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## LECTURE PIM FISCHER: PROTECT THE RIGHTS OF UNDOCUMENTED MIGRANTS NOW

We are faced with a completely new balance of political power. Undocumented migrants can be quite certain what this will mean for their position. However, undocumented migrants are not without rights. On Monday 22 January Pim Fischer will explain the existing judicial context. Are their boundaries to the exclusion of undocumented migrants? Which tenets exist concerning human rights? Can primary laws offer protection?

Time: 22 January 15:30-17:30

Venue, Tuinzaal van de Keizersgrachtkerk Amsterdam, Keizersgracht 566

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## 1. BASIC RIGHTS

### Council of State: Chavez-family is entitled to child-related budget; tax authorities must investigate allowances

This ruling proves that a Chavez family - Dutch mother and child with undocumented father - are indeed entitled to child-related budget.

The tax authorities are responsible for the allowances. Usually there is no entitlement to allowances in households in which one or more members have no residence permit. However, in this case the tax authorities themselves have to investigate whether the undocumented father has a declaratory residence right. You will find more information [here](#).

### Court of Appeal: mitigate penalty for lack of health-care insurance Chavez mother

This mother of a Dutch child was still involved in legal proceedings concerning her right of residence when she was issued a penalty because she had no health-care insurance. The Court are of the opinion that this penalty should be moderated because at that same moment she was given her rejection by the IND. At a later stage her right of residence has been acknowledged. You will find more information [here](#).

## 2. ADMISSION POLICY

### Court of Appeal: consider risk of FGM Nigeria in each individual case

The Court are of the opinion that the risk of Female Genital Mutilation always has to be considered in each case individually. This risk depends on factors such as the education of the parents, the relationship with relatives, the place of residence, and the tribe. You will find more information [here](#).

### Secretary of State of Justice and Security: moratoria on decision and departure Sudan and Palestinian Territories

Because of the unrest in Sudan as well as in the Palestinian Territories the Secretary of State will not take decisions on asylum applications during the next six months unless they have been waiting for examination and a decision for longer than the maximum term. These people are entitled to shelter and support. About Sudan you will find more information [here](#) and about the Palestinian Territories [here](#).

### Court of Appeal: when returning to the Netherlands after 'EU route' the Netherlands legitimately checks the actual residence

The 'EU route' means that a Dutch citizen travels to another EU country together with an undocumented partner in order for that partner to be granted residence on the basis of EU legislation. After a minimum of three months the family can travel back to the Netherlands to be granted right of residence there as well. Once they have returned, the Netherlands perform a thorough check as to whether the family has actually lived in the other EU country. In this case the family had moved to Germany. In spite of many documents the Dutch authorities were of the opinion that they had not actually moved. For example, they still visited their Dutch physician. Therefore, they were not given a residence permit in the Netherlands. The Court has agreed with this ruling. You will find more information [here](#).

### 3. CHECK AND DETENTION

Court of Appeal: the police are allowed to investigate right of residence after reporting domestic violence

This ruling shows that the police had the right to ask for identity documents because there were reports of domestic violence in the premises concerned. The undocumented resident was detained. You will find more information [here](#).

There is a [right to 'report safely'](#), but in this case the report had not been made by the undocumented victim.

### 4. ACTIVITIES

Helpline Red Cross

The Red Cross has the website Helpful Information where undocumented migrants can find places where they can obtain help. They can also apply for help by means of WhatsApp. The WhatsApp number has been changed; the new number is +31 9 70 10 28 69 64.

Founded in 2003, the LOS national foundation for undocumented migrants (Landelijk Ongedocumenteerden Steunpunt) is the knowledge centre for people and organisations providing assistance to undocumented migrants. The LOS foundation is devoted to the basic rights of these migrants and their children.