforme pour la Coopération Internationale sur les Sans-papiers - PICUM**) représente un réseau de plus de 140 organisations et 160 militants individuels, travaillant avec des migrants sans-papiers dans plus de 38 pays, principalement en Europe, mais aussi dans d'autres régions du monde. Avec plus de dix ans de témoignages, d'expérience et d'expertise sur les migrants sans-papiers, PICUM soutient la reconnaissance de leurs droits fondamentaux, créant ainsi un lien essentiel entre les réalités locales et les débats politiques.

## ETABLIR LE CONTEXTE

## Exemples de politiques proactives et progressistes adoptées par des gouvernements locaux et régionaux



**MICHELE LEVOY**, Directrice de PICUM



Les gouvernements locaux et régionaux jouent un rôle clé dans la garantie de l'accès aux services sociaux de base pour les migrants-sans papiers, et adoptent souvent des politiques proactives et progressistes, qui assurent un accès inclusif aux droits sociaux, quel que soit le statut de résident du demandeur.

En Belgique, plusieurs autorités locales garantissent l'accès au niveau minimal obligatoire d'éducation pour les enfants migrants sans-papiers. Les municipalités italiennes de Gênes, Turin, Florence et Milan assurent aujourd'hui un accès à l'école maternelle pour les enfants migrants sans-papiers, dépassant en cela le niveau d'accès aux droits fondamentaux garanti à l'échelle nationale.

Si l'on veut mettre l'accent sur le rôle essentiel joué par les autorités locales lorsqu'il s'agit de garantir l'application des droits de l'homme pour les migrants sans-papiers, il est tout à fait pertinent de faire référence au concept de "villes sanctuaires" ("sanctuary cities") au Canada et aux Etats-Unis, exemples édifiants d'autorités locales et municipales qui offrent des mesures de protection exhaustives pour les droits fondamentaux des migrants sans-papiers.

## ETABLIR LE CONTEXTE

### Le rôle des institutions européennes dans la garantie des droits fondamentaux des migrants sans-papiers



**PIERLUIGI BROMBO**, Comité Economique et Social Européen (CESE),  
Section Emploi, Affaires sociales, Citoyenneté (SOC)



Dans un contexte politique où, suite à la crise financière, ce ne sont pas seulement les budgets, mais aussi les conditions d'accès aux droits fondamentaux qui sont restreints, les institutions européennes jouent un rôle particulièrement essentiel pour garantir les droits fondamentaux des migrants sans-papiers et pour animer le débat concernant leur accès à ces droits.

Le CESE, en tant qu'organe consultatif représentant les organisations de la société civile, joue dans ce contexte un rôle important, en transmettant trois messages clés à propos de la garantie d'accès aux soins de santé pour les migrants sans-papiers :

1. Les Etats membres doivent fournir une meilleure protection des droits fondamentaux des migrants sans-papiers, et l'Union européenne devrait considérer les migrants sans-papiers comme l'un des groupes sociaux les plus vulnérables, en garantissant leur accès aux soins de santé et à d'autres services sociaux tels que l'éducation.
2. L'accès aux soins médicaux et à la prévention en matière de santé devrait être considéré comme un droit fondamental, en accord avec la Charte des droits fondamentaux de l'Union européenne, qui garantit l'accès à la prévention en matière de santé et aux soins médicaux.<sup>30</sup>
3. Les autorités locales et régionales ont un rôle clé dans l'application et le développement de politiques d'immigration cohérentes, car elles ont souvent les compétences politiques, réglementaires et budgétaires qui leur permettent d'intégrer efficacement les politiques nationales d'immigration aux niveaux local et régional.

<sup>30</sup> Voir Article 35 de la Charte des droits fondamentaux de l'Union européenne : "Toute personne a le droit d'accéder à la prévention en matière de santé et de bénéficier de soins médicaux dans les conditions établies par les législations et pratiques nationales. Un niveau élevé de protection de la santé humaine est assuré dans la définition et la mise en œuvre de toutes les politiques et actions de l'Union."

# Recommandations

Lors de la dernière table-ronde, les participants ont souligné que l'amélioration de l'accès aux soins pour les migrants sans-papiers doit rester une priorité urgente en Europe, malgré les efforts remarquables des autorités locales et régionales, des professionnels de santé et de la société civile pour combler les manques des cadres législatifs nationaux et pour garantir le respect de la dignité humaine.

Suite à ces discussions, PICUM appelle à l'adoption et la mise en œuvre aux niveaux local, national et européen des recommandations clés suivantes :

## 1. L'accès aux soins est un droit de l'homme et doit être reconnu comme tel.

Les Etats membres de l'Union européenne devraient se conformer aux obligations internationales et garantir progressivement que chacun ait droit au standard le plus élevé en matière de santé mentale et physique, quel que soit son statut de citoyenneté. En accord avec les réglementations internationales, les Etats membres de l'UE ne devraient pas refuser ou limiter l'accès égal pour tous aux services de santé préventive, curative et palliative.

