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## Study on Mobility, Migration and Destitution in the European Union

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*Document Version*

Publisher's PDF, also known as Version of record

*Publication date:*

2014

[Link to publication in University of Groningen/UMCG research database](#)

*Citation for published version (APA):*

Regioplan Policy Research (2014). Study on Mobility, Migration and Destitution in the European Union. European Commission.

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# **Study on Mobility, Migration and Destitution in the European Union**

Final Report

**EUROPEAN COMMISSION**

Directorate-General for Employment, Social Affairs and Inclusion  
Directorate D – Europe 2020: Social Policies  
Unit D1 – Social Policies, Innovation and Governance

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# **Study on Mobility, Migration and Destitution in the European Union**

Final Report

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This publication is commissioned under the European Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

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Luxembourg: Publications Office of the European Union, 2014

ISBN 978-92-79-39190-3

Doi: 10.2767/30114

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**PART I**

**GENERAL REPORT**

## **0 MOBILITY, MIGRATION AND DESTITUTION IN THE EU: GENERAL INTRODUCTION TO THE STUDY**

### **0.1 Background and objectives**

Presently over 30 million non-nationals are living in EU countries. Roughly two thirds of them are third country nationals. The successful integration of these individuals into the Member States societies is crucial for social cohesion but is not unproblematic. Evidence shows that immigrants, especially non-EU nationals originating from developing countries, experience a high risk of social exclusion. Generally immigrants are less well protected by the social benefits system and are at a higher risk of unemployment. Research indicates that non-EU nationals experience high levels of poverty and a high percentage of housing problems (EU-SILC, 2012; Pleace, 2010). Homelessness is one of the most extreme forms of poverty and there is evidence of a growing problem of homelessness among migrants in a number of Member States over the last decade. Service providers are witnessing rising numbers of immigrants, particularly undocumented migrants and asylum seekers, using homeless services (Bosch Meda, 2010). In addition mobile citizens from the recently acceded Central and Eastern European countries are also increasingly experiencing homelessness (Pleace, 2010; HomelessLink, 2010).

Currently several initiatives are being undertaken on the level of the European Union in order to accomplish a more inclusive growth. One of the prominent initiatives to boost inclusive growth is the European platform against poverty. Through this platform the EU has placed the fight against poverty at the heart of its economic and social agenda. The platform sets a dynamic framework for action to ensure respect for the fundamental rights of people experiencing poverty and social exclusion, and to enable them to live in dignity and take an active part in society.

The Platform against poverty constitutes a central part of the broader framework of the Europe 2020 Strategy, which is the EU's growth strategy for the coming decade. Main purpose of this strategy is the realization of a smart, sustainable and inclusive economy within the territory of the EU. As it is believed, these three mutually reinforcing priorities should help the EU and the Member States deliver high levels of employment, productivity and social cohesion. Concretely, the EU has set different ambitious objectives – among which on social inclusion - to be reached by 2020.

The present study was issued in the context of the implementation of the PROGRESS annual work plan of 2011. This plan announced a study on those migrant groups, including EU mobile citizens, which have limited access to welfare protection and which are destitute and homeless, with particular focus on Roma and Sinti migrants.

Additionally, since 2000, homelessness has emerged as a clear thematic priority in the EU efforts to combat poverty and social exclusion. Over the last decade the EU has supported and coordinated Member States' policies in this area through the Social Open Method of Coordination. The Commission now wants to step up progress in the fight against homelessness by developing a more ambitious and concrete EU framework based on the Jury's recommendations of the European Consensus Conference on Homelessness.<sup>1</sup> One of the challenges addressed by the Jury is the growing problem of homelessness and destitution among non-nationals and the issue

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<sup>1</sup> European Consensus Conference on Homelessness, Policy recommendations of the jury, 9/10 December 2010, Brussels.

of access barriers to homeless services linked to legal status. The Jury explicitly called for further research into this field. As such, the current study will contribute to a more systematic understanding on the nature and extent of homelessness among different migrant groups and on the legal and institutional barriers which immigrants are facing in accessing social protection.

The overall objectives of the present study are:

- To gain a general understanding of the causes of destitution among different categories of non-nationals, with reference to:
  - a. Legal obstacles
  - b. Social obstacles
- To provide information on the extent of homelessness among non-nationals and on characteristics of homeless migrants;
- To assess national and local policy responses which address the problem of destitution and more specifically homelessness among non-nationals and the identification of good practices;
- To evaluate the strengths and weaknesses of EU policies and legislation in tackling the problem of destitution among non-nationals.

## **0.2 Scope and outline of the study**

The study consists of three tiers of analyses.

The *first tier* is referred to as the general level. This level focuses on destitution and homelessness on an aggregate EU level and all its member states and looks into both the extent and legal and social causes thereof. This part of the study is based on a desktop study of available data sources<sup>2</sup> and includes both a quantitative analyses on the extent of incidence of homelessness and destitution and qualitative analyses of legal and social causes.

The *second tier* consists of country group studies. These country case studies represent one of the four migrant groups which are included in this study, i.e. EU10 mobile citizens, third country workers, undocumented migrants and mobile EU Roma. We have selected the following four country case studies (covering eight countries):

- A study into the situation of EU10 mobile citizens in Germany and the UK;
- A study into exploitative practices vis a vis third country workers in Poland and Spain;
- A study into the situation of undocumented migrants in Greece and the Netherlands;
- A study into the situation of mobile EU citizens of Roma origin in France and Italy.

The case studies are based on desktop research and interviews with stakeholders. For comparability across case study countries a questionnaire was developed to guide research efforts in the selected countries (see also Annex I). This questionnaire addressed the following topics:

- Extent of destitution and homelessness
- National policy and legislative context regarding social assistance and social housing
- Legal and social barriers
- Local initiatives and good practices for the homeless (migrants)

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<sup>2</sup> This desktop study included studies from EAPN, EUROSTAT, ILO, OECD, FEANTSA, PICUM, FRA and academic studies.

This approach of studying one migrant group in two different countries enables us on the one hand, to gather detailed and in-depth information of the extent of homelessness and destitution among migrants and mobile citizens and the causes thereof. Information which cannot be derived from large scale comparative studies. On the other hand, by choosing to study one migrant group in two countries, we are able to identify common features in the position of specific migrant groups which allow for drawing more general conclusions which exceed national circumstances.

The *third tier* of analyses is dedicated to an analysis of the country group studies. Also we discuss how the outcome of these studies reflect upon the theoretical framework developed in Part I of this study and what general policy trends emerge from the findings. These policy trends are discussed under the headings: 'local dumping', 'repressive policy responses' and 'human rights responses'. This analysis cumulates in a number of country/group recommendations and EU policy recommendations. For this purpose also two round table meetings - one on the position of mobile EU Roma and one on undocumented migrants - were held with local, national and international stakeholders. The last part is dedicated to a free discussion of future scenarios for the EU to ameliorate plight of the homeless).

### **0.2.1 Definitions of migrant groups**

The four migrant groups under study in the country case studies as mentioned above are not fully mutually exclusive. To clarify the exact focus of the country case studies, the four migrant categories are defined below:

*EU10 mobile citizens*: nationals from EU8 (Poland, Hungary, Czech Republic, Slovakia, Lithuania, Latvia, Estonia, Slovenia) and EU2 (Bulgaria, Romania) who have moved to another Member State (in this case Germany and the UK) for the purposes of finding work.

*Third country workers*: third country nationals who have migrated to the EU (in this case Spain and Poland) for purposes of finding work. This category encompasses both regular and irregular migrants.

*Undocumented migrants*: illegally staying non-nationals (in this case in Greece and in the Netherlands). This category can consist of rejected asylum claimants, illegal entrants, persons who have lost their residence status.

*Mobile EU citizens of Roma origin*: nationals from, predominantly but not exclusively, EU2 countries with a Roma or Sinti background who have moved to another Member State (in this case France and Italy).

### **0.2.2 Limitations**

Asylum seekers constitute a specific group in terms of access to services of migrants in poverty. Minimum reception standards for asylum seekers are laid down in the Asylum Seekers Reception Directive 2003/9/EC (As replaced by Directive 2013/33/EU). As information about the implementation of this directive can be drawn for the EU evaluation of this directive<sup>3</sup>, we have chosen not to include this specific migrant category in our country group studies.

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<sup>3</sup> Commission of the European Communities (2007) Report from the Commission to the Council and to the European Parliament on the Application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the Reception of Asylum Seekers (COM(2007) 745).

### **0.3 Outline of the report**

Following the three tiers of analyses, this report also consists of three parts. Part I contains the general report (chapters 1 - 6). In this report we develop a conceptual framework for the study. Also we present a review of what is known about the extent and causes of destitution and homelessness among migrants. The general report also includes an in-depth analysis of the legal causes of homelessness and destitution among migrants, focusing both on EU law and on the human rights instruments of the Council of Europe (ECHR and ESC).<sup>4</sup> In addition, the general report identifies questions and blind spots to be addressed by the case studies. Part II (chapters 7 – 14) includes eight country case studies in which the experience of destitution among undocumented migrants (Greece and Netherlands), third country workers (Spain and Poland), mobile EU Roma (Italy and France) and EU10 mobile citizens (United Kingdom and Germany) is thoroughly and systematically analyzed. Finally, Part III (chapters 15 - 17) of this report is dedicated to the presentation of the overall findings and conclusions of this study and to the formulation of recommendations aimed at improving the situation of homeless and destitute migrants in the EU. This part concludes with a free discussion of some future prospects for the EU to ameliorate the plight of the homeless.

### **0.4 Acknowledgements**

This report has been prepared by Regioplan Policy Research Ltd (Jeanine Klaver and Arend Odé) in association with the University of Groningen (Gijsbert Vonk) to provide DG Employment, Social Affairs and Inclusion the findings of a study on mobility, migration and destitution in the European Union.

The case studies were prepared by Mario Battaglini (Italy), Kamelia Dimitrova (France), Justyna Frelak (Poland), Maria Mousmouti (Greece), Piet Renooy and Valentin Günther (Germany), Arend Odé and Lars Heuts (Spain), Jeanine Klaver and Lars Heuts (United Kingdom) and Jeanine Klaver and Arend Odé (Netherlands).

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<sup>4</sup> The full report on EU soft law can be accessed at Annex II on page 457.

# 1 INTRODUCTION

This general report contains an analytical framework intended to increase understanding about destitution and homelessness among migrants, i.e. both third country nationals and mobile citizens in Europe.<sup>5</sup> This framework enables us to develop a specific methodology to be applied in the proposed country group studies while simultaneously providing an overview of the present state of research on homelessness and destitution among migrants. What do we actually know about the extent and causes of this problem?

First of all, in chapter 2 we address the principal concepts used in this research project. From this it emerges that there are different indicators of deprivation and that each of these indicators has a specific relevance and meaning. In fact, the different concepts form part of an ascending series of deprivation; starting with poverty measured in relation to average income levels and ending with actual destitution and homelessness. The use of different concepts also helps us to understand that destitution should not only be regarded in terms of material deprivation but also with reference to social isolation and lack of individual autonomy.

In chapter 3 we go on to provide a brief analysis of what is actually known about the extent of destitution among migrants in Europe. From this analysis it emerges that in the member states of the European Union only general statistical classifications are available with regard to poverty and social exclusion. Data on destitution and homelessness are even scarcer. These concepts are not covered by any survey or registration at all in the EU. Of some help is the descriptive information provided by NGOs and interest groups but these data are not sufficient to portray the impoverished situation for all the migrant groups in a similar way. Nonetheless, both the statistical and narrative reports indicate a situation in which migrants are much more prone to destitution and homelessness than is the native population. In order to obtain a more complete picture we have consulted all kinds of information sources available in the separate countries.

After analysing the available data we develop a detailed explanatory framework of destitution and homelessness. This framework is the product of two approaches: a social approach and a legal approach. In combination these two approaches throw light on the different causes that underlie patterns of severe poverty among the immigrant population residing in the European Union. Our main presumption is that destitution and homelessness are the result of both how society – politically, socially and economically – operates, and the very existence of formal legal structures which may include and exclude migrant groups.

The social causes are dealt with in chapter 4. For the purpose of our analysis these social causes are divided into three 'pillars': the labour market, social security and the housing market. These pillars are considered to be the main sources of individual wellbeing and social safety. Our central line of reasoning is that at different levels migrants may be confronted with all kinds of obstacles preventing them from gaining full access to the goods and services provided by these pillars. We examine the obstacles that may confront migrants first at the structural level, where the amount and quality of the provisions and services are considered. We then look at the role of institutional mechanisms, particularly with regard to discriminatory and unfair practices. Finally we examine

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<sup>5</sup> When in this report the term 'migrant' or 'immigrant' is used without any further specification it refers to both third country nationals and mobile EU citizens. Several studies discuss the position of migrants in general terms without making an explicit distinction, however when more detailed information is available on the migrant group involved this will be mentioned in the text.

the individual level of the migrants involved, including the different aspects of human capital. This study of the social causes is based upon a critical evaluation of secondary literature.

We address the legal causes in chapter 5. Depending on their specific status, migrant groups might be formally excluded from access to the labour market, social security services and the housing market in the host country. As will be explained, the deficit in legal protection for migrants does not only exist under national law but also under international and European law. Despite the efforts of the international community of states to improve the social protection of migrants, there are still inadequacies to be identified. This also applies for the EU. We will show that some of the legal causes of destitution and homelessness among migrants can be traced back directly to weaknesses in European protective regulatory standards. In addition to EU law, attention has been paid to the impact of Council of Europe human rights treaties on the position of immigrants. These treaties are proving to be of increasing importance for marginalised individual migrants and groups. This legal analyses is based upon a systematic study of legal sources, such as the EU Treaties, secondary legislation and case law of ECJ, the European Court of Human Rights and the European Social Rights Committee.

Lastly, on the basis of this analytical framework we formulate a number of starting points for the structure of our study on destitution and homelessness in the European Union. These starting points are presented in the final chapter 6. These starting point can be summarised under the banners of: adopting a differentiated approach, focussing on specific migrant groups and taking into account country specificity without turning a blind eye to “the greater picture”. These four starting points are explained in chapter 6.

## **2 DESTITUTION: DEFINING THE PROBLEM**

This chapter explains the notion of destitution, particularly in relation to the adjacent concepts of poverty and social exclusion. From this it emerges that destitution is even more encompassing than the two other indicators of marginalization. Primarily, destitution is about poverty and social exclusion in society. It is, however, also about individual self-reliance and the ability to control one’s life. Below, a short description is given of the way the different terms overlap and often intersect. Also included is a brief comment on what is actually understood by homelessness in its many guises.

### **2.1 Poverty and social exclusion**

Poverty is generally defined as lack of sufficient financial resources to meet basic needs. According to the World Bank (2007) it is usually measured in absolute financial terms using a precise poverty line, such as the amount of money daily available. Poverty may also be measured in relative terms when compared to the better off in society.<sup>6</sup> In addition, poverty can be defined in terms of ability to buy basic necessities determined by a basket of goods and services deemed necessary in a society. Regardless of the precise definition of poverty, at all times it refers to a situation of absolute or relative material deprivation.

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<sup>6</sup> See, for instance, the Laeken indicator of poverty, meaning the threshold of 60% of the national median income. People below this threshold are then considered poor.



The element of social exclusion generally focuses on having a marginal and socially isolated position. Eurostat in its report 'Combating poverty and social exclusion – a statistical portrait of the European Union 2010' relates social exclusion to being unable to enjoy levels of participation that most of society take for granted. Eurostat continues by claiming that social exclusion is both multi-dimensional and multi-layered, which makes it hard to measure. It is multi-dimensional in that it encompasses income poverty, unemployment, access to core institutions, living conditions, as well as social participation. Social exclusion is multi-layered insofar as the causes of exclusion can be at the national, community, household or individual level.

It may be argued that social exclusion is distinct from poverty because while the definition of social exclusion includes aspects of material deprivation (i.e. lack of financial means), it goes beyond this by looking at the processes that lead to non-participation in all of society's normal activities. Consequently, an analysis of social exclusion can broaden the discussion of well-being by considering dimensions beyond income poverty, including access to financial, human and social capital (World Bank, 2007). In other words: being poor can lead to exclusion, but social exclusion is more than just being poor. In a slightly different way, Atkinson (1998) argues that while income poverty and social exclusion overlap, they do not necessarily intersect. One can therefore be socially excluded without being poor.

For most people, however, poverty and social exclusion strongly correlate, meaning that social exclusion is based on poverty. Similarly, the European Commission argues that social exclusion must be considered as a direct consequence of poverty. On its website about the European Year 2010 against Poverty and Social Exclusion, it says: "Living in poverty may result in a variety of problems, from not having enough money to spend on food and clothes to suffering poor housing conditions and even homelessness. Poverty also means having to cope with limited lifestyle choices that may lead to social exclusion." Social exclusion is therefore conceived as an impediment to full participation in society.

## **2.2 Destitution**

The word "destitution" derives from the Latin word *destituere*, which means to abandon someone, to maroon someone (from JRS, 2010). Hence, in the literal sense of the word, a destitute person is left without assistance in a precarious situation. The word destitution is predominantly used within development research, which reflects the abovementioned connotation, that 'destitutes' are the poorest of the poor and are left alone by society.

In recent years, however, the term 'destitution' is increasingly used to describe a certain form of poverty as regards third-country nationals residing in Europe, including asylum claimants, rejected asylum seekers, and irregular migrants (JRS, 2007). A common characteristic of these groups to which reference is made as regards destitution is that they do not enjoy complete protection under national law, and that they consequently rely on marginal and unofficial resources to meet their basic needs.

A very useful characterization of destitution is given by the JRS Report on Destitute Forced Migrants (2007), which comprises three elements: material deprivation, social exclusion and the level of control over one's life. With regard to the latter element, the report says that destitution implies such a degree of poverty that the person in question is largely dependent for his survival on the goodwill of others, including charity organisations, networks of family and friends, or support by the state. In particular, destitution entails:

- Lack of control over assets and the loss of access to income of one's own labour,
- Lack of access to statutory support mechanisms, so that the person depends on the goodwill of others such as friends, family and charity organisations,
- The impossibility of changing the situation of destitution, meaning that the circumstances must be considered as rather permanent.

Together, these elements provide for a more or less complete picture of people living in a destitute situation. Moreover, the classification as developed in the JRS report points out that destitution goes beyond the notion of poverty and social exclusion, since it also includes an element of self-sufficiency.

In the country reports of this study the destitute situation of immigrants will be understood in relation to their difficult daily life. Nonetheless, we may argue – on the basis of a great number of studies and documents which will be discussed later on in this general report – that throughout Europe common features have resulted in a situation that comes close to what is understood by destitution. These are:

- All states have adopted laws and policies that, to a large extent, exclude destitute migrants from their welfare provisions;
- Destitute migrants have no or very limited access to public goods and services under law in terms of health care, employment, housing, financial support and material assistance such as food and clothing;
- Even if access to goods and services is guaranteed by law, it is often denied in practice due to complex administrative procedures, unclear laws and service providers' lack of knowledge.

These features will be generally discussed in the following section of the general report, and further explained in the separate country studies.

## **2.3 Homelessness**

Homelessness is one of the most extreme forms of destitution, for it relates severe poverty to a situation in which a secure private living is no longer achievable. Homelessness is, however, a complex phenomenon and may take different forms and shapes. In order to create a common framework for the definition of homelessness, the European Typology of Homelessness and Housing exclusion (ETHOS) was developed by FEANTSA (2011). The ETHOS typology, which takes into account physical, social and legal aspects of a 'home', classifies homeless people according to four main living situations, i.e. rooflessness, houselessness, living in insecure housing, and living in inadequate housing.

Rooflessness is regarded the most extreme condition of homelessness. After all, roofless people lack a home both in the physical, social and legal sense; they are sleeping on the rough. Houselessness refers to people in (temporary) shelters and accommodations. These persons do have a physical place to live but experience exclusion in the legal and social domain. People in insecure housing do have a roof over their head but their housing status is insecure as they might be under the threat of eviction or have merely found temporary accommodation with family or friends. The final category refers to people living in inadequate or substandard housing, meaning that living is associated with many inconveniences. These four broad conceptual categories can be further divided into subcategories of homelessness (see table 2.1).

**Table 2.1 European Typology on Homelessness and Housing Exclusion (ETHOS)**

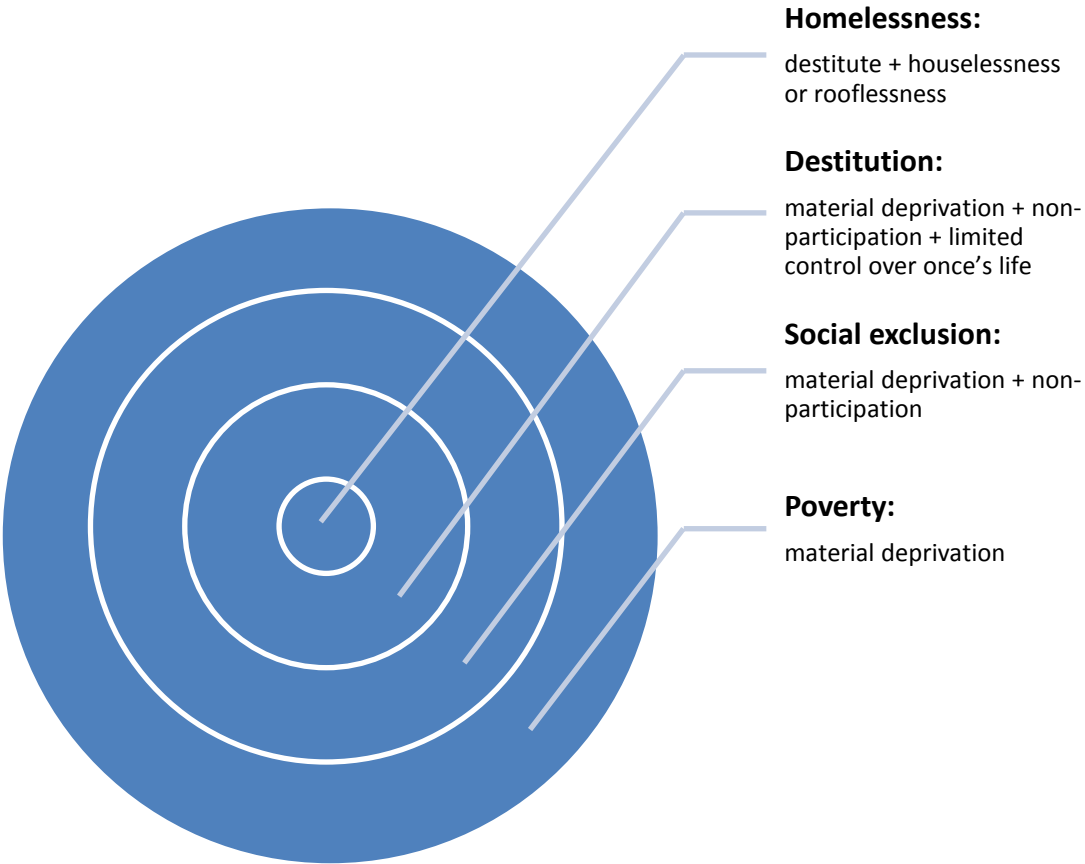
Conceptual category	Operational category
Roofless	People living rough People staying in a night shelter
Houseless	People in accommodation for the homeless People in women's shelter People in accommodation for immigrants People due to be released from institutions People receiving support (due to homelessness)
Insecure	People living in insecure accommodation People living under the threat of eviction People living under the threat of violence
Inadequate	People living in temporary/ non-standard structures People living in unfit housing People living in extreme overcrowding

What it is important to realize, is that people at risk of homelessness often move in and out of different categories of homelessness. This is mainly due to their rather unstable daily situation, which also involves great fluctuations in the financial recourses and relevant social networks available to them. In the national reports of this study, we will shed further light on the variable and unpredictable housing situation of destitute migrants. As rooflessness and houselessness are generally considered as the most critical apparitions of homelessness, focus is on these two dimensions.

## 2.4 Circles of deprivation

All in all, different dimensions and degrees of poverty have been explained, which are all in some way or the other linked to each other. Considering the fact that we deal with a certain hierarchy in terms of ever increasing individual rates of poverty, we may enter these different concepts of poverty into a so-called circle of deprivation (see figure 2.1) This circle expresses increasing degrees of marginalization, starting with poverty (as a threshold of median disposable national income) and ending with the most critical stage of poverty, i.e. homelessness, which is principally considered as houselessness or rooflessness.

Figure 2.1 Circles of deprivation: different degrees of poverty and exclusion



### 3 DESTITUTION AND HOMELESSNESS: WHAT IS KNOWN?

#### 3.1 Available information on destitution

An important survey to measure the extent of material deprivation and social exclusion is the European Union Statistics on Income and Living Conditions (EU-SILC).<sup>7</sup> The survey has been established to provide data to be used for the structural indicators of social cohesion in the European Union. Of particular relevance for the purpose of this study is the indicator 'at risk of poverty or social exclusion'. This indicator reflects information on both insufficient income, severe material deprivation and low work intensity.<sup>8</sup>

When at least one of these criteria is applicable to an individual person, he or she has been labeled as being at risk of poverty or social exclusion. Table 3.1 reveals this information for both the native population and a few migrant categories in a number of countries, all of which are included in our study on destitution. The information presented clearly demonstrates the rather weak position of the foreign born, indicating that one in three migrants in the EU is at risk of poverty or social exclusion.

Adding to this general pattern, two further details are worth mentioning. Firstly, when looking at the position of non-EU foreign born migrants (third country nationals), their vulnerable position – in terms of poverty risk or social exclusion – becomes clearly visible indeed. In fact, differences in poverty between the native population and those foreign born should be entirely ascribed to the critical position of migrants originating from third countries. Mobile citizens originating from other EU member states are more or less equally prone to a poverty risk or social exclusion than the native population.

Secondly, in addition to outcomes for the EU-27 as a whole, great differences in the income position of migrants can be observed between the different member states included in table 3.1. The highest numbers of impoverished migrants are to be found in Southern Europe, particularly Greece and Spain. In contrast, the differences in poverty risk between the native population and migrants are less obvious in Western European countries, such as Germany and the United Kingdom. Strikingly enough, the poverty risk in Poland is almost similar for migrants and the native population, although again the position of migrants born in non-EU countries is more vulnerable as compared to the other categories in this country.

**Table 3.1 Poverty risk or social exclusion among nationals and immigrants in the EU-27 and some member states, 2012**

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<sup>7</sup> The EU-SILC is an instrument aiming at collecting timely and comparable cross-sectional and longitudinal multidimensional microdata on income, poverty, social exclusion and living conditions.

<sup>8</sup> With regard to income, a so-called poverty indicator is set at sixty percent of the national median disposable income. Material deprivation is defined as the lack of different material deprivation items, such as arrears on mortgage or rent payments, insufficient capacity to pay for a one's week holiday, and insufficient capacity to afford luxury goods and to face unexpected financial expenses. Finally, a work intensity equal or inferior to one fifth of potentially workable months in a household is considered as very low.

	Native born	Foreign born	Foreign born EU	Foreign born non-EU
EU-27	23.1	32.9	23.8	38.4
France	16.5	30.1	18.6	35.6
Germany	19.9	19.8	16.7	25.4
Greece	32.7	54.8	35.1	60.7
Italy	27.7	43.1	40.4	44.4
Netherlands	12.5	27.3	15.6	30.1
Poland	26.2	27.5	24.2	29.7
Spain	24.2	44.9	32.5	50.1
United Kingdom	21.1	29.5	20.6	33.4

Source: Eurostat, EU-SILC (2012)

The EU-SILC survey is very helpful for obtaining an initial picture of poverty risks among migrants. We should, however, be aware of the fact that we can not only rely on these data in order to fully understand the marginalized position of destitute migrants in the European Union. The reason for this being that the poverty or social exclusion is well defined according to plain criteria, but these criteria also demonstrate that the persons included do not necessarily belong to those defined as most vulnerable or destitute. In other words, the income threshold method is useful for understanding relative rather than absolute poverty. Furthermore, the indicators of deprivation as specified above (see footnote 2) are not meant to express the deprived material position of really destitute people, since all of these are related to more or less popular social behavior.

What is more, the classification only partly covers the groups which are dealt with in this study. These are third country workers, EU10 mobile citizens (particularly overstayers), asylum seekers, mobile EU Roma and undocumented migrants. At best the separate groups form part of one of the stated migrant categories, as is the case with regular third country workers (being non-EU migrants) and the EU-10 overstayers (being migrants born in the EU). But then again, third country workers and overstayers definitely do not represent these broad categories, as we expect them to have different characteristics. With respect to the other groups it is even more difficult to benefit from the EU-SILC information. This is certainly true for the category of undocumented migrants, who are by definition not recorded and elude statistical coverage.

This having been said, we do know that the categories under study generally suffer from both material deprivation and social exclusion. The information at hand does not, however, come from large surveys or registration data. Instead, a great number of small-scale reviews, in-depth studies and other anecdotic information provide a general image of the rather weak positions of these immigrants. Of pivotal importance in this field are the numerous contributions of different NGOs and other interest groups – including FEANTSA, Caritas Europe, JRS and FRA – who every so often provide detailed information on the destitute situation of specific migrant groups. These reports will be extensively used in our country reports.

In general these reports refer to extreme patterns of poverty, often being documented by national units and reporters in the different countries of the EU. Asylum migrants and undocumented migrants are in the most critical positions, mainly due to their formally excluded position (from many goods and services) and their overall poor integration patterns. Other migrant groups may be prone to destitution as well, although the impression we get is that degrees of poverty within these migrant communities vary to a much greater extent.

While these reports are much more capable of providing a detailed picture of the migrant groups we are interested in, we still lack a more encompassing picture of migrants in a destitute situation. After all, the available reports provide a rather fragmented picture, with great differences in the amount and quality of information between both countries and migrant groups. We therefore also incorporate academic and other research in the national reports, which has been carried out on a national scale, and which includes different elements of destitution in a more systematic way.

### **3.2 Available information on homelessness**

At the EU level there is no systematic data available on homelessness. In the EU-SILC survey overcrowding and housing deprivation are amongst the indicators of the social inclusion strand, but other categories of homelessness are not included. Moreover, as revealed in detail by FEANTSA (2009), there is a large variety in the quality and availability of data on homelessness in the separate member states, both regarding statistics in general and information on the different categories of homelessness as used in the ETHOS-typology (see also table 1.1).

As regards migrant and ethnic minority homelessness reliable data is almost completely lacking at the level of the EU. Quantitative data on migrant housing and homelessness (based on census information) is sometimes obtainable at a national level. These studies tend to report largely on only one area (often large cities) and hardly provide for a systematic comparison between different migrant groups. For smaller groups or recent immigrants (e.g. seasonal workers or asylum seekers and refugees) available data is particularly scarce. Also the gender dimension of migrant homelessness remains largely underexposed in many of these national qualitative samples. Generally, work on migrant homelessness reveals that available data are often extremely poor (Pleace, 2010; EUMC, 2005).

The problems in understanding migrant homelessness extend beyond simple data quality. Edgar (2009) mentions the problem of large differences in the use of definitions between countries, not only with regard to the migrant population being considered but also with respect to the meaning of homelessness. Writing in 2010, Fonseca *et al.* note that comparative EU-level quantitative research is equally hampered by varying definitions of what a 'migrant' is, by the practical difficulties of controlling for the huge diversity within migrant populations and, not least, by the tendency of undocumented migrants to conceal themselves for fear of repatriation. By way of example, the authors report that the Czech Republic estimates that its last census undercounted foreign nationals by 60 per cent. Furthermore, the replacement of census surveys with register-based censuses (using administrative data) in countries such as Austria, Belgium, Germany and Sweden is in their view likely to increase the risk of migrant people being undercounted.

Despite large differences in the quality and availability of data on migrant homelessness, the EUMC (2005) indicates on the basis of various national studies some common patterns and concludes that:

"Migrants and settled minorities do generally appear to suffer higher levels of homelessness, poorer quality housing conditions, poorer residential neighbourhoods (such as shanty towns), and comparatively greater vulnerability and insecurity in their housing status. Very serious housing problems include lack of access to basic facilities such as drinking water and toilets, significantly higher levels of overcrowding than for other households, and exploitation through higher comparative rent and purchase prices. Persistent difficulties are faced by Roma, Travellers, Gypsies and Sinti, and refugees and asylum seekers, across the EU in securing adequate basic housing." (EUMC, 2005, page 59-60).

The limited availability of reliable data implies for this study that we will not be able to present statistics on the extent of homelessness among migrants in Europe. Only a rough indication of the incidence of homelessness among different categories of migrants can be given. These estimates do not allow for a systematic comparison of homelessness among (different categories of) migrants in the EU member states.

Once again, we may resort to the publications of NGOs and interest groups, which at least provide a fragmented picture of homelessness among migrants. And then again, the position of both undocumented migrants and asylum migrants appears to be very weak, as many among them rely on housing support as a last resort. Very informative is a study, recently published by FEANTSA (2012), which has tried to place homelessness within the context of the current economic crisis. This overview reveals that in a selected number of European countries homelessness among immigrants has substantially increased during the last three years or so. In both Italy and Spain, for instance, surveys indicate that migrants represent a high and growing share of homeless service users. But also in various Western European countries, including the United Kingdom and the Netherlands, homelessness among migrants is unquestionably on the rise.

We certainly will try to get a more comprehensive picture of homelessness among the separate migrant groups and countries under study. As detailed statistics on the housing position of migrants are generally not available, other small-scale and in-depth research, generated by both academic and other sources, will also be included.



## **4 SOCIAL CAUSES OF DESTITUTION AND HOMELESSNESS**

Central to our line of argument is that destitution can only be understood by taking into consideration both social and legal causes. This chapter looks at the role of social causes. As we explain later, the role of the national political and economic context, the impact of different social forces and the significance of individual factors may contribute to the marginal position of migrants in terms of destitution and homelessness. These different levels will be explained below in relation to the labour market, social security services and the housing market.

### **4.1 A vulnerable labour market position**

Statistics and national studies reveal that immigrants in Europe generally have weak positions in national labour markets. These unfavourable positions translate into low participation rates and high unemployment risks, as well as critical working conditions and terms of employment (OECD, 2011). Several studies (e.g. Haiderner, 2007; Nilsson and Wrench, 2009) have structured different underlying mechanisms in order to understand these outcomes, and make a distinction between structural factors, institutional mechanisms (i.e. the role of gatekeepers) and the characteristics of migrants themselves. These levels of explanations may all contribute to the rather weak positions of migrant workers in national labour markets, or worse still, to the fact that immigrants are not capable of finding work at all.

In addition to this economic view on the position of migrants, several studies take notice of the role of national migration and integration policies, in order to understand the actual possibilities for immigrants to participate in host societies. As will be clarified in more detail, official policies greatly impact on the legal possibilities of migrants to find employment in the formal sector, and therefore also on the actual attraction of the informal sector for migrant workers. Below, we shortly explain these different causes of destitution in more in detail.

#### **4.1.1 Limited access of less skilled migrants to European labour markets**

Since the new millennium, there seems to be a gradual shift in official views on international migration, at least as regards labour based mobility patterns (Castles, 2006). An important milestone was the 2001 Sussmuth Commission Report to the German government, which convincingly argued that Germany had long since become an immigration country and would need to rely on

labour migration to fill both skilled and unskilled jobs in the future.<sup>9</sup> Only one year later the British Home Office brought out a report that highlighted the potential benefits of labour migration.<sup>10</sup> In line with these more liberal views, the European Commission has recently published an important document, which clearly emphasizes the need to make better use of the benefits of international labour mobility.<sup>11</sup> Just one example of this openness toward new immigrants, is the European Union's Blue Card scheme, offering a fast-track option for skilled migrants wishing to work in the EU.

The main arguments underlying this shift were primarily related to economic and demographic motives. Economically, European countries increasingly realized that labour market shortages were very persistent, both at the lower and upper end of the labour market. So, migrant workers from outside the EU were needed to make further economic growth possible. An important demographic factor was the realization that total fertility rates had fallen significantly in many European countries to such an extent that populations were beginning to decline (IOM, 2012). Part of this demographic shift has been the ageing of the population, meaning that fewer natives were presenting themselves on the labour market, and that the labour force must support a growing number of elderly. In fact, international migration was increasingly supposed to address these economic and demographic challenges.

Castles and Miller (2009) argue, however, that in daily practice national governments in Europe are ready to give preferential entry to well qualified workers, especially to those able to meet specific shortages, but refuse to recognize the need for poorly skilled workers. No doubt, the reluctant attitude to include these workers in formal programmes is largely fuelled by the need to reduce unemployment among the poorly skilled national labour force. Nonetheless, the result of this line of reasoning is that highly skilled migrants are identified as a priority to enhance the competitive power of national economies, whereas less skilled migration is only promoted for sectors facing significant shortages. As Martin (2005) claims, despite the proliferation of guest workers programs and temporary employment permits, many and perhaps most of the world's migrant workers remain outside legal admission channels.

