



Access to shelters for irregular migrants

By Mauro Striano, Policy Officer at FEANTSA

Immigrants make up a significant proportion of the homeless population in several European Union (EU) Member States. They are more likely to live in severely overcrowded housing or with no access to basic facilities than nationals. They might find accommodation in shelters but might also be obliged to sleep rough because of limited capacity in night shelters or because of limitations linked to their residence status. Access to emergency accommodation is conditional and based on regular residency, and as a consequence, research shows that in cities where data is available, irregularly residing migrants are significantly represented among people sleeping rough. There is no common EU legislation setting minimum standards regarding access to shelters and, as a result, the level of access substantially differs from country to country and, sometimes, from region to region. There are countries where access to shelters is provided regardless of the administrative status, others in which irregularly-residing migrants have no access to almost any basic service; there are countries in which national law regulates access to emergency accommodation, others where homelessness services is a regional competence; countries where access to emergency accommodation is an enforceable right, and still others where access to shelters is unconditional, at least in theory.

In our work at FEANTSA, we have been carrying out a comparison of national legal frameworks to scope out the level of access to shelters for irregular migrants. It is an ongoing process and at this stage we can only report some of the information collected for 9 EU Member States. The exercise is quite challenging because in many cases there is no clear national legal framework regulating access to basic services, including shelters, for individuals who do not have a right to reside. Out of the 9 Member States analysed so far, 3 do not have specific provisions in national law that clearly indicate whether an irregularly residing migrant has access to publicly-funded emergency accommodation. Of the 6 countries that have a national legal framework, 4 deny access - Denmark, Italy, Finland and the United Kingdom - while in France and Spain, irregular migrants are entitled to emergency support.

According to Danish law¹, to have access to services there are two conditions to be met: the first is to be a 'legal' resident²; the second is to be included in the target group of the service – the target group of shelters being defined as “people with special social problems, who do not have, or who cannot stay in,

their own home and who need shelter and offers of activating support, care and assistance³”. Access to publicly funded shelters is therefore forbidden to irregularly-residing migrants. Moreover, providing assistance to people who do not have a legal residence is considered an offence by Danish migration law⁴ and making accommodation available to irregularly-residing migrants can be punished with a fine or imprisonment up to 2 years⁵.

In the UK, irregularly residing migrants have no recourse to public funds. No recourse to public funds (NRPF) is a condition imposed on someone due to their immigration status. A person with no recourse to public funds is prohibited from accessing specified welfare benefits and public housing⁶ and homelessness assistance is included in the housing benefits that people with no recourse to public funds are not entitled to⁷. As a consequence, irregularly residing migrants, including mobile EU citizens who do not hold a right to reside, cannot access publicly-funded shelters.

Similarly, according to Italian migration law⁸, regular residence is required in order to access publicly funded shelters. This has not always been the case: before the change in migration law in 2002, the law bound mayors to provide access to shelters, regardless of administrative status, during emergency situations. In practice, since homelessness is a local competence, municipalities continue to adopt regulations occasionally during the winter programme that allow for access to shelters irrespective of residency status.

In the same way, a residence permit is required in Finland in order to fully benefit from public shelters, but municipalities can provide access to basic services through emergency shelters. Nevertheless, Finland has been massively investing in Housing First, which in practice means that outside of the winter programmes there is almost no emergency accommodation provided and, as a result, irregularly residing migrants – who have no right to Housing First services – tend to sleep rough in relatively hidden places, such as forests.

Spanish migration law provides for access to basic services and benefits⁹ for foreigners, regardless of their administrative status, which also includes homelessness services. However, as is the case in Italy, homelessness is a local competence in Spain, which implies that in practice the services provided and their level of accessibility can differ between municipalities.

1 Denmark, *Bekendtgørelse af lov om social service* <https://www.retsinformation.dk/forms/R0710.aspx?id=202239>

2 *Bekendtgørelse af lov om social service*, §2: “Enhver, der opholder sig lovligt her i landet, har ret til hjælp efter denne lov (...)”