Le droit des migrants sans-papiers aux soins de santé est garanti par la Déclaration Universelle des Droits de l'Homme<sup>31</sup>, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale<sup>32</sup>, le Pacte international relatif aux droits économiques, sociaux et culturels<sup>33</sup> et par la Convention internationale relative aux droits de l'enfant<sup>34</sup>. L'accès aux soins de santé est également considéré comme un droit fondamental selon plusieurs instruments législatifs européens : la Charte des droits fondamentaux de l'Union européenne<sup>35</sup>, la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales<sup>36</sup> et la Charte sociale européenne révisée.<sup>37</sup>

<sup>31</sup> Article 25.

<sup>32</sup> Article 5.

<sup>33</sup> Article 12.

<sup>34</sup> Article 24.

<sup>35</sup> Article 35.

<sup>36</sup> Article 3, tel qu'interprété par la Cour européenne des Droits de l'Homme dans le cas *Pretty contre Grande-Bretagne*, pour lequel la Cour a statué que " les souffrances qui proviennent de maladies naturelles, physiques ou mentales, ne peuvent tomber sous le coup de l'Article 3, lorsqu'il y a, ou risque d'y avoir, aggravation par le traitement, [...] pour lequel les autorités peuvent être tenues responsables".

<sup>37</sup> Article 13. Dans un récent cas, il a été démontré qu'une interprétation dynamique de la Charte n'exclut pas les migrants sans-papiers de son champ d'application, si leur dignité humaine est directement impactée. Voir par exemple *International Federation of Human Rights League (FIDH) contre France* [plainte n°14/2003] et *Defence for Children International (DCI) contre Pays-Bas* [plainte n°47/2008].

**2. Garantir que tous les membres de la société ont accès aux soins est à la fois un impératif de santé public et un impératif économique.**

Un travail de sensibilisation doit être fait autour de l'importance de garantir des soins de santé inclusifs pour tous les membres de la société, afin de promouvoir la cohésion sociale, fondée sur le respect et la promotion des droits de l'homme. Refuser l'accès aux soins à un groupe spécifique de personnes amoindrit les efforts faits pour contrer la propagation de maladies contagieuses dans la population. Le diagnostic et le traitement efficaces des maladies contagieuses requièrent un accès à la médecine préventive et aux soins de santé pour tous. Réduire l'accès aux services de santé aux simples soins d'urgence a un grave impact négatif sur la propagation des maladies contagieuses dans la population et sape les objectifs de santé publique. En outre, refuser l'accès aux soins primaires et secondaires pour les migrants sans papiers implique une utilisation excessive des services d'urgence, et le coût de l'exclusion dépassera forcément celui de l'inclusion, le coût des soins d'urgence étant bien supérieur aux services de santé primaires.

**3. Il faut adopter et mettre en place des cadres législatifs cohérents et inclusifs de façon homogène, au niveau local et régional.**

Les Etats membres devraient prendre toutes les mesures nécessaires pour garantir que les droits des migrants sans-papiers aux soins de santé soient mis en place de façon homogène par les autorités locales et régionales, et que les mêmes standards de protection légale soient appliqués au niveau national. Les instruments législatifs et politiques disponibles au niveau national devraient être utilisés de façon stratégique, et les bonnes pratiques développées aux niveaux locaux et régionaux devraient inspirer la mise en œuvre de politiques de santé globales et inclusives par les gouvernements nationaux. Les Etats membres devraient garantir le respect des droits de l'homme dans les cadres législatifs et politiques nationaux, ainsi que l'accès aux soins sociaux basiques, quel que soit le statut de citoyenneté ou de résidence.

**4. L'accès aux services de santé doit être clairement indépendant des contrôles de l'immigration.**

Conformément aux recommandations publiées en octobre 2012 par l'Agence des droits fondamentaux de l'Union européenne (FRA), concernant « *L'arrestation des migrants en situation irrégulière – considérations sur les droits fondamentaux* »<sup>38</sup>, les Etats membres devraient séparer l'accès aux soins de santé et les politiques de contrôle de l'immigration, et ne devraient pas imposer aux fournisseurs de soins et aux administrations de santé de dénoncer les migrants sans-papiers. Le secret médical lié au statut de patient ne doit pas être sapé par des mécanismes de dénonciation, qu'ils soient directs ou indirects.

<sup>38</sup> FRA, "Arrestation des migrants en situation irrégulière – considérations sur les droits fondamentaux", 2012, disponible à : [http://fra.europa.eu/sites/default/files/document-on-apprehensions\\_1.pdf](http://fra.europa.eu/sites/default/files/document-on-apprehensions_1.pdf).