Of course, there are many examples to be given of national temporary working schemes, also including less skilled migrant workers. What is equally true, however, is that these legal provisions only partly respond to what is actually happening in daily practice. In other words, these schemes generally allow for the entry of limited numbers of migrants, whereas actual demands for migrant workers often proves to be considerably higher. This dissimilar political and economic reality has resulted in all kinds of informal work relationships, which have been established alongside the formal permit systems. In Germany, for instance, great numbers of both legally staying and undocumented migrants have been working without regular work contracts (Martin, 2005). But also the British economy has proved to be very open to casualized and informal work relationships, which has made it easy for employers to take on vulnerable migrant groups, especially undocumented migrants and asylum seekers (Castels, 2008).

This reality also becomes apparent in the separate country reports of the present study. As will be described for instance for third country workers in Poland and Spain, many of these migrant

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<sup>9</sup> Structuring Immigration, Fostering Integration. Report by the Independent Commission on Migration to Germany. Berlin, 4th of July, 2001.

<sup>10</sup> Migrants in the UK: their characteristics and labour market outcomes and impacts. British Home Office, December 2002.

<sup>11</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The Global Approach to Migration and Mobility. Brussels, SEC (2011) 1353 (final).

workers are employed in the national labour market of these countries, but without being authorized for this. The consequence is that these workers are predominantly employed in the informal sectors of the economy, which makes them socially vulnerable and unprotected in case of inactivity.

#### **4.1.2 Labour market segmentation: the position of migrants**

Labour market segmentation and the concentration of migrants in less skilled occupations is typical for all labour markets in Europe (OECD, 2011). These ethnic segmentation patterns must be understood as a result of specific employment trends. On the one hand the relative importance of skilled jobs has increased significantly, attracting both the well-educated national labour force and skilled migrant workers. On the other hand, low qualified jobs still constitute a substantial proportion of total employment in Europe.<sup>12</sup> Moreover, the demand for low-grade occupations continued throughout the recent years of the economic recession (IOM, 2012). Forecasts for all member states of the EU highlight the expected growth of elementary jobs, such as retail sales, food preparation, customer services, personal and home care helpers, construction work and transportation (CEDEFOP, 2013).

Due to their overall poor educational achievements, most of the third-country migrant workers in the EU are employed in these elementary and often menial jobs. To date, almost eighty percent of all third-country nationals in the EU are poorly skilled, which amounts to over 23 million persons (CEDEFOP, 2011). On the basis of a comprehensive comparison including all EU member states, it becomes apparent that these migrants are largely concentrated in the lowest quintiles of the national labour markets (Muños de Bustillo and Antón, 2012). This pattern applies as a general rule for all countries, but is even more pronounced in Austria, France, Germany, Italy and Spain. In addition, as the latter study reveals, new migrant jobs tend to be created mainly at the bottom of national labour markets.

The process of ethnic segmentation is further enhanced by a decreasing appreciation for low-grade jobs among the national labour force. As IOM (2012) claims, many native workers in the EU are no longer willing to apply for these jobs, which are increasingly perceived as below their aspirations and capacities. Muños de Bustillo and Antón (2012) clearly demonstrate a pattern of substitution, meaning that at the lower levels of national labour markets we may notice a simultaneous reduction in employment by natives and a growth of immigrant employment.<sup>13</sup> Generally, migration is therefore regarded as a vital way to deal with the inconsistencies of the labour markets of EU member states.

As long as these migrants are employed, the risk of being destitute is not self-evident. We should, however, bear in mind that competition at the lower ends of the labour market is generally very strong, meaning that many migrants compete for an inadequate number of jobs. Moreover, as explained by the OECD (2010), the recent situation of limited job growth in Europe has further affected the position of migrants in national labour markets. As will be illustrated in the subsequent country reports of this study, migrant workers are sometimes easily made redundant or simply displaced by other migrant groups. Obvious examples, as will be illuminated in the national reports of this study, are the African workers experiencing strong competition from Eastern European migrants in Spain, as well as the undocumented workers in the Netherlands

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<sup>12</sup> The number of workers in the EU in elementary occupations contributed twenty percent of total employment growth between 2000 and 2008, against an average job growth of ten percent (CEDEFOP, 2011).

<sup>13</sup> Although the authors refer to a general pattern of substitution, they admit that has not been the case in every member state of the EU. In fact, six countries (being Cyprus, Estonia, Greece, Ireland, the Netherlands and Spain) do not reveal an opposite direction of employment growth among the native and migrant work force.

who are increasingly replaced by legal labour migrants, mainly originating from the new EU member states.

#### **4.1.3 A new organisational structure further increasing segmentation**

Another element towards the establishment of rather segmented labour markets has been the introduction of new organizational elements. These elements can be understood as part of more a fundamental restructuring process of national economies. As argued by Castles (2006), one of the most dramatic trends of the last twenty years has been the restructuring of labour forces in developed countries, particularly through practices such as subcontracting, temporary employment and casual work.

Castles and Miller (2009) summarize a number of prominent elements of contemporary labour markets, which have significantly affected the position of migrants. These are: (a) growing informal sectors in the economies of developed countries, (b) casualization of employment and growth in part-time work; (c) increasing insecure conditions of employment; and (d) increased differentiation of labour forces on the basis of gender, age and ethnicity. Together, these developments are thought to have deepened a process of structural inequality, with some participants being pushed into the lower echelons of national labour markets.

The social transformation in Western economies cannot be understood without referring to the important role of migrant workers. As Lillie (2010) claims, national labour markets are increasingly breaking into tiers, with transnational migrants, often employed through subcontractors and specific agencies, making up the lower tier. Krenn and Heidinger (2008) assert that the overall restructuring and 'informalisation' of the economy should be considered as complementary to the intensified recourse on migrant workers, especially un(der)documented migrants. Likewise, Chierup et al. (2006) submit that the growth of new downgraded and informal sectors of the European labour market is increasingly staffed by socially marginal migrants.

The introduction of new organizational elements relying on large numbers of migrant workers has been described in a great number of studies. A dominant trend in the post-communist construction industry in Berlin, for example, has been the growth of small enterprises, the casualization of work, and the contracting out of labour. These phenomena have opened the door to a great variety of rather weak employment contracts, involving many temporary migrants (Martin, 2005; Favell, 2008). In the United Kingdom, Schierup et. al. (2006) observed that during the 1990s many migrant workers in the British garment industry initially lost their jobs and then became contractors to the big clothing houses, setting up small formally independent sweatshops based on cheap immigrant labour. In Finland, Lillie (2010) shows that the contemporary shipbuilding and construction industry have become increasingly dependent on cheap migrant labour, mainly by way of transnational subcontracting relations.

Taken together, these examples of labour force restructuring clearly demonstrate a tendency towards ethnic labour market segmentation. As will be explained further in the national case studies of this report, we will come across many examples in which the rather vulnerable position of migrants is closely related to the introduction of these organizational elements. The informal employment of undocumented migrants in the Netherlands, the casual work done by Moroccans in Spain and Ukrainian migrants facing poor employment conditions and underpayment in Poland are just three illustrations to illuminate this process of restructuring.

#### 4.1.4 Exploitation as a common characteristic of informal labour markets

Generally, we may refer to informal employment as those jobs to which labour regulations are not applied. According to the definition of the International Labour Organization (2004), employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (e.g. advance notice of dismissal, severance pay, paid annual or sick leave).<sup>14</sup> Similarly, the OECD (2009) claims that in the informal sector labour relations – where they exist – are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees.

It then follows that in the informal labour market different rules and manners apply. To begin with, the working conditions in informal employment are, almost without exception, generally described as very poor. These harsh conditions include, lack of safety, health risks, discriminative practices and often extremely long working hours. Worse still are many examples of intimidation and violence (Caritas, 2006; JRS, 2010). According to Blunch et al. (2001) in many cases jobs in the informal sector are low-paid and the job security is poor. Considering the absence of minimum wage legislation, unfair or underpayment is hardly surprising. Furthermore, informal employment is, by definition, accompanied by income insecurity, meaning that workers who are informally employed are excluded from contributory schemes (such as unemployment insurances or sickness benefits). Moreover, as reported by the OECD (2009), migrants employed in informal labour markets generally cannot afford to purchase private insurance against certain risks, as they lack the means to do so.

Immigrants, both documented and undocumented, make up large proportions of the informal economy. Haidinger (2007) claims that the necessity for migrants to engage in the informal economy and accept far worse working conditions results primarily from various employment prohibitions, including language difficulties, discrimination and the non-recognition of certificates. According to the EUMC (2003), immigrant workers often have jobs that are insecure, lower paid, short term, dirty and with long working hours. The JRS (2010) argues that exploitation is a widespread phenomenon within the informal labour market, with rejected asylum seekers and irregular migrants being referred to as the most vulnerable groups. Similarly, IOM (2012) asserts that the exploitation of migrants in the national labour markets of Europe has become a general phenomenon, with seasonal migrants, undocumented workers and migrant women being most prone to abuse and mistreatment.

Southern European countries in particular are noteworthy for their extensive informal economies (Baldwin-Edwards, 2002; De Haas, 2008). This reality becomes visible in the country studies of Greece, Italy and Spain which unmistakably disclose a great attraction of the informal sector for foreign workers. But Western European countries also have their own models of atypical employment, although a little less extensive as compared to the

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<sup>14</sup> Defining and measuring informal employment, by Ralf Hussmanns. Bureau of Statistics International Labour Office, 2004.

Mediterranean countries.<sup>15</sup> Persistent features are their poor working conditions and great job insecurity. As will be shown in different national reports, informal employment can even be regarded as a direct path to destitution.

#### **4.1.5 The role of gatekeepers: exclusion and inclusion**

In addition to formal exclusion, national labour markets may not always be open to migrant workers. As reported by Nilsson and Wrench (2009), direct discrimination on the basis of nationality or ethnic origin happens to be a widespread phenomenon in Europe, and gives the impression that these practices are even more common at the lower echelons of the labour market. These practices may further weaken the position of immigrant workers and, as a consequence, increase the need to find employment outside the official labour market. The low levels also include the informal labour market, to which severe discriminatory practices are attributed (e.g. Caritas, 2006; JSR, 2010). No doubt, the feeble position of migrants towards their employers has encouraged such practices of inequity and unfair treatment.

Andriessen et al. (2012) have investigated the impact of discrimination in the Dutch labour market and claim that some non-Western immigrant groups, and men and youngsters in particular, suffer most from these practices. According to Caritas (2006), there is persistent prejudice in hiring procedures in Europe, including misleading vacancy announcements and adulteration of recruitment procedures. Similarly, national reports of Caritas Belgium (2006) and Caritas Germany (2006) point to extensive discrimination in both national labour markets.<sup>16</sup> These patterns of racial or ethnic discrimination are also clearly present in our country reports, revealing exceptionally negative attitudes towards Roma and specific categories of third country workers. In addition, various more indirect forms of inequity – including a variety of employment routines, daily practices of recruiting and culturally biased assessment techniques – may further weaken the position of immigrants in national labour markets (Nilsson and Wrench, 2009). So, even if the purpose is not to keep out migrants, different ways of acting may still lead to similar results of exclusion. Employers, employment offices and private agencies are all known for these practices.

What is equally true, however, is that many migrants find employment through specific recruitment channels. In fact, as IOM (2012) asserts, patterns of strong concentrations of migrant workers often result from international agencies and services bringing foreign workers to national economic sectors.<sup>17</sup> Migrant flows have thus become institutionalized, with employers and entrepreneurs in the migrant sending communities themselves becoming involved in organizing the movement and management of labour to its new locations abroad (Bade, 2003). The World Trade Institute (2011) observes that the international recruitment of low skilled migrants is increasingly handled by specialized sector-based agencies. Often these agencies provide the only road to overseas employment. However, leaving recruitment entirely to the market, may not always protect the status and interests of the migrants involved. More specifically, the World Trade Institute mentions the often excessive fees charged by these manpower agencies, but also practices of fraud and inhuman employment conditions. As will be shown for the Dutch case in this report, such agencies may play a very problematic role in relation to human trafficking of undocumented workers to this country.

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<sup>15</sup> As explained by Hazans (2011), total informal employment accounts for less than fifteen percent in Western Europe, against twenty-five percent in the Southern member states of the EU.

<sup>16</sup> In Belgium, half of all migrants faced at least one instance of discriminatory behaviour when applying for a job. In Germany, many migrants reported being rejected for an apprenticeship or a job.

<sup>17</sup> Examples given by IOM (2012) include high shares of Moldavian, Chinese and Korean workers in Romanian shipbuilding; strong representations of Ukrainian workers in Polish construction and agriculture; and Northern African workers concentrated in manufacturing and trade in France.

#### **4.1.6 Excluding mechanisms at the level of individual migrants**

We should not argue unambiguously that only macro-economic and institutional factors are at the root of the unfavourable labour market position of migrant workers. Undisputedly, the micro-economic or individual level cannot be left untouched either in order to fully understand the position of immigrants in national labour markets. This level refers to so-called human capital factors – including educational attainments and (language) skills, but also work experience and motivation – which are usually acknowledged as the main explanatory factors for these labour market outcomes.

In the Netherlands, for example, educational levels and language skills at all times prevail in explanatory models of labour market participation and unemployment (e.g. Dagevos, 2007; Dagevos and Odé, 2011). A survey of Turkish nationals in the German labour market reveals the prevailing importance of education and language proficiency in explaining the overall unfavourable position of this migrant community (Euwals et al., 2007). With regard to the British labour market, the role of education appears to have a significant effect on the position of migrants in the same way (Dustmann and Fabbri, 2005). Similar conclusions on the impact of education are given in a comparative analysis including various European countries (Peracchi and Depalo, 2006).

We should, however, realise that these explanatory frameworks fall short when it comes to different elements which are less easy to measure. Findings of in-depth research show that the value of informal networks and access to relevant information very much contribute to a better understanding of the labour market position of migrants. Due to the fact that the migrant population generally does not take part in helpful social circles needed to get in touch with the better jobs, they often resort to the available section of low-grade employment. This mechanism has been analysed for different migrant groups in the United Kingdom (Giulietti et al., 2013). Prominent conclusions are that the informal networks available to migrants have no significant impact on their employment chances and have even a negative effect on the wage levels. The authors explain these poor results by the limited options immigrants have when searching for jobs. Moreover, migrants might accept jobs offered through their social network because, despite the low wage on offer, it is a quicker way to fend off unemployment.

#### **4.1.7 Labour market exploitation among female migrants**

Poor participation rates, high unemployment and a strong representation in low grade jobs are defining features of the labour market experience for many female immigrants into the EU, especially for migrant women from less developed countries.<sup>18</sup> Various factors contribute to these poor labour market outcomes for migrant women, such as inadequate educational attainment and language skills, the absence of a supportive environment and relevant social networks, labour market discrimination, and often also a poor legal status (RAND, 2008).

Moreover, in many European countries recent female migrants are increasingly dependent on informal labour markets. They particularly find employment in domestic services, the sex industry, agriculture and tourism (Kontos, 2008). The author shows that in many EU countries informal and sometimes clandestine labour markets attract great numbers of both documented and

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<sup>18</sup> It should be noted however that there are significant intra-country differences. A study by RAND Europe, using labour market data from 2005, shows that in Western European countries labour market participation rates of migrant women lag considerably behind those of otherwise similar native born women and continue to do so many years after immigration. In Southern Europe on the other hand, labour market participation rates of migrant women are similar to those for comparable native born women (RAND Europe, 2008).

undocumented female migrants. Generally, the working conditions in these labour market echelons vary from poor to inhumane. Particularly vulnerable groups are women with a dependent resident status (i.e. spouse visa) or no legal status altogether.

Anthias et al. (2009) claim that the problem is not unemployment per se, but employment in the informal sector which leads to precarious working conditions and high risks of poverty. Thus female migrants in domestic and care work are often confronted with violations of all kinds of worker rights (FRA, 2011). Worse still are female migrants employed in wellness services and the sex industry, where unfair practices and severe exploitation are not exceptional. So, both general and gender specific factors contribute to a rather worrisome picture with respect to the position of female migrants in the national labour markets of the EU member states.

## **4.2 Small revenues from the welfare state**

Separate attention should be paid to the role of the welfare state. After all, as we have seen in the previous section, socially vulnerable migrant groups are often not capable of generating adequate resources in order to become financially self-sufficient. A number of subsequent questions to be addressed relate to the role welfare states play in this field. On which social provisions do immigrants rely? Are these provisions sufficient to keep these vulnerable groups out of severe poverty? What barriers stand in the way of them making full use of these provisions. These issues will be explained in the section below.

### **4.2.1 Migration policy and social security**

There is no such thing as a natural right to social security among non nationals. No doubt, social security regimes have during the course of time become much less discriminative, at least by replacing the nationality condition by the notion of territoriality. This is, however, not to say that migrants may not find themselves in an adverse or unequal position. Geddes (2003) argues that there has been a neo-national realignment of migration and welfare that focuses on the debate about needs, recourses and the sustainability of national welfare states. Similarly, as Vonk (2001) describes, the legal position of different groups in social security is strongly affected by the nature of immigration policies in operation. In other words, most states base the right to social benefits on legal residence, while immigration law may make the legality of residence dependent upon the condition that the foreigner does not rely upon public funds.

The complex relationship between immigration and social security rights is further increased in view of the fact that the legal position of migrants may differ according to the specific regimes under which migrants enter the country. Along this line of reasoning, as Vonk continues, national governments are likely to differentiate between separate migrant groups, each of which is granted access to the social welfare provisions depending on the official attitudes to welcoming these migrants. No doubt, the positive impulse of a favourable migration climate on the development of protective standards in the sphere of social security is mostly manifest in the European Union. As EU mobile citizens are expected to contribute to the growth of national economies, all kind of initiatives have been undertaken to solve any legal backlog or uncertainty of these mobile citizens.

On the other hand, however, countries resort to different ways of preventing immigrant groups originating from outside the EU (the so-called third-country nationals) from making full use of social benefits. This is for instance the case with temporary migrant workers, who are generally only allowed to stay on the condition of having paid employment and who are just entitled to work-



related social security schemes. The legal arrangements which apply to these migrant workers explicitly exclude them from access to social assistance (Vonk and Van Walsum, 2012). Worse still, as Castles (2006) and Vonk (2001) argue, many temporary migrants are employed under the umbrella of subcontracting arrangements; these workers remain covered by the often poor level of protection granted by the countries of origin.

Other migrant groups being excluded from social security protection are asylum seekers and undocumented migrants. Generally, both groups are not only denied access to the formal labour market, but are also excluded from full entitlement to social assistance. Caritas Germany (2006) asserts, for instance, that asylum seekers and persons with protection status receive less social assistance than other people in Germany. Only a small amount of money is paid in cash to this category of recipients. Similarly, Caritas Sweden (2010) reports that the amount of social assistance granted to asylum seekers who do not have their own means is also quite low. Assistance is merely given in the form of daily allowances. From the Advocacy Network on Destitution we learn that in a great deal of European countries governments provide no income support to these categories.<sup>19</sup>

In addition to creating different regimes for migrants, governments also resort to creating additional barriers once migrants already reside in their country. As Broeders (2004) claims, European countries increasingly realise that they are unable to stop migrants at their borders, and therefore try to restrict the use of public goods and services in an alternative way. A common measure is to grant social security only after some time of legal residency. For instance, in the Netherlands access to social assistance is only allowed, provided that the beneficiary legally resides at least five years in this country. In Denmark, during the first seven years of their stay in this country, migrants only receive a low social benefit, called introduction benefit (Nielsen, 2004). This amount is said, however, to be so low that persons cannot pay the rent or buy food and clothing (Caritas Denmark, 2006). Other measures, which may have a negative impact on the use of social security benefits is to make these conditional upon integration requirements. As it seems, these integration requirements are increasingly being introduced in European countries (Klaver and Odé, 2012).

What matters for the purpose of this study is that the granting of social security rights to legally residing migrants and the establishment of the principle of equal treatment does not prevent countries in Europe from looking for alternative ways of restricting migrants in seeking to claim these benefits. The measures undertaken very much reflect the political climate towards migration and therefore differ from one migrant group to the other. The result is nonetheless that many migrants and those who belong to the least welcome group in particular, may remain deprived of the full extent of legal protection required to keep them out of poverty.

#### **4.2.2 The use of social security by immigrants in Europe**

Generally, immigrants are expected to be more dependent on national welfare provisions compared to natives (Barrett and McCarthy, 2008; Barrett and Maître, 2011). After all, a vulnerable social and economic position in society – expressed in both low employment rates and high unemployment rates – is likely to coincide with high numbers of migrants being affiliated to the social security system. Brücker et al. (2002) present a number of additional reasons for explaining differences in dependency levels between immigrants and the native population. These include, among others: self-selection (migrants are likely to live in countries with more generous welfare benefits), discrimination (these practices could see immigrants facing difficulties in

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<sup>19</sup> The findings are published by JRS (2010) and include case studies in Belgium Germany, Ireland, Italy, Malta, Portugal, Romania, Spain, Sweden and the United Kingdom.

securing employment), network effects (immigrants may become part of networks that are excluded from mainstream society) and reduced wages (increasing the likelihood of being on welfare).

In daily practice, however, these patterns of strong dependency among immigrants on national social systems are far from evident. Based on a systematic comparison across different welfare provisions and including most EU member-states, Barrett and Maître (2011) claim that non-EU immigrants (third country nationals) are more likely to be in receipt of unemployment related support in a wide range of countries and also of family-related payments. They are, however, less likely to receive old age payments, sickness and disability payments. Almost identical conclusions are drawn by Boeri (2002), who has used the European Household Panel to conclude that non-EU citizens are relatively more likely to be recipients of social assistance, housing support and unemployment benefits, but less likely to receive pensions and sickness benefits. Kahanec and Zimmermann (2009) basically confirm these conclusions for the enlarged EU after May 2004. Finally, a recent study on mobile EU citizens shows that the use of welfare benefits of these migrants is not higher than among the native born and that they are less likely to receive disability and unemployment benefits (ICF GHK, 2013). This study also shows that mobile EU citizens account for a very small share of so-called special non-contributory benefits

To summarize, the analyses suggest that across all social support payments, there is generally little evidence that immigrants are excessive users compared to natives. This image also becomes apparent when looking at the separate countries. Brücker et al. (2002) concluded for the late 1990s that in some countries non-EU immigrants have higher rates of welfare receipt, but in others they certainly have not. Zimmermann et al. (2011) also come to a rather scattered image, with some member states (including Poland, France, Finland, Denmark and Sweden) being countries in which the proportion of non-EU migrants receiving social support exceeds that of the native born. Most Southern European countries (including Cyprus, Italy, Portugal, Greece and Spain) reveal, however, a reverse pattern of welfare dependency.

The so-called 'welfare magnet' hypothesis, indicating that migration is primarily stimulated by the generosity of welfare provisions in the countries of destination, does not seem to apply to the European situation. Moreover, when the patterns of welfare dependency among the native and migrant population are examined for several individual characteristics (such as age, gender and education), this hypothesis loses further momentum. Zimmermann et al. (2011) have compared the use of welfare provision for equivalent (native and migrant) groups and conclude that with all payments combined, the results reveal a general pattern of lower rates of receipt among migrants compared to natives. Four countries in the EU – Denmark, Finland, Germany and Sweden – are the only countries in which higher rates among immigrants still (i.e. after checking for differences in individual characteristics) prevail. The authors therefore conclude that the causal effects of welfare spending on immigration are very weak and insignificant.

What is generally acknowledged, however, is that social benefits granted to immigrants are on average lower as compared to the sums paid to nationals. This is mainly due to the fact that immigrants generally have built up smaller social benefits, often because of their shorter or interrupted working life. In addition, as we concluded before, immigrants may rely on different arrangements, due to long term unemployment or no previous working experience at all. These arrangements are usually less generous as compared to those on which the native population rely. In the Netherlands, for instance, immigrants particularly rely on general social assistance and much less on the employment related benefits, such as unemployment or disability payments

(Statistics Netherlands, 2012). These differences appear to be most pronounced for non-western immigrants and refugees.

#### **4.2.3 Social barriers affecting the use of social security**

In addition to formal exclusion and less generous benefits granted to migrant groups, there are also non-legal barriers which may prevent immigrants from taking advantage of social welfare systems. Generally, this is referred to as the phenomenon of non-take-up, signifying that people do not make full use of their rights to benefits and services. Barrett and Maître (2011) point to a higher incidence of poverty among immigrants in Europe, which, according to the authors, raises particular concerns about income support and the extent to which European welfare systems are achieving the objective of preventing migrants from entering into severe poverty. Similarly, Hartmann-Hirsch (2011) directly relates the incidence of high poverty risks among non-EU migrants to the fact that many eligible migrants actually do not make use of their rights.

Van Oorschot (1991) was one of the first trying to distinguish relevant factors affecting take-up of welfare provisions. The author concluded that the factors affecting take-up can be classified at three levels: the level of the benefit scheme, the level of administration and the level of the client. The first level assumes importance when schemes are more complex to comprehend and contain less clear criteria of entitlement. Also the existence of a means test is expected to negatively affect the use of social security schemes. At the level of administration, significant factors refer to the quality of both decision-making, procedures and communication. In addition, the actual way of handling claims and claimants also may have an impact on the probability of non take-up. The third level includes various factors, which are related to the ability of clients to make use of their social security rights. These include, amongst others, familiarity with the existence of the scheme, and sufficient knowledge of the claiming process and of the administrative procedures. Fear of stigmatization and humiliation is recognised as an additional factor explaining (non) take-up.

When considering these different levels, the phenomenon of non take-up is not exclusively restricted to the migrant population. After all, the complexity of rules and the poor quality of service provisions may also deter natives from actually claiming a social benefit. However, as different elements are explicitly related to the significance of understanding both the legal and administrative system, it is reasonable to argue that migrants may be confronted with additional problems. Moreover, the role of language proficiency is also at stake, at least when it comes to difficulties in filling in forms and gathering the necessary information. What also matters for the purpose of this study, is that the identified factors at the client level are supposed not to be considered independently from the problem of poverty, indicating that poor people in particular are facing specific obstacles when claiming social security (Van Oorschot, 1991).

Unfortunately, there are only a few studies that further focus on the position of immigrants regarding the problem of ignoring social security rights. For instance in Germany, undocumented immigrants could in principle apply for social benefits, but in practice are prevented from doing so because this would disclose their presence to the Social Welfare Offices (Caritas Germany, 2006). Although irregular migrants are thus insured by law, it is very unlikely that these foreign workers would exercise their rights and initiate proceedings. Similarly, Hartmann-Hirsch (2011) observes in Luxembourg an important gap between eligibility for social security and actual take-up by non-EU-citizens. Concerning social assistance, non-EU immigrants have a very high eligibility rate in this country, however only half of the eligible persons go for take-up. On the basis of an extensive expert's survey, Zimmermann et al. (2011) argue that the risk of being discriminated against, neglected, misinformed or otherwise mistreated by officials and service providers in public social service agencies should be regarded as very high. This all results in low levels of

actual take-up among the migrant population. Social security claimants considered most vulnerable in this respect are third-country nationals and undocumented migrants.

#### **4.2.4 Alternative mutual support resources are sometimes supportive**

As argued by Vonk and Van Walsum (2012), the focus on the migrant in relation to social security elucidates that migrants are not only potential receivers of social protection, but that they can function as providers of social security as well. Consequently, different sustainable examples of mutual and informal solidarity within migrant groups are reported on, in order to emphasise the crucial role of informal security for the basic needs of migrant communities.

Informal social support is widely acknowledged as an important source of income for those who live on the margins of society. From the perspective of destitute migrants, the role of informal support seems to be even more critical, as these migrants are more often than not excluded from public goods and services. When reading numerous personal interviews with destitute migrants – as reported by Caritas Europe, Feantsa, the European Agency for Fundamental Rights and Jesuit Refugee Service Europe – evidence proves that these patterns of informal support constitute an essential part of migrants' survival strategies. All the same, however, we learn from these rather anecdotal accounts that a great deal of these migrants live socially isolated, both in relation to the society at large and other members of the migrant community. An informal infrastructure of mutual help, although badly needed, is therefore not always nearby.

What remains is a high dependency on statutory mechanisms and charity. These organisations, either organised with the help of public or private means, appear to be of pivotal importance. Not only do they provide material essentials, but many have an important social function too. Three different examples are reported by Caritas Europe (2010), all of these illuminating the central role of charity organisations. In Portugal asylum seekers awaiting the outcome of their appeal, as well as overstayers of a health visa strongly rely on charity to survive, as many NGOs provide services and material essentials to these third country nationals. In Romania and Germany, holders of a temporary suspension of removal are extremely dependent on the goodwill of others to meet their basic needs. The vast majority of these migrants rely on NGOs for their subsistence, although some also receive support from members of their own community. In Belgium it is said that vulnerable immigrants – particularly asylum seekers in appeal to the Council of State, rejected asylum seekers and irregular immigrants – live on the margins of society and, as a result, resort to their social network or to statutory support mechanisms.

Across all countries of the EU, we may find similar examples of NGOs, religious institutions, community members and other social actors, providing basic services to poor migrants in order to minimise the effects of destitution as much as possible. These services are aimed at meeting the most basic needs of destitute migrants that are necessary for their survival. However, this is not to say that these initiatives are always sufficient to respond to all the demands of destitute migrants. As JRS (2010) argues, requests for assistance often have to be turned down, due to financial or capacity constraints. Neither is the quality of the services provided always adequate. As a result of limited financial and human resources, the basic services provided by NGOs and charity organisations are therefore not anywhere near sufficient to respond to all the daily needs of destitute migrants.

### **4.3 Problems related to housing**

Homelessness is not only the result of extreme marginalization and exclusion, but is in itself also a factor which causes exclusion. It is therefore crucial to understand which factors influence homelessness and which effects homelessness in turn have on the lives of individual migrants. In this section we discuss the explanatory framework for understanding homelessness among migrants. As will be shown, homelessness among migrants is caused by various social factors which interact and operate simultaneously to produce negative outcomes for the housing situation of migrants. Structural barriers, practices of direct and indirect discrimination and individual characteristics of migrants, all contribute to understanding homelessness among migrants. The analysis of social causes of homelessness is concluded by briefly discussing the implications of homelessness for migrants.

#### **4.3.1 Insufficient resources and scarcity on the housing market**

Caritas (2006) finds that in many countries the structure of the housing market proves to be a bottleneck in access to decent housing for immigrants, both in terms of availability and affordability. Similarly, the EUMC (2005) identifies the poor match between the stock of the social housing sector and the needs of large migrant families as a barrier to finding adequate housing in many European countries. Furthermore, developments over the last decade in the social housing stock have had a further negative impact on those with limited financial means. In many European countries access to the housing market has become more market driven in recent years (Hegedus, 2011). Similarly, Nordfeldt (2012) asserts that there appears to be an erosion of housing subsidies in countries all over Europe.

The result of these developments is an increased pressure on a diminishing social housing stock. Furthermore, many people, including migrants, are forced to resort to the private rental sector, where they are more likely to live in low standard dwellings, including overcrowding and inadequate services, and pay disproportionate rents for these accommodations. Practices of rack-renting and multiple lettings are not uncommon in some countries (Caritas, 2006). Particularly vulnerable groups in this field, as mentioned by many national reporters of Caritas, are newly arrived immigrants, undocumented migrants and refugees.

#### **4.3.2 The role of direct discrimination and practical barriers**

A variety of studies (EUMC, 2005; Caritas, 2006; Roumet, 2007; Bosch et al., 2011) demonstrate that direct discrimination by various actors in the housing market contribute to housing exclusion and homelessness among migrants. Special categories, which are often mentioned as most vulnerable are migrants with precarious legal positions (including asylum seekers and undocumented immigrants) and migrants with a distinct ethnic-cultural background (including Roma and migrants from non-Western countries). *These migrant categories appear to be highly exposed to discriminatory practices in national housing markets.*

As Roumet (2007) concludes, national studies in Europe reveal a widespread incidence of unfair and discriminatory practices affecting housing markets, social rented housing allocation, or access to finance and other support. Similarly, the EUMC (2005) points to practices of overt discrimination by private landlords, housing brokers and private agencies, but occasionally also by local authorities. In advertisements for private rented housing, migrants and minorities are sometimes explicitly excluded from applying. The EUMC study found evidence of this practice in countries such as Spain, Germany, Austria and Ireland. A research carried out by the EU

Fundamental Rights Agency (2005) also found that most housing discrimination is perceived by migrants and minorities in Central Europe and Southern Europe.

In addition to these examples of overt discrimination, there is also evidence of more concealed forms of discrimination which is directly targeted at migrants. Landlords or housing agencies use excuses for not renting to a migrant by claiming that a flat is already rented when it is actually vacant or by imposing additional barriers (e.g. proof of certain documents) which are not required from nationals (EUMC, 2005). Also quota systems are reported which limit and restrict the number of minority families in neighborhoods and housing estates. This practice of overt and more concealed forms of direct discrimination effectively hampers access of migrants to the housing market and often results in dependency on substandard housing in unfavourable neighborhoods, often at relative high prices.

Based on extensive in-depth research, Caritas (2006) also points to the existence of considerable practical barriers which prevent migrants from accessing the regulated housing markets. These practical barriers are the result of generally imposed criteria which result in a disproportionate exclusion of migrants. There are various forms of such indirect discrimination practices. General mechanisms with a discriminatory effect on migrants identified in various European countries are the use of the length of residence criterion, administration of waiting lists, the use of income criterion, and proof of documentation (work contract, pay slips, et cetera). In some countries, as FRA (2011) suggests, landlords must notify the police of the presence of foreigners in rented accommodation, which makes it practically impossible for undocumented migrants to legally rent accommodation. These criteria reduce the opportunities for migrants to find affordable housing in both the social housing sector and the regulated private sector.

Last but not least, administrative practices create additional obstacles for newly arriving migrants. Chan (2005) reports that for these migrants, including asylum migrants, administrative challenges can significantly affect the quality and rate at which adequate housing is attained. The lack of available information provided to these migrants is an undeniable barrier, as it stands in the way of a sufficient understanding and full use of social housing policies. Newly arriving migrants are particularly limited in knowledge surrounding the process and availability of public housing. Language barriers within the application system further exacerbate this problem, as many of these immigrants often lack the language skills needed to comprehend the system. Although the author particularly refers to the situation in Canada, there is no reason to deny these effects in European countries.

#### **4.3.3 The role of individual characteristics of migrants**

Housing finance issues and personal tax matters should be identified as providing a complex set of structural barriers, which can restrict access of migrants to decent housing (EUMC, 2005). As Maloutas (2012) writes, housing deprivation largely depends on the inequalities reproduced in the labour market and the impact on the social structure of unequally accumulated wealth. The EUMC (2005) equally finds that the (in)ability to pay for a dwelling proves to be a key determinant in access to home ownership. Those with insufficient financial resources depend on the social housing stock (if they qualify), the substandard private rental sector or informal arrangements with friends and relatives for meeting their housing needs. More recently, Feantsa (2012) concludes that the economic and financial crisis in Europe has indeed had a further negative impact on the overall extent of homelessness. This increase reflects more migrants being unemployed and many with a severe loss of income, which means that more people have difficulty meeting

housing costs. Particularly the South of Europe, being most severely affected by the economic crisis, experiences a dramatic increase in homelessness, including migrant groups.

Lacking local social support networks and limited knowledge of the administrative systems in the country of settlement are acknowledged in some studies as additional factors which make immigrants vulnerable for homelessness (Fitzpatrick et al., 2012; Mostowska, 2011). These characteristics may result in underuse of services, even in cases of formal entitlement. Substance abuse and mental illness among migrants may also contribute to homelessness (UDENFOR, 2012). However, the causal relation between homelessness and these personal problems is not fully clear.

These problems may incidentally affect the housing situation of individual migrants, but should not be considered as a prominent factor in explaining the overall extent of homelessness among migrants in Europe. A systematic comparison of background characteristics of migrant and non-migrant homelessness in the United Kingdom reveals that the weight of personal problems (e.g. childhood traumas, substance abuse) is far less prominent among migrant compared to non-migrant homeless persons (Fitzpatrick et al., 2012). The study also shows that most migrants had not experienced homelessness in their home countries and only found themselves destitute after arrival in the country of destination.

So while individual factors such as lacking social capital and communication skills contribute to explaining homelessness and social exclusion among migrant groups, the overall effect of these factors seems to be far less prominent compared to barriers at the structural and institutional level. The latter levels predominantly include eligibility for housing and services, discriminative practices of different actors involved, availability and affordability of housing, and access to the labour market (Fitzpatrick et al., 2012; Nordfeldt, 2012).

#### **4.3.4 Implications of homelessness**

Several studies report on the significant consequences homelessness has in the social and economic spheres of migrants' lives. Among such impacts are negative consequences on the physical and mental health, barriers to accessing services and finding and holding jobs and social isolation and exclusion (EUMC, 2005; Caritas, 2006). Several studies also mention the impact of homelessness on children's' education (EUMC, 2005; Le Méner and Oppenheim, 2012). Concerns in this respect are physical access to education but also the lack of a suitable environment for children to learn in.