3 *Bekendtgørelse af lov om social service*, § 110. “Kommunalbestyrelsen skal tilbyde midlertidigt ophold i boformer til personer med særlige sociale problemer, som ikke har eller ikke kan opholde sig i egen bolig, og som har behov for botilbud og for tilbud om aktiverende støtte, omsorg og efterfølgende hjælp (...)”

4 Denmark, *Bekendtgørelse af udlændingeloven* <https://www.retsinformation.dk/Forms/r0710.aspx?id=194003>

5 *Bekendtgørelse af udlændingeloven*, art. 59: « (...) ved at stille husrum eller transportmidler til rådighed for en udlænding forsætligt bistår den pågældende med at arbejde her i landet uden fornøden tilladelse (...) »

6 UK, *Immigration Rules* <https://www.gov.uk/guidance/immigration-rules>

7 UK, *Housing Act 1996* <https://www.legislation.gov.uk/ukpga/1996/52/contents>

8 *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* <https://www.altalex.com/documents/codici-altalex/2014/04/09/testo-unico-sull-immigrazione>

9 *Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social* - Article 14, par. 3: “Los extranjeros, cualquiera que sea su situación administrativa, tienen derecho a los servicios y prestaciones sociales básicas”. <https://www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf>



For instance, the Madrid winter programme¹⁰ does not make any distinctions regarding administrative status. It may be noteworthy that local police are one of many partners of the Madrid winter programme, but as they do not have any competence in migration law enforcement – which is a national competence – in principle, they do not have to report irregularly-residing migrants who are using homeless services. In French law too, the principle of unconditionality applies, whereby all homeless people have access to emergency accommodation, regardless of their nationality or administrative status¹¹. On top of that, the principle of continuity applies to the accommodation provided, meaning that, in theory, emergency accommodation cannot be terminated if no alternative housing solution is provided¹². Moreover, people who do not receive an accommodation proposal can lodge an appeal, in fulfilment of their right to emergency accommodation. A specific law¹³ recognizes housing as an enforceable right and provides a mechanism whereby applicants who are not provided accommodation, despite their requests, may lodge an amicable appeal regardless of their nationality or administrative status. A decision should be taken within 6 weeks, after which the State has 6 weeks to provide a housing solution. If no solution is provided, the individuals may start a litigation process by making another appeal. On paper, the French legal framework seems to be the most progressive in terms of access to rights; however, it must be pointed out that in practice, existing mechanisms are not effective enough to prevent irregular migrants – and others – from sleeping rough.

In the 3 countries analysed so far where there is no national legal provision for regulating access to shelters for irregular migrants, access to services is regulated at regional level or through decisions of the Courts. In Belgium, access to shelters is regulated at regional level. At national level, the only relevant provision is that irregularly residing families in which there are minors have the right to material help, including access to accommodation. In the Brussels region, emergency services are unconditional and free for Belgian citizens, EU citizens and their family members who hold a right to reside for more than three months, regularly residing third-country nationals, stateless and beneficiaries of a refugee status or subsidiary protection. Those who do not belong to these categories – irregularly residing third-country nationals as well as EU citizens who do not hold a right to reside – have the right to emergency accommodation and to day centres, although it is not an enforceable right before the courts and the tribunals¹⁴. In practice, considering the insufficient number of beds in emergency accommodation, irregular migrants make up a significant proportion of people sleeping rough in the streets of Brussels. In the Netherlands, municipalities are responsible for the provi-