**5. Tous les acteurs impliqués dans la fourniture de soins de santé doivent avoir accès à des informations claires et fiables sur les droits aux soins des migrants sans papiers.**

Les Etats membres doivent garantir l'accès à des informations claires et fiables sur les droits aux soins des migrants sans papiers pour tous les acteurs impliqués, et éliminer toutes les barrières pratiques qui empêchent les migrants sans-papiers de jouir de leurs droits aux soins. Les praticiens de santé, les autorités publiques et les autorités de l'immigration doivent être sensibilisés au droit des migrants sans papiers à recevoir un traitement médical.

**6. Les gouvernements locaux et régionaux et les organisations de la société civile doivent avoir un rôle complémentaire.**

Il est essentiel de s'assurer que la responsabilité ultime en matière d'accès aux soins repose sur les gouvernements nationaux. Les gouvernements locaux et régionaux et les organisations de la société civile jouent un rôle essentiel dans la fourniture de soins de santé aux migrants sans papiers, mais ce rôle doit seulement venir compléter les devoirs des gouvernements nationaux. Les Etats membres doivent garantir des cadres législatifs globaux, inclusifs et cohérents au niveau national, devant être mis en œuvre de manière uniforme aux niveaux local et régional.

**7. L'assistance aux migrants sans papiers ne doit pas être criminalisée.**

Les Etats membres doivent s'assurer que le fait de fournir des services sociaux ou toute autre forme d'assistance aux migrants sans papiers ne soit pas criminalisé. Les Etats membres doivent lever toutes les sanctions contre les professionnels, les acteurs de la société civile ou toute autre personne qui donnent des soins de santé ou une assistance liée à la santé aux migrants sans-papiers.





**Garantizando el acceso universal a la sanidad en Europa a las personas migrantes irregulares: ¿Cuál es el rol de las administraciones locales y regionales?**

# Introducción

El pasado 12 de Diciembre de 2012 la Plataforma para la Cooperación Internacional sobre Migrantes Irregulares (PICUM), junto con EUROCITIES, ofrecía una mesa redonda presentada por el Sr. Nichi Vendola en el Comité de las Regiones (Región de Apulia, Italia). El objetivo de la mesa redonda fue el de abordar las discrepancias existentes entre, por un lado la legislación en el acceso a la atención sanitaria de los migrantes irregulares y por otro las prácticas que de hecho se están desarrollando a nivel nacional y local.

Este encuentro ofreció el espacio necesario para un profundo debate sobre las diferentes actuaciones que los gobiernos a nivel local y estatal han implementado en lo referente al acceso a la sanidad de los migrantes irregulares a nivel Europeo. A pesar de las dificultades políticas y de financiación, algunas localidades y regiones han ampliado los niveles de acceso a la sanidad para los migrantes irregulares más allá de los niveles de protección garantizados por la legislación estatal. En otros casos, los gobiernos locales y regionales han suavizado las decisiones de los gobiernos centrales que restringían los niveles en el acceso a la sanidad para las personas migrantes irregulares.

En este sentido, el rol de los gobiernos locales y regionales ha resultado esencial. Esto se debe principalmente a que en términos generales, los servicios sociales básicos, dentro de los cuales se incluye el acceso a la sanidad, suelen ser competencia de las autoridades locales y regionales. Éstas además son las responsables de la atención sanitaria primaria por lo que conocen de cerca la realidad de las necesidades sanitarias locales. Los gobiernos locales y regionales, a pesar de estar condicionados por una legislación central más restrictiva, suelen responder con un alto grado de creatividad y flexibilidad, proponiendo políticas más inclusivas y estableciendo prácticas capaces de promover cohesión e integración social ya sea a nivel local que regional.

## ACERCA DE PICUM

La **Plataforma para la Cooperación Internacional sobre Migrantes Irregulares (PICUM)**, nace como una iniciativa de organizaciones de base, llegando a formar una red de más de 140 organizaciones y 160 entidades relacionadas en el trabajo con migrantes irregulares en más de 38 países mayoritariamente Europeos aunque también de otras regiones del mundo. Con más de diez años de experiencia en el trabajo con migrantes irregulares PICUM promueve el reconocimiento de derechos, ofreciendo una visión que conecta las diferentes realidades a nivel local con debates más amplios sobre políticas públicas relacionadas que se están desarrollando en la actualidad.

## ESTADO DE LA CUESTIÓN

## Ejemplos de políticas proactivas y progresivas adoptadas por gobiernos regionales y locales



**MICHELE LEVOY**, Directora de PICUM



Las actuaciones de los gobiernos locales y regionales han sido claves a la hora de garantizar el acceso de las personas migrantes irregulares a los derechos sociales básicos. Ha sido precisamente a nivel local y regional donde se han adoptado políticas proactivas y progresivas dirigidas a garantizar el acceso a derechos sociales independientemente del estatus del permiso de residencia.

En Bélgica, diversos gobiernos locales garantizan el acceso a la educación a los niños y niñas migrantes irregulares.