Evidence from countries such as Italy and Spain suggest that the spatial segregation of vulnerable migrant groups such as Roma in housing in peripheral marginalized areas, affects the possibilities these groups have in accessing public and private services (EUMC, 2005). So the mere location of their abode restricts opportunities for social and economic participation. Also with regard to the reception of asylum-seekers, indications are available from Ireland that the housing of asylum-seekers in separate poor quality reception centers leads to social isolation and negatively affects opportunities for participation.

Not only the geographical location but also the quality of the housing or shelter affects migrants' lives. Living in substandard and overcrowded housing and sleeping rough may seriously affect the physical and mental health of the persons concerned. Gray (2001) asserts that looking at the incidence of common infectious diseases, a relation between prevalence and crowding can be found. Moreover, the author indicates that crowding is stressful for children as well as adults, and particularly for women, leading to poor social relationships, poor childcare, aggression or

withdrawal. Coux and Mavin (2003) claim that overcrowding also has severe negative effects on children's performance at school.

Once on the street, it is very difficult to become integrated again in mainstream society. The dire straits in which homeless migrants find themselves provides a formidable barrier to find work and hold a job. Mental and physical health problems stand in the way of securing work, but also – and in the case of immigrants maybe more importantly – practical barriers emerge for homeless migrants in finding a job. Those without a fixed abode often run into all kinds of bureaucratic hurdles which are almost impossible to navigate. A recent study among homeless migrant workers in Copenhagen shows that even if they find a legal job it is difficult to get wages paid, as without a formal address it is impossible to open a bank account (UDENFOR, 2012). These migrants end up in a circular argumentation; without wages they are unable to rent a house or apartment.

#### **4.3.5 Homelessness and women**

While there is a paucity of data on homelessness among migrants in general, this is even more the case for migrant women. At present there is no reliable data on the incidence of homelessness among female migrants. However, a recent qualitative study on homeless women in Ireland sheds some light on the factors causing homelessness among female migrants. This study is based on in-depth interviews with migrant homeless women living in shelters and transitional housing (Maycock et al., 2012). The findings show that for many respondents gender-based violence was a trigger to homelessness.

In addition, as this study discloses, these migrant women were hesitant in accessing support services, which was partly explained by alleged uncertainty about their residence rights and perceived shame surrounding domestic violence. For a few women, their homelessness was directly caused by job loss and subsequent unemployment. All of the interviewed women, however, experienced income poverty in their route to homelessness and for many their marginal social position continued to be a significant hurdle on their path out of homelessness.

The available information on homelessness among female migrants thus seems to indicate that poverty and marginalization are interlinked with experiences of domestic violence which make migrant women particularly vulnerable to homelessness. Maycock et al (2012) conclude that many women find themselves in a vicious circle: to gain independence from abusive partners they often have to seek support from the housing and welfare system. However, due to their legal position these support systems are often not accessible to them, either because they do not have a resident status or do not meet the qualifying conditions for assistance. Homelessness among migrant women thus also intersects with immigration and welfare policies.

#### **4.4 The impact of social causes: some concluding remarks**

As we have clearly shown in this chapter, different social forces – both at a macro, meso and micro level – are to be considered in order to understand the marginal position of many migrants in the member states of the EU. These positions have been extensively described with respect to the labour market and the social safety net. Generally defined, members of all four migrant groups under study are facing serious risks to become destitute and even homeless. Moreover, the current economic crisis has further deteriorated the social position of the migrants concerned, due to both decreased economic perspectives and budget reductions in social policies.



To a large extent the overall weak social positions of immigrants in Europe should be considered from an economic perspective. As several studies reveal, national labour markets are increasingly breaking into tiers, with low skilled migrants generally making up the lower tier. This specific position of the immigrant labour force particularly arises from contemporary labour market imbalances, allowing great numbers of predominantly low skilled migrants to participate. The introduction of new organizational elements is likely to have further weakened the position of migrants in the national labour markets of the EU. After all, practices such as subcontracting, temporary employment and casual work have increased the employment opportunities for migrant workers, even though under rather unfavourable and substandard conditions.

In addition, the role of national governments should be regarded as well, as they establish the legal possibilities for employment. More specifically, we have discussed their reluctant attitude to include low skilled workers in formal immigration laws. Despite the proliferation of guest workers programs, a great deal of the migrant workers in Europe remain outside the legal admission channels. The consequence of this reality is that many migrants in the EU strongly resort to the informal and undeclared echelons of the labour market. Apparently, in these informal labour markets unconventional practices prevail, including harsh employment conditions, unfairness and income insecurity.

What is more, however, is that many among the migrant groups under study only partly benefit from the available welfare state provisions. Partly this is a result of their weak resident position, as a result of which they are generally excluded from social assistance, also including social housing programs. In addition, being engaged in unofficial employment makes migrants highly vulnerable in terms of social insurance as these migrant workers are excluded from contributory schemes. Furthermore, poverty risks may arise from the fact that migrants do not always make full use of their social security rights. Ignorance on the part of the migrants themselves but also the complex nature of both the claiming process and the administrative procedures give cause to this outcome. Alternatively, many migrants strongly rely on inadequate and insecure informal networks of mutual support.

So far, processes of severe marginalisation have been predominantly discussed at the level of society and its key institutions. In order to understand why some groups of migrants are more at risk than others, we should also consider a number of relevant factors at the level of the migrants involved. At least three dimensions are worth mentioning in this field, i.e. a legal dimension, a social dimension and an ethnic (minority) dimension. These can be explained as follows.

Firstly the legal dimension differentiates migrants according to their residency and employment status. In chapter five we will discuss the way national legal and political systems may exclude certain groups of migrants from their social services. What we like to argue at this place is that a weak and insecure legal position also exposes migrants to all kinds of unfair practices and exploitation. After all, in case formal participation is no longer allowed, migrants resort to those – informal and sometimes clandestine – spheres of life where different rules and manners apply. Highly vulnerable to these practices are migrants who came to the EU in an irregular way and those who stayed in the countries of destination after their initial residence or employment permit expired.

Secondly, those with a poor background in terms of human capital – generally measured in terms of education, language skills and work experience – are also likely to face severe risks in terms of destitution and homelessness. Moreover, the current economic crisis in Europe has strongly undermined the social and economic position of migrants with less skills and insufficient knowledge on various relevant issues, making them either unemployed or more likely to accept

substandard employment. As we have seen, a great majority of third country workers in the EU is only poorly skilled, but also those from within the EU – including temporary labour migrants and Roma – should be included in this category.

Last but not least, the ethnic minority background of immigrants also matters with regard to risks of destitution. Unfair and discriminative practices are still widespread in Europe, and embrace various domains of society. As we have discussed in this chapter, these practices may become manifest in the labour market, the housing market and the social system. Particularly vulnerable are those migrants who strongly differ from the mainstream European culture and customs. After all, evidence proves severe prejudice against migrants from third countries – among which many from Muslim countries. In addition, however, unfair practices also target at ethnic minority communities from within the EU, as is indisputably the case for the EU Roma.

## 5 LEGAL CAUSES OF DESTITUTION AND HOMELESSNESS

### 5.1 Introduction

Destitution and homelessness do not only have social causes, but may also follow from weaknesses in the legal position of migrant groups. Depending on their specific status these groups might be formally excluded from access to the labour market in the host country and/or to the social services which are designed to protect the vulnerable and the weak: social insurance, assistance, social housing and shelter, medical aid, etc. When a migrant is legally speaking not entitled to access work or this social safety net, he or she may be forced to live on the fringes of society and on the streets.

The deficit in legal protection for migrants does not only exist in national law, but also in international and European law. Despite efforts of the international community of states to improve the social protection of migrants, there are still shortcomings and lacunae. This also applies for the EU. Some of the legal causes of destitution and homelessness among EU mobile citizens can be traced back directly to weaknesses in European protective regulatory standards.

The purpose of this chapter is to map out the relevance of European law for migrants who want to access the social safety net existing in European countries, not only with reference to its potential but also its limitations. The focus on limitations allows us to draw some conclusions as to the legal causes of destitution and homelessness under European law.

The social safety net will be defined here with reference to two types of services, i.e. social assistance and social housing services. The term social assistance refers to tax financed benefit arrangements which target the poor (means test). For the purposes of our report, this term must be interpreted in a wide sense, i.e. not only standard benefits for minimum subsistence, but also special payments for specific needs (medical costs, travel costs, budget support) and benefits in kind (food stamps, shelter, medical services). Social assistance schemes can be general or categorical (for the elderly, the handicapped, etc.), national or local. Under European Union law, if social assistance benefits are categorical (i.e. targeted to specific groups such as the elderly and the handicapped) and granted on the basis of objective legal criteria (i.e. not solely on the basis of discretionary powers), they no longer qualify as social assistance but as “special non-contributory cash benefits”, at least for the purposes of social security regulation 883/2004 (article 70). These types of benefits are covered as well. Social housing services refer to ‘social advantages’ which allow persons to live under a roof, i.e. subsidized housing, rent rebates, free accommodation for homeless persons, etc. Also the notion of (temporary) shelter is included. This chapter also refers to issues related to access to the formal labour market and labour standards. As we have seen in the previous section of this report, (the quality of) work is one of the causes underlying the phenomenon of destitution and homelessness.

With regard to the notion of European law, the focus of this chapter is on European Union law and on the law stemming from instruments of the Council of Europe. With regard to the former, we will not only look at the EU legal regime establishing the freedom of movement of persons, but also at social policy competences to enact binding legislative standards on housing and social assistance. This is important because the competences to set standards for the protection of the poor and the homeless are not unlimited either. As for the law stemming from the instruments of the Council of Europe, attention has been paid primarily to the European Convention on human rights and the European Social Charter. A discussion of these instruments is justified because

these human right instruments can “wipe up” some of remaining problems that are left behind as a result of the shortcomings in EU-law. Information about this is also relevant for the subsequent country case studies, which of many things seeks to gather information on the possibility for individuals to claim support on grounds of human rights arguments. To what extent can such claims be based upon European law? Our focus on European law does not mean that non-European international law bears no relevance to our research topic. Thus, for example, within the framework of the ILO there is a number of instruments which are of particular importance to our target group, such as the Domestic Workers Convention No. 189 of 2011 and the Social Protection Floors Recommendation 202 of 2012. Also some other European conventions, not discussed in this section, such as the European Convention on social and medical assistance may have some residual importance.

While the emphasis of this research is on social protection law and not on immigration law, it has to be born in mind that the immigration status of a person may be relevant for his or her right to social benefits. In almost all European countries (and indeed in European law itself) immigration law and social welfare law are intertwined. Entitlement to social assistance depends on the legality of residence, while in its turn the legality of residence may depend upon the foreigner claiming social assistance. So although this report does not cover immigration law *stricto sensu*, we will take into account the way immigration status impacts upon benefit entitlement and the right to housing.

Below we will first look at EU law (section 5.2) and then at the instruments of the Council of Europe (5.3). This chapter ends with a conclusion (section 5.3) which contains a systematic overview of the findings with reference to EU law and Council of Europe human rights instruments.

## **5.2 Migration, destitution and homelessness in EU law**

This section is set up in a “hard core” fashion. It follows the sources of EU law which are presented in hierarchal order. Thus, we start off discussing the treaties of the European Union (3.2) and the EU Charter of Fundamental Rights (2.3). Then the EU Association Agreements are dealt with (3.4), followed by a discussion of the EU regulations on the co-ordination of social security systems (3.5). After this will look at Residence Directive 2004/38 on the freedom of movement of persons in conjunction with regulation 492/2011 (formerly 1612/68) on the freedom of movement of workers (3.6). Lastly, we will discuss several smaller EU directives on asylum and immigration issues. (3.7).

Each of these sections is set up in a similar manner. First of all, we discuss the potential benefits of the instruments for destitute and homeless migrants. Then we look at specific limitations and problems which pertain to this group. Each time, the sections are completed by a short summary.

We have also carried out a systematic analysis of the non-binding instruments, statements and resolutions which are relevant for our subject. The function of this is to get an idea of the possible gap that exists between the policy desiderata on the one hand and the European social competences on the other. An overview of the soft law instruments can be accessed at Annex II (p.457).

### 5.2.1 Treaty of the EU and Treaty of the Functioning of the EU

The treaties of the European Union, the TEU which has been in force since 1 November 1993 and the TFEU, which has been in force since 1 January 1958 have most recently been adjusted by the Lisbon treaty of December 2009. The TFEU is relevant from three angles: firstly, European citizenship and the freedom of movement of persons (articles 21, 45, 49 and 56 TFEU), secondly European social policy (articles 2 and 3 TEU in conjunction with Article 9 TFEU articles 151-161 TFEU) and thirdly, for third country nationals: European policy on immigration and asylum seekers (articles 77 to 81).

Furthermore, of significant importance to the issue of homelessness and destitution amongst migrants are the Articles 8 and 10 TFEU in conjunction with Articles 18 and 19 TFEU. The provisions aim at the elimination of inequalities between men and women and discrimination on the basis of inter alia race and ethnic origin. Moreover, according to Article 6 TEU, the EU recognizes the rights, freedoms and principles as have been set out in the EU's Charter of Fundamental Rights and aims at the accession as a member of the European Convention on Human Rights. Additionally, the fundamental rights of the European Convention on Human Rights together with the common fundamental principles from the Member States' constitutional traditions constitute the general principles of EU law.

#### *Freedom of movement of persons*

With regard to the freedom of movement one can truly say that the TFEU has had a major impact on the social protection rights of EU mobile citizens, not only in terms of offering a framework for a successful body of secondary law (e.g. social security co-ordination Regulation 883/2004 and Residence Directive 2004/38/EC), but also in terms of acting as point of reference for the ECJ in cases where limitations to national law and secondary EU law had to be scrutinized. EU citizens enjoy free access to the labour markets of the member states, are protected against the loss of their social security rights and enjoy full equal treatment in the area of social and fiscal advantages.

There are however also some limitations. The provisions of the EU treaties on the freedom of movement principally apply to EU citizens who make use of EU law: third country nationals are excluded, unless they are members of the family of EU citizens. Also according to the jurisprudence, cases in which all facts have only occurred within one Member State must be considered as a purely internal situation. In case of a purely internal situation a person concerned cannot invoke the free movement principles in order to challenge national measures based on domestic statutory provisions. Thirdly, persons who are economically non-active are not given unlimited freedom of movement. This is an old reminiscence of the economic tradition of the old European Community; freedom of movement is there for the purposes of the functioning of the labour market, not generally for citizens. It is true that gradually, particularly after the inclusion of the notion of European citizenship in the Treaty, the rights of non-active EU citizens have been extended, but if we look more closely at the conditions applying in secondary law, we can observe, for example, that the rights residence rights are subject to a means of subsistence test, while simultaneously there is no fully fledged right to social benefits certain those who do not carry out an economic activity. While it is true that the ECJ has done a lot to curb this situation, the weaker position for economically non active persons still prevails, particularly for EU citizens with insufficient resources of their own. Clearly, this has negative effects for the poor and the homeless (see infra 5.2.2). Unless they have been given permanent residence status under EU law, their right to freedom of movement can be withdrawn, which may result in a denial of benefit rights and even expulsion from the territories of the member states.

### *European social policy.*

The basis of social protection and social security from the perspective of EU law is Article 3 of the former EU treaty in conjunction with Article 2 of the Treaty of European Union (TEU). According to Article 3(1)(c) and (j) of the former treaty, the activities of the Community are to include not only an 'internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital', but also 'a policy in the social sphere'. Article 3 of the current Treaty of the EU states that the Community is to have as its task, 'the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress' and 'it shall combat social exclusion and discrimination, and shall promote social justice and protection.' Further impetus for a social role of the EU institutions has been given by article 9 TFEU: "In defining and implementing its policies, the Union shall take into account requirements linked to (...) the guarantee of adequate social protection, the fight against social inclusion (...)". These provisions are the starting point for EU measures in the field of social rights, among which the ones relating to housing (shelter) and social assistance in order to prevent homelessness and destitution. Yet it has to be borne in mind that the TFEU remains a framework treaty. For concrete measures there must a clear attribution of powers in the treaty itself. And for this we are dependent on the text of 153 TFEU.

Does article 153 TFEU provide a basis for binding measures in the field of poverty reduction and the prevention of homelessness, for example in the form of a directive laying down standards on minimum income protection for vulnerable and marginalized people? Such a directive is most relevant for combating destitution in times of economic crisis, in particular for those EU Member States where a general social assistance scheme has not yet into being (Southern Europe) or where benefits levels are substandard (some A-10 countries) (cf. Marshal, Marx and Van Mechelen 2011). In fact a resolution for a EU-wide standard for minimum income schemes has been discussed in October 2010 in the European Parliament. However the resolution was not adopted. One of the reasons for this is, that it is felt that the EU simply lacks legal powers to enact such instruments. (cf. Verschuere 2012). Paragraph 1 of article 153 TFEU refers only to social security and social protection for workers.

This reference to workers does not apply to "combating social inclusion" as referred to in article 153 (1) (j), but this activity allows for the adoption measures "designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States", i.e. non-binding measures. Even if one were to disagree with this and argue in favour of a legal basis, for most fields mentioned in article 153 (1), the treaty requires unanimity in voting (cf. article 153 (2) TFEU). So far in its history, the Council has never used this provision to adopt measures on the basis of unanimity. So the conclusion has to be that despite evidence in support of action to combat social exclusion, poverty and homelessness, expressed in the abundance resolutions, statements and communiqués, (see addendum to be accessed at Annex II), for the time being the EU will have to resort to non-binding measures. Arguably, it is not so much the "horizontal" lack of political will, but rather the problem of the "vertical" division of powers between the EU and its member states, which acts as a stumbling block here, but of course also this division of powers reflects a certain political reality.

### *The European policy on migration and asylum seekers*

After years of inaction, we can now say that the EU has moved forward very fast in introducing a common immigration policy towards third country nationals. Many new measures have been, such

as the Reception Conditions for Asylum Seekers Directive (2003/9/EC as replaced by Directive 2013/33/EU), the Family Reunification Directive (2003/86/EC) and the Long-Term Residence Directive (2003/109/EC). All these measures contain measures which impact upon the social protection of third country migrants. They will be discussed below in section 5.2.7. Note also that the limitation discussed within the framework of the treaty provisions on the freedom of movement of persons in the EU, namely the requirement of intra-community migration, does not apply necessarily to these immigration measures for third country nationals.

### *Summary*

The TFEU is relevant from three angles: firstly, European citizenship and the freedom of movement of persons, secondly European social policy and thirdly, for third country nationals: European policy on immigration and asylum seekers. With regard to the freedom of movement the main constraints are: no application to third country nationals, no application in purely internal affairs and limited application for economically non-active persons with limited resources (poor non-working migrants); unless non-active citizens have been given permanent residence status under EU law, their right to freedom of movement can be withdrawn, which may result in a denial of benefit rights and even expulsion from the territories of the member states. The latter constraint impacts particularly negative upon our target group: the homeless and destitute. As for the social policy angle, it was concluded that article 153 TFEU still does not provide a clear basis for adopting binding harmonisation measures in the field of social exclusion and minimum subsistence schemes. The TFEU articles on immigration and asylum have acted as a basis for a series of directives which favour the social protection of third country nationals, to be discussed section 2.7.

## **5.2.2 EU Charter of Fundamental Rights**

The EU Charter of Fundamental Rights (Charter), which has been in force since 1 December 2009 following the entry into force of the Treaty of Lisbon, contains several social rights which may affect the homeless and the destitute. These rights are included in Title IV under the heading 'solidarity'. The most important provision is Article 34 which contains rights to social security and social assistance, in particular paragraph 3 which covers the right to social and housing assistance in order to combat social exclusion and poverty and to ensure a decent existence. Additionally, Article 33 stipulates the right to social protection for families; Article 35 provides the right of access to preventive health care and the right to benefit from medical treatment. Lastly, Article 36, providing the right of access to services of general economic interest, does not create a new right as it is fully in keeping with Article 14 TFEU.

In principle the Charter applies equally to all persons, whether or not they are EU citizens, except for some provisions which impose some form of limitation. Article 34 of the Charter is one of the provisions which contain such a limitation. The entitlement to social security benefits and social advantages in accordance with Union law and national laws and practices only applies to persons who reside and move legally within the EU. In short, as a result persons who suffer from homelessness and destitution may only rely on Article 34 of the Charter if they legally reside and move within the EU and the EU Member States apply EU law to their situation. The legal residence and free movement of persons is decided by national law which has to be in accordance with secondary EU law.

Other limitations pertain to the legal effect of the Charter. The Charter is mainly directed to the EU institutions and to EU Member State if they implement EU law. This latter rule is contained in Article 51 of the Charter. So the test for determining whether a given dispute falls within the scope of the Charter is whether EU law applies to that dispute (cf. Peers 2012, pp. 446-449). And even if it does, this does not automatically mean to say that citizens can invoke the Charter directly to

claim subjective rights. According to the text of this provision the right to social and housing assistance, must be “in accordance with the rules laid down by Community law and national laws and practices”. Taking into account the fact that individuals cannot derive any subjective rights from article 153 TFEU either, it would be stretching it a bit far to assume that article 34 (3) can create subjective rights. If this is correct, the conclusion seems to be that article 34 (3) of the Charter is limited to exercising control over the validity of EU measures implementing this principle. Nonetheless, to end on a cautiously optimistic note: it remains to be seen what consequences the judiciary, in particular the ECJ, is willing to give to this type of principles adopted in the Charter.

### *Summary*

The charter contains various fundamental rights relevant for the social protection of the homeless, most explicitly article 34 (3) dealing with social and housing assistance to combat exclusion. It does not apply to migrants in an irregular situation. Moreover this provision cannot give rise to subjective rights in claims before courts. Instead it is a tool for exercising control over the validity of EU measures implementing this principle. How this tool can be used, is still not fully clear.

### **5.2.3 EU third country agreements**

Some attention should also be paid to third country agreements concluded by the EU. The EEA Agreement mainly regulates the EU legislation on the free movement of goods, persons, services and capital (EU Acquis) as well as equal conditions of competition and non-discrimination in 27 Member States and 3 countries of the European Free Trade Association (EFTA), Iceland, Liechtenstein and Norway. Since the 3 EFTA countries cannot be considered as EU Member States, this Agreement only extends a part of EU law to these countries, and as the Agreement is mainly aimed at economic cooperation it is not dealt with in this report (See for more information the special position of EFTA-countries within the EU with regard to social security (Zaglmayer 2009, pp. 57-84).

Apart from the EEA, there are various association and co-operation treaties, concluded with third states, such as the Association Agreement with Turkey (AAT) and its Additional Protocol (1970), the association agreements with other European states waiting to join (such Albania and Croatia) and Euro-Mediterranean association agreements concluded with Morocco, Tunisia and Algeria. All these agreements include so called social paragraphs which inter alia provide a basis for the introduction of social security instruments that are based upon techniques comparable to those adopted in Regulation 883/2004 (infra. 3.5). Only in relation to Turkey has such an instrument been developed (Decision 3/80 of the Association Council EEC-Turkey), but the ECJ has recognized the direct effect of at least the non-discrimination clauses adopted in the agreements themselves. This means that third country nationals can invoke the agreements in order to claim equal treatment in the area of social security, including special non-contributory benefits. However, apart from the AAT, such non-discrimination provisions now only apply to legally residing migrants.

It can be said that the impact of the social paragraphs contained in the association agreements has somewhat diminished since Regulation 883/2004 has become applicable to legally residing third country nationals (infra 5.2.4). Still these paragraphs may hold some surprises. Thus for example in the Akdas and others case the ECJ ruled that the export clause of article 6 of decision 3/80 of the Association Council EEC-Turkey has direct effect. The result was that Turkish citizens could export a Dutch non-contributory, means tested supplementary allowance to Turkey,



in this way preventing returnees from becoming destitute in their country of origin. It also has to be taken into account that the non-discrimination principle can be invoked by a third country national who has not moved between the territories of the member states. For example, a Moroccan national can claim social security benefits in France, even when he has not migrated within the European Union.

#### *Summary*

Some third country agreements may be relevant for the social protection of third country nationals. This applies most of all for EEA-nationals. Otherwise legally residing migrants may benefit from the non-discrimination clauses adopted in the social clauses of association agreements concluded with various third countries, such as Turkey and northern African countries, even when they have not moved between different EU member states, but have lived or worked in one single EU state. For Turkish nationals returning to Turkey, the export clause of decision 3/80 of the EEC-Turkey Association Council is relevant.

#### **5.2.4 Social security Regulation 883/2004 implemented by Regulation 987/2009**

The present Regulations on the coordination of social security systems respectively entered into force on 20 May 2000 and 1 January 2010, but their roots go back to the very beginning of the EEC. These regulations include the different social security systems of 27 EU Member States with the aim of coordinating the operation of national social security law, of which the content itself is left untouched. The objective of the regulations is that in the case of cross-border mobility, migrants and their families are protected against any loss of benefit rights. For this reasons it resorts to various techniques, such as the export of benefits, non-discrimination, determination of the applicable legislation and the aggregation of insurance periods.

Regulation 883/2004 has a wide scope of application. It applies to all statutory social security schemes, whether these are based upon insurance or the payment of contributions in respect of all classical social security risks as recognized in the ILO-Convention No. 102 of 1952 (unemployment, sickness, invalidity, old age, industrial accidents, old age, children etc.). Early retirement schemes are also covered. Furthermore, the personal scope of application applies to all EU citizens who are or have been subject to the social security legislation of one or more member states. By separate regulation 1231/2010/EC the Regulation has been extended to third country nationals as well, on condition that they reside legally in the member states. The legal residence test does not apply the EU citizens themselves.

The potential impact of Regulation 883/2004 for the destitute and the homeless is significant. This is the case despite the fact that on grounds of article 3 (5) social assistance is excluded, let alone that it applies to the right of housing, which is altogether outside the concept of social security. Nonetheless, the term social assistance has always been interpreted narrowly by the ECJ. It is now assumed to refer to benefits which are granted on a purely discretionary basis or benefits which cannot be linked to any of the classical social risks referred to in article 3 (1) of the Regulation. All other tax financed non-means tested benefits which can be associated with these classical risks such as special benefits for the elderly, schemes for the handicapped, supplementary allowances for insufficient pension rights, etc. fall under the regulation. Member states are supposed to list these so called special non-contributory cash benefits in an Annex to the Regulation (Annex X). article 70 (4) Regulation 883/2004 states that benefits thus listed, shall be provided exclusively in the member states in which the person concerned resides at the expense of this member state's institutions. Export of non-contributory benefits is not required.

The consequence is that non-contributory benefits must be granted to all residents, irrespective of their work history or insurance record. This is obviously of great importance for the destitute who are outside the labour market. They can receive non-contributory benefits once their income falls under the prescribed threshold. Residence is defined in the Regulation as the place where a person habitually resides (article 1 (j.) Regulation 883/2004), i.e. the country where a person has the centre of his life.

An interesting question that has come up at the ECJ, is whether an economically non-active mobile citizen who claims a benefit which qualifies as a non-contributory benefit under Regulation 883/2004 can nonetheless be refused by reference to Residence Directive 2004/38/EC (infra 3.6). This question can arise by reason of the fact that article 7 (1) (b) of the later directive stipulates that economically non-active Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they have comprehensive sickness insurance and sufficient resources for themselves and their family members in order not to become a burden on the social assistance system of the host Member State during their period of residence. The question has been referred by the Austrian Oberster Gerichtshof, in a case of two German nationals, Mr and Mrs Brey, who moved to Austria allegedly because Mr Brey felt discriminated against in Germany in view of his Russian background. Mr Brey receives a German invalidity pension and care allowance amounting to € 1100. As Mrs Brey lost her social assistance benefits upon moving to Austria, the couple entered into financial difficulties. They had to pay € 511 rent. Mr Brey then claimed an Austrian supplementary pension allowance under Austrian law. This was withheld arguing that he did not satisfy the condition of Directive 2004/38 that he must have sufficient resources of his own. The Oberster Gerichtshof simply asked whether the Austrian supplementary pension allowance is to be considered a social assistance benefit within the meaning of article 7 (1) (b) of Directive 2004/38. If this is the case, the consequence is that benefit can be withheld, but it is also possible to support the view that once having obtained non-contributory cash benefits under Regulation 883/2004, persons will automatically fulfil the condition of "having sufficient resources" under Directive 2004/48/EC.

In its ruling the ECJ held that as the purposes of Directive 2004/38 and Regulation 883/2004 are different, a benefit which qualifies as a non-contributory benefit for Regulation 883/2004 may still be considered as coming under the concept of 'social assistance system' according to Article 7(1)(b) of the Directive. However, the ECJ also made clear the national authorities cannot automatically come to the conclusion that the claimant does not have sufficient resources and a burden on the social social assistance system of a host state just by reason of the fact that he claims social assistance. The competent national authorities cannot draw such conclusion without first carrying out an overall assessment of the specific burden which granting that benefit would place on the national social assistance system as a whole, by reference to the personal circumstances characterising the individual situation of the person concerned.

According to the ECJ any automatic decision that a claimant of a social assistance benefit does not have a right to reside, is unlawful as it precludes the necessary inquiry into the individual circumstances of the claimant. Such a mechanism, whereby nationals of other Member States who are not economically active are automatically barred by the host Member State from receiving a particular social security benefit, even for the period following the first three months of residence referred to in Article 24(2) of Directive 2004/38, does not enable the competent authorities of the host Member State, where the resources of the person concerned fall short of the reference amount for the grant of that benefit, to carry out an overall assessment of the specific burden which granting that benefit would place on the social assistance system as a

whole by reference to the personal circumstances characterising the individual situation of the person concerned.

In particular it is important that the competent authorities of the host Member State are able, when examining the application of a Union citizen who is not economically active, to take into account, *inter alia*, the following: the amount and the regularity of the income which he receives; the fact that those factors have led those authorities to issue him with a certificate of residence; and the period during which the benefit applied for is likely to be granted to him. In addition, in order to ascertain more precisely the extent of the burden which that grant would place on the national social assistance system, it may be relevant to determine the proportion of the beneficiaries of that benefit who are Union citizens in receipt of a retirement pension in another Member State.

So while the Brey case settles a principle point of law in favour of the more restrictive conditions of Directive 2004/38, it nevertheless supports the position of poor mobile citizens by a strict interpretation of these conditions. In practice, whether or not a social assistance claim may act as reason to declare a mobile citizen as unlawfully residing will not always be easy to answer, particularly in view of the array of circumstances that may determine whether or not an economically non-active mobile citizen may be deemed to be a burden on the social assistance system.

#### *Summary*

Regulation 883/2004 on the co-ordination of social security has a major impact upon the position of the destitute and the homeless, in particular in view of the wide protection offered to those who claim so called non-contributory cash benefits in the home state. As a matter of fact, third country nationals can also benefit from this, but they have to satisfy the condition that they must reside legally in a member state. The useful effect of Regulation 883/2004 is weakened by reason of the fact that non-contributory benefits may be qualified as falling under the concept of 'social assistance system' within the meaning of Article 7(1)(b) of the Residence Directive 2004/38/EC. In that case, claiming such benefits can be seen as an indication for insufficient own resources, which may result in a loss of residence and benefit rights. However, in C-140/12 (Peter Brey) the ECJ made clear that a social assistance claim may not automatically result in a mobile person automatically losing his protected status under Directive 2004/38. Such conclusion can only be drawn after an individual assessment of the specific burden such a claim may pose on the social assistance system as a whole.

#### **5.2.5 Residence Directive 2004/38/EC**

The Directive “on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States” entered into force on 30 April 2004. It is a consolidation of various earlier residence directives applying to different groups and takes on board the abundance of case law of the ECJ based on these former directives. This regulation has not replaced Regulation 1612/68 on the freedom of movement of workers, which has always played an important role for access to social rights in view of a single provision: article 7 (2). This article stipulates equality of treatment for workers in the area “social and fiscal benefits”. It has survived the modernisation of the regulation, now numbered 492/2011, again as article 7 (2). The principle of free movement of persons is derived from articles 21, 45, 49 and 56 TFEU

Directive 2004/38/EC regulates the entry and residence of EU citizens and their family members in another Member State. In the Directive a distinction is made between residence up to three months, residence from three months to five years (both under the heading ‘residence’ in Chapter

III of the Directive) and residence for longer than five years (under the heading 'permanent residence' in Chapter IV of the Directive). Every category has its own preconditions.

The right of residence for up to three months for EU citizens and their family members is not accompanied by restrictions except for the requirement that they hold a valid travel document. EU citizens and their family members enjoy this right of residence as long as they do not become an unreasonable burden on the social assistance system of the host Member State (Article 6 in conjunction with Article 14, paragraph 1).

The right of residence for more than three months does involve some limitations: EU citizens who make use of free movement rights in accordance with this Directive must be workers, self-employed persons, or have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence. Also they must have comprehensive healthcare insurance cover in the host Member State (article 7, paragraph 1 in conjunction with article 14, paragraph 2).

The right to permanent residence can be obtained after five years of continued legal residence in a member state. After this period, no conditions apply anymore with regard to sufficient resources and healthcare insurance cover. In some cases the right to permanent residence can be obtained prior to the completion of the five years period (i.e. pensioners and frontier workers).

The initial conclusion to be drawn from this state of the law is that it does not always work out favourably for people in our target group. Without having acquired permanent residence, their lack of resources may imply that they lose their right to EU residence. As minimum subsistence benefits schemes of the member states often employ conditions with regard to legal residence, a loss of EU residence status may imply a subsequent loss of benefit rights. The loss of residence status might mean that EU citizens may eventually be expelled. The lack of resources and the threat of expulsion may force people to move underground, to resort to marginal activities in the shadows of the official society, to beg and to sleep rough. Some will end up in dire straits; others may pick up their lives and move elsewhere to look for better fortune. The main non-discrimination provisions of the Directive 2004/38/EC as adopted in article 24 does not make this situation any different. On the basis of this article all Union citizens residing on the basis of this Directive in the territory of the host member state shall enjoy equal treatment with the nationals of that Member State within the scope of the TFEU. Those without sufficient resources do not have an unqualified right to reside.

There are, however, a number of mitigating factors which have come about in interaction between the national and European legislature and the case law of the ECJ. We will refer to some of such mitigating factors.

- No immediate expulsion

On grounds of article 14 (3) of Directive 2004/38/EC an expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State. Member states must examine whether the loss of income is the result of merely temporary difficulties. Also they should take into account the duration of the residence and the amount of state benefits a person is receiving. Furthermore the ECJ requires that the proportionality principle should be adhered to: national measures must not go beyond what is necessary to achieve the objective of protection of public finances of the host state. Proportionality is also what is required by art. 33 (3) of the Directive 2004/38 dealing with

the redress procedures against any expulsion order. This procedure shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. It must be ensured that the decision is not disproportionate.

- Protection for the working poor and for job seekers

In past case law, the ECJ made clear that workers who earn less than the minimum wage are still fully protected by EU law, even if they claim social benefits in the host state, as long as the work is genuine and not merely marginal. Furthermore, article 14 (4) of Directive 2004/38/EC stipulates that (self-) employed persons cannot be expelled. As long as activities are carried out, there is also access to social benefits.

Also job seekers enjoy enforced protection. The ECJ has confirmed this inter alia in the case of Collins , dealing with an Irish American (i.e. with Irish nationality) claiming a means tested job seekers allowance in the UK. According to the Court in this case a member state may only impose restrictions on access to benefits for those who do not have a genuine link with the British labour market. It was suggested that in casu the requirement of habitual residence imposed the job seekers allowance was a suitable criterion for establishing such a link. More recently, the cases of Vatsouras and Koupatantze dealt with the right to job seeker allowances for job seekers, this time involving Greek unemployed workers claiming social assistance benefits for the unemployed in Germany (Harz IV). Directive 2004/38/EC stipulates that job seekers have no right to social assistance in the host country (article 24 (2)). According to the ECJ the latter exclusion does not apply for benefits which are “intended to facilitate access to the labour market” (as most of the contemporary “activating” social assistance schemes do, by the way). As in Collins, the ECJ formulated the condition that a real link between the jobseeker and the labour market must be established. The existence of such a link can be determined by establishing that the job seeker has, for a reasonable period, in fact genuinely sought work in the member state in question.

- Post-active workers and members of the family

By a combination of legislative provisions and case law, the protection of EU-citizens also extends to workers with a past employment record, such as workers who fall ill, who have become involuntarily unemployed (after a period of one year employment subject to the condition of registration with an employment office), or incapable of work (article 7 (3) Directive 2004/38/EC). Also the family members of these persons enjoy protection, regardless of their nationality. With regard to the unemployed the continued protection does not apply for workers who have been employed for a period of shorter than one year. They only retain their workers status for another six months. In this sense, the unemployed who have been engaged in the lower echelons of the labour market, agency work, temporary jobs, etc. (and there are many!) run the risk of becoming “overstayers” with no right to social assistance, unless in the capacity of a job seeker.