sion of emergency accommodation and most of them refuse people without residence permits. Following the decisions of the European Committee for Social Rights in 2014¹⁵ regarding two collective complaints filed by the Conference of European Churches¹⁶ and by FEANTSA¹⁷, some municipalities set up special night shelters for irregularly-residing migrants, the so-called *Bed-Bad-Brood Shelters*. Nonetheless, in November 2015, the Dutch High Court ruled that municipalities did not have the obligation of providing shelter to people with no right to reside. There is no national legislation in Sweden either, thus when it comes to the level of rights accorded to irregular migrants, answers can only be found in Swedish case law. Two recent cases provided two contrasting answers: in one, a rejected asylum seeker was not entitled to emergency support, while in another, an irregular migrant who had never applied for asylum was granted access to publicly funded shelters. The two contrasting decisions relate to two different legal regimes - one regulating access to support for asylum applicants, thus placing the matter under the competence of the migration agency; the other regulating public support for anyone lacking sufficient resources, hence the case falls under the competence of public social services.

Three initial conclusions may be drawn at this stage. The first is that access to shelters, and to other emergency services, substantially differs between Member States and, particularly where no national framework exists, within Member States. Even when access to emergency accommodation is regulated at national level, different levels of competence might apply – migration as a national competence and homelessness at local level – resulting in unequal levels of access to shelters within one territory of a same given country. The second conclusion is that in countries where holding a permit of residence is required to access services, irregular migrants are extremely vulnerable to sleeping rough. Homelessness services may face challenging situations where they are unable to use public funds to support people in distress or, even worse, risk breaching the law by opening their doors to individuals who have no right to reside. The third finding is that when access to shelter is provided regardless of the administrative status, in practice the right is not always enforceable and when it is, engaging in long and costly legal procedures is difficult for people who are in urgent need of quick solutions.

Despite the limited competence regarding irregular migration, EU must urgently adopt a common framework, providing a minimum set of rights, including access to shelter, to all, regardless of the administrative status. Emergency accommodation is a matter of life or death.

“Out of the 9 [EU] Member States analysed so far, 3 do not have specific provisions in national law that clearly indicate whether an irregularly residing migrant has access to publicly-funded emergency accommodation. Of the 6 countries that have a national legal framework, 4 deny access - Denmark, Italy, Finland and the United Kingdom - while in France and Spain, irregular migrants are entitled to emergency support.”

10 Programa municipal de atención a personas sin hogar. Presentación de la campaña contra el frío 2018/2019. <https://www.madrid.es/UnidadesDescentralizadas/IntegracionyEmergenciaSocial/SAMUR%20Social/ficheros/2018%202019%20DOCUMENTO%20INFORMATIVO%20INSTITUCIONAL.pdf>

11 France, Code de l'Action Sociale et des Familles, article L. 345-2-2 « Toute personne sans-abri et en situation de détresse médicale, psychique ou sociale a accès, à tout moment, à un dispositif d'hébergement d'urgence. »

12 Ibid., article L. 345-2-3 « Toute personne accueillie dans une structure d'hébergement d'urgence doit pouvoir y bénéficier d'un accompagnement personnalisé et y demeurer, dès lors qu'elle le souhaite, jusqu'à ce qu'une orientation lui soit proposée. Cette orientation est effectuée vers une structure d'hébergement stable ou de soins, ou vers un logement, adaptés à sa situation. »

13 Droit au logement opposable (DALO)

14 Region de Bruxelles Capitale, Ordonnance relative à l'aide d'urgence et à l'insertion des personnes sans abri, art. 3 http://www.ejustice.just.fgov.be/mopdf/2018/07/10_1.pdf#page=134

15 Decision on the merits of complaint no. 86/2012 <https://hudoc.esc.coe.int/eng/#{%22ESCDclidentfier%22:%22cc-86-2012-dmerits-en%22%22}> and decision on the merits of complaint no. 90/2013 <https://hudoc.esc.coe.int/eng/#{%22ESCDclidentfier%22:%22cc-90-2013-dmerits-en%22%22}>

16 Collective complaint no. 90/2013 Conference of European Churches (CEC) v. The Netherlands <https://tinyurl.com/y5mqg5p6>

17 Collective complaint no. 86/2012 European Federation of National Organisations working with the Homeless (FEANTSA) v The Netherlands <https://tinyurl.com/yxrlp0d5>