Los municipios Italianos de Génova, Turín, Florencia y Milán, a través de una mejora del nivel de acceso a los derechos fundamentales garantizados a nivel nacional, han asegurado el acceso a la educación pre-escolar a los niños y las niñas irregulares.

Cuando hablamos del rol de las autoridades locales en lo referente a la garantía y acceso a Derechos Humanos de las personas migrantes irregulares, es necesario mencionar como ejemplo a las 'ciudades santuario' ('sanctuary cities') en Canadá y en los Estados Unidos de América. Se trata de dos ciudades que son claros ejemplos de cómo los gobiernos locales y municipales han sido capaces de establecer medidas de protección de los derechos humanos de las personas migrantes irregulares.

## ESTADO DE LA CUESTIÓN

### El rol de las instituciones Europeas en la garantía de derechos fundamentales de las personas migrantes irregulares



**PIERLUIGI BROMBO**, Comité Económico y Social Europeo (CESE),  
Unidad de Empleo, Asuntos Sociales y Ciudadanía (SOC)



Como resultado de la actual situación política y económica, se están recortando no sólo los presupuestos sino también el acceso a derechos fundamentales. En este sentido, el rol de las instituciones Europeas es clave y de vital importancia a la hora de poner sobre la mesa en el debate público el tema del acceso y la garantía a los derechos fundamentales de las personas migrantes irregulares.

En este contexto y en lo que respecta a la garantía de derechos de acceso a la sanidad de las personas migrantes irregulares, el CESE, siendo un cuerpo consultivo que representa a la sociedad civil y sus organizaciones, juega un papel central presentando tres argumentos que son clave a la hora de garantizar el acceso a sanidad:

1. Los Estados Miembros han de ofrecer una mejor protección de los derechos fundamentales de las personas migrantes irregulares y la Unión Europea debe considerar a éstas personas como uno de los grupos más vulnerables asegurando acceso a la sanidad y a otros servicios sociales como la educación.
2. El acceso a la sanidad debería ser considerado como un derecho fundamental, siguiendo la línea indicada por la Carta de los Derechos Fundamentales de la Unión Europea la cual garantiza el acceso tanto a la medicina preventiva como al tratamiento médico.<sup>39</sup>
3. Como consecuencia de las competencias políticas, legislativas y presupuestarias, los gobiernos locales y regionales juegan un papel esencial en la ejecución y en el desarrollo de políticas migratorias consistentes. Estas competencias les permiten integrar de manera efectiva las políticas migratorias nacionales dentro del nivel local o regional.

<sup>39</sup> Ver Artículo 35 de la Carta de los Derechos Fundamentales de la Unión Europea que menciona "Toda persona tiene derecho a acceder a la prevención sanitaria y a beneficiarse de la atención sanitaria en las condiciones establecidas por las legislaciones y prácticas nacionales. Al definirse y ejecutarse todas las políticas y acciones de la Unión se garantizará un nivel elevado de protección de la salud humana".

# Recomendaciones

Los participantes en la mesa redonda subrayaron, a modo de conclusión, que a pesar de los esfuerzos realizados por los gobiernos locales y regionales, los profesionales de la salud y la sociedad civil para cubrir las deficiencias de la legislaciones a nivel nacional y garantizar el respeto por la dignidad humana, continúa siendo una necesidad urgente en Europa mejorar el acceso a la sanidad de las personas migrantes irregulares.

Como resultado del debate, PICUM hace un llamamiento para la adopción e implementación a nivel local, nacional y europeo de las siguientes recomendaciones:

## 1. El acceso a la sanidad debe ser reconocido como un derecho humano.

Los Estados miembros de la Unión Europea deben cumplir con las obligaciones internacionales y garantizar progresivamente que el derecho a la salud mental y física sea accesible a todas las personas en los más altos estándares independientemente del estatus de residencia. De acuerdo con las obligaciones internacionales, los Estados miembros de la UE no deben negar ni limitar el acceso en condiciones de igualdad de todas las personas a la atención sanitaria independientemente de que sea una atención preventiva, paliativa o curativa.

El derecho a la sanidad para los migrantes irregulares está garantizado por la Declaración Universal de Derechos Humanos<sup>40</sup>, la Convención Internacional para la Eliminación de todas las Formas de Discriminación Racial<sup>41</sup>, el Pacto Internacional de Derechos Económicos, Sociales y Culturales,<sup>42</sup> y por La Convención de los Derechos del Niño<sup>43</sup>. El acceso a la sanidad está también considerado por diferentes leyes europeas como un derecho fundamental: La Carta de los Derechos Fundamentales de la Unión Europea<sup>44</sup>, el Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales<sup>45</sup> y por la Carta Social Europea revisada.<sup>46</sup>

<sup>40</sup> Artículo 25.

<sup>41</sup> Artículo 5.

<sup>42</sup> Artículo 12.

<sup>43</sup> Artículo 24.

<sup>44</sup> Artículo 35.

