

18 DECEMBER IS INTERNATIONAL MIGRANTS DAY

STOP PENALISING HUMANITARIAN ASSISTANCE

International Migrants Day offers an opportunity to bear witness to migrants' human rights situation. Today, it is our responsibility to stress the growing tendency in EU to establish "solidarity offences" and the "duty to denounce" undocumented migrants, which hurt both the latter's access to health care and the professionals working with them, in particular various organisations belonging to the HUMA network*. HUMA asks for the removal of national laws penalising humanitarian assistance to undocumented migrants. Any kind of denunciation or arrest of undocumented migrants seeking access to health care is a crime to human rights.

In 2002, an EU directive¹ defined the facilitation of unauthorised entry, transit and residence. According to this directive, Member States were required to adopt appropriate sanctions against "any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens."

In several EU countries where the HUMA network has a presence, there are still many examples of legislation that criminalizes assistance to undocumented migrants residing in Member States, even if this assistance is not given for financial gain. Other legislation asserts an obligation to denounce undocumented migrants, to the detriment of their most basic right to health care.

Solidarity offences and the duty to denounce

The latest example comes from **Spain**, which modified its Aliens Act in November 2009 with a law that deems anyone agreeing to house an undocumented migrant (not living at his/her home) in order to allow the latter to be recorded in the local register to have committed a serious offence. This will have significant consequences on undocumented migrants' access to health care, as being locally registered is a *sine qua non* condition for having effective healthcare access.

In **France**, the code for regulations on the entrance and residence of foreigners (2005) specifies in Article L622-1 that all those who facilitate, "in a direct or indirect way," the stay of foreigners with no residence permit will be punished by a term of five years' imprisonment and a fine of 30,000 Euros. The French National Consultative Commission on Human Rights² denounces the fact that a literal interpretation of this article makes any person lending assistance in good faith a suspect, and several recent, well-known cases have demonstrated that this situation is not merely theoretical.

Germany has also implemented highly criminalizing legislation that penalises assistance to undocumented migrants, even if such assistance is not rendered for financial gain, and obliges public administration services³ to denounce migrants without residence permits or risk being penalised if they do not. This obligation includes the social-welfare centres in charge of authorising access to health care ("*Krankenschein*"); such authorisation is mandatory for receiving care and having the cost of hospital care reimbursed.

In 2008, the **Italian** government tried to pass an amendment lifting the ban on reporting people seeking health care. Fortunately, parliament rejected the idea in March 2009 after intense advocacy work on the part of various organisations.

¹ COUNCIL DIRECTIVE 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence.

² http://www.cncdh.fr/IMG/pdf/texte_du_discours_YR_-_19_novembre_2009.pdf.

³ Administrative instructions have recently changed, and social-welfare centres are not obliged to report to the authorities when contacted by a hospital for reimbursement.

* The HUMA network comprises 13 organizations: *Médecins du Monde* (Doctors of the World) in Belgium, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, plus KISA in Cyprus, SKOP (HAM) in Malta, and SIP in Poland.

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In **Cyprus**, public healthcare officials often denounce undocumented migrants to the immigration authorities, even though they are under no obligation to do so.

In 2008, the **Swedish** government tried in vain to adopt a law that would have formally prohibited the provision of medical assistance to undocumented migrants. Though, protests from civil society made a difference, especially during a hearing in the Swedish Parliament where Médecins du Monde participated.

Health care versus immigration control

Each year, members of the HUMA network encounter thousands of undocumented migrants in Europe and witness the backward slide of access to health care. Access to health care is a fundamental right for every person residing in Europe. The HUMA network and its members *Médecins du Monde*, SIP, KISA and SKOP are reiterating the fact that limiting access to health services is a flagrant violation of undocumented migrants' fundamental right to health care and undermines the effectiveness of public-health policies. Migratory policies should not stand in the way of the right to health care.

For these reasons, the HUMA network calls for:

- **The removal of provisions that criminalize humanitarian assistance to undocumented migrants from all EU Member States' legislation.**
- **Safeguards on medical confidentiality and a strict ban on any kind of denunciation or arrest of undocumented migrants that are seeking access to health care.**