

***A personal-data firewall between enforcement
and services: a pan-European approach***

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Rights of irregular migrants

- A sensitive topic
- which the Council of Europe has always had the courage to address

Council of Europe

- 47 member states
- Home to European Court of Human Rights
- and several other human-rights monitoring mechanisms
- including the European Commission against Racism and Intolerance (ECRI)

Focus so far

- Removals
- Regularisation, in very specific circumstances

ECRI's General Policy Recommendation No. 16

ON SAFEGUARDING IRREGULARLY PRESENT MIGRANTS FROM DISCRIMINATION

http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/default_en.asp

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ECRI's latest GPR has another focus

- All its provisions (with one exception) deal with human rights irregular migrants have while present on member states' territory, independently of length of stay

Irregular migrants have human rights

- including social rights
- enumerated in ECRI's GPR (health, education, housing)
- also right to data protection
- right to marry
- and right to have their children's birth registered

How to ensure that these rights can be exercised in practice?

- Idea simple:
- one can exercise rights or complain about them, without risking expulsion
- Wide-ranging implications

Implications for authorities

- Those who guarantee above-mentioned human rights separate from immigration-control authorities
- Firewall principle
- No reporting duty
- Also prohibited from sharing
- Except in well-defined circumstances
- Right of appeal

Implications for the private sector

- Again, no reporting duty
- Prohibition from sharing
- No criminalisation of certain activities

Additional implications

- No controls in certain areas
- Documents required by education and school providers

Some controversial ideas

- Labour inspection
- Criminal justice
- Racial profiling
- Awareness-raising

Some special cases

- Specialised bodies
- CSOs

Aim to exclude expulsions?

- or make them very difficult?
- GPR contains provisions on expulsion

Price to pay for small gains?

- Of course, some expulsions will be rendered more difficult
- However, proper price to pay for small gains?

In terms of

- Racism
- Suffering of regular migrants
- Effectiveness of service providers

Legitimate objective of controlling irregular migration

- To be pursued in a different manner
- CoE's contribution (e.g. study on administrative courts in Greece)
- Cost might be part of problem
- ECRI's GPR stops diversionary tactics
- CoE's focus on populism

Most importantly,
ECRI's GPR is about decency

- At heart of human rights culture in Europe

Two examples

- An irregularly present migrant falls victim to a violent hate-motivated criminal offence
- Wants to report it to the police
- Lives in one of the CoE countries (such as the United Kingdom or Greece) where illegal entry and/or stay are criminal offences
- Can there be a firewall?

Two examples (continued)

- Labour inspection of a sweat shop
- Employing irregularly present migrants
- as well as citizens in respect of whom employer pays no social-security contributions
- Major health and safety issues
- How can the firewall operate?
- Ethical/equality issues