<sup>45</sup> Artículo 3, interpretado como lo hace la Corte Europea de Derechos Humanos en el caso de *Pretty contra el Reino Unido*, donde la Corte concluye que "el sufrimiento que deriva de una enfermedad de origen natural, físico o mental, puede ser cubierto por el artículo 3, donde es, o los riesgos pueden ser exacerbados por el tratamiento [...] por lo cual las autoridades pueden ser halladas responsables".

<sup>46</sup> Artículo 13. Reciente jurisprudencia concluyó que utilizando una interpretación dinámica de la Carta, sus derechos no pueden excluir migrantes irregulares si su dignidad humana está directamente afectada. Ver por ejemplo, Federación Internacional de los Derechos Humanos (FIDH) contra Francia (Querrela no. 14/2003) y Defensa de Niños y Niñas Internacional (DNI) contra Países Bajos (Querrela no. 47/2008).

**2. Asegurar el acceso a la sanidad a toda la sociedad es un imperativo tanto de salud pública como económico.**

El acceso universal a la sanidad debe ser entendido como un elemento esencial en la construcción de una sociedad cohesionada y fundada en el respeto y en el fomento de los derechos humanos. Negar el acceso a los servicios sanitarios a determinados grupos de personas, debilita los esfuerzos en el control de enfermedades contagiosas entre la población general. La identificación y el tratamiento efectivo de las enfermedades transmisibles, requiere el acceso a servicios sanitarios de prevención y general para todas las necesidades de salud. Reducir el acceso a la sanidad exclusivamente a las situaciones de emergencia tiene consecuencias negativas en la prevención de la propagación de enfermedades contagiosas entre la población general y perjudica los objetivos en lo que respecta a la salud pública. Además, negar el acceso a la sanidad, ya sea a servicios primarios o secundarios, a los migrantes irregulares tiene como consecuencia un uso excesivo de los servicios de emergencia aumentando así los gastos por encima de lo que supondría el gasto en un sistema de sanidad universal.

**3. Los marcos legales han de ser inclusivos y coherentes y han de ser aplicados homogéneamente a nivel local y regional.**

Los Estados miembros deben tomar todas las medidas necesarias para asegurar que los derechos de acceso a la sanidad de las personas migrantes irregulares sea garantizados igualmente por las autoridades regionales y locales y que los mismos estándares de protección legal se aplican a nivel estatal. Las políticas e instrumentos legales ya disponibles a nivel nacional han de ser utilizadas estratégicamente. A su vez, el desarrollo de buenas prácticas a nivel local y regional han de ser aprovechadas para inspirar la implementación de políticas de sanidad inclusivas e integrales a nivel nacional. Los Estados miembros deben garantizar que los derechos humanos sean respetados en todos los marcos jurídicos y normativos nacionales como así también garantizar el acceso a servicios sociales básicos independientemente de la ciudadanía o estatus de residencia.

**4. El acceso a la sanidad debe diferenciarse contundentemente de los controles de inmigración.**

En línea con lo acordado por la Agencia Europea de Derechos Fundamentales (FRA) en Octubre de 2012 en el documento "*Detención de los migrantes en situación irregular- Considerando los Derechos Fundamentales*" ("*Apprehension of migrants in an irregular situation – fundamental rights considerations*")<sup>47</sup>, los Estados miembros deben diferenciar el acceso a servicios sanitarios de las políticas de control de inmigración y no deben imponer bajo ningún concepto a los actores implicados en la atención sanitaria ningún deber de denunciar a los migrantes irregulares. La relación médico-paciente de confidencialidad no debe ser socavada por ningún mecanismo directo o indirecto de denuncia.

<sup>47</sup> FRA, "Apprehension of migrants in an irregular situation – fundamental rights considerations", 2012, disponible en: [http://fra.europa.eu/sites/default/files/document-on-apprehensions\\_1.pdf](http://fra.europa.eu/sites/default/files/document-on-apprehensions_1.pdf).

**5. Todos los actores involucrados en la prestación de servicios de salud deben tener acceso a información clara y fiable sobre el derecho de las personas migrantes irregulares a la atención médica.**

Los Estados miembros deben asegurar que los actores involucrados en la prestación de servicios de salud tengan acceso a una información fiable y clara sobre los derechos de acceso a la sanidad de las personas migrantes irregulares, eliminando así todas las posibles barreras que a nivel práctico los mismos puedan encontrar. Es importante informar al personal médico, a las autoridades públicas y de inmigración como así también a las propias personas migrantes irregulares sobre su derecho a recibir tratamiento médico.

**6. Los gobiernos locales y regionales y las organizaciones de la sociedad civil deben jugar un papel complementario.**

Es crucial asegurar que la responsabilidad última en proveer acceso universal a la sanidad para personas migrantes irregulares sea de los gobiernos nacionales. A pesar de que los gobiernos locales y regionales y las organizaciones de la sociedad civil juegan un papel esencial a la hora de garantizar el acceso a la sanidad de las personas migrantes irregulares, esto debería ser sólo complementario a las obligaciones de los gobiernos nacionales. Los Estados miembros han de asegurar el establecimiento de una legislación exhaustiva, coherente e inclusiva a la vez que garantizar una aplicación homogénea a nivel local y regional.

