

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Decision regarding the Right to Health of Undocumented Migrants
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According to article 84 (1) of Law 3386/2005 (Entrance, residence and social integration of third countries' nationals in Greece) hospitals and clinics are allowed to provide their services to adults undocumented migrants only in cases of emergency. Furthermore, according to par. 4 of the said article the employees of the aforementioned services who violate the above provision are disciplinarily and criminally liable for having abrogated their duties. Moreover, according to circular OIK/EMP518 of the Ministry of Health medical care will be provided to adult undocumented migrants exclusively in cases of emergency and until their health has stabilized.

On the basis of all the above it is evident that Greece grants to undocumented migrants restrictive access to medical care and, by extension, an equally restricted right to health.

Article 5 (5) of the Greek Constitution provides that 'All persons are entitled to the protection of their health and of their genetic identity...', whereas according to article 21(3): 'The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy'. Whereas subjects of the social right to health are Greek citizens, the legislator may extend those rights to foreigners. Furthermore, although article 5 (5) has *status negativus*, it has been argued that it expands effectively the *ratione personae* of Article 21 (3).

Apart from the above provisions the right to health of undocumented migrants may derive from Article 2 (1) of the Constitution according to which ‘respect and protection of the value of the human being constitute the primary obligations of the State’. The protection of health by the State is rudimentary for fulfilling the content of the said principle. It can hardly be disputed that the right to health is one of the most important specializations of the principle, which renders undocumented migrants subjects of the right. The in effect restricted access to medical care means that someone’s health needs to significantly deteriorate so as to qualify for emergency care. Certainly, this situation does not comply with the obligation to protect the human being’s value. Elementary social rights, such as the right to health, are so much interwoven with the protection of human value that their denial to a person on the basis of the legality of his presence is unthinkable. On the basis of the aforementioned it is safe to conclude that the Constitution provides for a more expanded access to medical care for undocumented migrants.

The right to health for everyone is also provided for in article 12 of the International Covenant on Economic, Social and Cultural Rights. The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill. The obligation to respect constitutes the strict core and the minimum with which the State party needs to comply. The Commission has stated that ‘States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.’ Moreover, it has stated that ‘these core obligations include at least the following obligations: (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; [...] (d) To provide essential drugs [...]. On the basis of the above it is argued that there is a right to health for undocumented migrants, which even if it is not identical with the one of citizens, it is

certainly broader than the one provided by the Law. Greece needs to comply with its obligations deriving from the content-core of the right to health which does not include solely emergency care.

The Law in force, apart from not complying with international obligations, has another problematic aspect. Emergency medical care cannot easily be defined. The European Commission for Social Rights in the case *International Federation of Human Rights Leagues v. France*, involving a similar law, underlined that ‘cases of emergency’ are not sufficiently defined, thus highlighting the problematic aspects of the law’s implementation. The issue of the uniform definition of emergency medical care has also been noted by R. Cholewinski, Rapporteur of the Ad hoc Working Group for Undocumented Migrants of the Council of Europe.

With regards to women, the NCHR noted that according to article 24(2) of the Convention in the Rights of the Child ‘States shall take appropriate measures [...] to ensure appropriate pre-natal and post-natal health care for mothers. While the aim of the said provision is the protection of the child’s health, the ‘receiver’ of medical services is the pregnant woman, since it is evident that the child’s health depends on the mother’s state of health. While the Law grants full access to medical services to minors, when it comes to women it allows only emergency care, thus covering only labour and some cases of complications. Pre-natal control which is necessary to ensure both the baby’s and the mother’s health is not covered, unless we are dealing with minors pregnant. Therefore, Greece needs to provide pregnant women with broader access to medical care, including pre-natal control.

Regarding migrants’ deportation, according to article 44 (1)(e) of Law 3386/2005 residence permit can be provided for humanitarian reasons to third countries nationals having serious health problems. However, precondition of the said issuing is the previous possession of residence permit. That means that an individual who suffers from serious health problems may be deported. The NCHR noted that this possibility, apart from potentially amounting to degrading treatment, in accordance

with ECHR's jurisprudence, certainly does not comply with the obligation of human being's value protection.

Another aspect of the issue in question is the protection of public health. Limiting the access of undocumented migrants to medical care renders the timely diagnosis of transmittal diseases impossible. According to the aforementioned Circular of the Ministry Health when undocumented migrants are apprehended while trying to enter Greece are given a medical check. However, there is a great number that manages to enter unnoticed. Those individuals are not medically checked. In case these people are already sick they would have to wait until their health deteriorates so as to qualify for emergency care while possibly endangering public health. The protection of public health constitutes another reason for establishing a broader access to medical care for undocumented migrants.

The NCHR on the basis of all the above and after having praised those members of medical personnel who provide medical care to undocumented migrants beyond the law's limits risking to face disciplinary and penal sanctions, recommended the following:

- a) The abolition of article 84(1) of Law 3386/2005 in so far it forbids medical care for undocumented migrants in cases of non-emergency;
- b) In any case:
 - 1) The access to medical care in cases of emergency to cover both stabilization and rehabilitation of undocumented migrants' health;
 - 2) The access to medical care to cover preventive medical check;
 - 3) Establishment of pre-natal and post-natal health care for women;
 - 4) The issuing of residence permit for humanitarian reasons to persons who suffer from health problems irrespective of previous possession of residence permit.
 - 5) The abolishment of disciplinary and penal sanctions for medical personnel in case they provide medical care beyond the limits prescribed by Law.

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