Regulation 1612/68 (now 492/2011) establishes rules on access to benefits. How poor mobile citizens can benefit from this can be illustrated in a spectacular way by the ECJ cases of Ibrahim and Teixeira of 23 February 2010. These cases dealt with single mothers who had applied for housing assistance for homeless people in the UK. They based their claim on article 12 of Regulation 1612/68 (now article 10 of Regulation 492/2011), which grants children of EU migrant workers the right to education, apprenticeship and vocational training. At the same time the mothers were no longer married to their husbands, who in their turn were no longer economically active in the UK. Yet, the ECJ ruled that the children’s right to education in the UK presupposes the children’s right to reside in this county. Furthermore, also their parents who are their prime carers must be allowed to remain in the host state during the period of their children’s education.

In these circumstances, social benefits may not be withheld. The argument of the UK government, that the mothers' right to benefit is subject to the condition of Directive 2004/38/EC of having sufficient resources was rejected.

- A right to social assistance as long as there is a residence status

A relevant case for our group, showing how the exclusion of the poor from the freedom of movement of persons must be placed in perspective, is Michel Trojani, an ECJ ruling from 7 September 2004. Also in this case the EU provisions on European citizenship played a major role. The case dealt with a Frenchman in Belgium who was homeless and stayed with the Salvation Army. He claimed a general minimum subsistence benefit, presently referred to as "living wage". It was clear that the claimant could not derive any right of residence under EU law by lack of work status and insufficient income. Nonetheless Trojani was granted the benefit by reason of the fact that under Belgian national law he had retained a lawful residence status. In other words, the Belgian authorities were entitled to end the legal residence, but as long as measures to withdraw residence status were not taken, the social assistance benefit in question had to be awarded. This is an important ruling, bringing the state of EU law very close to the requirements adopted in 1952 by the Council

of Europe in the European Convention on social and medical assistance (infra 4.5).

An interesting question in the light of the Trojani-case is whether local authorities can submit mobile EU-citizens to a "local connection test" as a condition for granting social assistance, sheltered accommodation or emergency assistance. This is particularly questionable in case an EU citizen does not really have any fixed connection with particular place in the host country. Reportedly, in view of the growing number of migrant homeless people, authorities increasingly resort local connection tests. It may for example be the case that a destitute Polish citizen, who has worked and lived in the Netherlands for a longer time, is refused temporary shelter in Amsterdam because he is not registered as an Amsterdam homeless person. This matter is actually the subject of a collective complaint lodged by FEANTSA against the Netherlands, with the European Social Rights Committee. Interestingly, the question has not yet been raised before the ECJ. It is submitted that a local residence test is not permitted under EU law unless the authorities apply the test on a non-discriminatory basis and it can be justified in view of acute logistical and financial problems arising from an influx of homeless people. But even then one could argue that it is primarily up to the national government to step in and come up with a solution. After all, it is the member states, not the local authorities who have adhered to the EU-treaties.

#### *Summary*

Directive 2004/38 prevents homelessness and destitution amongst EU citizens and their families who make use of their right to free movement. The right to equal treatment means that social assistance benefits and measures providing access to employment are available to EU citizens and their families who are workers, self-employed, or have sufficient resources and who have had legal residence in the host Member State for three months or more. A major drawback is that EU citizens without sufficient resources, who have not yet acquired permanent residence, lose their right to EU residence and with that potentially their right to social benefits. There are a number of rules and safeguards which mitigate this reality. EU citizens claiming social assistance may not automatically be expelled or only after individual scrutiny. Furthermore, subject to some conditions post-active workers, such as the unemployed, continue to enjoy protection. This also applies for job seekers who can prove they have developed a real link with the labour market in the host state. Finally, as long as a state has granted legal residence on the basis of national law, benefits

may not be withheld. In our view it is also not likely that in such a situation the national authorities are allowed to apply a local residence test.

## **5.2.6 Directives on immigration and asylum (third-country nationals)**

In the area of immigration and asylum seekers (art 77 – 81 TFEU), there is a growing body of directives which have an impact on the prevention of homelessness and destitution amongst third country nationals. A characteristic of most of these directives is that they mostly protect well defined, limited groups of persons: such as victims of human trafficking, asylum seekers, migrants who are engaged in voluntary or involuntary return proceedings to their home countries. Below we will briefly describe the relevance of the most importance instruments.

### *Reception Conditions for Persons Claiming International Protection Directive 2013/33/EU*

The right covered in this Directive in order to indirectly prevent a fall into a situation of destitution and/or homelessness only applies to migrants and their family members who apply for asylum (international protection) who are awaiting a decision on their request from the authorities. The latter is however not certain in cases in which the asylum-seeker lodges an appeal. That depends on a court decision. An asylum-seeker who makes a repeated request does not fall under the Directive.

### *Family Reunification Directive 2003/86/EC*

The Directive ‘on the Right to Family Reunification’ entered into force on 3 October 2003. This Directive aims to establish common rules of law relating to the right to family reunification with the intention to enable family members of third-country nationals residing lawfully on the territory of the EU to join them in the Member State in which they are residing. The Family Reunification Directive provides rights to migrants who apply for family reunification but also prevents them from becoming destitute or homeless by prescribing minimum standards on the availability of housing, healthcare insurance and sufficient resources. These rights are however only applicable for third country nationals with legal residence, excluding asylum-seekers without any legal status. Further, the right to family reunification may be more limited for family members outside the nuclear family. Additionally the right of access to employment may be restricted for a maximum of twelve months. Lastly, legally admitted refugees who want to reunite with family members have to apply for family reunification within a certain time period after receiving a legal status. Those family members are in this case exempted from the conditions laid down in Article 7 of the Directive.

### *Long-Term Residence Directive 2003/109/EC*

The Directive ‘concerning the status of third-country nationals who are long-term residents’ entered into force on 23 January 2004. The purpose of the Directive is that it creates a ‘long-term resident status’ after five years of legal residence in a Member State, which provides a right to permanent residence based on Community law. The Long Term Residence Directive prevents long term residents from becoming destitute and/or homelessness by imposing conditions on the person in question in order to maintain a decent standard of living. The Directive prescribes, inter alia, that Member States take measures to ensure that a person concerned has sufficient, stable and regular resources, appropriate housing and healthcare insurance. Furthermore, long term residents are treated the same as nationals in relation to inter alia, social security, social assistance and social protection, as defined by national law; equal treatment also applies to access to employment and self-employed activities; access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing. However on grounds of article 11, paragraph 2 of the Directive, Member States may restrict equal treatment in the field of inter alia, social security, tax benefits, and access to goods and services.

The Directive also provides room for Member States to restrict the access to work in favour of nationals and/or EU citizens. In this regard the extent of protection of long term residents in this Directive seems to be low.

#### *Return Directive 2008/115/EC*

The Directive 'on common standards and procedures in Member States for returning illegally staying third-country nationals' (Directive) entered into force on 13 January 2009. This Directive provides a framework of standards for Member States for the return of illegal migrants, which contain certain exceptions and safeguards. This directive does not provide many rights aimed at preventing destitution and/or homelessness amongst migrants that are irregularly staying in a Member State. However, it does contain certain guarantees for immigrants who agree to voluntary return or are subject to forced removal. The third country nationals, either 'free' or detained, who are obliged to return prior to a return decision, do have, without any limitations, access to health care facilities and the treatment of illness.

#### *Blue Card Directive 2009/50/EC*

The Blue Card Directive introduces a regime for entry and residence of highly qualified third country workers. Not only will these workers be given access to the labour market, but also are they entitled to equal labour and social security conditions (article 14). However, the unemployed blue card holder only enjoys this protection for limited duration (article 13), while equality of treatment in "procedures for obtaining housing" may be restricted (article 14(2)).

#### *Human Trafficking Directive 2011/36/EC*

The Directive 'on preventing and combating trafficking in human beings and protecting its victims' entered into force on 15 April 2011. This Human Trafficking Directive has a broad personal scope. It gives a full right to social assistance and support regardless of residence status. The only limitation is that the migrant is a victim of exploitation in accordance with Article 2 of the Directive.

#### *Qualification Directive 2011/95/EU as the recast of 2004/83/EC*

The Directive 'on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees and for persons eligible for subsidiary protection, and for the content of the protection granted' entered into force on 9 January 2012. This Directive may prevent homelessness and/or destitution amongst migrants who seek international protection, either as a refugee or as a person eligible for subsidiary protection. Member States must ensure equivalent conditions regarding access to employment, social assistance, health care and accommodation for this group of migrants as for nationals. The access to social assistance may be limited for persons eligible for subsidiary protection to only core benefits.

#### *Summary*

For third country nationals moving the EU Member States, there is a growing body of directives which have some impact on the prevention of homelessness and destitution. These are directives in the field of immigration and asylum (Article 77 to 81 TFEU). A characteristic of most of these directives is that they mostly protect well defined, limited groups of persons: such as victims of human trafficking, persons claiming international protection, migrants who are engaged in voluntary or involuntary return proceedings to their home countries. Also permanent residents enjoy some protection.



### **5.3 Destitution and homelessness and the impact of human rights instruments of the Council of Europe**

As it appears from the previous section, the protection that is offered to destitute migrants under European Union law is treacherous domain full of pitfalls and booby traps. In these circumstances human rights standards become relevant. The refusal to grant support in an individual case might be contrary to positive obligations assumed under the European Convention on human rights (ECHR), while systematically withholding support to groups of vulnerable migrants may violate the obligations assumed under the European Social Charter (ESC). The purpose of this section is to give an overview of the current state of the law and legal opinion with regard to these two human rights instruments.

#### **5.3.1 Homelessness and destitution and the European Convention on human rights**

Like EU law, the ECHR offers effective protection in individual cases as it is binding and has direct effect in the legal orders of member states, as the provisions are intended to be self-executing. Moreover, the ECHR grants the rights set forth in the Convention to everyone within the jurisdiction of a contracting state (personal scope). The European Commission on Human Rights decided in 1961 that this means that 'every person within a contracting state's jurisdiction, regardless of their nationality or status must be secured the rights and freedoms laid down in the ECHR. Also irregular migrants enjoy protection from the ECHR (Kapuy 2011, p. 129) , which provisions they may invoke in national judicial proceedings. On the other hand the assessment done by the ECtHR is limited by the 'margin of appreciation' provided to the state parties. The final decision on how much latitude is to be given to national authorities depends on the weight the Court attaches to the following factors: the European consensus, the nature of the right and the aim pursued by the contested measure.

It is now generally accepted that the ECHR can invoke obligations in the field of socio-economic rights (Koch, 2009). It is possible to discern two very general and overlapping categories with respect to the extent to which the ECHR has been interpreted to require States to protect socio-economic rights (Clements and Simmons 2008, pp. 410-411). The first category concerns the State's direct or indirect responsibility in case of severe socio-economic deprivation which has had (or threatens) gross consequences for the victim. The State's responsibility under the ECHR is then generally engaged by reference to its obligations under Articles 3 and/or 8 ECHR. The second category involves no direct or obvious indirect state responsibility in case of suffering from (or threatened with) severe socio-economic deprivation. The State's responsibility under the ECHR is then generally engaged by reference to its obligations under Article 1 in combination with Articles 3 and 8 ECHR. This set of rules means that member states have to secure to everyone within their jurisdiction that no one shall be subjected to torture or to inhuman or degrading treatment or punishment and that everyone has the right to respect for his private and family life, his home and his correspondence. Other ECHR rights which may prevent destitution and/or homelessness amongst migrants are Article 4 which prohibits all forms of forced labour, such as human trafficking, the right to life (Article 2), the right to liberty and security (Article 5), the prohibition of discrimination (Article 14) and more indirectly the right to access to justice (Article 6 ECHR) and the freedom of association (Article 11) (Gerd 2012, p. 125 and p. 127). Below, we will make a short tour d' horizon along the case law relating to these provisions in order to scan the relevance for the homeless and destitute, making use of the overviews provided by Clements and Simmons (2008), Gerds (2012) and Slingenberg (2012)

The impact of Article 2 ECHR (the right to life) on the issue of destitution and homelessness is limited as it is interpreted as only prohibiting the direct physical termination of human existence. It does not include the right to a decent life. Only in cases in which a destitute situation is life threatening ('real and imminent risk to life') it may provide protection. Gerds (2012, pp. 127-129) elaborates on three examples. First, In case of physical assaults, Article 2 brings along the obligation for states to undertake "some form of official investigation". As people experiencing poverty, such as homeless, are often in greater danger of violent assaults and lack the means to initiate legal action against the offenders, public proceedings may be the only effective way to protect them. The problem may arise that people living in destitution cannot take the necessary legal action without the help of public prosecution service. As a consequence, the family of a victim may be left in destitution after its main provider was killed. Second, Article 2 ECHR may provide material protection in cases in which extreme hardship occurs for which the state can be held responsible as it might constitute an immediate danger to life. Third, states have a positive obligation to provide basic health care to people in a life-threatening situation.

Article 3 ECHR, in particular regarding the prohibition of inhuman treatment as destitution consists of inhuman living conditions, is in principle an effective tool for the protection against destitution and homelessness as no exemptions and derogations are allowed. However, from the case law it follows that poor living conditions 'alone' do not violate this condition. Only in case of exceptional circumstances the violation of Article 3 ECHR may be accepted, which generally requires direct and active state intervention in the sphere of the individual and a certain 'severity' of maltreatment. In *Van Volssem vs. Belgium* the minimum level of severity was not reached with regard to the company that reduced the power and cutting off the supply as a reaction to the applicant's arrears. Similarly in *Larioshina vs. Russia* the ECtHR ruled that the minimum threshold was not affected by a Russian pensioner who received a pension of less than a Euro a day. A violation of article 3 was accepted in a case against Romania since this state was held responsible for the destruction of fourteen Roma family homes which caused the applicants to have to leave their village and live in dire conditions for over ten years which effect their health and well-being. The ECtHR found an interference with the applicants' human dignity, which amounted to degrading treatment which is prohibited by article 3 ECHR. In another case, in which the ECtHR decide that there was a violation of article 3, the applicant was deprived of her home and support, obliging her to leave the village where she had lived all her life, and no steps were taken to provide assistance, which led to inhuman treatment. With regard to the access to health care, the ECtHR held that Article 3 would be violated if an applicant suffering from AIDS, who has only a short time to live must be deported to his country of origin where medical treatment would not be available which would lead to death in complete destitution.

The case *M.S.S. vs. Belgium and Greece* might lead to a broader understanding of the positive obligation under article 3 for the future. In this case the poor living conditions for asylum seekers in Greece led to a violation of the positive obligation to allocate basic housing and food. This amounted to inhuman treatment in accordance with article 3 ECHR. A state's failure to guarantee a minimum subsistence standard in order to lead a dignified live (with the provision of very basic necessities of life, such as food and shelter) is however not generally regarded as inhuman treatment. The *M.S.S.* case was an exceptional case in this regard. In short, the Court's threshold for the minimum level of severity is very low. According to Slingenbergh poor living conditions will only reach this threshold if the person concerned is unable to effectively cater for his most basic needs and therefore lives in a state of the most extreme poverty, provided that there is little prospect of any improvement within a reasonable time. The mere lack of accommodation or the inability to buy other necessary articles such as clothing is not serious enough. (Slingenbergh,

2012, p. 360) Gerds (2012, p. 131) finds that general guidelines securing the minimum necessities to fight poverty are lacking and suggests that the ECtHR should follow the ECSR case law in this regard in order to establish a consistent and general approach to Article 3, but this is merely a subjective point of view.

Article 5 ECHR has only little safeguards for migrants and asylum seekers facing custody pending deportation as the measures do not have to be reasonable or proportionate, they only need to be in conformity with national law. The only two ways in which a migrant can claim a violation of Article 5 are either to establish the illegality of the treatment under national law, or to show that de facto the reason for the detention was not deportation. The case law of Article 5 focuses strongly on the physical freedom. Article 5 ECHR does not apply to situations in which an elderly person is in her own interest taken into a nursing home by a state's order with the necessary medical care and adequate living conditions. The enjoyment of a minimum of economic and social security is not part of the right to liberty and security.

Article 14 ECHR provides that access to the social security system of member states cannot be denied to non-nationals unless 'very weighty reasons' are put forward by the state. The ECHR does not effectively sanction discrimination of poverty. No cases exist in which questions of social origin, property, birth or other status led to a violation of Article 14 ECHR. Gerds (2012, p. 134) observes that the ECtHR grants states a wide margin of appreciation in this regard. However, Article 14 may be of relevance as an accessory right in relation with for instance Article 8 ECHR (see below) and Article 1 of the ECHR' 1st Protocol. In the case *Gaygusuz vs. Austria*, the ECtHR held that Article 14 in conjunction with Article 1 of the ECHR' 1st Protocol brings along that a distinction on the basis of nationality constitutes an unjustified violation of these provisions in the situation of *Gaygusuz*, a man from Turkish decent, who claimed a special benefit after the termination of his unemployment benefit.

As regards Article 8 ECHR, this provision may (indirectly) protect migrants from falling into destitution and homelessness. In the case *Wallová and Walla vs. Czech Republic* the ECtHR concluded that separating children from parents for reasons of inadequate housing violates the Convention because less drastic measures would have been possible, especially providing adequate housing to the family. According to Garcia (2007, p. 1121) one could interpret this that the state is obliged to provide adequate housing to families who cannot afford it. It seems that in case of special circumstances, for instance because of serious disabling illness, the ECtHR finds that an eviction without the provision of alternative adequate accommodation has an impact on the private life of the individual. Also the provision of social reception facilities to vulnerable (irregular ) immigrants may fall in this regard under the scope of Article 8 ECHR. However, the ECtHR never explicitly declared that Article 8 ECHR guarantees the right to have one's housing problem solved by the authorities. On the contrary the ECtHR emphasises the large margin of appreciation of the member states and denies any obligation of the state ensuing the Convention to provide for an adequate living standard. Moreover, when it comes to providing housing to homeless people or socially deprived minorities, the case law shows a very reserved position (Gerds 2012, p. 138). The ECtHR has ruled on a couple of cases with regard to the eviction of Roma people from caravan sites. In most of these cases, however, the ECtHR found that the state measures were necessary in a democratic society, in accordance with the law and not being disproportionate (Article 8, paragraph 2). Gerds (2012, p. 138), opposing this tendency, is of the opinion that more attention should be paid to the right of minorities with regard to Article 14 ECHR. The eviction of Roma people could be considered as a form of discrimination under Article 8 ECHR in conjunction with Article 14 ECHR, as they affect the lifestyle of Roma people, as the evictions force them to give up their traditional life. Gerds (2012, p. 139) proposes that the ECtHR could argue by referring to the legitimate reason of preserving cultural and social diversity, and

the necessary measures of 'positive' discrimination to achieve equal opportunities. In a different case, the ECtHR ruled that Article 8 ECHR in conjunction with Article 14 ECHR was violated concerning the Austrian national law providing protection only to heterosexual couples against sudden homelessness after evictions from rented flats.

Subsequently people who lost their family life partly due to the eviction and people who are not entitled to inhabit a home because they cannot afford the rent, may only be protected under Article 8 ECHR as regards the effective access to a judicial review of the eviction decision. According to the ECtHR in another case the Convention [indirectly] contains an obligation on the state to effectively guarantee the right to legal aid to people facing poverty. In this case Article 8 ECHR in conjunction with Article 6 ECHR was violated. Finally, Article 8 ECHR may protect the destitute against the violation of environmental rights, as they affect poor people much harder than the rest of the society (Gerds, 2012, pp. 139-140).

However the ECtHR is reluctant in this regard and finds that Article 8 ECHR is not designed to provide protection of the environment. Nevertheless, with regard to people who could fall into destitution as a consequence of the violation of environmental rights, the ECtHR concluded in one case that Spain violated the positive obligation to guarantee environmental rights by the placement of a waste incinerating plant. The facility which was placed adjacent to the applicant's house would lead to unacceptable smells and health risks. In another case the ECtHR found that Italy had to pay in kind damages because it failed to protect the people living close to a chemical factory against the air pollution which apparently led to major health problems.

In short, the conclusion seems justified that Article 8 provides protection against eviction from a person's home. According to Slingenbergh the most important safeguard in this respect is that it should be possible to have the proportionality of the eviction examined by an independent tribunal, even if the right of occupation has come to an end under domestic law. Nonetheless, when applying the proportionality test the domestic courts continue to enjoy a wide margin of appreciation. (Slingenbergh 2012, p.393).

Then, more indirectly also the freedom of association according to Article 11 ECHR may play a role in the prevention of destitution and/or homelessness as for instance NGOs do effective work helping vulnerable people. If these NGOs are deprived from their freedom of association, indirectly also destitute and/or homeless people or people who run the risk of falling into destitution and/or homelessness may be affected. These NGOs need independence and freedom from the state on the one hand, and on the other hand, support and acceptance in their work.

### *Summary*

The ECHR has great a potential for providing an individual with a remedy against the state in cases of homelessness and destitution, but the ECtHR is reluctant to use this potential. The most promising rights in this respect are Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (respect for private life, family and home). With regard to the Article 3 poor living conditions will only reach this threshold if the person concerned is unable to effectively cater for his most basic needs and therefore lives in a state of the most extreme poverty, provided that there is little prospect of any improvement within a reasonable time. The mere lack of accommodation or the inability to buy other necessary articles such as clothing is deemed not serious enough by the ECtHR. And even then, a violation of Article 3 is only accepted by the Court in exceptional circumstances. Article 8 is particular relevance for homelessness because it

provides protection against eviction from a person's home. The most important safeguard in this respect is that it should be possible to have the proportionality of the eviction examined by an independent tribunal, even if the right of occupation has come to an end under domestic law. Nonetheless, when applying the proportionality test the domestic courts continue to enjoy a wide margin of appreciation.

### **5.3.2 Homelessness and destitution and the European Social Charter**

The 'original' ESC was enacted in 1961 in order as a catalogue of social rights to supplement the ECHR. In 1996 the revised ESC was adopted which entered into force in 1999. The revised ESC brought the possibility of a starting a collective complaints procedure with the European Social Rights Committee (ESRC) a body which previously only had a traditional supervisory role. In this procedure the ESRC is subordinate to the Council of Ministers, which may address state parties respectively with resolutions and recommendations which are based on the ECSR's authoritative interpretation of the ESC on the basis of a country report or in a specific case. As we will see below, the ESRC is more generous in accepting violations of the Treaty in case of alleged failure to provide a socio-economic protection than the ECtHR. But the impact of this is mitigated by the fact that the ECSR opinions do not have legal effect, while the recommendations of the Councils of Ministers 'ratifying' these opinions are not binding. This does not mean to say, however, that the opinions can indirectly influence governments' policies and judicial decisions. NGO's that are active in the field of homelessness, such as FEANTSA and Defence for Children are aware of this and have successfully used the collective complaints procedure for advocating the rights vulnerable groups.

In the ESC a distinction is made between 'core' and 'non-core' rights (Khaliq and Churchill 2008, p. 429). Parties to the ESC must accept at least six out of the nine 'core' rights, as well as at least 16 of the 31 Articles or 63 out of 98 numbered paragraphs. Thus the extent of protection depends on what rights the particular State party has chosen. Additionally, according the Annex to the ESC most of the social rights included in the Charter apply only to the nationals of the State concerned and to the nationals of other States parties lawfully resident or working regularly in that State. However, through the ECSR's teleological interpretation of the Charter also irregular migrants and stateless persons may be included. With respect to the interpretation, the ECSR noted that the ESC should be interpreted 'in light of development in the national law of member states, as well as relevant international instruments'. Additionally, it is necessary to seek the interpretation of the treaty that is most appropriate in order to realise the aim and achieve the object of the treaty. In this regard the ECSR plays close attention to the ECHR and its case law.

The provisions that have direct impact on the report's issue of destitution and homelessness are Article 30 (protection against poverty) and 31 ESC (right to housing). According to these provisions, contracting parties should, with a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, undertake: to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; and to review these measures with a view to their adaptation if necessary (Article 30). The contracting parties should, with a view to ensuring the effective exercise of the right to housing, undertake: to take measures designed to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; and to make the price of housing accessible to those without adequate resources (Article 31).

Article 30 is not a core right. According to the ECSR states must have a an overall and coordinated approach against poverty and social exclusion which brings along an analytical framework; a set of priorities and corresponding measures to prevent and remove obstacles of access to social rights; and monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. Moreover, State parties must link and integrate policies in a consistent manner and must not simply adopt a purely sectoral or target group approach. The policies must distinguish between poverty and social exclusion and address the specific problems raised by the latter. Notwithstanding the overall approach to poverty, the most vulnerable groups of society, which are among others the homeless, and immigrants, and their specific needs should not be lost out of sight (Gerds 2012, p. 159). In addition, the ECSR referred to the data by Eurostat, defining the risk-of-poverty threshold as less than 60% of the median net national income (Gerds 2012, p. 153). Lastly, the ECSR considers that the provision of adequate housing, according to Article 31 ESC, is critical in fighting poverty. In the case *International Movement ATD Fourth World vs. France* , the ECSR found that the violation of Article 31 resulted in a violation of Article 30, as the national housing programme was not sufficient. This case shows the important link between the two provisions.

Also Article 31 is a non-core right. The provision should be read together with other articles such as articles 7 (protection of children) and 16 ESC (protection of the family) which are core rights. In the case *European Roma Rights Center vs. Greece*, the ECSR found a violation of Article 16 ESC by arguing that: Greece did not have a sufficient number of permanent dwellings of an acceptable quality to meet the needs of the settled Roma; Greece did not have a sufficient number of stopping places for Roma who choose to follow an itinerant lifestyle, or who are forced to do so; and Greece systematically evicted Roma from sites or dwellings unlawfully occupied by them. In another Roma people case concerning Article 16 ESC, the ECSR concluded that equal treatment required measures appropriate to the 'Roma's particular circumstances to safeguard their right to housing to prevent them as a vulnerable group from becoming homeless'. Moreover, State parties should take into consideration the traditional lifestyle of Roma people. Further the ECSR stressed that in accordance with Article 16 ESC, contracting parties should ensure that evicted persons are not rendered homeless. With regard to Article 31, the ECSR stated unequivocally that the equal treatment obligation under that provision must be assured to different groups of 'vulnerable persons'. In that regard the ECSR places the burden of proof on the State party to show how the principle of equal treatment for Roma people regarding access to social housing was effective in practice. Further , the ECSR made clear that Article 31 applies to both rented as owner-occupied housing and that adequate housing means 'a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded' (Khaliq and Churchill 2008, p. 449). Article 31, paragraph 2 ESC imposes an obligation upon State parties to reduce homelessness. In view of the ECSR 'reducing homelessness' requires 'the introduction of measures, such as provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness'. Moreover, contracting states are obliged to provide homeless persons with adequate housing, if they so request it, within a reasonable period of time (Gerds 2012, p. 160-161). Additionally, the ECSR puts in this regard emphasis upon the situation of vulnerable people, whose dignity should always be concerned. Particularly the rights of children come to the fore. For instance in the case *Defence for Children International vs. The Netherlands* , the ECSR concluded that State parties are required, under this provision, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children. Lastly, Article 31, paragraph 3 ESC obliges State parties to ensure that there is an adequate supply of affordable

housing to those who lack adequate resources (Khaliq and Churchill 2008, pp. 450-451; Gerds 2012, p. 162). The overall prices for housing, including all running costs, have to be low enough in the long term to enable everyone to maintain a minimum living standard relative to the society he or she lives in (Gerds 2012, p. 162).

Other rights which can indirectly influence homelessness and destitutions are: the right to social aid (Articles 12, 13 and 14); the right to protection of health (Article 11); the right to vocational training (Article 10); the right to work (Article 1); the right to fair remuneration (Article 4); and the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20).

#### *Summary*

The ESC contains very relevant obligations for states to combat homelessness and destitution. As it appears, the ESRC is not too reluctant to assume that these obligations are violated by states. In this respect it has had no difficulty in bypassing the Annex to the ESC which reserves the rights of the Charter to nationals of the contracting states with legal residence. But the impact of this is mitigated by the fact that the ECSR opinions do not have legal effect, while the recommendations of the Councils of Ministers 'ratifying' these opinions are not binding. This does not mean to say, however, that the opinions can indirectly influence governments' policies and judicial decisions.

## **5.4 Conclusions as to the legal causes of destitution and homelessness**

The purpose of this report was to map out the relevance of European law for migrants who want to access the social safety net existing in European countries, not only with reference to its potential but also its limitations. The safety net was primarily identified with reference to social assistance (in the wide sense of the word, including special non-contributory cash benefits as referred to in Regulation 883/2004) and the right to housing. Also some attention is paid to formal access to the labour market.

We observed that the EU-treaties are relevant from three angles, i.e. the freedom of movement of persons, EU social policy and the regime for immigration and asylum seekers. The impact of these three areas can be summarized as follows.

For EU-citizens the greatest impact stems from the provisions on the freedom of movement of persons. They provide not only access to the labour markets, but they also protect against the loss of social security rights and discrimination on grounds of nationality in the field of all sorts of social and fiscal advantages. However we also pointed out some limitations. In principle, the relevant provisions apply to EU-citizens only. Also purely internal situations are not covered by the treaty regime on the freedom of movement. But most importantly for our target group: the provisions are not very generous for the poor, defined as persons with "insufficient resources of their own". They have no temporary residence rights and their right to social assistance benefits is somewhat clouded. Indeed, when it comes to this category of EU-citizens it appears that there are still many uncertainties and unresolved questions. For example we do not know exactly when an economically non-active mobile citizen becomes a burden on the social assistance system of a member state and hence lose his protection offered by Directive 2004/38/EC (Cf. 5.2.4). We do not really know what exactly is meant by a "genuine link" with the labour market with the ECJ requires for job seekers who want to claim social assistance benefits is their host country. Neither is it fully clear whether local authorities can apply a "local connection test" when EU mobile citizens apply for shelter and emergency relief, although the odds are against it. Such a test would

probably not satisfy the non-discrimination principle on grounds of nationality, but this has not yet been confirmed by the ECJ (cf. section 5.2.5). Even more clouded, is how the member states actually interpret the state of EU law in this regard and what national legal practices are. Clearly, here lies a task for further research in the country case studies.

For the destitute and the homeless, the bottom line is that they are no longer protected by EU law. As minimum subsistence benefits schemes of the member states often employ conditions with regard to legal residence, a loss of EU residence status may imply an immediate or subsequent loss of benefit rights. The result is that EU citizens may eventually be expelled. The lack of resources and the threat of expulsion may force people to move underground, to resort to marginal activities in the shadows of the official society, to beg and to sleep rough. Some will end up in dire straits, others may pick up their lives and move elsewhere to look for better fortune. In this sense EU law can be seen as one of the causes of their situation.

As for the social policy angle, our systematic overview of “soft law reference” is a testimony to the consensus that is felt by the authorities that something must be done to resolve the problem of destitution and homelessness. The various EU institutions are really involved in this question. However at the same time we observed that the TFEU, in particular article 153, does not provide a clear legal basis for binding harmonization measures in this field, for example a directive on minimum conditions applying in the field of social and housing assistance. This means that despite the support for action to combat social exclusion, poverty and homelessness expressed in resolutions, statements and communiqués, for the time being the EU will have to resort to non-binding measures. It was argued that it is not so much the “horizontal” lack of political will, but rather the problem of the “vertical” division of powers between the EU and its member states, which acts as a stumbling block here, although it can be said that the latter equally reflects a certain political status quo.

Finally we have seen that for third country nationals moving the EU Member States, there is a growing body of directives which have some impact on the prevention of homelessness and destitution. These are directives in the field of immigration and asylum (Article 77 to 81 TFEU). A characteristic of most of these directives is that they mostly protect well defined, limited groups of persons: such as victims of human trafficking, asylum seekers, migrants who are engaged in voluntary or involuntary return proceedings to their home countries. Also permanent residents enjoy some protection.

As the protection that is offered to destitute migrants under European Union law is not without pitfalls and booby traps, human rights standards become relevant. We observed that the Charter on fundamental rights contains a principle which is directly relevant for our target group: Article 34 (3) of the Charter recognizing the need of social and housing assistance in order to combat social exclusion and poverty. However, we also concluded that this provision is not likely to give rise to subjective rights which can be claimed in the courts. It is more of a guideline to control the actions of the EU-institutions itself. The situation is different for human rights instruments of the Council of Europe. These were the subject of the second part of our research.

We observed that the ECHR has great a potential for providing an individual with a remedy against the state in cases of homelessness and destitution. But we also noted that the ECtHR is reluctant to use this potential. The most promising rights in this respect are Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (respect for private life, family and home). With regard to the Article 3 poor living conditions will only reach this threshold if the person concerned is unable to effectively cater for his most basic needs and therefore lives in a state of the most



extreme poverty, provided that there is little prospect of any improvement within a reasonable time. The mere lack of accommodation or the inability to buy other necessary articles such as clothing is deemed not serious enough by the ECtHR. And even then, a violation of Article 3 is only accepted by the Court in exceptional circumstances. Article 8 is particular relevance for homelessness because it provides protection against eviction from a person's home. The most important safeguard in this respect is that it should be possible to have the proportionality of the eviction examined by an independent tribunal, even if the right of occupation has come to an end under domestic law. Nonetheless, when applying the proportionality test the domestic courts continue to enjoy a wide margin of appreciation.

With regard the ESC we observed that the ESRC is not too reluctant to assume that the various social rights obligations applying in the field of destitution and homelessness are violated by states. In this respect the ESRC has had no difficulty in bypassing the Annex to the ESC that reserves the rights of the Charter to nationals of the contracting states with legal residence. But the impact of this is mitigated by the fact that the ECSR opinions do not have legal effect, while the recommendations of the Councils of Ministers 'ratifying' these opinions are not binding. The opinions merely indirectly influence governments' policies and judicial decisions.

## **6 FINAL REMARKS**

We conclude this general report by making a number of observations with regard to the “researchability” of destitution and homelessness and the composition of the country group studies. So far we have looked at the concepts of destitution and homelessness (chapter 2), at the available information about the extent of destitution and homelessness (chapter 3) and at a variety of social causes (chapter 4) and legal causes (chapter 5) of destitution and homelessness amongst migrants. On the basis of our findings we have formulated a number of starting points for our further research. These are the following:

- a. Adopting a differentiated approach
- b. Focusing on specific migrant groups
- c. Taking into account country specificity
- d. Without turning a blind eye to “the greater picture”

### **6.1 Adopting a differentiated approach**

If anything has become apparent from the foregoing study it is how heterogeneous and multifaceted the problem of homelessness really is. The popular prejudice may want to pinpoint the problem to one category of persons and a single cause: “these tramps are strangers who are addicted and suffer psychological problems”. But behind such qualifications may rest a multitude of underlying causes which may have affected someone’s personal biography: of labour market conditions, the welfare system, the housing market, legal status, etc. Also the situation may vary strongly from member state to member state and for different categories of migrants. Moreover, within each category there are further group characteristics to be taken into account. Finally, as homelessness is often connected to local circumstances, it may be necessary to distinguish between regions, between cities, between boroughs. In other words, in order to grasp the extent and the causes of the problem it is necessary to break it down into small bits and take into account all sorts of specificities. Indeed, it is probably not without reason that much research that has been carried out tends to favour the micro level, looking at local situations or even at the biography of a single person, as if it wants to grasp the phenomenon of homelessness in a single anecdote. We will not go as far as that but nonetheless we have taken differentiation as a starting point for the composition of the study.

### **6.2 Focusing on specific migrant groups**

In this study we focus on four categories of vulnerable migrants. These are: third country migrant workers, undocumented migrants, mobile EU Roma and EU-10 overstayers. In fact this distinction is made with a view to varying presumed causes which distinguish these groups. For third country workers we expect to find these causes in the labour market conditions, in particular substandard employment and in the worst case exploitation. For undocumented migrants, the assumption is that the cause of homelessness is related to exclusion from welfare rights and repressive policies. For the Roma it is assumed that the precarious working status and in particular stigma and discrimination play a role. And finally for EU-10 overstayers we are interested in the effects of their uncertain legal status (also under EU law) and in the impact of the economic crisis. At this stage it is important to stress that in our research has not just looked for a confirmation of these presumed causes. Our preconceived ideas may be either falsified or mitigated. For this reason the questionnaire developed for our country group studies required a screening of the full array of causes, both social and legal.