**7. La asistencia a las personas migrantes irregulares no debe ser criminalizada.**

Los Estados miembros deben garantizar que proveer servicios sociales y/o cualquier otro tipo de asistencia a personas migrantes irregulares no sea criminalizado. Los Estados miembros deben eliminar cualquier tipo de sanción contra profesionales, actores de la sociedad civil, o cualquier persona que provea servicios de salud y/o asistencia sanitaria a personas migrantes irregulares.





**Garantire l'accesso  
alle cure sanitarie per i  
migranti privi di documenti  
che si trovano in Europa:  
Quale ruolo possono  
svolgere le autorità locali e  
regionali?**

# Introduzione

---

Il 12 Dicembre 2012, PICUM, insieme a EUROCITIES, ha organizzato una tavola rotonda, ospitata da Nichi Vendola (Regione Puglia, Italia) presso il Comitato delle Regioni allo scopo di esaminare le discrepanze tra le normative e le pratiche nazionali e quelle locali in materia di accesso alle cure sanitarie per i migranti irregolari.

Questo evento ha permesso di discutere in maniera approfondita del ruolo assunto dalle autorità locali e regionali nei vari paesi d'Europa sia nel miglioramento dell'accesso all'assistenza sanitaria per i migranti irregolari oltre al livello garantito dalle legislazioni nazionali, nonostante i vari vincoli finanziari e politici, sia nell'attenuare le decisioni del governo centrale per cercare di limitare le protezioni esistenti.

Il ruolo delle autorità locali e regionali si rivela così fondamentale, specialmente perché la prestazione dei servizi sociali di base è di solito competenza delle amministrazioni regionali o locali, che sono responsabili dell'assistenza sanitaria di base e sono ben informati sulle esigenze sanitarie dei residenti. Le autorità locali e regionali si dimostrano altresì abili nel reagire con creatività e flessibilità ai restrittivi quadri giuridici nazionali, proponendo delle politiche di inclusione e creando dei precedenti di pratiche positive in grado di promuovere coesione e integrazione all'interno della società, sia a livello locale, che regionale.

## INFORMAZIONI SU PICUM

Nata dall'iniziativa di diverse organizzazioni della società civile, la "Piattaforma per la Cooperazione Internazionale sui Migranti privi di Documenti" (PICUM), rappresenta ora un network di più di 140 organizzazioni e 160 singoli sostenitori che lavorano con i migranti irregolari in più di 38 paesi, principalmente europei, ma anche di altre regioni del mondo. Con più di dieci anni di esperienza nell'ambito della migrazione, PICUM promuove attivamente il riconoscimento dei diritti fondamentali dei migranti irregolari, fornendo un collegamento essenziale tra realtà locali e dibattiti politici ad alto livello.

## SCENARIO

## Esempi di politiche dinamiche e progressiste adottate dalle amministrazioni locali e regionali



**MICHELE LEVOY**, Direttore di PICUM



Le amministrazioni locali e regionali ricoprono un ruolo cruciale nel garantire l'accesso ai diritti sociali fondamentali per i migranti privi di documenti e spesso adottano politiche dinamiche e progressiste in grado di assicurare un accesso inclusivo a questi diritti, indipendentemente dallo status amministrativo di residenza.

In Belgio, diverse autorità locali garantiscono l'accesso all'istruzione obbligatoria ai bambini privi di documenti.

Allo scopo di migliorare il livello di godimento dei diritti fondamentali garantiti a livello nazionale, i comuni italiani di Genova, Torino, Firenze e Milano, assicurano attualmente l'accesso alla formazione prescolare ai bambini privi di documenti.

Quando si cerca di fare luce sul ruolo delle autorità locali nell'assicurare la piena protezione dei diritti umani dei migranti irregolari, è importante soffermarsi sulle "città santuario" presenti in Canada e negli Stati Uniti, quali esempi incoraggianti delle amministrazioni comunali, capaci di offrire delle misure di protezione globali ai migranti privi di documenti.

## SCENARIO

### Il ruolo delle istituzioni europee nel garantire i diritti fondamentali dei migranti irregolari



**PIERLUIGI BROMBO**, Comitato Economico e Sociale (EESC), Sezione "occupazione, affari sociali e cittadinanza" (SOC)



Il ruolo delle istituzioni europee nella tutela dei diritti fondamentali dei migranti e nel dibattito sulla questione dell'accesso di quest'ultimi ai loro diritti fondamentali è di cruciale importanza, specialmente nel contesto politico attuale dove, come risultato della crisi finanziaria, non solo il budget, ma anche il godimento dei propri diritti viene limitato.

