

Sans- papiers and regulation procedure in Switzerland

A human rights perspective on how
to apply the hardship procedure in the canton St. Gallen

An abstract of the thesis by
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“If a person does not have papers, however she is a person right? And all have rights, are entitled to have rights, to do something. And thus also sans-papiers, they are humans still.”

by Feliz, a participant in this research (Int1.1, para.243)

Despite the developments and wide recognition of human rights systems in Europe, people without regular immigration status continue to live in precarious situations. One of the few possibilities of regularizing the status of immigrants in Switzerland is the so-called ‘Härtefallverfahren’ (translation: hardship procedure). This thesis uses expert interviews to research implementation of this procedure in the canton St.Gallen. Overall, the study found that there are problematic points within its procedure. A significant margin of discretion leads to regional differences and is vulnerable to unequal treatment, which is often perceived as arbitrary. Applicants are rather dependent on the goodwill of decision makers because regularisation through the hardship procedure is not considered a right but a humanitarian intervention. These findings suggest that the procedure should be more transparent, accessible and predictable. It is concluded that social work is a human rights profession with its triple mandate and should take action to improve this procedure.

Keywords: rights of sans-papiers, irregular migrants challenging state sovereignty, triple mandate of social work profession, Swiss regularisation mechanism, expert interviews in canton St. Gallen, universal principle of human rights.