### **6.3 Taking into account country specificity**

The homelessness situation may differ in each member state. For each of the migrant groups identified above we have selected two EU countries in which one of these migrant groups will be studied in detail. The situation of EU-10 nationals is studied in Germany and in the UK. This is because of the reported incidence of homelessness amongst these nationals in these countries. This also presents us with contrasting cases in view of the fact that EU-8 nationals have had free access to the UK labour market for several years whereas in Germany the free movement of labour of EU-8 nationals only became possible in May 2011. The situation of third country workers is studied Spain and Poland. We selected Spain in view of the large number of workers from Northern Africa and their reportedly weak position in certain sectors such as agriculture and domestic services and Poland in view of the increasing labour immigration from Eastern countries further to the east, in particular the Ukraine. The situation of undocumented migrants is studied in the Netherlands and Greece. Greece was chosen in view of its high influx of irregular immigrants and the recent reports about their inhuman treatment. The Netherlands was chosen for its high degree of control and exclusionary policies relating to undocumented immigrants. The situation of the mobile EU Roma is studied in France and Italy. These countries have received a large number of new Roma immigrants following the collapse of the former communist regimes in the EU-10 countries. Choosing two countries per category of migrants enables us to consider both country-specific and universal findings.

### **6.4 Without turning a blind eye to “the greater picture”**

We did not want our differentiated approach to result in this study falling apart into unconnected splinters. We wanted to include a reverse learning effect, a “feedback loop”: how do the country group studies reflect upon the explanatory framework developed in this general report. In order to satisfy this need, each of the country group studies has a fixed structure. This structure includes a precise description of destitution and homelessness among the migrant group under study, a description of the social security provisions (including housing) available to migrants, an explanation of social and legal causes and finally an outline of various political and civil society initiatives for providing support. Within this structure emphasis is placed on the questions and aspects that have particular relevance for the situation in the country and the group involved. In this way a compromise was reached between the research ambition and the available time and resources.

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## **PART II**

# **COUNTRY GROUP STUDIES**

## **7 UNDOCUMENTED MIGRANTS IN GREECE**

### **7.1 Introduction**

The aim of this country case study is to shed light on homelessness and destitution among undocumented migrants in Greece. Undocumented migration is a 'hot' issue for Greece for a number of reasons. The geographical position of Greece and its extensive –but porous- land and sea borders make it one of the main gateways to Europe. Increasing numbers of people have been crossing the borders illegally, to find themselves detained in bad conditions or in a state of irregularity. The ineffectiveness of the migration and asylum system combined with poor reception facilities and the limited support available appear to lead undocumented migrants almost inevitably to destitution, homelessness and exploitation.

Further, the worst financial crisis in modern Greek history has placed enormous strain on large parts of the population, has dismantled the social networks that 'filled in' the gaps of the rudimentary social welfare system and has left room for an unprecedented rise in xenophobic and racist reactions that find 'easy victims' in the most vulnerable of migrants. Undocumented migrants in Greece, are, in the present circumstances, due to a conjunction of geographical, legal, institutional and economic occurrences, a group of people 'trapped' into legal invisibility and social exclusion.

Undocumented migrants are a diverse group that consists of individuals with diverse paths of irregularity. Four main groups can be distinguished: illegal entrants, that is individuals who entered the country without the required documents either with the aim to stay or as 'transit' to another EU country, visa overstayers, people who entered legally but whose visa expired without them leaving the country, rejected asylum seekers and regularized migrants who fell back into illegality for failing to fulfill the qualifying conditions for renewing their permit.

The main issue that this study will attempt to address is the extent of homelessness and destitution among undocumented migrants and the legal and social barriers they face in accessing social housing and social assistance schemes.

### **7.2 Destitution and homelessness among undocumented migrants**

This section attempts to give a (quantitative) description of homelessness and destitution among migrants in general and more specifically of undocumented migrants.

#### **7.2.1 Undocumented migrants**

Undocumented migrants are third country nationals that enter or attempt to enter or exit Greek territory without the necessary legal requirements.<sup>20</sup> Undocumented migrants are a diverse group that consists of four main sub-groups: illegal entrants, that is individuals who entered the country without the required documents either with the aim to stay in the country or to move to another member state, visa overstayers, people who entered legally on a short term visa that expired without them leaving the country, rejected asylum seekers and regularized migrants who fell back

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<sup>20</sup> Article 83 law 3386/2005.

into illegality, because of inability to fulfill the qualifying conditions for renewing their permit (Maroukis, 2012).<sup>21</sup> Illegal migration is a major issue in the last years given that Greece has become one of the main gateways for undocumented aliens in the European Union. In 2010, 90% of all arrests for irregular entry in the EU were made in Greece (75% in 2009, 50% in 2008). The Greek-Albanian and the Greek-Turkish borders are the main points of entry. Arrests have decreased since the first quarter of 2012 by 55,59% (Hellenic Police statistics).

Estimates on the number of undocumented migrants in Greece are based on the apprehension data at the border released by the Hellenic Police and research estimates. According to data by the Hellenic Police, from 2006 till April 2013, 800.729 individuals have been detained at the Greek borders attempting to illegally enter the country.

**Table 7.1 Apprehensions at the Greek borders and deportations**

Year	Arrests by the police	Arrests by marine authorities	Total	Deported
2013 (first quarter)	10 423	1 451	<b>11 874</b>	6 370
2012	75 251	1 627	<b>76 878</b>	
2011	98 611	757	<b>99 368</b>	
2010			<b>132 524</b>	52 469
2009	115 980	10 165	<b>126 145</b>	63 427
2008			<b>146 337</b>	20 555
2007			<b>112 364</b>	17 077
2006			<b>95 239</b>	17 650
<b>Total</b>			<b>800 729</b>	<b>177 548</b>

Source: Hellenic Police, Migration Statistics

The above data refers to the number of apprehensions at the border. Only a small percentage of the apprehended is deported/returned immediately. The remaining people are detained in reception centers or police stations. If they apply for asylum they might be released, while waiting for their application to be examined. If not, they are released with a deportation order to leave the country within 30 days (MSF, 2010).

A study for the European Migration Network estimated the number of irregular migrants in Greece in 2001 at 400,000 (Maroukis 2012). Another research placed the figure of undocumented individuals in 2004 at 230,000-330,000 (Zografakis, Kontis & Mitrakos, 2007; Zografakis and Mitrakos, 2006). The Clandestino study estimated a population of undocumented migrants of 260-300,000 people in 2004 that decreased to 205,000 in 2007 (Maroukis, 2008) while a research conducted for the Hellenic Migration Policy Institute (2008) estimated that 172,000-209,000 migrants were illegally present in Greece in 2007. Updated estimates of the Clandestino project for 2010 and 2011 referred to a population of approximately 330,000 irregular migrants, which could raise up to 350,000 and 390,000 (Maroukis, 2012). Overall, numbers are declining as a result of the regularisation programmes in the early 2000s, the visa-free entrance regime with Albania and a return trend due to the financial crisis.

<sup>21</sup> Around 20,000 of the estimated 352,175 irregular migrants of 2010 are regular migrants losing their permits, 41,400 are irregulars living in Greece before 2005, and 61,000 are Albanian irregulars circulating between the two countries. In the 2011 estimate there are 62,411 regular migrants losing their permits, 41,400 are irregulars living in Greece before 2005 and 11,700 are Albanian irregulars circulating between the two countries.

According to Maroukis (2012) irregularity is due to several factors, the main ones being geography and the structure of the labour market. Geographic factors include the 1,227 km of land and maritime borders of Greece with third countries (land borders with Albania 282 km, Bulgaria 494 km, Turkey 206 km, FYROM 246 km and a coastline of 13,676 km) and the fact that it is the main gateway to Europe for people coming from Africa and Asia. With regard to the labour market, a crucial role is played by the inflexible requirements for regular entry, the ineffectiveness of the provisions for inviting foreign workers as opposed to the flexibility of the informal economy that accommodates irregular work without the restrictions and bureaucratic burdens and the ineffectiveness of the asylum system that keeps individuals in limbo for long. A national action plan for the management of migration flows has been announced by the Ministry of Citizen Protection in 2010<sup>22</sup> and constitutes the road map for the management of undocumented migration. It focuses mainly on improving reception conditions and asylum procedures but does not look at all at other factors.

There is no hard data on the destitution of undocumented migrants. Empirical statements suggest that undocumented migrants live in extreme conditions of poverty and material deprivation, face poor health and severe housing problems that include living on the streets (especially during initial immigration phases), in overcrowded conditions (flats or abandoned public buildings) or in substandard conditions. The European Court of Human Rights found the detention conditions of asylum seekers in Greece to constitute degrading or inhuman treatment (Judgment M.S.S. v. Belgium and Greece). However, living conditions might differ significantly depending on the origin of the undocumented migrants given that often their communities and networks provide for support and basic facilities. Undocumented migrants and asylum seekers, especially during their initial phases of immigration, are considered to be one of the main categories of the homeless in Greece.

In terms of ethnic composition, early undocumented migrants to Greece originated from neighbouring countries (mostly Albania) and the former USSR. Filipinos, Vietnamese, Sudanese and Egyptians have been in Greece since the 1980s. More recent arrivals include Pakistani and Bangladeshi citizens, Iraqi and Afghani asylum seekers and sub Saharan Africans (Maroukis, 2012). According to police data, the undocumented migrants arrested at the Greek borders originate from more than 100 nationalities. The largest groups are by far Albanians, Afghans, Pakistanis, Bangladeshis, while in the last years there are increasing numbers of Algerians, Moroccans, Somalis, Iraqis and Syrians.

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<sup>22</sup> The Action Plan provides for a) the establishment of first reception institutions b) the establishment of an independent asylum Service and the reform of the asylum procedure, c) new procedures for the support of vulnerable groups especially the improvement of existing services d) the establishment of new detention centers for aliens under deportation in accordance to the CPT criteria e) improved record of return procedures.

**Table 7.2 Nationalities of people intercepted at the Greek borders (land and marine borders) 2008-2013**

Nationality/ Year	2008	2009	2010	2011	2012	2013 (first trimester)
Albanian	49.5%	50%	37.8%	11.8%	13.8%	28.2%
Afghanistan	17.5%	14.1%	21.35%	28.7%	21.5%	15.2%
Somalia	4.5%	6.1%	4.92%	2.2%	2.3%	2.9%
Pakistan	3.7%	3.9%	6.7%	20.1%	14.4%	14.1%
Palestine	3.1%	8.5%	5.7%	2%	2.2%	2.3%
Georgia	2%	2%				1.5%
Iraq		6%	3.8%	2.9%	2.8%	2.3%
Algeria			5.5%	5.4%	6%	
Bangladesh			2.4%	5.4%	10.2%	4.8%
Morocco				3.4%	2.8%	2.2%
Syria					10.3%	15.3%

Source: Hellenic Police Migration Statistics:  
[http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=3665&Itemid=429&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=3665&Itemid=429&lang=)

## 7.2.2 Destitution

There is a constant rise in the number of people at risk of poverty or social exclusion in Greece. In 2011, 31% of the population (a figure corresponding to approximately 3.4 million people) was at risk of poverty or social exclusion compared to 28.1% in 2008 and 27.7 in 2010. From this 3.4 million people, 21.4% was at risk of poverty after social transfers, 15.2% was severely materially deprived and 11.8% lived in households with very low work intensity (2011) (Eurostat 2011). Yet, these figures most probably will rise dramatically for 2012 and 2013 due to the ongoing and persistent financial crisis.

The poverty threshold corresponds to 60% of the national medial equivalised disposable income (ELSTAT, 2013). The threshold was at 4,741€ in 2003, in constant rise until 2010 (6,480€ in 2008, 6,897€ in 2009, 7,178€ in 2010) but fell in 2011 (to 6,591€). According to the available data, women are in greater risk of poverty (21.9%) compared to men (20.9%). In terms of age, it is the younger and the older members of the society that face the greater risks (23.7% for people aged 0-17 and 23.6% for people aged 65 and more compared to 20.2% for people between 18-64 years).<sup>23</sup> The risk of poverty is higher for the unemployed (44,0%), the inactive (30%), the retired (19,9%) and not employed persons (28,1%). Per household type, it is single person households with dependent children that face by far the greater risk of poverty (43.2%), followed by households of single adults older than 65 years (29.7%), single female (25.8%) and single person households (25.2%). Unemployment figures, as an indicator of risk of poverty, are in constant rise. In the last trimester of 2012 unemployment reached 26% (compared to 24,8% in the third trimester of 2012 and to 20,7% in the respective trimester of 2011). Unemployment strikes particularly women and young people. In the last trimester of 2012, 29,7% of women were unemployed compared to 23,3% of men, while among young people (15-24 years) 57,8% were unemployed. Unemployed women (65%) appear to be in a particularly difficult position. The unemployment rate of foreigners was also higher compared to that of Greek nationals (36% compared to 25%) (OAED, 2012). Although significantly lower, the risk of poverty affects also employed persons. The risk of poverty is 11,9% and is higher for males (13,2%) compared to females (10,1%) and considerably higher for part time employees (21,4%) compared to full time employees (10,4%) (ELSTAT, 2013).

<sup>23</sup> The risk of poverty before social transfers is higher by 3.4%.



The current financial crisis makes financial exclusion the main parameter of social exclusion. According to initial assessments the groups facing the most important risks are children, old people, unmarried women, single parent families, low skilled workers, unemployed, inactive persons, people with disabilities, people living in rural areas and immigrants (Balourdos, 2011, Balourdos, 2012).

Destitution among migrants is difficult to establish. Poverty for migrants from outside the EU is higher compared to national population both in absolute and relative terms, while migrants from the EU face the same or lower levels than national average. In Greece the risk of poverty among migrants (defined as people born in another country) in 2004 was significantly higher (30%) compared to nationals (approximately 20%) (Lelkes, 2007). The higher risk of poverty persisted in 2007 (approx. 18% for nationals compared to approx. 35% for non-nationals). The risk of poverty increased with the number of immigrants in the household (around 20% with one EU immigrant, over 40% with 2 EU immigrants) and was significantly higher (over 40%) when non-EU immigrants were part of the household. Material deprivation was high and was most widespread among non-EU immigrants (approx 5% for nationals, less than 10% for EU migrants and around 25% for non-EU migrants). Trends in the risk of poverty rates among migrant groups for the period from 2004-2007 were in the rise for EU migrants (from less than 20% to over 20%) but relatively stable (over 30%) for non-EU migrants (Lelkes and Zolyomi, 2011). According to the Income and living conditions survey for 2011 the risk of poverty or social exclusion is almost double for foreigners compared to Greek nationals (58,3% compared to 29,7%) and significantly higher for foreigners from outside the EU 27 (62,2%) compared to citizens from the EU-27 (39,9%). People in risk of poverty or social exclusion born in Greece are 29,3% compared to 52,6% born outside Greece. The risk of poverty for citizens of EU-27 member states was 29,2% while it was 58,6% for people from outside the EU (ELSTAT, 2011).<sup>24</sup> Thus the risk of poverty is almost double for immigrants compared to non-immigrants, the risk being even higher for non-EU immigrants.

Data on the health of migrants is extremely limited. The few existing studies focus on infectious diseases and show an increasing trend in the number of migrants among patients with tuberculosis, hepatitis B, while within homeless migrants in Attika the percentage of people with Hepatitis B and C is significantly higher than the native population. Further, migrants appear to be more susceptible to labour accidents and to suffer from increased levels of stress, pressure etc (MigHealthNet 2009). Microdata from two Day Centers operated by NGO Praxis in Athens and Pireus (1.615 medical examinations in the period May-November 2012) give a 'snapshot' of the most common medical problems of homeless migrants (63% of the visitors were migrants and the majority of them undocumented migrants). The main health problems recorded were related to bad living conditions.

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<sup>24</sup> These figures refer to the age group 18-65.

**Table 7.3 More frequent diseases in Day Centers of Athens – Pireus, NGO Praxis (May – November 2012)**

Diseases	
Wounds and poisoning	178
Undefined	130
Complications in pregnancy, birth	2
Diseases of the Musculoskeletal System	162
Skin diseases	212
Diseases of the genitourinary system	28
Diseases of the digestive system	67
Infections of the respiratory system	138
Diseases of the Circulatory system	141
Diseases of the nervous system	81
Mental distress	33
Blood diseases	4
Endocrinological, nutritional, gastroenterological diseases	15
Infections and parasitic diseases	95
Neoplasms	8

Source: NGO Praxis, Report on the operation of the Day Centers in Athens and Pireus, May – December 2012

### 7.2.3 Homelessness: houselessness and rooflessness

The extent of houselessness (people living in shelters such as hostels, emergency shelters, reception centers) and rooflessness (sleeping rough) among migrants is difficult to establish. Homelessness is a relatively new phenomenon in Greece and was initially connected to the influx of immigrant populations in the late 80's that made homelessness visible (Arapoglou, 2004). A definition of the homeless was adopted only in 2012 and refers to *legally* resident individuals that do not have access or have precarious access to adequate owned, rented or conceded housing that fulfils the necessary technical requirements and includes basic electricity and water services.<sup>25</sup> Based on this definition, legal migrants are considered among the homeless population while undocumented migrants are totally excluded.

It is mostly as a result of the financial crisis, the breakdown of traditional support networks (i.e. the expanded protective family, the relaxation of solidarity bonds resulting in reduced tolerance towards weak family members) and the drastic fall of income that homelessness has become a matter of public concern. Data in this area (quantitative and qualitative) are scarce, fragmented and unreliable for providing an accurate mapping of the phenomenon.

The lack of official data on homelessness does not allow establishing differentiations among population groups or by gender, age and household composition. Research findings on the qualitative features of the homeless in the streets of Athens, Thessaloniki and Larisa in 2006 (sample of 200 individuals) (Klimaka, 2006) showed that 90,7% of the sample was literate, single (50,3%) and male (75%) with an average age of 47 years. 66% of the sample believed that it would overcome being homeless and 72% of the sample had been in contact with a shelter or programme for the homeless.

<sup>25</sup> Art. 29 of Law 4052/2012.

**Table 7.4 Qualitative features of the homeless in the streets of Athens, Thessaloniki and Larisa (206)**

Time without a home	more than 5 years - 23%; up to five years - 23,5%; for up to 2 years - 25,8%' up to one year - 19,1%; less than 6 months - 18,6%
Reasons for being homeless	low income and financial problems (50,3%); unemployment (46,4%), lack of support from the family (35,4%); divorce (16,6%); use of drugs or alcohol (13,3%); psychiatric problems (7,7%); immigration (2,8%).
Securing a place to sleep 31% reported problems in securing a place to sleep.	Main sleeping places: on the street or in another open public space (50,5%); in abandoned houses (31,9%), in houses of family or friends (26,9%), in a hostel or shelter (20,9%), in a hotel (20,3%), in a car or other vehicle (19,8%), in a hotel paid by someone else (9,9%), in a church (9,3%), in a hospital (8,2%), in an apartment (7,1%), in public areas open at night (5,5%), in prison or detention center (5,5%).
Finding food 23% of the sample reported facing a problem to find food on a daily basis	Eating habits: public meals (84,4%), food offered by others (34,5%), food bought in fast foods (33%), food found on the street or in the garbage (13,4%), meals in prison or institution (8,9%).
Washing and clothing	Finding a place to wash was be more a problem compared to clothing 22% (against 18%) reported that this was a daily problem, 27% (against 18%) that it was a common problem.

Source: Klimaka, 2006

Further research by the same NGO (Klimaka 2010) on the profile of the homeless during the financial crisis shows that the homeless are concentrated in urban centers (Athens, Thessaloniki) and can be divided into three main groups: a) the 'traditional' homeless, individuals who are homeless due to unemployment, low income, mental health problems or lack of supporting networks; b) the 'new-homeless' who fell into a state of homelessness due to unemployment, low income and incapacity of their network to support them and c) immigrants and asylum seekers in transitory phases as well as individuals in initial phases of immigration.

Migrants form part of all three groups of homeless. The first group includes individuals in lack of roof due to unemployment, low income, mental health problems, double diagnosis or lack of supporting networks. These individuals are Greek and foreign nationals with mental health problems that have been homeless for a long time. Migrants in this group originate mainly from countries of South East Europe and the former USSR (Poland, Romania, Bulgaria, Russia etc). The second group includes the 'new-homeless', that is individuals residing without a roof or in insecure living conditions due to unemployment, low income and incapacity of their network to support them. This group has a relatively high educational background, maintains links with its environment, does not present psychopathologies and has increased prospects of reintegration. In terms of composition, this group includes foreigners, individuals who became destitute because of unemployment, individuals who lost their property due to mortgages or debt, unemployed young people who do not live with their families, low paid workers that cannot afford a home (the generation of 500-700€) as well as individuals who became homeless shortly before retirement. The third group consists mainly of immigrants and asylum seekers in transitory stages and individuals in their initial phase of immigration in Greece. These individuals either live on the streets or in inappropriate conditions and originate mostly from Asian and African countries like Afghanistan, Pakistan, Iraq, Bangladesh, Sudan, Morocco etc) (Klimaka 2010).

More recent research (Klimaka 2012) in a sample of 214 homeless persons that included Greek citizens and long-term residents/migrants further confirmed financial problems, unemployment and lack of family support as the main causes of homelessness. However, 79,8% of the sample believed that his/her situation can be improved either without help (21,9%) or through the help of NGOs (22,9%), the state (12,4%), the family (10,5%), the church (8,6%), the community (10,5%) etc.

In the 90's approximately 15.000 homeless were considered to live in the country (Sapounakis, 1994), and well above 11.000 in the Athens area in the early 2000's (Ligdopoulou and Arapoglou 2002). Further, approximately 140.000 Greeks and 85.000 immigrants lived in poor conditions without any assistance (Arapoglou 2002). Sapounakis incorporated in 2005 existing data and estimates within the conceptual categories of homeless people (See table in Annex III of this chapter). Based on his assessment, the number of roofless individuals country-wide in 2005 (conceptual category A of the Ethos typology) counted 1,000 Greeks, 5,000 refugees and undocumented immigrants and an additional 1000 that were using low budget hotels for accommodation. With regard to the houseless (conceptual category B of the Ethos typology), 300 people were residing in temporary accommodation shelters and approximately 2.500 people in temporary housing, including shelters for the elderly and women (operational categories 3 and 4). With regard to immigrant accommodation (operational category 5), approximately 8,000 non-Greek citizens were estimated to rotate between refugee camps, street living and extremely marginal accommodation, over 500 political refugees resided in the accommodation camps and 1300 immigrants resided in nine reception centres and three camps. 200 repatriates were waiting to be accommodated through targeted programmes and around 200 members of specific groups (e.g. women refugees, juveniles, etc.) resided in specialised shelters. No data was available on ex-prisoners and offenders, (operational category 6, institutional release) while approximately 2500 people with mental health problems were housed at structures of the Psychargos (mental health) programme and another 400 in protected apartments (operational category 7: supported accommodation). No information was available with regard to insecure housing (conceptual category C). With regard to inadequate housing (operational category D), 0.20% of the total amount of dwellings in the country was considered to be inadequate, while approximately 1,000 people occupied deserted yards or dwellings. In 2001, around 50% of the total number of regular dwellings were considered unfit due to lack of central heating, kitchen and bathroom or shower. Overcrowding was a phenomenon observed mostly among migrants and concerned approximately 5,600 households with 6 or more members.

A more recent effort to map the homeless by the Ministry of Health and Social Solidarity in April 2009 estimated the number of homeless in Greece to 7.720 individuals. The mapping estimated the number of homeless in the street to 1.807 individuals (23,4% of the total number) and those that do not have a home to 974 (12,6% of the total). However, this estimate has been highly criticized for not including basic categories of the ETHOS typology. Still, official data on the extent of homelessness does not exist.

According to estimates from NGOs, undocumented migrants and refugees form a large percentage of the roofless and the houseless in Greece. However, no figures are available. The housing situation of immigrants, refugees and asylum applicants is particularly bad due to the lack of targeted housing policies and limited capacity of existing reception centers and hostels and the important deficiencies of the migration and asylum system (Amnesty International, 2008; ECRE, 2008; UNHCR, 2008; Human Rights Watch, 2008; Council of Europe Commissioner for Human Rights, 2009; European Committee for the Prevention of Torture, 2009; Human Rights Watch, 2009; UNHCR, 2009; Amnesty International, 2010). The reception capacity in Greece in February

2013 included 8 hostels for unaccompanied alien minors, 1 for unaccompanied girls, women and lone parent families, 2 for unaccompanied minors and lone-parent families, apartments, 3 for asylum seekers. The total capacity for asylum seekers and unaccompanied minors was 1006 beds, a figure well below the actual number of undocumented migrants present in the country. The reception conditions for asylum seekers were found to be unacceptable to the degree of constituting inhuman or degrading treatment and a violation of articles 3 and 13 of the European Convention of Human Rights (Judgement of the European Court of Human Rights *M.S.S. v. Belgium and Greece*).

Sapounakis (2009) identified the main accommodation patterns of migrants in Greece as follows: roofless immigrants live in the streets or centrally located public spaces in urban centers, especially in Athens and Thessaloniki and originate from Asian or African countries. They often have mental health problems, disability, low levels of education and the causes of rooflessness include extreme poverty, lack of income and difficulty in being employed. A (small) category of immigrants reside in temporary accommodation shelters and hostels or reception centers for immigrants, refugees and asylum seekers. However, these usually receive the most vulnerable (unaccompanied minors, lone parent families etc) leaving thousands without any solution. Immigrants from communities with a long presence in Greece (Filipinos, Albanians and Poles etc) temporarily live with family or friends. Forced cohabitation or residence in over-crowded conditions is a practice within Nigerians, and near East Asians. Afghans, Pakistanis and Africans rent apartments in groups of 20-30 and use them in shifts. Several groups of immigrants occupy abandoned dwellings or reside at their place of work, a practice common with women from house-workers from Bulgaria, Ukraine, Georgia and Philippines. Several immigrants live in inadequate conditions usually in the countryside where they work illegally and live in makeshift tents, stables or fishing boats. The financial crisis has deteriorated living conditions further leaving immigrants even more vulnerable and susceptible to exploitation.

Micro data from the two day centers operated by the NGO Praxis in Athens and Pireus (May-December 2012, sample of 1.791 individuals) shows that the majority of users of the services (57%) were third country nationals and particularly undocumented migrants (approximately 67%).<sup>26</sup>

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<sup>26</sup> The report refers to a sample of 17.983 visits by 1.794 individuals. 37% of visitors were Greek citizens, 6% were EU citizens and 57% third country nationals, out of which approximately 67% were undocumented migrants. The majority of visitors were male, single and unemployed and resided in the street or in abandoned buildings (54%). 1.689 children were recorded, 523 of which were accompanied by their parents or custodians.

**Table 7.5 Living conditions based on the Ethos typology of visitors of Day Centers of Athens – Pireus, NGO Praxis (May – November 2012)**

Conditions	Number
People who live on the street	954
Emergency accommodation	7
Homeless shelter	55
Women' shelter	2
Immigrant accommodation	25
Institutional release	6
Insecure housing	290
Threat of eviction	89
Threat of violence	2
Temporary structure	19
Unfit housing	215
Overcrowding	127
<b>Total</b>	<b>1791</b>

Source: NGO Praxis, Report on the operation of the Day Centers in Athens and Pireus, May – December 2012

Street work teams from the same NGO recorded 120 people living in the streets, 23 of which were Greek citizens. 64 abandoned buildings were identified where 1280 individuals resided. Only 7% of these people had visited a Day Center, the main reason being fear of losing their 'post' (30%), inability to move because of disability (11%) and psychological/psychiatric reasons (4%).

The lack of official mapping of the phenomenon of homelessness does not allow an accurate picture of the areas where homeless migrants are concentrated. Athens and other urban centers like Thessaloniki or Patras gather more than 50% of the country's total immigrant population and the homeless population (Sapounakis and Katapidi, 2011). Further, towns and cities situated at entry or exit points, at ports or land borders also have large concentration of undocumented migrants especially 'transit' migrants. Immigrants settle in inner city areas and on the edges of urban cities which are poor in infrastructure, while small units providing services are scattered across the city (Arapoglou, 2004).

The current financial crisis makes financial exclusion the main parameter of social exclusion. According to initial assessments the most vulnerable groups are children, old people, unmarried women, single parent families, low skilled workers, unemployed, inactive persons, people with disabilities, people living in rural areas and immigrants (Balourdos, 2011). These vulnerable groups are in theory more prone to homelessness. Children and especially immigrant children are a particular risk group given that immigrant families have been one of the first groups to be affected by the economic crisis and unemployment (Greek National Committee for UNICEF, 2012).<sup>27</sup>

There is no data to indicate the development of the incidence of homelessness among migrants. However, if we accept that homelessness among migrants grows along with the numbers of undocumented migrants in the country, then it is definitely on the increase.

To conclude, the lack of comprehensive data is one of the major problems in relation to homelessness and leaves limited space for evidence-based responses and planning. The need for a consistent and accurate mapping of the phenomenon of homelessness is the starting point

<sup>27</sup> Child poverty in Greece is 23% and minors living below the poverty line were estimated to 439.000 in 2010, while 200.000 children aged 17 years (10% of the total) originated from immigrant families.

for any consistent policy approach. However, the recent legislative definition that acknowledged the homeless as a vulnerable group is limited to the extent that it excludes those who are not legally present in the country.

### 7.3 Access to the social safety net

The present section focuses on (national) social housing and social assistance policies and schemes and examines the extent to which undocumented migrants can benefit from these policies and practices.

#### 7.3.1 Housing

Greece has traditionally been a country with very high rates of owned property in Europe. Over 80% of the population resides in owned houses or apartments when the EU average is around 70 or lower (Gkikas Hardouvelis, 2009). Contrary to Greeks, immigrants rent property: 68% of immigrants rent houses (significant differences exist between different nationalities) compared to 12% of Greeks. According to data from the 2001 Census, 97% of (legal) immigrants lived in a normal household, 0,5% lived in a collective household and 1,5% in spaces that were not houses (mostly Pakistanis and Albanian males). In terms of living space, immigrant groups (Albanians, Bulgarians, Polish, Romanians, Russians, Ukrainians, Georgians, Pakistanis and Turkish) had personal space of less than 10m<sup>2</sup> per person (for single household accommodation), 1% lived without electricity, (mostly Albanians in Athens, Attica and Piraeus) and 16% had no heating (Baldwin-Edwards, 2008).

Article 21 par. 4 of the Hellenic Constitution consolidates a right to housing for the homeless or for those inadequately sheltered.<sup>28</sup> However, a clear housing policy or structures for social housing has not been a concern of post war governments (Symeonidou, 1996) mostly because of the high levels of house ownership and the role of the family and social networks in providing housing. Instead of a coherent housing policy, Greece has a patchwork of fragmented initiatives that include: a) tax exemptions for the acquisition of a 'first' house, b) interest rate subsidies for the first house and tax exemptions for the payment of interests c) emergency interventions (floods or earthquakes) or schemes in favour of groups like co-ethnics or the Roma d) housing programmes from the Workers Housing Organisation for lower income workers e) town planning and land policies that ensure favourable building conditions, including a notorious tolerance for 'illegal' buildings and their subsequent legalisation under favourable conditions (Emmanouil, 2006). This complex combination of measures form a 'de facto' housing policy which is however restricted in scope and selective in coverage. In fact, official responses in Greece are considered 'effective in concealing homelessness and in silencing a series of exclusions which inhibit access of homeless people to secure housing, employment and good quality of care' (Arapoglou, 2004).

The only institution offering housing schemes is the Workers Housing Organisation (OEK) established in 1954<sup>29</sup> under the supervision of the Ministry of Employment. The purpose of OEK was to provide housing in autonomous constructions or apartments to workers and private employees and employees of public law entities provided they did not own (themselves or their families) a house.<sup>30</sup> The housing schemes operated by OEK took one of the following forms: a) allocation of newly built housing at cost b) grants for reparation or renovation of existing housing

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<sup>28</sup> Article 21 par. 4 reads: The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.

<sup>29</sup> Legislative Decree 2963 of 20/24-8-54.

<sup>30</sup> Article 2 of LD 2963 of 20/24-8-54.

and completion of unfinished housing c) grants for reconstruction of housing in areas belonging to a worker or employee or to several of them.<sup>31</sup> However, OEK was not set up to exercise social policy but instead to offer coverage to its beneficiaries (Emmanouil, 2006). Moreover, the organisation was abolished as of 14/2/2012 in the context of structural reforms of the public sector<sup>32</sup> and its competencies were transferred to the Manpower Organisation that can only sustain existing schemes.<sup>33</sup> According to media reports, the programmes to be continued include rent subsidies with significant changes in the eligibility criteria and more stringent means tests.

The lack of a formal housing policy does not leave much room for addressing the needs of specific groups or vulnerable categories of individuals. In this context, few measures related to housing for specific groups include the network of accommodation and housing structures in the community available to deinstitutionalized people with disabilities and mental health problems established in the context of the National Mental Health Reform Programme Psychargos, in operation since 2000. This scheme exclusively addresses previously institutionalized individuals and provides residence in protected apartments, hostels etc (Mousmouti 2012). Few hostels and protected apartments also exist for people with disabilities, the elderly and women victims of violence.

The horizontal and vertical division of responsibilities with regard to housing issues is complex and fragmented. At governmental level, housing issues fall within the mandate of the Ministry of Environment, Energy and Climate Change; social issues are the mandate of the Ministry of Health and Social Solidarity; the rental housing market is supervised by the Ministry of Development, Competitiveness, Infrastructure, Transports and Networks, while migration flows are the responsibility of the Ministries of Public Order and Interior (Sapounakis, 2005). Local governments have the competence to develop services in favor of vulnerable groups, people in need and the homeless but often lack funds. The initiatives that local authorities develop present a great variety and might include the operation of shelters, meals and clothing, social services etc.

With regard to the financial structure of social housing the Workers Housing Organisation (OEK) is financed exclusively from the contributions of employers and employees without any participation from the national budget. In specific, OEK is financed through contributions by workers and employees of the private sector (1% on salaries) and by their employers (0.75% of their wage bill).<sup>34</sup> Activities of local authorities usually rely on subsidies from the central government or line ministries both for schemes, such as the non contributory housing allowance scheme for old people, or external financing (programmes) for developing additional interventions.

Housing law is inexistent in Greece. However, responses to the incidents of homelessness led to the development of emergency accommodation services that included a limited number of statutory hostels, services run by local authorities, hotels and guest houses by the voluntary sector, housing provision for refugees and repatriates and deinstitutionalisation programmes (Sapounakis, 1999).

The financial crisis places extreme pressure on low income households. The dramatic fall in living standards and the increase in unemployment has left several households unable to pay mortgages, debts or even rent. The media report an impressive increase in the number of

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<sup>31</sup> Article 13 of LD 2963 of 20/24-8-54.

<sup>32</sup> Articles 1§6 and 2§1 of law 4046/12.

<sup>33</sup> Articles 2 and 3 of the Act of the Council of Ministers 7/2012.

<sup>34</sup> Article 7 of LD 2963 of 20/24-8-54.



evictions: more than 4.000 evictions were initiated in the first month of 2011, when a total of 8.500 evictions took place in 2010. During the first half of 2011, the Court of First Instance of Athens issued more than 16.000 orders for payment compared to 23.000 issued in 2010 and 8.000 orders issued in 2008 (Giannetou, 2012).

Measures to assist people unable to pay outstanding debts include temporary suspension of auctions for claims lower than 200.000€<sup>35</sup> and a special procedure allowing over-indebted households to achieve a sustainable settlement of debts with banks, private individuals, companies, public utilities.<sup>36</sup> This aims among others also to protect the (first) residence of the household. Immovable property is protected, if it is the main or the only residence of the household, if it falls within specific tax limits and if 85% of its value can be paid off within a period of 20 years. Consumer protection organisations offer free legal aid to over-indebted consumers and psychological support to people that lose their homes.<sup>37</sup> According to media reports a new law is being prepared, providing for a procedure for settling and making arrangements for mortgages for the first residence.<sup>38</sup>

Undocumented migrants do not fall within the protective scope of the above measures and cannot benefit from them.

### **7.3.2 Social assistance (*lato sensu*)**

The Greek model of social welfare is classified in the Southern European 'cluster' of welfare states characterised by the predominance of social insurance, the selective and marginal role of social assistance and the prominent role of informal social networks and the family. Social assistance is a particularly neglected part of the welfare state (Matsaganis, 2000). Social assistance in Greece consists of a categorical schemes addressing specific population groups defined by means of biological and social criteria: people with disabilities, unprotected minors, uninsured mothers, uninsured old people, repatriated Greeks, victims of emergencies (Ministry of Health and Social Welfare, 2008). Despite the high levels of social spending, transfers have weak results in poverty reduction, which, combined with underdeveloped social services and the structure and administration of benefits lead to 'eligibility overlaps and coverage gaps' (Matsaganis, 2000).

The Greek social assistance system does not include a minimum income scheme. Despite the relevant discussions, such a reform never materialised until recently when an (almost) universal non-contributory basic pension was introduced and will be operational as of 1/1/2015 (Law 3863/2010). The basic pension will be topped up by second pillar contributory pensions. Access conditions are related to meeting the contributory conditions for a proportional pension or passing an income and residence test (personal income below 5.400€ and family income below 10.800€ in 2010 prices) (Matsaganis, 2012).