In questo contesto, il Comitato Economico e Sociale, essendo un organo consultivo che rappresenta le organizzazioni della società civile, svolge un ruolo rilevante nel divulgare tre messaggi fondamentali connessi all'accesso alle cure sanitarie per i migranti irregolari:

1. Gli Stati membri devono provvedere a una migliore protezione dei diritti fondamentali dei migranti irregolari e l'Unione Europea dovrebbe considerare questi ultimi come uno dei gruppi sociali maggiormente vulnerabili, assicurando loro l'accesso alle cure sanitarie e ad altri servizi sociali, quali l'educazione.
2. L'accesso alle cure mediche e alla prevenzione sanitaria deve essere considerato un diritto fondamentale in linea con la Carta dei Diritti Fondamentali dell'Unione Europea, la quale garantisce l'accesso alla prevenzione sanitaria e alle cure mediche.<sup>48</sup>
3. Le autorità regionali e locali svolgono un ruolo di primo piano nell'attuazione e sviluppo di politiche di immigrazione coerenti, dato che spesso hanno le competenze politiche, normative e di bilancio che consentono loro di integrare efficacemente le politiche nazionali a livello locale o regionale.

<sup>48</sup> Vedi articolo 35 della Carta dei Diritti Fondamentali dell'Unione Europea, che afferma: "Ogni persona ha il diritto di accedere alla prevenzione sanitaria e di ottenere cure mediche alle condizioni stabilite dalle legislazioni e prassi nazionali. Nella definizione e nell'attuazione di tutte le politiche ed attività dell'Unione è garantito un livello elevato di protezione della salute umana."

# Raccomandazioni

Durante la parte conclusiva della tavola rotonda i partecipanti hanno sottolineato che il potenziamento dell'accesso alle cure mediche per i migranti irregolari rimane una priorità urgente in Europa, nonostante gli sforzi notevoli intrapresi dalle autorità regionali e locali, dagli operatori sanitari e della società civile per colmare le lacune nell'ambito delle legislazioni nazionali e per garantire il rispetto della dignità umana. Come risultato di questa discussione, PICUM chiede l'adozione e l'attuazione a livello locale, nazionale ed europeo delle seguenti raccomandazioni chiave:

## 1. L'accesso all'assistenza sanitaria è e deve essere riconosciuto come un diritto dell'uomo.

Gli stati membri dell'Unione Europea dovrebbero conformarsi agli obblighi internazionali e assicurare che il più alto livello di salute fisica e mentale sia progressivamente garantito a chiunque, indipendentemente dallo status amministrativo di residenza. In linea con gli obblighi internazionali, gli stati membri dell'UE non dovrebbero negare o limitare la parità di accesso all'assistenza sanitaria preventiva, curativa e palliativa.

Il diritto alle cure sanitarie per i migranti irregolari è garantito dalla Dichiarazione Universale dei Diritti dell'Uomo,<sup>49</sup> dalla Convenzione Internazionale sull'Eliminazione di ogni Forma di Discriminazione Razziale,<sup>50</sup> dalla Convenzione Internazionale sui Diritti Economici, Sociali e Culturali,<sup>51</sup> e dalla Convenzione sui Diritti dell'infanzia.<sup>52</sup> L'accesso all'assistenza sanitaria è considerato un diritto fondamentale anche da diversi strumenti legali europei, quali: la Carta dei Diritti Fondamentali dell'Unione Europea,<sup>53</sup> la Convenzione Europea per la salvaguardia dei Diritti dell'Uomo e delle Libertà Fondamentali,<sup>54</sup> e la Carta Sociale Europea.<sup>55</sup>

<sup>49</sup> Articolo 25.

<sup>50</sup> Articolo 5.

<sup>51</sup> Articolo 12.

<sup>52</sup> Articolo 24.

<sup>53</sup> Articolo 35.

<sup>54</sup> Articolo 3, come interpretato dal Corte Europea dei Diritti dell'Uomo nel caso *Pretty contro Regno Unito*, dove la corte sostiene che "la sofferenza dovuta a una malattia che sopraggiunge naturalmente, sia essa fisica o psichica, può rientrare nell'art. 3 se viene o rischia di essere aggravata da un trattamento - che consegue a talune condizioni di detenzione, di espulsione o ad altre misure - del quale le autorità possono essere ritenute responsabili".

<sup>55</sup> Articolo 13. Attraverso un'interpretazione dinamica della Carta, la recente giurisprudenza ha ritenuto che i diritti stabiliti nella Carta non possono escludere i migranti irregolari qualora la loro dignità umana si trovi ad esserne direttamente colpita. Esempi in merito sono casi Federazione Internazionale per i Diritti Umani (FIDH) contro Francia (Pronuncia no. 14/2003) e Difesa Internazionale per i Bambini (DCI) contro Paesi Bassi (Pronuncia no. 47/2008).

**2. Assicurare che le cure sanitarie siano previste per tutti i membri della società è un imperativo sia economico che di sanità pubblica.**

Una campagna di sensibilizzazione deve essere promossa allo scopo di assicurare un accesso inclusivo ai servizi sanitari a tutti i componenti della popolazione e di promuovere una società coesa e fondata sul rispetto e la promozione dei diritti umani. Negare l'accesso alle cure sanitarie a un gruppo specifico della popolazione compromette gli sforzi per combattere la diffusione di malattie trasmissibili. L'effettiva identificazione e trattamento delle malattie trasmissibili richiede l'accesso ai servizi sanitari di prevenzione e alle cure di base; ridurre l'accesso a questi servizi alle sole cure di emergenza ha, quindi, un serio impatto negativo sulla diffusione delle malattie trasmissibili e pregiudica altresì gli obiettivi di salute pubblica. Negare l'accesso alle cure primarie e secondarie ai migranti irregolari implica inoltre un uso eccessivo dei servizi sanitari di emergenza. Dato l'alto costo dei servizi di emergenza, il costo dell'esclusione sarà più alto di quello dell'adozione di politiche sociali che garantiscano l'inclusione.

**3. Un quadro giuridico coerente e inclusivo deve essere adottato e attuato in maniera omogenea a livello locale e regionale.**

Gli Stati membri dovrebbero prendere tutte le misure necessarie atte a garantire che i diritti di accesso alle cure sanitarie dei migranti privi di documenti siano messi in atto dalle autorità locali e regionali e che gli stessi standard di protezione legale siano applicati a livello nazionale. L'uso strategico di strumenti e politiche legali già disponibili a livello nazionale dovrebbe essere incoraggiato, mentre le buone pratiche sviluppate a livello locale e regionale dovrebbero ispirare l'attuazione di politiche inclusive e globali da parte governi nazionali. Gli Stati membri dovrebbero altresì assicurare che i diritti umani siano rispettati in tutte le strutture nazionali e che le politiche esistenti vengano applicate in maniera effettiva, garantendo in questo modo l'accesso ai servizi sociali a prescindere dalla cittadinanza e dalla residenza.

**4. L'accesso ai servizi di assistenza sanitaria e le politiche di controllo sull'immigrazione devono essere trattati separatamente.**

In conformità con le linee guida pubblicate a ottobre 2012 dall'Agenzia dell'Unione Europea per i Diritti Fondamentali (FRA) su *"L'arresto dei migranti irregolari – considerazioni sui diritti fondamentali"*<sup>56</sup>, gli Stati membri dovrebbero trattare separatamente le prestazioni sanitarie dalle politiche di controllo sull'immigrazione e non dovrebbero imporre l'obbligo per le amministrazioni e il personale sanitario di denunciare i migranti irregolari. Il segreto professionale medico-paziente non deve essere compromesso da questi meccanismi di segnalazione.

<sup>56</sup> FRA, *"L'arresto dei migranti irregolari – considerazioni sui diritti fondamentali"*, 2012, disponibile al sito: [http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation\\_it.pdf](http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_it.pdf).

**5. Tutti gli attori coinvolti nella fornitura di servizi sanitari devono avere accesso a informazioni chiare e affidabili sui diritti dei migranti alle cure sanitarie.**

Gli Stati membri dovrebbero garantire che informazioni chiare e affidabili sui diritti dei migranti privi di documenti siano facilmente accessibili, eliminando inoltre tutti gli ostacoli che impediscono ai migranti di usufruire dei loro diritti all'assistenza sanitaria. Sarebbe inoltre opportuno sensibilizzare in merito i medici, gli enti pubblici e le autorità che si occupano di migrazione.

**6. Amministrazioni locali e regionali e organizzazioni della società civile dovrebbero svolgere un'azione complementare.**

È fondamentale garantire che la responsabilità ultima della fornitura dei servizi di assistenza sanitaria ai migranti privi di documenti resti nelle mani dei governi nazionali. Le autorità locali e regionali e le organizzazioni della società civile svolgono un ruolo importante nel provvedere a queste cure, ma questa azione deve solo essere complementare a quella del governo centrale. Gli Stati membri devono quindi assicurare che un quadro giuridico globale, inclusivo e coerente sia stabilito a livello nazionale e che questo venga attuato in modo uniforme a livello locale e regionale.

**7. L'assistenza ai migranti senza documenti non deve essere punita.**

Gli Stati membri dovrebbero garantire che la fornitura di servizi sociali e di altre forme di assistenza ai migranti irregolari non venga punita mediante sanzioni di ordine penale. Gli Stati membri dovrebbero rimuovere qualsiasi tipo di sanzione contro professionisti, membri della società civile o altri attori che forniscono assistenza sanitaria ai migranti irregolari.



PLATFORM FOR INTERNATIONAL COOPERATION ON  
UNDOCUMENTED MIGRANTS

[www.picum.org](http://www.picum.org)