Non-contributory social assistance schemes/programmes target people with disabilities through separate schemes (blind, deaf, intellectual disabilities, Aids etc), uninsured old people, unprotected children, uninsured mothers, repatriated Greeks and people in emergency situations (Ministry of Health and Social Welfare, 2008). Benefits include also unemployment assistance (a contributory scheme also exists). The categorical rationale of these schemes leaves significant 'gaps' in the social safety net and several needy individuals uncovered (Matsaganis, Ferrera, Capucha and Moreno, 2003).

<sup>35</sup> Law 3814/2010 and Law 4128/2013.

<sup>36</sup> Law 3869/2010. The procedure initially attempts an extra judicial settlement and in case of failure, settlement before the court.

<sup>37</sup> <http://www.ekpizo.gr/yperxrewsh/>.

<sup>38</sup> [http://www.kathimerini.gr/4dcgi/w\\_articles\\_kathremote\\_1\\_25/05/2013\\_500756](http://www.kathimerini.gr/4dcgi/w_articles_kathremote_1_25/05/2013_500756).

There are few separate policies or schemes targeting homeless and destitute people who belong to special categories of vulnerable people. Unaccompanied children are a particularly vulnerable group whose number raises to 6,000 per year and given that they do not always resort to asylum applications, this fact places them in particular risks (Greek National Committee for UNICEF, 2012). For this category of migrant special reception centers are available in different parts of the country. In 2013 8 hostels for unaccompanied alien minors, 1 for unaccompanied girls, women and lone parent families, 2 for unaccompanied minors and lone-parent families, 3 for asylum seekers existed. The total capacity for asylum seekers and unaccompanied minors was 1006 beds. Favourable conditions exist for migrant children in general, who, independently of residence status, have unconditional access to health care and education.<sup>39</sup>

Another vulnerable category are women victims of violence. In this case, the General Secretariat for Equality has set up a network of 61 structures across the country to address and prevent violence against women. The network includes a help line (SOS 15900), 39 counselling Centers (operated by the General Secretariat in cooperation with the municipalities) and 21 temporary accommodation hostels.

Social assistance programmes are designed centrally and executed locally. The Ministry of Health and Social Solidarity is in charge of the 'National System of Social Welfare' and the competent body to design policy in this field. Within the Ministry the policy areas of health and social welfare coexist in a common 'institutional package' but fail to form a coherent policy, resulting in poorly coordinated schemes that leave significant gaps in protection (Institute of Local Government 2006). The National Centre for Social Solidarity (E.K.K.A.) coordinates the network of social services that offer care to individuals, families, groups experiencing crisis situations or in need of emergency aid.<sup>40</sup>

The statutory role of local authorities includes the management of *all* local affairs with the aim to protect, develop and continuously improve the quality of life of the local society.<sup>41</sup> Local competencies include a) policies to support children and old people b) vulnerable groups, the provision of health and mental health services c) actions for housing of the homeless and financially weak citizens d) programmes and initiatives for the prevention of criminality e) programmes for the integration of Roma, repatriates, immigrants and refugees f) promotion of volunteering and social welfare. Following the recent local government reform in 2010 their competencies have been further broadened to allow for providing financial support, renting property, social housing, free concession of houses, housing allowance etc.<sup>42</sup>

However, despite the statutory provisions, the management of social assistance remains highly centralised and in practice the role of local authorities is restricted to 'managing' and 'paying out' the benefits designed centrally. However, several local authorities develop their own schemes and initiatives, if they have the capacity and the possibility to raise financing.

The financing of social assistance depends on government subsidies. The Constitution grants to local authorities powers to set and collect local revenues that may take the form of charges linked

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<sup>39</sup> Art. 84 of Law 3386/2005.

<sup>40</sup> Art. 6 of law 3106/2003; Presidential Decree 22/2006 as amended by law 3895/2010.

<sup>41</sup> Their competencies include the areas of development, environment, quality of life, employment, social protection and solidarity, education, culture and sports, civil protection and agricultural development.

<sup>42</sup> Art. 94 par. 3b of law 3852/2010 and article 202 par. 2 of the Municipal Code.

to services and taxes.<sup>43</sup> However, in reality, local authorities have little autonomy to raise taxes (Fortsakis and Savvaidou 2011) and despite the existence of the statutory provision, they depend almost entirely on central administration and state subsidies for their operation. Their main source of income are state subsidies from the Central Independent Funds and income from borrowing. The CIFs are allocated by Joint Decision of the Minister for the Interior and the Minister for Finance.<sup>44</sup>

The increased competencies of local authorities in social welfare has not been followed by respective increases in budgetary transfers. Funds in the areas of health, social welfare and the provision of social services originate from the Central Independent Funds and municipalities have the competence to select the beneficiaries and pay out the benefits. Municipalities have the additional possibility to raise funds through the National Strategic Reference Framework 2007-2013 or other EU-funded programmes.

Following this brief overview, one can safely conclude that undocumented migrants are invisible for the Greek social assistance system. They are excluded from all existing categorical benefits and only have emergency access to health care. An exception exists for children up to the age of 14 that can have access to healthcare and education independently of their residence status. De facto, the only viable sources of assistance for undocumented migrants are the services provided by the non-governmental sector.

## **7.4 Legal and social causes of destitution and homelessness**

### **7.4.1 Legal barriers**

This section focuses on the legal barriers that undocumented migrants face in accessing social assistance and housing schemes.

#### **A. Qualifying conditions for migrants for social assistance and housing schemes**

A definition of the homeless exists since 2012<sup>45</sup> and refers to all individuals *legally* resident in the country that do not have access or have precarious access to adequate owned, rented or conceded housing that fulfils the necessary technical requirements and includes basic electricity and water services. The homeless include individuals who live on the street, in hostels, those who are temporarily hosted in institutions or other closed establishments as well as those residing in inappropriate accommodation. The content, the extent and the duration of entitlements to social protection as well as the procedure and the institutions for registering the homeless are to be determined by ministerial decision that remains to be issued. Although the specific schemes for the homeless are still not determined, this legislative definition excludes undocumented migrants and links qualifying conditions vis a vis foreigners to their residence status. Migrants who reside legally in the country enjoy the same rights with Greek citizens vis a vis social insurance and healthcare, while undocumented migrants are in principle excluded by all services provided by the state with the exception of emergency health care.

#### *People in need*

The only social assistance scheme that addresses need in a more general sense is that on

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<sup>43</sup> Article 102 par. 5.

<sup>44</sup> Article 259 of 3852/2010.

<sup>45</sup> Art. 29 of Law 4052/2012.

'measures of social protection for the financially weak'.<sup>46</sup> The scheme offers protection to Greek or foreign citizens (including co-ethnics) permanently (and legally) residing in Greece who are poor or in a condition of limited social, physical or mental capacity (disability, old age etc) or temporarily or permanently in a state of need due to illness, natural disasters or other unforeseen events. The protection offered is conditional upon the fact that need is not covered by social insurance and proven incapacity to address it by own means or through the family. These vague provisions have been used as the basis for providing two distinct types of assistance: financial assistance to victims of natural disasters<sup>47</sup> and access to free medical and health care for uninsured individuals who are in financial need.<sup>48</sup>

#### *Financial assistance to victims of natural disasters*

This type of assistance refers to relief in cases of emergencies and natural disasters such as floods, earthquakes etc.

#### *Health care for uninsured individuals in financial need*

This scheme offers to beneficiaries access to free hospitalisation, medical examinations, free medicines and patient transfer for a period of 1-3 years. The scheme addresses a diverse group of beneficiaries that includes among others people of Greek origin with permanent and legal residence, foreigners who reside legally in the country, children in social protection units, uninsured pregnant women and mothers and their children, co-ethnics and foreigners with a residence permit for humanitarian reasons (health). Qualifying for the scheme requires Greek citizenship, proof of Greek origin (for co-ethnics) or permanent and legal residence in the country. Beneficiaries need to prove lack of insurance, a family income of less than 5.000 Euros and no professional activity that would offer access to insurance. Specific groups of foreigners (refugees, people who have applied for refugee status, holders of permit for humanitarian reasons, people in reflection period, victims of specific crimes) qualify for free medical and hospital treatment directly with the proof of their status (card or statement). Citizens of the member states of the European Social Charter and foreign spouses of Greeks or co-ethnics or members of the EU and their children are granted a certificate of social protection if there is a proven health problem.

#### *Housing schemes*

The contributory housing scheme operated by the Workers Organization addresses individuals, independently of nationality, who work and fulfill the qualifying conditions. Programmes are open to foreign workers who live and work in Greece. Rent subsidies are open to workers and employees that live and work in Greece, are insured, pay contributions to OEK, have an annual income of less than 12.000€ (increased by 2.000€ for every child), rent housing, do not own property and have not previously received support from OEK. Loan subsidies target employees resident in Greece who have more than three children or are pensioners. The housing lottery programme concerns the disposal of houses built by OEK through lottery in which workers with very low incomes can participate. The conditions are determined whenever housing was to be made available. In terms of procedure, rent and loan subsidies programmes require proof of family situation, residence permit of all family members, proof of identity, tax statements, social insurance certificates and proof of contributions to OEK. Thus, the only existing housing scheme does not require a nationality test but requires proof of legal residence, work and insurance.

#### *Housing allowance*

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<sup>46</sup> Legislative Decree 57/7.7.1973 (OG/149 A/19.7.1973).

<sup>47</sup> Ministerial Decision 7727/3.8.73.

<sup>48</sup> Ministerial Decision Y4A/48566/2005 as amended by Ministerial Decision 139491/2006.

Non-contributory housing allowance takes the form of a rental fee, paid to uninsured and financially weak elderly people over 65 years who live alone or in a couple and do not own a house. The Housing Allowance amounts to 362€ and is implemented by the Regions. To qualify for the non-contributory housing allowance scheme an individual needs to be uninsured, not own a house, not have income and be over 65 years of age. The allowance is paid directly to the owner of the property. The required documents include an application, proof of family situation, a solemn statement that the individual is uninsured, the rent agreement, solemn statement from the owner of the property that he accepts to receive the allowance and proof of identity.

#### *Access to health care*

Greece has a National Health System which is tax and insurance based. Primary health services are available at local level, while secondary health services are covered either by insurance funds or by the local authorities for holders of a booklet of financial need. Hospital and medical care includes outpatient treatment in hospitals, health centers and regional medical centers and paraclinic, medical and laboratory examinations, medicines prescribed by a NHS doctor and hospitalisation in public hospitals. In principle, access to the National Health Service is linked to the legal status of migrants. Migrants who reside legally in the country enjoy equal rights to insurance and social protection with Greek citizens. Refugees, asylum applicants, beneficiaries of subsidiary protection and people protected for humanitarian reasons have access to health care through their identification. Undocumented migrants can only have access to emergency care against a fee of 5€ and only until the stabilisation of their health.<sup>49</sup> Public services are obliged not to offer services to undocumented migrants with the exception of emergencies and children for whom access to health does not depend on residence status and emergency.<sup>50</sup>

For undocumented pregnant women ante- and post-natal care is not covered, unless they are minors. However, the possibility exists to suspend the removal of migrant women in an irregular situation during pregnancy but this does not lead automatically to access to cost-free maternal care. Undocumented migrant children up to the age of 14 are entitled to unconditional access to healthcare under the same conditions as Greek children irrespective of residence status. People with chronic diseases can receive treatment only if the chronic condition results in an acute or life-threatening situation. However, at public first aid and municipal clinics migrants in an irregular situation may also consult with doctors in non-emergency situations and receive follow-up treatment for diabetes. Specific services for migrants have been set up, usually in collaboration with NGOs (European Union Agency for Fundamental Rights, 2011). Migrants with HIV or other infectious diseases, who cannot receive effective treatment in their country, can benefit from free hospital and medical care and for the duration of treatment, they are entitled to receive a temporary residence and work permit.<sup>51</sup>

#### *Access to other services*

Responses to homelessness led to the development of emergency accommodation services that include statutory hostels, services run by local authorities, hotels and guest houses by the voluntary sector, housing provision for refugees and repatriates and deinstitutionalisation programmes (Sapounakis, 1999). Statutory and locally run accommodation facilities are not open to undocumented migrants. Services offered by the voluntary sector are, in most cases, available for undocumented migrants and do not require proof of legal residence. However, since these services might be funded by different sources (European programmes, grants from line ministries, private donors and contributions) it is not rare that funding sources often impose restrictions on the beneficiaries of the services or on the qualifying conditions.

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<sup>49</sup> Art. 84 Law 3386/2005 and Circular of the MoH on the health services to aliens.

<sup>50</sup> Circular of the Ministry of Health for the provision of health services to aliens 2012.

<sup>51</sup> Art. 11 of law 2955/2001.

### *Unemployment benefits*

Unemployment benefits include contributory benefits and rudimentary non- contributory benefits. The regular unemployment benefit and the benefit for long term unemployed are contributory and address employees covered by unemployment insurance<sup>52</sup>, while seasonal benefits address employees from specific professions.<sup>53</sup> Non-contributory assistance addresses people who remain unemployed after the end of the regular unemployment benefit. The scheme is means-tested (family income could not exceed 9.977,99 € for 2013.<sup>54</sup> A benefit exists for unemployed young people aged 20-29 who remain in the unemployment registers for more than a year.<sup>55</sup> Undocumented migrants cannot qualify for either of these benefits.

### *Non-contributory pension for uninsured old persons*

The Organisation of Agricultural Insurance allocates a pension to Greek citizens and individuals of Greek origin who reside permanently in Greece and have completed the age of 68, do not receive pension of other assistance and have a low annual income.<sup>56</sup> Undocumented migrants cannot qualify.

### *Disability benefits*

Disability benefits include different sub- schemes that cover people with severe disabilities (more than 67%), the blind, the deaf, people with cerebral paralysis, with thalassemia, with HIV-AIDS, lepers, paraplegic-quadruplegic, intellectual disability and kidney patients. Qualifying for disability benefits depends on the residence status of the individual (benefits are paid out by local authorities) and on meeting the requirements set out in the law with regard to disability. The degree of disability is certified by specially designated bodies, while requirements include proof of family situation, proof of identity and residence permit (for immigrants). Most of these benefits are not income-tested. Undocumented immigrants cannot qualify.

### *Child benefits for families with three or more children*

Child benefits include a third child benefit paid to the mother, benefit for more than 4 children, a lump sum for the mother that gives birth to a third child and every child after the third, a benefit for families with three children and a pension to mother with many children. Legal residents can qualify for child benefits provided they (and their children) reside permanently and continuously in Greece for at least 10 years.<sup>57</sup> Formal requirements include proof of identity and residence permit, proof of family situation and proof of the permanent 10-year residence.

Undocumented individuals do not qualify for any assistance neither regular payments nor emergency care.

## **B. Access to public funds and immigration control**

Residence status does not depend on a condition of “no recourse to public funds” but instead on the proof of availability of resources from the applicant. More than 20 different residence permits exist. The general qualifying conditions require a valid passport or travel document, proof that the applicant does not constitute a danger for public order, security and public health, availability of

<sup>52</sup> Art. 27 of law 3016/2002, Common Ministerial Decisions 31092/2003, 31217/2003, 14080/513/2012.

<sup>53</sup> Art. 22 and 37 of laws 1836/89, 2081/92, 2224/94, 2434/96, 2556/97, Ministerial Decisions 30659/31-3-89, 30962/27-4-89, 31353/7-6-89, 32021/6-10-89, 33142/19-2-98, DIADP/A/12604/4-7-03, Common Ministerial Decision 65646/1026/2-10-08, law 3762/09.

<sup>54</sup> Art. 22 par. 6 of law 1836/89, Ministerial Decisions 30659/31-3-1989, 33988/4-12-1991.

<sup>55</sup> Art. 2 of law 1545/85, 31658/85 Ministerial Decisions 33967/91, 32023/93.

<sup>56</sup> Law 1296/1982 as amended by laws 1422/1984, 1745/1987 and 2556/1997.

<sup>57</sup> Law 3454/2006, Law 3631/2008 art. 6 as amended by Law 3918/2011 art. 42 & 43.

sickness insurance covering all the risks covered for the native population and the availability of sufficient resources to return to the country of origin<sup>58</sup> For each of the different residence permits further conditions apply and these usually require the applicant to prove that he/she has the necessary financial resources to support his/her residence or activity. For example, acquiring a residence permit for the exercise of an independent activity or for investment purposes requires proof of availability of at least 60.000€ deposited in an account of the applicant and their subsequent transfer to a local bank.<sup>59</sup>

### **C. Relation with criminal law**

Irregular entry and stay in Greek territory is an offence. A third country national that enters illegally is punished with imprisonment (minimum of three months) and a fine (a minimum of 1.500€). If the person attempting to illegally exit the country is wanted by the authorities, the imprisonment and the fine are doubled.<sup>60</sup> Begging and promotion to begging or vagrancy (individuals who promote or do not prevent persons in their custody or dependent persons from begging or vagrancy) are punished with imprisonment and a fine.<sup>61</sup>

Helping and/or assisting undocumented immigrants is prohibited. A number of detailed provisions explicitly set out the obligations of civil servants, employers and individuals with regard to undocumented migrants. Public services, public sector legal entities, local authorities, public utility organizations and social insurance organizations are obliged not to offer services to third country nationals who have no passport or travel document, visa or residence permit and cannot prove their legal entry and residence in the country. An exception exists for hospitals, infirmaries and clinics in cases of emergency treatment or in cases of children.<sup>62</sup> Civil servants who do not comply with this obligation face disciplinary proceedings and are punished according to the provisions of the Penal Code for breach of duty.

Employers are not allowed to recruit and offer work to third country nationals without a residence or work permit or no proof of having applied for one. Employers who employ third country nationals are obliged to inform the Service of Aliens and Immigration of the Regions and if found in breach of these provisions they might face, besides other sanctions, an administrative fine of 3.000-15.000€ for every third country national in their employment. Those who employ undocumented third country nationals are punished with imprisonment (at least three months and six months in case of relapse) and the General Secretary of the Region may close down the enterprise or store for a period of 1-6 months (12 months in cases of relapse). In case of a third conviction, the operation is suspended and the individual cannot get a new license for five years. Sanctions are higher if these offences aim to promote third country nationals to prostitution (imprisonment of two years and fine of at least 6.000€), if victims are minors (imprisonment of 10 years and a of 10-50.000€), if they involve individuals younger than the age of 15, the use of fraud, close relatives or persons responsible for the custody of the minor, civil servants etc.<sup>63</sup>

Imprisonment is imposed to the third country nationals who offer work or services without a residence permit.<sup>64</sup> However, illegally employed individuals can, despite the provisions of art. 84 par. 1 of law 3386/2005, denounce their employers and submit complaints to labour centers. Assistance provided for the submission of a complaint does not constitute an offence.<sup>65</sup>

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<sup>58</sup> Art. 10 Law 3386/2010.

<sup>59</sup> Art. 24 law 33986/2005.

<sup>60</sup> Art. 81 of law 3386/2005.

<sup>61</sup> Art. 407 and 409 of the Penal Code.

<sup>62</sup> Art. 84 law 3386/2005.

<sup>63</sup> Art. 86 Law 3386/2005 on the entry and residence of third country nationals.

<sup>64</sup> Art.86 Law 3386/2005.

<sup>65</sup> Art. 83 Law 4052/2012.

For private citizens and employees it is prohibited to rent property to undocumented third country nationals without a visa or residence permit. Hotel and resort directors are obliged to inform the competent services on the arrival and departure of third country nationals. Non-compliance, besides other sanctions, leads to administrative fines (1.500-3.000€).<sup>66</sup>

Individuals who facilitate entry without the necessary controls face imprisonment up to 10 years and a fine of at least 20.000€. If the act takes place for profit-making purposes or by profession or by more than two persons imprisonment is increased to 10 years and the fine to 50.000€. Equally, sanctions and fines are imposed to individuals who facilitate illegal entry of third country nationals or hinder police investigations, those who possess or use a valid travel document belonging to another person.<sup>67</sup> Sanctions are imposed also to travel agencies or immigration agencies that request travel documents based on fraudulent data. Additional sanctions and penalties exist for carriers, sea captains, airline and shipping companies that carry third country nationals who do not have the right to enter Greek territory.<sup>68</sup>

The degree of active enforcement of these offences by national authorities varies. In the first place, it should be noted that undocumented migrants tend to avoid any contact with the authorities, even in cases when this has adverse impacts e.g. on their health. When it comes to private individuals, and taking into account the fact that the informal economy in Greece often accommodates and exploits undocumented migrants, these prohibitions are largely ignored (Re-Integration Centre for Migrant Workers, 2011).

A notable intensification of enforcement efforts is observed in the area of public order and security. The police launched a major operation entitled 'Xenios Zeus' in the summer of 2012 targeting areas with a high concentration of undocumented immigrants in Athens, other cities or areas or 'traditional' entry points. According to the initial ministerial declarations, the operation aimed, among others, to protect migrants who live in inhuman conditions and have to resort to illegal acts in order to survive (Minister of Citizen Protection, 2012). According to the latest police reports, 5.334 aliens have been arrested because they did not fulfil the legal residence requirements (Hellenic Police, May 2013). Operations are on-going.

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<sup>66</sup> Art. 87 Law 3386/2005.

<sup>67</sup> Art. 87. par. 6 and 7 Law 3386/2005.

<sup>68</sup> Art. 88 Law 3386/2005.



In the area of employment, the competent body is the Labour Inspectorate (SEPE).<sup>69</sup> SEPE is responsible for the enforcement of labour legislation. It operates a phone line (15512) for anonymous complaints on abuses of labour legislation including undeclared labour, illegal employment and illegal employment of third country nationals. Despite the fact that informal labour in the country thrives (according to Eurofound (2013) the size of the undeclared economy in 2012 was estimated to be 24% of GDP), results in this area are limited. The 2011 annual report of SEPE mentions no inspections and controls on illegal employment of third country nationals, while only 8 relevant complaints were reported (0,2% of the total number). However, the data from regular inspections conducted by SEPE indicates that 39,49% of uninsured workers were foreigners. The fact that recurrent incidents of large groups of undocumented migrants who work illegally in agriculture, live in makeshift dwellings, receive low wages and are exploited repeatedly hit the light of publicity, more recently in the strawberry fields in Nea Manolada (Amnesty International 2013), no official action is taken. It is therefore reasonable to conclude that enforcement is selective and does not always touch key areas that affect undocumented migrants.

The criminalization of any type of contact with homeless immigrants is one of the factors that contribute to the marginalization of this group. Given that reception facilities that could offer decent conditions until they are repatriated or their condition is otherwise solved are well below need, the lack of any possibility to legally reside, work, earn income and benefit from basic services leaves this group not only in the verge of destitution but subject to extreme forms of exploitation.

#### **D. The right to social assistance and housing**

The right to social assistance and the right to housing are consolidated in the Greek Constitution. Article 21 consolidates the obligation of the state to protect the family, marriage, motherhood and childhood, to care for families with many children, disabled war and peace-time veterans, war victims, widows and orphans and persons suffering from incurable bodily or mental ailments, to adopt special measures for the protection of youth, old age, disability and the relief of the needy, special care for the homeless or those inadequately sheltered and specifically for people with disabilities. These provisions are a constitutional order to the legislator and an institutional guarantee without however consolidating directly justifiable rights (Contiades 2004). Individuals cannot claim resources by invoking the constitutional provisions directly. However, where a specific benefit is consolidated in legislation, beneficiaries can invoke it through legal proceedings.

There are no landmark cases on the right to housing.

Discrimination in access to social assistance and housing is prohibited by existing legislation. Thus, on the one hand, the legal framework ensures that legally residing third country nationals enjoy the same rights with Greek citizens with regard to social insurance and health, while on the other hand, it prohibits any (direct or indirect) discrimination on the grounds of race or ethnic origin in the public and the private sector in, among other areas, social protection including social security and healthcare, social advantages, education, access to and supply of goods and services available including housing.<sup>70</sup> The legal remedies offered differ by area of law. Discrimination in the context of administrative action offers to the individual recourse to administrative remedies.<sup>71</sup> Penal sanctions are imposed to discriminators in the provision of goods

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<sup>69</sup> Law 2639/1998.

<sup>70</sup> Law 3304/2005.

<sup>71</sup> Art. 24 – 27 of law 2690/1999.

or services to the public and administrative sanctions are imposed to employers who discriminate in employment. Extra-judicially, the law establishes three distinct bodies that can be addressed by individuals who are victims of discrimination: the Ombudsman for discrimination in public services, a committee at the Ministry of Justice for discrimination by civil or legal persons and the Labour Inspectorate for discrimination in employment. Legal persons with the aim to ensure the respect of equal treatment can represent individuals before the courts or administrative authorities provided the individual has given its consent through notarised or private document with a certification of the authenticity of signature.

## **E. Access to Justice**

Legal aid is relatively undeveloped in Greece. Law 3226/2004 on Legal Aid offers free legal aid to low income citizens of EU member states and third country nationals or stateless persons provided they have legal or habitual residence in the EU. The low income threshold refers to annual family income lower than the 2/3 of the lowest individual income based on National General Collective Labour Agreement. Legal aid is provided to victims of crimes of slavery or human trafficking, sexual tourism, abduction of a minor, abuse of minors, child pornography, trafficking, illegal residence or transportation of third country nationals, victims of rape and pimping, among others.<sup>72</sup> Accessing legal aid is linked to legal residence. Undocumented migrants can benefit from free legal aid services offered by NGOs or reception centers or day centers.

There is no statutory obligation to grant social assistance or shelter to undocumented immigrants and therefore it could not be challenged through the legal system. On the other hand, legally resident immigrants who fall under the protective scope of existing legislation and qualify for specific schemes can use all existing legal remedies to challenge a refusal to grant them social assistance or other benefits.

Incidents of xenophobia, discrimination and police brutality have unfortunately become an everyday reality in Greece. Combined with the rise of xenophobic parties, openly racist stances in society and the lack of police accountability they create an explosive environment. The media consistently report incidents of racist violence targeting aliens. In certain areas of Athens, racist attacks and beatings are a daily reality motivated by far-right groups that operate in a state of anomy in certain areas (UNHCR, 2011; Amnesty International, 2012). NGO and media reports record also instances of police brutality against undocumented migrants but also tourists (Human Rights Watch, 2012).<sup>73</sup> Effective legal remedies against discrimination, xenophobia or police brutality are in fact limited. Complaints against discrimination on the grounds of race or ethnic origin in the public and private sector can be filed before the equality bodies. Legislation penalizing incitement to racial hatred exists for several decades but until now nobody has ever been condemned for a crime with racist motives and violent attacks against aliens in their majority remain undetected (and unpunished). Victims, especially if they are undocumented migrants, abstain from reporting abuses or attacks out of fear of being arrested or further abuse (UNHCR, 2011, RAXEN, 2010).

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<sup>72</sup> Art. 1 Law 3226/2004.

<sup>73</sup> See selected media reports at: <http://www.bbc.co.uk/news/magazine-20958353>; <http://news.bbc.co.uk/2/hi/europe/7445665.stm>; [http://www.huffingtonpost.co.uk/fragkiska-megaloudi/growing-police-brutality-in-greece\\_b\\_2636529.html](http://www.huffingtonpost.co.uk/fragkiska-megaloudi/growing-police-brutality-in-greece_b_2636529.html); <http://www.washingtonpost.com/blogs/worldviews/wp/2013/01/10/greek-police-beat-up-another-illegal-immigrant-whos-actually-a-tourist/>

The Greek National Commission for Human Rights, the UN High Commissioner for Refugees and 23 NGOs established the Racist Violence Recording Network which aims to record racially motivated incidents and develop proposals to prevent such crimes, in the absence of an official national mechanism. According to data from the second report of the Network in 2012 (Racist Violence Recording Network 2012), 15 out of 80 recorded racist attacks included incidents where the police used force during identity checks and ill-treatment at detention (PICUM, 2012). The Hellenic Police also set up a network of 70 specialized services against Racial Violence and a special phone line (11414) for anonymous reporting of incidents of racist violence. The services can intervene to investigate or prosecute racist, xenophobic or hate crimes, collect data, cooperate with other services, supervise areas with an increased risk of racist attacks, maintain a registry of racist incidents, inform victims on their rights, inform the prosecutor on cases of racism violence and report on the cases handled. However, NGOs and immigrants communities have been critical of the effectiveness in these initiatives provided that immigrants would consistently avoid reporting any incidents to the police. It is no surprise that only 8 incidents have been reported. The rise of incidents of racist violence also motivated a draft law on penal measures against racism and xenophobia. The draft law has sparked intensive collisions among the different parties represented in Parliament and has finally been withdrawn. To conclude, there appears to be a noted lack of effective remedies and mechanisms available to undocumented migrants in cases of xenophobia, racism and police brutality.

## **F. Expulsion and repatriation**

Repatriation programmes exist.<sup>74</sup> In principle, for every illegally residing third country national a 'return decision' is issued. Priority is given to voluntary return, especially for people with previous legal residence. Return takes place in two phases: either with voluntary compliance within a given date or by forced return in case of non compliance with the return decision. The bodies competent to issue return decisions are the Directorates of Aliens and Migration of the Decentralised Administration or the Directorate of Migration Policy of the Ministry of Interior when third country nationals do not fulfil conditions for residence; police authorities when rejection or revocation of residence permits is issued by the Ministry of Citizen protection as well as in cases of illegal residence.<sup>75</sup>

Voluntary repatriation programmes are operated by the International Organisation for Migration in cooperation with the Ministry of Citizen Protection, the Hellenic Police Headquarters and the United Nations High Commissioner for Refugees Office in Greece for third country nationals who do not fulfil the conditions for entry and stay, third country nationals whose request for asylum is still pending or has been rejected, third country nationals who enjoy international protection but wish to return to their countries. Through the program, IOM assists return through registration and identification of those who wish to return, issuance of travel documents, issuance of tickets, financial assistance, escorting to the airport, reception in transit and country of origin.

The expulsion of EU citizens can take place only for reasons of public order or public security. In this decision, the duration of residence in Greek territory, age, health condition, family and financial condition, social and cultural integration and links to the country of origin are taken into account. Receipt of social assistance does not automatically lead to expulsion, while measures of fiscal policy cannot lead to expulsion.<sup>76</sup>

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<sup>74</sup> Law 3907/2011.

<sup>75</sup> Circular 37/2011 of the Ministry of Interior.

<sup>76</sup> Art. 22 of Presidential Decree 106/2007.

Article 29 of law 3907/2011 provides for the guarantees of article 14 of the Return Directive, namely family unity, access to education, emergency health care and respect for the needs of vulnerable people.

#### **7.4.2 Social barriers**

This section focuses on the social causes of destitution and homelessness among undocumented migrants.

##### **A. Housing in public and private sector**

Homelessness of undocumented migrants is the result of a number of barriers and practices including: lack of housing schemes to address their needs, exclusion from the coverage of the limited housing schemes and social assistance schemes, exploitation by private landlords and lack of access to resources i.e. regular income and access to financing for mortgages and loans. Conditions for renting houses have deteriorated and there are incidents of exploitation by owners who do not sign rental contracts or illegally increase rent or impose obligatory cohabitation or evictions (Giannetou, 2012). Specifically when it comes to temporary accommodation for the homeless, service providers tend to offer their services on the basis of philanthropy rather than citizenship rights, while at the same time, they tend to classify the homeless into different groups and 'coach' them into the settings considered appropriate for them (Arapoglou, 2004). The philanthropy discourse developed is another social barrier that affects the access of migrants to the limited existing services.

Homelessness of undocumented migrants is also the result of personal factors that characterize a large majority of undocumented migrants such as low educational level, poor language skills, inexistence of support networks. However, although personal factors might contribute to destitution and homelessness, it is mostly the legal and institutional barriers that leave this group with very limited options.

##### **B. Social assistance**

The social assistance infrastructure is far from sufficient for preventing people from becoming destitute and homeless. Firstly, the categorical nature of social assistance leaves multiple protection gaps. In fact, the social assistance system is structured in a way to serve privileged 'insiders' while leaving 'mid-siders' and 'outsiders' with limited or inexistent support (Matsaganis, 2012). Secondly, the system is rule-oriented rather than result-oriented (Institute of Local Government, 2006) and thus relies heavily of bureaucratic requirements which are burdensome for the beneficiary and prohibitive for specific categories of people such as undocumented migrants. Third, there is a notorious lack of sustainability in initiatives that receive external financing (e.g. from EU funds) that collapse once funding ends. Faced with these structural inefficiencies, the system does little for those in need, not to mention those who do not even qualify for the limited assistance offered. Another factor, includes discriminatory practices by the employees of the social protection system based on stereotypes who make use of their discretionary powers to establish 'informal sub-categories of users' that are accorded diversified access to the social policy system (Skamnakis, 2007).

Undocumented migrants are entitled only to emergency health care and have no legal entitlement to access to social assistance system.

## 7.5 Services for the homeless

This section provides a brief sketch of homeless services available to migrants in general and examines the extent to which undocumented migrants can make use of these services and the barriers they encounter.

The services offered to the homeless in Greece comprise a variety of services including help lines, accommodation, emergency assistance, food, clothing and personal hygiene services, psychosocial support, legal aid and employment promotion. The extent to which undocumented migrants can have access to these services depends on the institution that offers the services and the origin of the funds.

### *Help lines*

The National Centre for Social Solidarity (EKKA) operates the Telephone Line 197 for Emergency Social Aid. Although it does not target only homeless people, it is the main entry-point to emergency social services. It operates on a 24 x 7 x 365 basis and provides emergency counselling and psychological support, information on social welfare issues, mobilises 'on the spot' intervention mechanisms and referral services. A specialised telephone line on homelessness (10520) is operated by NGO Klimaka. The line aims to facilitate the quantitative mapping of the homeless; provide information on existing services; and provide support to individuals living in insecure living conditions or in risk of becoming homeless.

### *Temporary accommodation*

Responses to homelessness led to the development accommodation services that include statutory hostels, services run by local authorities, hotels and guest houses by the voluntary sector, housing provision for refugees and repatriates and accommodation developed through deinstitutionalisation programmes (Sapounakis, 1999). In broad terms, one can distinguish between state run shelters that do not offer services to migrants and services run by NGOs that address the needs of undocumented migrants. For example, the Homeless Foundation of the municipality of Athens offers short term accommodation to 180 individuals for a period of 3-6 months and can rent property to provide shelter to destitute individuals – families. However, these services exclude undocumented migrants. The National Center for Social Solidarity operates short-term hospitality shelters for vulnerable social groups such as adolescents, women victims of domestic violence-with or without children, women victims of violence in general, victims of trafficking and adults in emergency situations. Shelters and hostels run by NGOs offer short term accommodation independently of gender, nationality, religion and are the only options accessible to undocumented migrants. Besides temporary accommodation non-state run shelters offer personalised support to cover the multiple needs of the homeless and facilitate their reintegration. However, the conditions for accessing accommodation are often determined by funding agencies (when they are externally financed). So, programmes funded for example by the European Refugee Fund are addressed to refugees and not undocumented migrants in general, while services funded by line ministries (e.g. the Ministry of Health) might exclude undocumented migrants.

### *Day Centers*

Day centers offer, during the day, basic services to people living on the street, such as personal hygiene services (possibility to shower and wash clothes), clean clothing, rest area and light food, internet use, general primary medical services, psychological support, referral to social services and hospitals, coordination with other social welfare services, support with job search.

### *Meals, clothing, medical care and related services*

Several institutions provide free meals, clothing and immediate relief services. The Homeless Foundation of the Municipality of Athens operates a Meal Provision Centre that distributes meals on a daily basis, provides free clothing, footwear and housing equipment, access to medicines through 'social pharmacy', a "social grocery" for basic survival needs. The church through local parishes and charities and voluntary organisations are also very active in providing such services.

#### *Reach out services (street work programmes)*

Several institutions offering support to the homeless operate street work programmes through mobile teams or street workers. Street work is a reach-out service that allows to distribute goods, identify the homeless, provide information on existing services, provide emergency assistance etc. Street workers aim to locate and inform individuals who may profit from the services offered.

#### *Medical services - counselling services - legal services*

Social services to homeless individuals include medical services, counselling and information, psycho-social support and referral services, social rehabilitation and reintegration as well as legal support. A special part of the support offered appears to concern assistance in dealing with social welfare issues (claiming benefits, pensions etc), coordinating with other institutions in the welfare system (a service which emanates from the fragmentation of the services in operation) as well as legal support services (claiming benefits, applying for residence permits etc). These services are offered in Day Centers and in temporary accommodation shelters.

#### *Emergency assistance*

Emergency "on the spot" interventions in crisis situations are operated by EKKA, which intervenes wherever an incident is reported, the admissions Service in shelters for emergency short-term hospitality and the Short-term Hospitality Shelter, where serious and emergency cases are accommodated. Other emergency services targeting specifically the homeless usually concern extreme weather conditions, etc and involve information services and mobile units that provide food, blankets, sleeping bags and information on where to find shelter.

#### *Reintegration services*

Reintegration services are dynamic and aim to assist the homeless to find a job and become reintegrated. NGOs place particular emphasis on the need for such services that go beyond relief and can actually assist the homeless to move on. The NGO Klimaka operates a social corporation paper recycling workshop called 'Klimax plus', where homeless residing in accommodation structures work. Further, residents have an active role in running the shelter.

These services are offered by a multiplicity of actors who do not always act in a coordinated manner. The state-run services are coordinated by the National Centre for Social Solidarity. Municipalities offer services through local structures (e.g. the Homeless Foundation of the Municipality of Athens) or through targeted programmes. The church is also active locally mainly by providing assistance, food and clothing. Joint efforts are also recorded, for example a recent initiative for a National Network of Immediate Social Intervention with the involvement of 51 municipalities, non-governmental organizations, public and private sector entities. The most active actors are non-governmental organizations whose services are open to undocumented migrants. This multiplicity of service providers operates without mechanisms for horizontal networking.

In terms of geographic distribution of services, these are mostly located in urban centers of Athens, Thessaloniki, Patras and entry or exit points like Evros, Patras etc. Given that the services targeting the homeless are not based on centralized planning, their geographical spread is uneven. The church is active through local parishes, mainly in providing assistance, food and

clothing. Comprehensive information on available services is not readily available. The National Network of Immediate Social Intervention (<http://www.koinoniasos.gr>) includes a mapping of the services of the network. The health map (<http://www.ygeianet.gov.gr>) provides a mapping of health services across the country. The NGO Klimaka published a 'Survival Guide for the Street' that includes basic information on available services.

The lack of data on the homeless means that services are not planned based on a realistic acknowledgment of needs. However, the existing services are well below need both with regard to the homeless in general and undocumented migrants in particular.

Not all services can be used by undocumented migrants. Hostels run by state bodies or local authorities are usually restricted to Greek citizens, thus directly excluding migrants. Food and emergency services are open to all. The services offered by NGOs, especially day centers, are open to undocumented migrants. Often the only available option for undocumented migrants is to make use of the services offered by NGOs.

Undocumented migrants face a number of barriers in making use of services: firstly, legal barriers directly exclude them from specific services, especially those provided by state run institutions; secondly, the limited availability of services and capacity of shelters etc. directs support towards the most vulnerable groups (e.g. minors, pregnant women, lone families etc) and leaves large groups of migrants without any assistance. Thirdly, undocumented migrants usually qualify for immediate relief or emergency services but limited capacity does not always allow them to benefit from more long term assistance e.g. residence in hostels etc. When it comes to services offered by non-governmental organizations there are no legal barriers although geographical barriers and supply barriers remain.

No initiatives aiming to provide support specifically to homeless undocumented migrants have been identified. This group can however benefit from non-governmental initiatives targeting the homeless or other groups e.g. refugees and asylum seekers.

No specific initiatives targeting specifically homeless female undocumented migrants have been identified. However, there are initiatives that do not exclude undocumented migrant women and these include the short-term hospitality shelters for vulnerable social groups such as adolescents, women victims of domestic violence with or without children, women victims of violence in general and victims of trafficking and the relevant 21 hostels for women victims of violence set up by the General Secretariat for Equality in cooperation with municipalities. Further, a help line (SOS 15900) operates and 39 counselling Centers. The phone line operates 24 hours per day, 365 days per year and offers information and counselling. Counselling centers offer psychosocial support, advice in employment matters, legal advice and advice in sexual and reproductive health. Legal aid is also provided in cooperation with local Bar Associations.

No country of origin initiatives aiming to help alleviate the situation of destitute and homeless undocumented migrants have been identified.

## **7.6 Good practices**

This section identifies good and bad practices in relation to homelessness among undocumented migrants.

No practices aimed at combating homelessness specifically among undocumented migrants are identified. Existing practices target broader groups e.g. the homeless in general or refugees and asylum seekers but their scope does not exclude undocumented migrants. Given the fact that

state run programmes or initiatives in principle exclude undocumented migrants, the practices presented originate from non-governmental organisations that provide services in this field.

#### *Day Centers for the Homeless*

Day Centers aim to improve the daily living of the homeless in Athens by providing immediate relief and coverage of basic needs independently of nationality, gender, age. The services offered include showers and toiletry items, laundry services, clothing warehouse, locked storage, restrooms, medical appointments and health care, beverages and snacks, psychological and social support & referrals, internet, mail and telephone access, cv preparation, access and guidance for state social services, personal case management.

This initiative is run by the NGO Praxis that operates two day centers in Athens. Based on the report and the data provided by the NGO on the two Day Centers in Athens and Pireus, in the period from May-December 2012, 17.983 visits were recorded by 1.794 individuals. 37% of visitors were Greek citizens, 6% were EU citizens and 57% third country nationals, out of which approximately 67% were undocumented migrants.

The Homeless Support Programme of the NGO Klimaka also includes the operation of a Day Center. The Day Center is open to all and its activities include: medical services, psychiatric assessment, treatment and follow-up, psychological support, support with social welfare and legal issues, referral and networking with competent institutions, rest area and personal hygiene services, first aid needs, food and snacks, social events, emergency assistance and hospitality. On a weekly basis approximately 350 individuals benefit from the services of the Day Center.

#### *Efforts to reintegrate the homeless*

One of the most promising practices identified refer to the effort to reintegrate the homeless by offering opportunities for employment and income generation. Klimaka is an NGO that runs programmes for the homeless since 2000. Klimaka also runs accommodation structures for people with mental health problems. Besides the effort to offer integrated services to the homeless there is also an approach to involve them in social entrepreneurship activities as well as in the daily management of their accommodation. Thus, homeless residing in the Centre for the support of the homeless are involved in running and managing the hostel. Another interesting practice is the paper recycling workshop set up as a social entrepreneurship association (KOISPE) where tenants of the homeless hostels can be employed and earn income. Another recent initiative is the 'Café of the Homeless' that operates on Saturday nights at the Centre for Support to the Homeless where visitors can have drink, food etc. The Café of the homeless is not a profit making enterprise nor a charity but a need to network and communicate. There is no menu, so visitors contribute what they wish.

Specific initiatives include an effort to create a network of services for women victims of violence and their children.

Initiatives aimed at addressing homelessness are relatively recent. There is no evaluation or appraisal of the effectiveness of the services offered that would allow to showcase results. Since effort focuses so far mostly in relief services (food, clothing etc), it could be supported that there is some improvement in this area. A preliminary assessment of the existing services for the homeless would have to be based on the fact that, according to experience in the field, relief services are not sufficient and there is a need for integrated psychosocial support services that can offer viable assistance towards the reintegration of the homeless.



The scarcity of services targeting homeless undocumented migrants leaves little room for identifying bad practices.

## **7.7 Concluding remarks**

This study attempted to establish the extent of homelessness and destitution among undocumented migrants and examine the ways in which the welfare state and in particular social assistance and housing schemes prevent destitution, homelessness and exclusion of this group.

This overview clearly shows that in Greece, the homeless and undocumented migrants are 'invisible' in statistics and data and, further, for policies and legislation. This invisibility leads them on the verge of society and exposes them to serious challenges for health, survival, exploitation, violence etc. while it does not allow central and local authorities, or even civil society, to plan responses in a consistent and effective way.

Housing schemes are inexistent in Greece. The few available options exclude undocumented migrants. Temporary accommodation shelters etc organized by social welfare services centrally or locally also exclude undocumented migrants. The only available option is either the limited accommodation positions offered by non-governmental or voluntary organizations or living in the streets or in inadequate conditions. The lack of services and options for this group inevitably link homelessness, rooflessness or insecure living to the status of undocumented migrant.

The welfare state remains equally blind towards undocumented migrants. Built on the rationale of protecting insiders, the social assistance system in Greece offers neither relief nor basic survival means to those in need apart from emergency access to health care.

There is an urgent need to build effective responses to the phenomena of migration, destitution and homelessness and their combined effects. A major precondition for achieving results in the area of services for the homeless is a) the evidence-based planning of interventions b) a coordinated and integrated action plan for dealing with homelessness and c) the availability of financial resources. The lack of data on the homeless, not to mention the specific conditions of undocumented homeless migrants, leads to a development of services in an uncoordinated and fragmented way. A detailed mapping of the homeless population is a basic precondition for achieving results. Secondly, initiatives so far are ad hoc, uncoordinated, fragmented and focus on relief rather than prevention and reintegration. The lack of horizontal and vertical coordination does not facilitate effectiveness. A basic precondition is the existence of a centralized action plan where the needs and the role of every actor is clear, accountable and measurable. Last but not least, the availability of financial resources is a condition since qua non for effective action. The availability of possibilities for financing through the Strategic Reference Framework is a positive factor which is not however devoid of problems in terms of flexibility, ownership and sustainability.

## ANNEX I

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## **ANNEX II**

### **List of interviewed stakeholders**

- Prof. Aristeidis Sapounakis
- Dimitra Soulele FEANTSA Administrative Board, Member for Greece,  
Representative of the NGO Arsis
- Ada Alamanou NGO Klimaka
- Ioanna Pertsinidou NGO Praxis
- Maria Kaldani NGO Arsis.

## **ANNEX III**

### **The homeless population in Greece according to the ETHOS typology (2005**

### ANNEX III: The homeless population in Greece according to the ETHOS typology (2005)

Sub category	Description	Country Description	Source	Access	Area covered	Measure	Data (Latest)	Date
<b>Roofless</b>								
1.1.	Sleeping rough	no national definition of a rough sleeper	Estimates of statutory social workers	Direct from supervising agencies	Country wide	Stock	6000	2005
1.2.	Contacted by outreach services							
2.1	Low-Threshold / direct access							
2.2	Shelter <sup>1</sup>	No Definition	Estimate			Flow	1000	
2.3	Arranged (e.g. budget hotel) Shortly-stay hotel							
<b>Houseless</b>								
3.1	Short-stay homeless hostel	Not defined as homeless	First hand data collected for EOH	In most cases direct visit	Greece	Flow	300	2005
3.2	Temporary housing (no defined time)							
3.3	Temporary housing (transitional defined)							
3.4	Temporary housing (longer stay)							
4.1	Shelter accommodation	Emergency situation	Social workers	form supervising agencies			70	2005
4.2	Supported accommodation	Does not exist						
5.1	Reception centres (Asylum)	Not always asylum	NGO	Published data and web sites		Stock	1800	
5.2	Repatriate accommodation	Program ending	Estimate					
5.3	Migrant workers hostels	Temporary accommodation						
6.1	Penal institutions (period defined nationally)	No national definition						
6.2	Institutions (care and hospital)	Opening of mental care institutes	Psychargos	Direct		Stock	2500	
7.1	Supported accommodation (group)	Only through Psychargos	Psychargos	Direct		Stock	400	
7.2	Supported accommodation (individual)							
7.3	Foyers							
7.4	Teenage parent accommodation							
<b>Insecure Housing</b>								
8.1	Living temporarily with family or friends (not through choice) (Housing/ Social Service records)	No Record					No Data	
8.2	Living in dwelling without a standard legal (sub)tenancy (excludes squatting)							
9.1	Legal orders enforced (rented housing)							
9.2	Re-possession orders (owned housing)							
10.1	Living under threat of violence from partner or family (police recorded incidents)							
<b>Inadequate Housing</b>								
11.1	Mobile Home/ Caravan (not holiday accommodation)		ESYE	Official statistics	Greece	Flow		
11.2	Illegal occupation of a site (e.g. Roma/ Traveller/ Gypsy)							
11.3	Illegal occupation of a building (squatting)		Estimate					
12.1	Dwellings unfit for habitation under national legislation (occupied)		ESYE					
13.1	Highest national norm of overcrowding	No legal national norm. Desired floor space threshold: 28sq.m pp						

Source: Sapounakis, A. (2005). National Review of Statistics on Access to housing and Homelessness, Greece, European Observatory on Homelessness

## **8 UNDOCUMENTED MIGRANTS IN THE NETHERLANDS**

### **8.1 Introduction**

Approximately, there are 100,000 undocumented migrants in the Netherlands. In order to discourage irregular migration, the Dutch government has introduced a great deal of laws and regulations, all meant to prevent these migrants from participating in the Dutch society. This aim is explicitly enshrined in the 1998 Linkage Act, which effectively excludes undocumented migrants from social benefits, with the exception of imperative medical care, legal aid and education for minor children.

The consequent way of preventing undocumented migrants from participating in Dutch society proves to be accomplished in an effective manner, as irregular migrants no longer benefit from most public goods and services. All the same, the strict enforcement within different domains of society – including both the labour market and the welfare system – gives causes for concern, as regards the position of undocumented migrants who reside in the Netherlands. Differently put, what are the consequences for irregular migrants in terms of destitution and homelessness in a society which effectively controls the possibilities for participation of those who are supposed not to participate?

This question will be addressed below. The focus of this study will be placed on the formal excluding mechanisms, including its ultimate consequences in terms of material and immaterial deprivation. In addition to this legal analysis, we take notice of different social causes for destitution and homelessness. As we learn from many studies on the position of undocumented migrants in this country, different political, social and economic mechanisms may both mitigate and worsen the position of these migrants. Elements which deserve particular importance in this respect are the way policies are put into effect, the extent to which the presence of migrants is tolerated in daily practice, the role and functioning of the labour market, and the very existence and impact of various civil society initiatives to support those migrants in need.

As information is gathered almost exclusively with the help of in-depth and small-scale studies, we have not been able to describe the position of different subcategories of undocumented migrants in a more or less systematic way. In practice this means that some categories of undocumented migrants (i.e. failed asylum claimants and irregular workers) are much better documented as compared to others (i.e. victims of human trafficking and those who primarily came as family migrants). With this limitation in mind, we hope to explain our findings as detailed as possible.

### **8.2 Destitution and homelessness**

#### **8.2.1 The immigrant population in the Netherlands**

A little more than twenty percent of the Dutch population has a migrant background (Dutch Statistics, 2012). Of these migrants, 1.6 million persons (or 45%) have a western background, and 1.9 million persons (or 55%) have a non-western background. Most Western migrants in the Netherlands originate from a EU member state, particularly Belgium and Germany. The largest



non-Western communities in the Netherlands are the Turkish (393,000 persons), the Moroccans (363,000) and the Surinamese (347.000).

Since the new millennium the number of Western migrants has increased on a much faster pace as compared to migrants from non-Western countries. Migrants originating from Central-Eastern Europe – and Poland, Bulgaria and Romania in particular – saw their numbers most strongly increased.<sup>77</sup> Other groups which strongly increased in number are migrants from various so-called refugee countries, mainly Iraq, Afghanistan and Somalia.

By definition, we do not know the exact number of undocumented immigrants in the Netherlands. The most recent scientific estimate points to a little less than 100,000 undocumented migrants in the Netherlands (Van der Heijden et al., 2011).<sup>78</sup> Other studies come to similar numbers (e.g. Kox, 2009; Schoevers, 2011; Stronks, 2013). It is worth to mention that these sources point to notably decreasing numbers of irregular migrants in the Netherlands during the last decade. This reduction is particularly due to the enlargements of the EU in 2004 and 2007, through which the number of illegally residing Eastern European migrants strongly reduced, and the General Amnesty of 2007, resulting in the legalization of more than 25,000 rejected asylum claimants in the Netherlands.

Officially, illegal residency is referred by the Dutch authorities to foreign nationals who are not in possession of a valid residence permit and therefore obliged to leave the country (EMN, 2007). From a legal perspective, different categories of irregular migrants can be identified: migrants who entered the Netherlands illegally, migrants who entered the Netherlands legally but became illegal, for example by overstaying their temporary visa, and migrants whose attempt apply for a residence permit has not been rewarded. In addition to this procedural classification, academic research generally classify undocumented migrants into those whose application for asylum was not rewarded, those who primarily came for economic reasons to the Netherlands, and family migrants who became undocumented after their relationship broke up. Often victims of human trafficking are identified as a separate category. It is important to realize, however, that on the level of individual migrants these distinctions are not always obvious, as many undocumented migrants identify various migration motives simultaneously (Staring, 2001; Van Liempt, 2007)

Unfortunately, there are no reliable data on the size of different categories of undocumented migrants in the Netherlands. According to De Boom et al. (2006) the share of rejected asylum seekers within the population of irregular migrants is about 15 percent. Apparently, most undocumented migrants cross the border on a tourist visa (and then overstay) or cross the border illegally without applying for asylum. These undocumented migrants may have come for both family and economic reasons to this country. More recent studies come, however, to higher shares of these previous asylum seekers. According to Stichting LOS (2012), about one third of the undocumented migrants in the Netherlands should be considered as those with an asylum history. The Dutch government (2012) comes to an even higher relative number of this migrant category.<sup>79</sup> Last but not least, the number of registered victims of human trafficking is also steadily

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<sup>77</sup> The Polish population in the Netherlands increased with 245%, the Bulgarians with 808% and the Romanian population with 212% (Dutch Statistics, 2012).

<sup>78</sup> With a 95% confidence interval the researchers indicate that the total population of undocumented migrants in the year 2009 lies between 60.667 and 133.624. These estimates should be reflected on with some caution, however, since the used method – the so-called capture recapture method – is not capable of giving reliable data on the number of undocumented group (see, for a review on some critical elements, Van der Heijden, 2011).

<sup>79</sup> Based on the administration of Dutch pharmacists, approximately forty percent of undocumented migrants

increasing. In 2011, more than 1,100 of these migrants applied for help, many of them coming from Eastern Europe (CoMensha, 2012). It is important to note that this increase is not necessarily a consequence of growing numbers of victims but may also be attributed to improved registration.

It seems that there are many more men than women residing without documents in the Netherlands. As indicated by Van der Heijden et al. (2011) the group of undocumented migrants exists for two in three out of males. With respect to age, the authors claim that ninety percent is younger than forty years of age. CBS/WODC (2012) reveal similar patterns: most undocumented migrants in the Netherlands are said to be male and 20-40 years of age. About ninety percent of these undocumented migrants is non-European and ten percent is assumed to be European (Van der Heijden et al., 2011). The CBS/WODC (2012) data indicate that undocumented migrants originate from a great number of mostly less developed countries (see also table 7.1).

Many undocumented migrants live in one of the four big cities in the Netherlands. According to Leerkes et al. (2004) about one in three undocumented migrants reside in these agglomerations. The reasons for these patterns of spatial concentration are manifold, also including the reduced risk to get caught, the presence of other undocumented migrants and the availability of low quality jobs. In addition, undocumented migrants are expected to live in some rural areas, particularly in those regions with a large amount of seasonal employment (Bijman, 2013).

**Table 8.1 Nationality of undocumented migrants in 2010 (based on observations police)**

EU and EVA (Including the EU8 and EU2 countries)	5.9%
Former Yugoslavia and Albania	3.3%
Former USSR	8.1%
Turkey	4.6%
Northern Africa	10.5%
Rest of Africa	31.7%
Asia	28.2%
America	7.7%

Source: CBS/WODC, 2012

### 8.2.2 Poverty among the immigrant population in the Netherlands

In relative terms, poverty is a common phenomenon among the migrant population, particularly among those who originate from non-Western countries. In 2010, almost one in five (17.9%) of the non-western migrants residing in the Netherlands had an income below the poverty line (against 4.8% of the natives).<sup>80</sup> The patterns presented are in line with the EU-SILC data, which reveal that poverty tends to be the most widespread among non-EU migrants in the Netherlands. This survey makes obvious that migrants from non-EU countries demonstrate a poverty risk of more than twenty percent, against a little less than fifteen percent among the EU migrants.<sup>81</sup>

In addition, the EU-SILC survey of the European Union also provides an indicator of 'poverty or social exclusion'. The variable used is a combination of three indicators: people living in households with very low work intensity, people at risk of poverty and people suffering from

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originate from countries from which people often request asylum.

<sup>80</sup> Data refers to first and second generation migrants.

<sup>81</sup> These persons have an equivalised disposable income below sixty percent of the median income after social transfers.

severe material deprivation.<sup>82</sup> As regards the Netherlands, it becomes apparent that migrants who are born outside the European Union have a far greater risk of poverty or social exclusion (30.1%) as compared to the native born (12.5%) and migrants who are born in the EU-27 (15.6%).

We should, however, consider these patterns of poverty and material deprivation with caution. As argued by Schockaert et al. (2012), migrant groups in the most vulnerable positions are fairly underrepresented in large-scale surveys like the EU-SILC. The authors claim that the latter survey leaves out many weak groups, among which undocumented and homeless immigrants, due to substantial and selective non-response. When compared with other countries in the European Union, exclusion is well defined according to plain criteria, but these criteria also demonstrate that the persons included do not necessarily belong to those defined as truly destitute.<sup>83</sup>

The presented figures are thus insufficient to give us any clues about poverty and exclusion among undocumented migrants in the Netherlands. All present studies available do, however, unmistakably point to undocumented migrants as being one of the most vulnerable migrant categories in this country. According to Schoevers (2011) the population of undocumented migrants in the Netherlands constitutes one of the most excluded and vulnerable social groups in our society. They lack good housing and working conditions, live in poverty, isolation and in the permanent threat of being arrested by the police. Other qualitative studies (e.g. Kox, 2009; Van Meeteren, 2010) present a similar pattern of overall severe material deprivation among the undocumented in the Netherlands, more often than not also including elements of destitution and homelessness.

Because of the absence of survey data or any reliable statistics, it is not easy to give any definite conclusions about the weakest categories within the group of undocumented migrants. On the basis of several in-depth studies we are, however, likely to conclude that irregular migrants with an asylum history are more at risk to suffer from destitution than undocumented migrants that came for the purpose of work. Kox (2009), for instance, interviewed more than eighty rejected asylum seekers in the city of Utrecht, and presents clear patterns of deprivation, both materially and socially. The author claims that a large majority, i.e. about two in three, has insufficient means of sustaining life. Most of these undocumented migrants relied on relatives and friends, but also made use of all kinds of charity and donations. Worse still, a small fraction of these migrants proved not to be able to find any formal and informal support; generally these migrants survived on the street.

Similar conclusions may be drawn from a study on adolescent undocumented migrants in the Netherlands (Staring and Aarts, 2010). This study concludes on the basis of many interviews with these young and solitary undocumented migrants that they generally live under very harsh and uncertain conditions.<sup>84</sup> A majority does not manage to get paid employment, often because they were afraid to get caught by the police. Those who incidentally work resort to the informal labour market with poor employment conditions and very low salaries. As a result of all this, these young undocumented immigrants highly rely on the support of others, but not all managed to do so. In

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<sup>82</sup> Material deprivation has been defined by the Social Protection Committee (EC) on the basis of nine items: (1) ability to face unexpected expenses, (2) the ability to pay for a one week holiday, (3) existence of arrears, (4) capacity to consume a proper meal, (5) capacity to home adequately warm, possession of a (6) washing machine, (7) a colour TV, (8) a telephone or a (9) care. Material deprivation is at stake when at least three items do occur.

<sup>83</sup> See footnote 5.

<sup>84</sup> The findings are based on 118 interviews with young undocumented migrants, who all had a previous asylum status until the age of eighteen.

addition, a majority of the approached youngsters said to have lived on the street, particularly during their initial period in illegality.

Another category to be indicated as extremely vulnerable and revealing various elements of destitution are those who have become victims of human trafficking. According to the Fairwork Foundation (2012) in the Netherlands there are about 30,000 persons severely exploited, many of them being undocumented immigrants. The sex industry in particular is accountable for large number of people being intimidated, abused and degraded (Kromhout et al., 2008).<sup>85</sup> As it seems, however, other economic sectors – including horticulture, construction, food processing, domestic services, and the hotel and catering sector – are increasingly responsible for these practices as well, which often lead to extreme marginalization among those who are recruited or even press-ganged (Willemsen, 2010; Fairwork, 2012).

Conversely, migrants who came at free will to the Netherlands in order to explore their economic chances seem to manage somehow, although much depends on their actual employment situation. From Van Meeteren (2010) we learn that this category of undocumented migrants, referred to as investment migrants, is very much focused on getting a paid job, no matter the poor conditions involved. Exceptionally poor working conditions are often the case, as will be explained in section 1.4, but still these migrants seem to be able to earn some money and rent or sublet a place to sleep.

### **8.2.3 Housing and homelessness**

On average the quality of housing among non-Western migrants in the Netherlands is poor when compared with the native population (Kullberg, 2012). Both in terms of average living space and the physical conditions, it turns out that non-Western migrants in this country are well behind. In part, this is due to their overall adverse income position, but migrant-specific preferences also impact on their situation. These preferences include, amongst others, a first choice to live in areas with many other fellow countrymen (i.e. in areas with on average poor quality dwellings) and a desire to primarily invest in accommodation abroad (i.e. in their country of origin). In addition, differences in living conditions between natives and non-western migrants are caused by the difference in the share of owner-occupied houses among these groups. Immigrants with on average low incomes are less capable of becoming owner of a private house, which makes them more dependent on rented houses or flats. Regularly, these accommodations are cheap and of a substandard level.

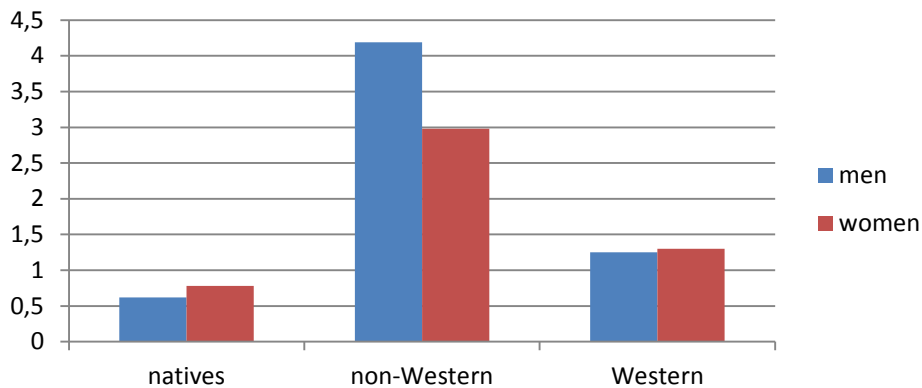
At the beginning of 2009 there were an estimated 18.000 roofless persons in the Netherlands (Dutch Statistics, 2010). Roofless persons are defined as those who are uncertain about a sleeping place for the coming night and therefore rely on various social networks or even must find a place in public resort. It is estimated, that more than one in three (36%) of all roofless persons originates from a non-western country. Another ten percent of all roofless persons in the Netherlands comes from a Western country. These statistics reveal that migrants are prone to a great risk of being roofless as compared to the native population (see also figure 8.1). Male migrants in particular face high chances of being roofless. In addition, rooflessness in the Netherlands is to a great extent an urban phenomenon. In total, almost two in five (37%) of all

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<sup>85</sup> The ILO (2012) claims that thirty percent of all people being exploited are engaged in the sex industry. This would mean that in The Netherlands alone at least 9,000 persons are estimated to be victim of severe exploitation in this economic sector.

roofless persons live in the four big cities of the Netherlands, i.e. Amsterdam, Rotterdam, The Hague and Utrecht.

**Figure 8.1** The ratio between the share in the number of homeless people and the total population (2009)



Source: Statistics Netherlands, *Demos*, volume 2, May 2011

We could not find any specific information on the extent to which undocumented migrants in this country are homeless or even roofless. As claimed by Van Meeteren (2010), the number of irregular migrants living on the streets is only small, for most of these migrants manage to arrange some form of accommodation, often with the help of other migrants. Homelessness is, however, often at stake, as many undocumented migrants have proved not to be capable of hiring or subletting a place of their own. Only those who participate in the informal labour market are likely to do so (Leerkes, 2004). What is equally true, however, is that a great number of undocumented migrants admit to have been roofless during their initial period of illegal stay. Particularly, this seems to have been the case for those who came as asylum seeker to the Netherlands (Kox, 2009; Staring and Aarts, 2010).<sup>86</sup> Roofless persons should therefore not be considered as a well-defined and constant category. Rather, undocumented migrants are from time to time forced to sleep outdoors, depending on their actual financial and social situation. Conversely, the overall picture is that homelessness has proved to be less easy to escape from.

### 8.3 Access to the social safety net

The most extreme outcomes of poverty and marginalization can often be mitigated through the social safety net. Comparatively speaking the Netherlands still have rather elaborate social assistance scheme, which guarantees a minimum standard of living for those unable to support themselves. The Netherlands also have a rather inclusive social security legislation which is based on the notion of territoriality. This notion implies that the state has a responsibility in ensuring an adequate standard of living for each citizen, regardless of nationality or ethnicity (Vonk, 2002).

Having said this, it is important to note however that the territoriality condition only applies to non-nationals who legally reside in the Netherlands.

<sup>86</sup> According to Kox (2009) about forty percent of all approached rejected asylum seekers had slept on the street, mostly during their initial period of illegal stay.

In the Aliens Act 2000 it is laid down under what conditions aliens can legally enter the Dutch territory and under what conditions a resident permit can be issued. The principle that only non-nationals who legally reside in the Netherlands have entitlements to social benefits, allowances and other collective services is enshrined in the 1998 Linkage Act. The linkage principle is laid down in Article 10 paragraph 1 of the Aliens Act 2000. For all applicants of social benefits residence status is automatically checked by civil servants in the population registers (which contains data on foreigners from the aliens police), which makes it virtually impossible to collect benefits.

With this Act undocumented migrants are thus effectively excluded from social benefits, with the exception of imperative medical care, legal aid and education for minor children. As legal residency is the most important factor determining access to social security arrangements in the Netherlands, undocumented migrants, in general, have no access to the social safety net.

In this section we will discuss the social housing and social assistance schemes in the Netherlands. In the next section we will elaborate on the effects of the Linkage Act on entitlements to social assistance and will illustrate that in some cases entitlements have been granted on an individual basis after court rulings.

### 8.3.1 Social housing

In 2012, the Netherlands counted with 7.2 million independent dwellings of which 40 percent is rented housing and 60 percent privately owned.<sup>87</sup> The rental sector is the most important source of cheap accommodation in the Netherlands. The majority of affordable rented houses are built, administered and rented out by housing associations. In 2010 housing associations owned 2,4 million houses which was approximately one third of the total housing stock.<sup>88</sup> About 21 percent of the housing stock of corporations are classified as low (cheap) rents, another 67 percent are classified as affordable rents. Only a small segment (11 percent) of corporation housing are classified as expensive. Another 7 percent of the housing stock consists of dwellings in the rent controlled private sector. So in total almost 2.7 million dwellings are available in the social sector. These houses have a maximum monthly rent of € 681,- and are accessible to households with an annual household income below € 34.000,-.

To ensure access to decent housing to low income households, households with relatively high rents in relation to their income can apply for a rent allowance (*huurtoeslag*) through the tax agency. This benefit applies both to accommodation in the social sector and the rent controlled private sector.

An evaluation three years after the introduction the Linkage Act showed that the act effectively excluded foreigners without a resident permit from collective services, including social housing (B&A, 2001). Due to this Act undocumented migrants cannot rent from the housing associations as resident status is thoroughly checked by service providers. In addition, the rent controlled private sector is also largely inaccessible for undocumented migrants. In theory undocumented migrants are allowed to rent an accommodation in the rent controlled private sector. However, Dutch municipalities often require a housing permit for renting or buying affordable accommodation to ensure these accommodations remain available to households with limited

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<sup>87</sup> Bron: [BZk/DGWBI/SYS - SYStem WOningVoorraad \(SYSWOV\)](#)

<sup>88</sup> <http://www.aedes.nl/content/elementen/feiten-en-cijfers.xml> Retrieved on June 26, 2013.

means. To obtain a housing permit applicants must, amongst others, provide proof of legal residency. This requirement renders the regulated private rental sector also mostly inaccessible.

Other support schemes to ensure decent housing for those with limited economic means, such as rent allowance (*huurtoeslag*) are also not available for undocumented migrants. Only Dutch nationals and immigrants with a resident permit are eligible for rent allowance. Undocumented migrants cannot appeal to rent allowance and to rent protection. Moreover, if an undocumented migrant is found to be living with a legal citizen with rent allowance, the legal citizen also loses his entitlement to rent allowance.<sup>89</sup>

Thus, in practice, undocumented migrants have no access to the social housing sector and hardly any access to the regulated private rental sector. As a consequence, undocumented migrants mostly live via illegal subletting agreements and with family and friends.

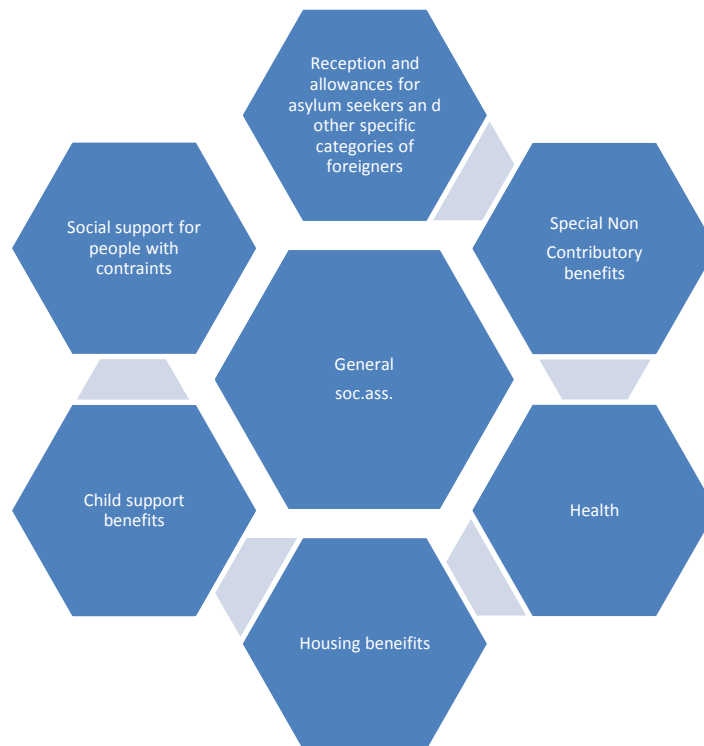
### **8.3.2 Social assistance**

In the Netherlands, entitlements to reception (*opvang*) and social assistance are laid down in various laws and regulations (see figure 8.2).

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<sup>89</sup> <http://www.stichtinglos.nl/content/huren-van-een-woning-kamer>, accessed May 31, 2013.

**Figure 8.2 Social assistance package in the Netherlands**



At the core of the social assistance package is the general social assistance (*Wet werk en bijstand*- WWB). Municipalities provide financial support to persons with insufficient means of subsistence within the framework of the WWB. Support consists of monthly social welfare payments, special non-contributory benefits and efforts aimed at labour market integration. Only Dutch citizens and foreigners with a resident permit are entitled to these benefits. However, according to Article 16 Wwb municipalities have the freedom to supply social welfare benefits in urgent cases (emergency assistance) to other categories, including foreigners upon the condition that they have a residence permit.

In addition to social welfare, municipalities have to provide assistance and support to specific vulnerable groups such as elderly people, disabled persons and people with mental problems within the framework of the *Wet maatschappelijke ondersteuning* (Wmo). Within this framework municipalities can also provide support and shelter for the homeless. Support is only granted on an individual basis and only when the necessary support cannot be provided through an appeal on other regulations. For foreigners this support is only accessible if they hold a residence permit as stipulated in Article 8 of the Aliens Act 2000.

Other measures with a generic scope i.e. that they apply to both nationals and foreign nationals with a resident status are the previously discussed housing benefits (rent allowance), child support benefits and health care benefits. Housing and health care benefits are means tested benefits paid in kind through the tax agency. Child support benefits on the other hand are a national insurance. In kind benefits are payable to parents of caretakers of children until the age of 18 years to assist in the costs of raising children.



In addition to these generic measures, there are two relevant schemes which are specifically targeted at asylum seekers and other specific categories of foreigners: the *Regeling verstrekkingen asielzoekers* (Rva) en de *Regeling verstrekkingen bepaalde categorieën vreemdelingen* (Rvb). Foreigners awaiting the decision of their first asylum request and foreigners treated as such are entitled to reception and special allowances. Reception occurs in special reception centers which provide shelter, a financial allowance for personal expenses, recreational and educational activities, health and liability insurance, and reimbursements of unforeseen costs. The COA (*Centraal orgaan opvang asielzoekers*) is responsible for providing shelter and assistance. In addition, provisions are available for specific categories of vulnerable foreigners such as victims of human trafficking, domestic violence and honor-based violence in special women's shelters. With these provisions the Dutch government provides in the basic needs of asylum seekers and other vulnerable groups.

## **8.4 Legal causes of destitution and homelessness**

This section deals with legal barriers undocumented migrants face in accessing social support.

### **8.4.1 Access to social assistance and cracks in the Linkage Act**

Due to the Linkage Act, undocumented migrants cannot claim any of the above mentioned provisions. The Dutch social safety net is therefore highly exclusionary for undocumented migrants and does not provide any protection against destitution. However, due to (recent) court rulings - largely based on international human rights standards - some entitlements to reception and assistance have been granted to certain categories of irregular migrants on an individual basis (cf Selm & Van Heule, 2011; Minderhoud, 2012). Minderhoud (2012) has referred to these exceptions as 'cracks in the Linkage Act'.

A 'crack' in the Linkage Act was made in cases with regard to entitlement to reception for asylum seekers (RVA) in cases of medical emergency and social support for people with certain constraints (WMO).

Following the principle of the Linkage Act, rejection of the asylum claim (or similar procedures) ends the entitlement to reception and special allowances as the legal basis for stay in the Netherlands no longer exists. However, in very specific circumstances the State is still held to provide support to irregular foreigners. These cases often involve persons with severe medical or psychological problems. In 2010 the Central Court of Appeal ruled in a case on a homeless Algerian awaiting the decision on his request for a residence permit for medical reasons, that the claimant was entitled to homeless support either in the reception facilities for asylum seekers within the framework of the RVA, or in the form of access to homeless shelters within the framework of the WMO.<sup>90</sup>

A landmark case in securing entitlements to social assistance for irregular migrants is the collective complaint brought before the European Committee of Social Rights (ECSR) by Defence for Children International (DCI). DCI complained that the Dutch government was acting contrary to the revised European Social Charter by denying access to shelter to minor children of rejected asylum claimants. In 2009, the ECSR ruled that the Dutch state was compelled to ensure

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<sup>90</sup> CRvB 29 april 2010, LJN BM0956.

adequate shelter to children, even for illegitimately staying children, while they remained on the Dutch territory.<sup>91</sup> Shortly after the ECSR ruling the Court in The Hague also judged the expulsion of a rejected asylum seeker with three very young children from a reception facility as inhumane and therefore illegitimate. The State was held to provide for shelter and financial means for the care of the children.<sup>92</sup> The Dutch government continued to fight these claims on social support to undocumented migrants at the highest level. However, in 2012 the Supreme Court of Justices ruled in favor of the claimants and stated that the State has a positive obligation to protect the rights of children, including undocumented children.<sup>93</sup> This has resulted in special reception facilities for rejected asylum claimants with minor children (see also section 8.6.1).

Also with regard to child support benefits, some claims have been made by undocumented migrants. In 2011 the Central Court of Appeals granted child support benefits to an undocumented migrant. The Court argued that denial of benefits could not be justified in cases where parents and children have resided in the Netherlands for some time and this fact is known to the authorities, who legitimately resided in the Netherlands at least for some time and who have become rooted in Dutch society.<sup>94</sup> However, finally in this case the Supreme Court ruled in November 2012 in favor of the government.<sup>95</sup>

What becomes clear from this jurisprudence is that the Linkage principle is not always allowed in cases of vulnerable undocumented migrants, especially when young children are involved or in cases of medical emergencies. This case law is human rights based referring to ECHR, ESC and the International Convention on the rights of children. It is important to note, however, that while undocumented migrants sometimes can enjoy temporary benefits, entitlement to benefits never incurs residents rights.

#### **Box 1.4: The Children Amnesty**

Another example of how the excesses of the exclusionary Dutch system is sometimes amended when children are involved, is the recently announced amnesty for specific groups of undocumented children, most notably children of rejected asylum claimants and unaccompanied minors. In the *Regeling langdurig verblijvende kinderen* (regulation concerning long term residing children), in effect as of January 30 2013, it is established that children who are younger than 19 years at the moment of application, who have applied for asylum and lived for at least five years before the age of 18 in the Netherlands and have remained during this period under the surveillance of the national government can apply for a residence permit.<sup>96</sup> The exact number of children that will benefit from this amnesty is as of yet unknown. In May 2013, the Dutch Refugee Council reported approximately 3,000 applicants.<sup>97</sup> However, undocumented children who have never applied for asylum or who have escaped surveillance by the authorities for more than three months do not fall within the scope of the amnesty.

<sup>91</sup> ECSR October 20, 2009, nr. 47/2008, JV2010, 150.

<sup>92</sup> Gerechtshof Den Haag, 27 juli 2010, LJN BN126.

<sup>93</sup> Supreme Court, 21 September, 2012, LJN BW5328.

<sup>94</sup> LJN: BR1905, Centrale Raad van Beroep, 08/6595 AKW, 15 juli 2011.

<sup>95</sup> LJN: BW7740, Hoge Raad, 11/03891, 23 november 2012.

<sup>96</sup> Before May 1, 2013 children until the age of 21 years could apply for the transitory regulation. As of May 2013 the age limit has been reduced to 19 years as part of the definite regulation (Nummer WBV 2013/1, houdende wijziging van de Vreemdelingen-circulaire 2000).

<sup>97</sup> <http://www.vluchtelingenwerk.nl/actueel/wachten-op-indieneren-aanvraag-kinderpardon.php>. Retrieved on June 21, 2013.

#### 8.4.2 Criminalization of irregularity

Dutch migration policies over the last two decades have been focused on restrictive entrance and the reduction of undocumented immigration. Instruments which are employed to achieve this goal are legal measures such as the previously discussed Linkage Act, (work place) controls, registration and new forms of surveillance. This strong focus on legal exclusion and enforcement, leads to a process of exclusion and marginalization through 'criminalization' (cf Engbertsen & Broeders, 2009). A concrete example of this process can be given with regard to access to housing. In Article 4.40 of the Aliens Decree it is determined that persons providing overnight shelter to an undocumented migrant have to report this to the authorities. Failure to report means committing an offense, even though providing shelter in itself is not punishable (Staring, Beckers & Roks, 2009, cited in Pronk, 2012).

At present irregular residency is not a punishable offence in the Netherlands, with the exception for undocumented migrants with an entry ban or a declaration of undesirability. However, in a further process of criminalization of irregularity the government strives to implement legislation which makes illegitimate residency an offence. A bill was introduced in Parliament in January 2013, which proposes to make illegal residency an offence for adult foreigners. This offence is punishable with a fine (with a maximum of Euro 3,900) or, if the undocumented migrant is unable to pay the fine, with detention (for a maximum period of four months). Undocumented migrants who are detained more than once risk the imposition of an entry ban for five years. Non-compliance with the entry ban is considered a crime which can be punished with detention (maximum of six months) and a fine. Employers and exploitative landlords who employ or provide shelter to undocumented migrants are also punishable and will be actively prosecuted. Persons providing assistance to undocumented migrants for humanitarian reasons are not punishable (TK 2012-2013 33512 nr. 2). According to some stakeholders these proposed measures are largely symbolic – but nevertheless harmful – as a large share of undocumented migrants already are confronted with an entry ban.<sup>98</sup>

The legislative proposal has met with severe criticism from various sources. Two advisory bodies for the government, i.e. the Advisory Commission for Alien Affairs (ACVZ) and the Council of State (*Raad van State*), made critical comments on the necessity and effectiveness of proposed measures, the occurrence of undesirable social side effects and the possible tensions with the Return Directive (ACVZ, 2011; Raad van State 2012).

Many fear that making illegitimate residency an offence will lead to further marginalization of undocumented migrants as they will go (even more) underground to avoid detection. Fear for detection is likely to have an impact on de facto access to education, legal assistance and necessary medical care: undocumented migrants might be less tended to apply for help and professionals might be less likely to offer support. In addition, it is expected that victims of exploitation and violence will be even less likely to report to the police and collaborate with police investigations. Besides it is probable that further marginalization will induce criminal survival strategies among irregular migrants (cf ACVZ, 2012; Staring, 2011; Ederveen, 2011).

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<sup>98</sup> Interview with Rianne Ederveen, Stichting LOS.

### 8.4.3 Access to justice

Access to legal assistance for undocumented migrants is guaranteed in the Alien's Act 2000 (Article 10, paragraph 2, Vw 2000). In fact, it is one of the exceptions in the Linkage Act to the general rule that undocumented migrants cannot make use of collective services. Access to justice is guaranteed for people with limited economic means, including undocumented migrants, by providing subsidized legal aid. An official proof of income is necessary for qualifying for subsidized legal aid which is assessed by the *Raad voor de rechtspraak* (Council for legal jurisdiction). Generally, undocumented migrants are unable to present the necessary documents showing proof of their income, but they can make a written statement about their financial situation. Even in the case of subsidized legal aid a limited financial contribution is demanded from the claimant. However, many lawyers do not charge undocumented migrants for their services as they can be compensated by the Council for legal jurisdiction. The Council has a duty to confidentiality and therefore cannot pass the information they receive about the undocumented migrant to other government bodies.

For relatively straightforward legal questions people can make use of the *Juridische loket* (Legal counter). This is an independent organization providing free legal services to all persons regardless of their legal status.

While the Dutch law thus guarantees access to justice, the extent to which undocumented migrants actually make use of these possibilities is dependent on other factors. It requires first of all knowledge about the options for legal assistance, which is not always present among undocumented migrants. In addition, fear of detection may also play a part in not enjoying the right to legal assistance. Undocumented victims of a crime can report to the police, however, in doing so they run the risk of detection. Generally, proof of identity is not required when reporting an offence to the police but it is up to the police whether or not they require the declarant to identify himself.

### 8.4.4 Expulsion and repatriation

Since the late 1990's return policies have become an increasingly important aspect of Dutch legislation concerning migration and asylum, instigated by ever-increasing numbers of asylum seekers in the 1990's. Various measures were introduced to shorten asylum procedures and to speed up the expulsion of rejected asylum claimants. Initiatives were aimed at discouraging illegal residency but also to prevent rejected asylum seekers from ending up on the street by providing assistance to those willing to return. In 2010 the Netherlands implemented the Return Directive which seeks to harmonize return measures between EU member states in the national migration and asylum legislation. With the Return Directive, the Return Decision (*terugkeer besluit*) and the Entry Ban (*inreisverbod*) were introduced and minimum standards are set for the provision of urgent medical care and elementary education until the moment of expulsion. The Return Directive also indicates a maximum duration of six months for aliens detention, which can be prolonged to 12 months in special circumstances.<sup>99</sup>

Presently in the Netherlands, rejected asylum claimants are granted four weeks to leave the Netherlands voluntarily (the Dutch government has labeled this independent return) after they have received the Return Decision. During this period shelter is provided by COA. Persons who have not left after this period, which often is the case, are relocated to a so called 'limited freedom location' (*vrijheidsbeperkende locatie*) for a maximum period of twelve weeks during which they

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<sup>99</sup> Kamerstukken II 2010-2011, 32 420, nr. 9).

have to prepare for their independent return. At this location they receive shelter and have to present themselves daily to the officers in charge.

Undocumented migrants who are willing to cooperate on their return can make use of various return facilities for support regarding the return to their home country. Support is provided in cash and/or by providing in kind reintegration facilities in the countries of return (cf Beltman 2012). As of January 2007 the Repatriation and Departure Service (DT&V) of the Ministry of Interior Affairs is responsible for ensuring that as many foreign nationals who have no right to stay, return independently. The aim is to prevent a flight into illegality and forced deportation.<sup>100</sup> DT&V collaborates with other partners to facilitate return. IOM runs various projects with in-kind and cash support for returnees, predominantly – and in some cases exclusively – for failed asylum seekers. In-kind support is provided by the 'Mediation Agency for Return (MbT) run by the nongovernmental development cooperation organization Cordaid. This support is given to both failed asylum claimants and other undocumented migrants. In addition to these projects the DT&V also sometimes offers financial support to accelerate the return process.

Rejected asylum seekers who have not left within the stipulated time frame are given an entry ban (Article 66a Vw 2000) which makes their irregular stay a punishable offence and prohibits travel within the Schengen territory for a maximum of five years. Rejected asylum claimants who have not left the Netherlands voluntarily are expelled from the country. If there is a fear that the foreigner will go underground to avoid expulsion, the foreigner – as a last resort - can be put in aliens detention. Shortly before the actual expulsion the foreigners are placed in an expulsion centre for the final checks. Over the last years NGO's, civil society groups, human rights lawyers, advisory commission and academics have severely criticized the pursued return policies of forced return and have pointed to the hopeless situation of many undocumented migrants in aliens detention (cf ACVZ, 2013; Nationale Ombudsman, 2012; Amnesty International, 2008). Often migrants are put in detention for months without any perspective on a solution of their problem, i.e. not being able to return but also not allowed to stay in the Netherlands. It is not uncommon for undocumented migrants to find themselves in and out of detention for several months each time. Conditions in aliens detention are very sober; persons are daily incarcerated for prolonged periods and are offered little activities and often have to share a cell with several other detainees. This situation, in combination with any real perspectives for the future, has recently (May 2013) lead to a hunger and thirst strike among failed asylum seekers in a detention center in Rotterdam and Schiphol. In a response to this situation the Dutch Council of Churches has issued a (renewed) declaration, calling upon the Dutch Government for more humanitarian return policies which provides people with real perspectives for the future.<sup>101</sup>

Data on actual return of undocumented migrants between 2008 and 2012 shows that less than half of the migrants which had to leave the country have evidently left the country, either independently or forced (see table 8.2). Of those who have evidently left the Netherlands the majority are forcibly expelled, albeit the share of independent (voluntary) return is gradually increasing. However, the data also show that for more than half of the migrants which had to be expelled the government has no indication of their whereabouts. Over the last years every six months between 5.000 and 6.000 undocumented migrants which had to be expelled from the Netherlands escaped surveillance. While it is impossible to give robust numbers, it is likely than many of these undocumented migrants who have escaped surveillance have not left the country at all. This goes to show that return policies in the Netherlands have not lead to a comprehensive

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<sup>100</sup> [www.dienstterugkeerenvertrek.nl](http://www.dienstterugkeerenvertrek.nl)

<sup>101</sup> Declaration Dutch Council of Churches: <http://www.raadvankerken.nl/?b=2421>.

approach in tackling the problem of a flight into illegality of foreign nationals who have no right to stay.

**Table 8.2 Return of undocumented migrants\* (six month totals) between 2008 and 2012**

	2008		2009		2010		2011		2012
	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st
Evident departure	4 680	4 520	4 820	5 540	5 730	6 100	5 400	5 450	5 580
<i>Forced</i>	80%	69%	73%	68%	68%	68%	63%	60%	56%
<i>Independent</i>	20%	31%	27%	32%	32%	32%	37%	40%	44%
Unknown departure (no surveillance)	6 100	4 900	6 550	5 200	5 470	5 750	5 180	5 570	5 850
<b>Total</b>	<b>10 780</b>	<b>9 420</b>	<b>11 370</b>	<b>10 730</b>	<b>11 200</b>	<b>11 850</b>	<b>10 580</b>	<b>11 020</b>	<b>11 440</b>

\* Data refers to undocumented foreign nationals stopped at the border or detected during controls, foreign nationals whose resident permit is being revoked and rejected asylum claimants.  
Source: Kamerstukken II, 2012-2013, 19637, nr. 1578

#### 8.4.5 Summary remarks

Since the early 1990s the Dutch government has introduced various laws and regulations meant to reduce the number of undocumented migrants in the Netherlands. Initiatives were aimed at cutting off undocumented migrants with means of subsistence. In 1991, the social fiscal number or personal identification number was introduced which, together with work place controls, effectively barred irregular migrants from legitimate work (Engbertsen et al., 2011). Since 1998 irregular migrants have also been excluded from welfare state provisions with the introduction of the Linkage Act.

The Dutch case is thus characterized by a rigid legal exclusion of undocumented migrants which bans them from access to the regulated labour market and excludes them from social assistance and social housing. As a consequence, undocumented migrants are forced to live in the margins of society, which makes them depend on both the informal economy and informal social networks. The proposal to make irregularity a criminal offence is expected to exacerbate this situation even more. While recent court rulings have rewarded individual entitlements to various forms of social assistance to undocumented migrants in need of support, we have to conclude that generally undocumented migrants in dire straits are not protected by the social safety net. The legal exclusion and unsuccessful return policies makes undocumented migrants vulnerable to destitution and homelessness.

#### 8.5 Social causes of destitution and homelessness

In addition to legal causes of destitution, the role of society also impacts on the vulnerable position of undocumented migrants in the Netherlands. From several in-depth studies we learn that undocumented migrants do not claim any formal social assistance in daily practice. Apparently, the Dutch Linkage act has accomplished its aim to exclude those from social benefits who are not entitled to these provisions. Therefore, no further attention is paid to the welfare system in relation to the position of undocumented immigrants. Below, we concentrate on the access of undocumented migrants to both the labour and the housing market.

### 8.5.1 Marginal labour market position

Economic sectors attracting most undocumented workers are usually associated with many short-term contracts (high turnover of personnel), a great deal of routine work (no entry requirements) and activities which could be labeled as dirty, dangerous and degrading (lower echelons of the labour market). Generally, the salaries paid in these informal (and sometimes illegal) labour markets and the conditions under which the work has to be done are not in line with the prevailing practice in the Netherlands. Sectors of activity, which are known for their extensive informal labour markets, and which attract high numbers of undocumented immigrants are agriculture, the construction sector, the hotel and catering industry, and domestic cleaning (Frouws et al., 2010; Bijman, 2013).

No doubt, these labour market practices cannot be understood without referring to the weak position of undocumented migrant workers, including both the lack of information on various legal aspects and their weak bargaining power (Willemsen, 2010). First and foremost, undocumented workers more often than not sufficiently informed about their legal position. The simple fact that both labour law and collective labour agreements in the Netherlands also apply to undocumented migrants is no common knowledge among these migrant workers. Furthermore, many fear retaliation of their employer in case they resist against a rule or specific measure, as they know that they are easily dismissed. Also the loss of reputation and the need to be loyal, both to the employer and to other workers, must be designated as a motive not to resist to their often deplorable situation.

It is worth-mentioning, however, that many undocumented immigrants in the Netherlands prove not to be able to find paid employment altogether. Kox (2009) claims that about one third of all approached rejected asylum seekers did not manage to get paid employment during their period of illegal stay. Factors explaining this pattern are related to both fear to get caught, poor health conditions and the simple fact that one could not find any paid job. Other categories of undocumented migrants too – including young former asylum migrants, family migrants but also those who came to work in the Dutch labour market – often face long periods without being offered any paid job or appear not to have found any employment (Kromhout et al. , 2008; Stronk, 2013).

The latter argument has also been brought forward by Van Meeteren (2010) who argues that it has become increasingly difficult for undocumented migrants to find employment in the Netherlands. Stronk (2013) claims that the undermined position of these workers is particularly due to the increased inspections by the Dutch government on the presence of undocumented workers at private firms. In line with the Employment of Foreign Workers Act of 1995, the Dutch government has strongly intensified its enforcement activities over the last decade, also including the introduction of heavy fines since 2005 (Frouws et al., 2010).<sup>102</sup> As it seems, these public actions have reduced the attractiveness of hiring undocumented workers indeed. At least, the official labour inspection reports point to strongly reducing yearly numbers of irregular migrants and accountable firms during the last ten years.<sup>103</sup> In fact, the informal labour market in the Netherlands is relatively small, which reduces opportunities for work for undocumented migrants.

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<sup>102</sup> With effect from 1 January 2005 the enforcement of the Employment of Foreign Workers Act mainly takes place within the framework of administrative law, making the handling of the fines faster. Legal persons who break the rules will be fined € 8,000 per worker illegally employed, individuals receive a fine of € 4,000 per worker illegally employed. The penalties are increased by 50 percent within 24 months if a violation is detected again.

<sup>103</sup> Based on the figures of the Labour Inspection it is claimed that illegal employment has declined sharply around

The arrival of regular migrants from the new member states of the EU is mentioned by many undocumented immigrants as an additional factor, which has further weakened their chances to find employment (e.g. Kox, 2009; Van Meeteren, 2010). These interviewees claim that the presence of a capable and apparently motivated work force from Central-Eastern Europe has certainly reduced the necessity to employ irregular workers. Frouws et al. (2010) come to a similar conclusion; the authors ascribe the decline in undocumented workers in the Dutch labour market to a significant extent to the increased competitive pressure from migrants from the new EU member states.

In addition to reduced chances to find employment, we should point to another severe impact of these developments on the position of irregular migrant workers. As claimed by Van der Leun and Kloosterman (2006), both the arrival of new groups of (regular) immigrants and the strengthening of inspections by the Dutch government have caused the employment carried out by irregular migrants to become even more precarious. It is said that employment conditions have further deteriorated, which is indicated by ever decreasing wages and the augmented use of employment agencies and subcontractors. Similarly, Willemsen (2010) argues that employment conditions in the informal sector have further deteriorated, meaning that various elements of harsh exploitation – including intimidation, force, fraud and deception – have become reality for an increasing number of irregular migrants in the Dutch labour market.

As it appears, the informal sector has gone further ‘underground’, meaning that real exploitation rather than unfavourable working conditions are at stake. The sex and wellness industry, horticulture, construction and domestic services are referred to as hazardous and precarious sectors in this respect. In addition, special notice should be taken of the increased relevance of so-called malafide intermediary employment organizations. Willemsen (2010) has interviewed approximately two hundred undocumented migrants being exposed to the harsh reality of the informal Dutch labour market, and reports a proliferation of malafide and sometimes criminal employment organizations. These employment agencies generally not comply with Dutch labour law, and are responsible for all kinds of exploitative and abusive practices.

### **8.5.2 Marginal housing opportunities**

Leerkes et al. (2004) found that undocumented migrants mainly resort to using three kinds of housing: (1) they temporarily make use of accommodation of friends and relatives, (2) they rent rooms or single beds in private houses or small pensions, and (3) they sublet with the help of relatives or commercial middlemen. As the authors continue, the actual form and quality of housing depends on various factors, including the financial position of the migrant concerned, the extent to which social networks are of any help, and their relationship with the country of origin (which may impact on the need to transfer money abroad).

One of the options available is to look for any paid room or bed. Engbersen et al. (2002) estimated that about one in three undocumented migrants rented a room from a private landlord. Leerkes et al. (2004) also concluded that a substantial minority (of about forty percent) made use of any private accommodation. The availability of sufficient financial resources proves very relevant, as those who are capable of renting or subletting a private stay have often a paid job. However, as Van Meeteren (2010) reveals, there is no stringent relation between income and

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2007. The percentage of violations decreased from 25 percent in 2005 to 17 percent in 2009. The number of detected illegally employed decreased from 4.656 in 2005 to 2.506 in 2009.



money spent on accommodation. Most undocumented migrants live in cheap houses of bad quality as their juridical status does not allow them to find anything better. So even those with regular incomes may end up in a rather poor housing situation.

As it seems, most undocumented immigrants who came as asylum seeker or for reasons of establishing a family to the Netherlands, strongly rely on the help of family and friends. These social networks are of crucial importance for those who hardly have any financial resources and are not capable of renting any private accommodation. In an extensive qualitative research of Kox (2009) it is shown that almost half of the approached rejected asylum seekers in the city of Utrecht resort to these social circles, frequently being composed of fellow countrymen or other migrants. From the interviews we also learn that most interviewees had different acquaintances on who they rely. This often resulted in unforeseen patterns of residential mobility, depending on the temporarily possibilities on offer (see also box 1.6). In addition, those migrants who became illegal after their relation broke up, also frequently resort to informal types of support. As claimed by Ederveen (2013), these migrants often find another partner or may be looked after by relatives and friends.<sup>104</sup>

**Box 1.6: Story from an interview with a African undocumented migrant of 36 of age**

When I came in Utrecht I did not know anybody. I decided to walk around in the centre of the city. There I met an Moroccan guy, who asked me where I did stay. I told him that I did not have any accommodation, and he introduced me to a friend of his. This friend offered me some accommodation, which was, however, not for free. So I could stay there only a few nights. Afterwards I found a cheap room (170 Euro) in a area outside the city centre, which I rented until I had still money left. Then I made use of the *Sleep Inn* of Utrecht, but I also passed the night on the streets of this city. I stayed many hours in the central shopping centre, and stayed in parks under a tree. After a while I was capable of organizing a false passport and civil service number, so I could work through mediation of private employment offices. Then I rented a room from a Turkish owner, where I lived almost one year. After that I got caught by the police, and was sentenced to prison, where I stayed about nine months. After I was let free, and was caught once more, I stayed another half year in prison. Thereafter I went to the *Sleep Inn* again, as well as other centers for the homeless. In the end I was invited in the house of a friend, where I still live. I pay ten Euro's a week and do some shopping. I expect to stay here for the time being.

Source: Kox (2009)

Another factor which explains the housing situation of undocumented migrants is the fact that their access to employment and housing is often entangled. No doubt, the situation of many internal domestic workers, often being forced to make long working hours at the place where they live as well, should be considered as a clear and sometime very troublesome example in this field (Willemsen, 2010). More in general, earlier research of Engbersen and Van der Leun (1999) points to the importance of large migrant communities, offering important support to newly arrived undocumented immigrants, both with regard to employment and housing chances. A similar example was given by Leerkes et al. (2004) who revealed that offered private places to

<sup>104</sup> The position of undocumented family migrants, often being composed of women from Northern Africa and different parts of Asia, was discussed with Rian Ederveen, staff member of Stichting LOS (national centre for undocumented migrants).

undocumented migrants are sometimes closely related to the (informal) labour market. The authors found out that various coffee shops in The Hague play a crucial role in organizing both rooms for undocumented Bulgarians and Turks and jobs for these migrants in the agricultural sector. They even point to the existence of parallel housing markets, owned and rented by foreigners.

## **8.6 Support for the destitute: services for the homeless**

This section discusses the available support structure for destitute homeless undocumented migrants. In the Netherlands municipalities are responsible for providing shelter and assistance to the homeless within the framework of the *Wet maatschappelijke ondersteuning (Wmo)*. There are various forms of shelter and assistance available for homeless people such as long term shelters, night shelters, day shelters and various forms of assisted housing. As explained before however, undocumented migrants in general are excluded from shelter and assistance offered by municipalities with the framework of the Wmo. Because of a formal requirement (legal status), a system requirement (attachment to city) and a local requirement (city-pass), often the only option for homeless undocumented migrants are local arrangements (Picum, 2012).

A study by PICUM from 2004 showed that night shelters were sometimes accessible for undocumented homeless as in night shelters the only access conditions normally are a small fee per bed and a stay no longer than a few nights. However, the report also noted large differences in accessibility between shelters as in some night shelters the free space could be occupied by any homeless persons whereas in other night shelters priority was given to documented homeless and in yet other shelters undocumented migrants were denied access altogether.

Relevant questions to be answered in this section are what support is available for undocumented homeless migrants outside of the framework of the Wmo, which organizations are providing support and which categories of undocumented homeless migrants are included or excluded. Generally a distinction can be made between government provided support for narrowly defined groups (such as victims of human trafficking or unaccompanied minors) and emergency shelters by private initiatives and municipalities for rejected asylum claimants who are unable to return to their country of origin.

### **8.6.1 Government provided services and schemes for specific groups**

#### *Victims of human trafficking*

Victims of human trafficking are entitled to shelter and assistance for three months while considering to press charges to their perpetrator and during the time their case is being investigated or tried before court. Support consists of shelter, legal aid, medical and psychological support, a financial allowance (Rvb) and health care insurance. During the time the case is being investigated or tried, victims are also allowed to work and can claim welfare benefits. There are three reception facilities specifically aimed at victims of human trafficking but these victims can also be offered shelter in women's shelters. Reception ends after a final decision on the case or when the victim no longer wants to cooperate with the police.

In practice most cases of human trafficking are dismissed due to lack of evidence. This means that upon dismissal the victims have to leave the reception facility.<sup>105</sup> It is often unclear what happens to these victims after they leave the reception facility. Professionals from support organization indicate the risk of victims ending up on the street or back into the arms of the perpetrator.

#### *Unaccompanied undocumented migrants*

Unaccompanied undocumented minors (younger than 18 years) have the right to reception. They can be housed in protected shelters, with foster families, or in small units with other children. Reception of this particular group of undocumented migrants seems to be sufficiently guaranteed in the Netherlands.

#### *Families with minor children*

For rejected asylum claimants with minor children specific reception facilities are available, if they have not returned within the twelve weeks in which they could prepare for their independent return (see also section 8.4.1). In 2010 the policy memorandum '*Altijd onderdak voor kinderen*' was adopted – in response to the ESRC ruling of 2009 on the Defence for Children case - in which measures were proposed to prevent families with minor children from becoming homeless after termination of the period of voluntary return.<sup>106</sup> As a result family support locations were created, similar to the 'limited freedom locations' but only geared to families with children. At these locations only very basic necessities are provided by COA. At present there are five family support locations. Families are only transferred to these locations when access to medical care and education for the children can be guaranteed (Zwagemakers, 2013).

### **8.6.2 Emergency shelters**

Undocumented migrants who do not fall within categories described above, have to depend on emergency shelters. There are several private and municipal organizations offering support and shelter to undocumented migrants. Estimations on the number of local organizations vary and range from 30 to 40 organization with approximately 1,000 beds<sup>107</sup> to 55 to 70 organizations with approximately 2,000 beds.<sup>108</sup> Some emergency shelters are entirely privately funded or are co-financed by municipalities. These organizations often date from before the year 2000. In addition there are emergency shelters which are fully funded by municipalities. Many of these shelters emerged after the year 2000 in response to the growth of destitute rejected asylum claimants after the introduction of the Linkage Act. The shelters are often run by local church groups or local refugee support groups.

The evaluation of the Linkage Act indeed showed that three years after the introduction of the act municipalities continued to offer assistance to undocumented persons in serious humanitarian situations (B&A, 2001). This situation exists up to day as local authorities are faced with destitute migrants within their communities who no longer legitimately stay in the Netherlands but who also cannot return to their countries of origin. Many local authorities feel compelled to offer some form of emergency assistance and shelter to these migrants to prevent humanitarian crises. Municipalities face a dilemma as according to Article 8 of the European Convention of Human

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<sup>105</sup> Previously victims could await the outcome of their complaint before the court on the dismissal in the reception facility but this is no longer the case.

<sup>106</sup> Kamerstukken II 2010/11, 32 566, nr. 2.

<sup>107</sup> Information provided by Stichting LOS.

<sup>108</sup> PICUM. (2012).

Rights (ECHR) they have a duty to care for vulnerable rejected asylum claimants, while at the same time in an agreement with the central government (*Bestuursakkoord*) they promised to end emergency shelters for rejected asylum claimants by 2010 (Zwagemakers, 2013). As return policies, which are a national responsibility, have proved ineffective or insufficient, municipalities continued to offer shelter to rejected asylum claimants within their communities (Van der Welle & Odé, 2009). The number of emergency shelters provided by municipalities has however decreased in recent years, especially after a General Amnesty was announced in 2007. Not only have the number of beds decreased in recent years, also criteria are imposed which limits access to these shelters. The main criterion these organizations often use for offering shelter is that a migrant has to be a rejected asylum seeker from their own municipality who has a chance to legalize his status. Other categories of undocumented migrants are generally denied access to these shelters (see box 1.7).

**Box 1.7: Municipal emergency shelter: Smallerland**

The municipality of Smallerland in the North of the Netherlands recently decided to provide emergency shelter to rejected asylum claimants during a period of four months. Shelter, food, medical and legal assistance is provided by the local Refugee Council and is funded by the municipality within the framework of the *Wet maatschappelijke ondersteuning*. However, this support is only available for rejected asylum claimants from the local refugee reception center and only for those who still had legal procedures pending or where willing to cooperate on their return.<sup>109</sup>

Privately funded initiatives seem less likely to impose a local residency criterion. Het *Wereldhuis* in Amsterdam (funded by religious organizations), for example, supplies support to undocumented migrants regardless of their local attachment. The organization provides day shelter, counselling and training to various categories of undocumented migrants; rejected asylum seekers, overstayers, victims of human trafficking and illegal entrants. Another initiative in Amsterdam (*Werkgroep Opvang Uitgeprocedeerden*) also funded by the church, provides legal and material aid to undocumented migrants with a legal perspective (either in the Netherlands or in another country). Again, local attachment is not a decisive criteria in the award of support. Yearly, approximately 300 undocumented migrants receive material support, but the initiative will be stopped in 2013.

### 8.6.3 Summary remarks

The available support for homeless undocumented migrants in the Netherlands is limited as common shelters for the homeless are not accessible for those without a residence permit. For certain well defined groups of undocumented migrants the government provides special reception facilities under very specific conditions such as victims of human trafficking as long as they cooperate with the police investigation, unaccompanied minor children until they reach the age of 18 and rejected asylum claimants as long as they cooperate in their return. Those who do not meet these criteria, for example because they were unable (or unwilling) to return within the stipulated time frame, are excluded from these facilities. Those migrants have to rely on private initiatives and emergency shelters from municipalities, but the number of available beds is limited and often specific criteria apply for accessing these facilities, such as a local attachment criterion.

<sup>109</sup> <http://www.smallerland.nl/Int/Nieuws-overzicht/Nieuws-overzicht-2013/Januari/Noodopvang-komt-er.html>

Undocumented migrants who are unable or unwilling to return are generally denied all support. This has led to the extreme situation of encampments of rejected asylum claimants at Ter Apel and Osdorp (Amsterdam) in the autumn of 2012. Being cut off from all kinds of support and unable to return to their countries of origin, these destitute migrants took to camping in the street to generate attention and a solution for their plight.

## 8.7 Practices to ameliorate the plight of undocumented migrants

The situation of undocumented migrants in the Netherlands has become increasingly difficult in recent years. A situation of extreme legal and social exclusion can be witnessed which leads to extreme poverty and destitution among large groups of undocumented migrants, especially among rejected asylum seekers. It is hard to identify good practices in the Netherlands aimed at combating destitution and homelessness among undocumented migrants as the main policy focus is on excluding undocumented migrants from any form of assistance and encouraging return. However, as many undocumented are unable or unwilling to return to their countries of origin, they are left in limbo surviving on the streets, in emergency shelters or with friends or relatives.

In response to these failed national policies, some (local) initiatives are initiated to soften the humanitarian consequences of these policies. For example, municipalities organized in LOGO (National Consultation of Municipalities on Reception and Return Policies; *Landelijk Overleg van Gemeentebesturen inzake Opvang- en terugkeerbeleid*) and the four large cities are in constant dialogue with the national government to provide for better solutions for homeless rejected asylum claimants. A very active municipality in this respect is the City of Utrecht which provides various forms of shelter for different groups of homeless undocumented migrants (see box 1.8). However, Utrecht also applies a local residency criterion i.e. that support is only given to persons who have resided for at least some time in the city of Utrecht. As the city is increasingly confronted with rejected asylum seekers who have been expelled from the reception centers all over the country, the homeless services in the city are faced with increasing demands for help. Utrecht is unable to provide support and shelter for this group of homeless migrants, but tries to address this problem by pressing the national government for coming up with solutions and by calling upon other municipalities to taking responsibility to provide support for their own destitute homeless migrants.

### **Box 1.8: City of Utrecht: support for homeless undocumented migrants**

The city of Utrecht finances various forms of support for homeless undocumented migrants. Two projects are specifically aimed at very vulnerable groups, i.e. rejected asylum seekers with (severe) psychological problems, and women with children and single men with medical problems.

For rejected asylum claimants with severe psychological problems 5 places are financed in a special treatment center in Amsterdam (*project medische opvang ongedocumenteerden*). The city of Utrecht provides support for a maximum duration of 1,5 years in this center during which the migrants are provided with food, shelter, legal aid, assisted return (when necessary), medical and socio-psychological aid.

In the other project (*project Fanga Musow/Stichting Seguro*) a similar type of support is provided.

This project is also open to overstayers and is not restricted to rejected asylum

claimants. Local residency and medical problems are eligibility criteria for receiving this type of support. The support is available for a limited number of people which are housed either in a women's house or in three houses for single men.

In addition to these two projects the city of Utrecht provides emergency shelter for 105 rejected asylum seekers who are no longer entitled to reception facilities for asylum seekers and who are unable to return to their countries of origin. The city offers so called '*bed, bad, brood en begeleiding*' (bed, bath, bread and support) to these asylum seekers. Legal support is provided by STIL which helps in accessing medical care, legal support, return, humanitarian needs and fighting exploitation (Gemeente Utrecht, 2010). The city has guaranteed financial support for these services until the end of 2015 (Gemeente Utrecht 2011).

Another interesting development is the Collective Complaint by the Conference of European Churches against the Dutch States. This complaint is brought before the European Committee of Social Rights and concerns the right to food, clothing and shelter for undocumented migrants in the Netherlands.<sup>110</sup> The complaint was spiked by recent events concerning the encampments of undocumented migrants at various public locations and the squatting of these undocumented migrants of the so-called Refugee Church in Amsterdam. In October 2013 the ECSR ruled in favor of the plaintiffs and called for immediate measures by the Dutch government.

## 8.8 Concluding remarks

Migrants in the Netherlands witness a high incidence of poverty. As compared to the native born (non-Western) migrants are more likely to be unemployed and suffer from severe material deprivation. This is even more so the case for undocumented migrants. Even though robust data on the position of irregular migrants is lacking, qualitative studies indicate very harsh and extremely insecure living conditions for many undocumented migrants. This situation is typified by a very marginal labour market position and a precarious housing condition. Again, qualitative studies show a high degree of houselessness (informal arrangements with friends and family) among undocumented migrants and also in some cases rooflessness. As a result of failed return policies increasing numbers of rejected asylum seekers are finding themselves on the street, in emergency shelters or detention centers.

Due to the Linkage Act undocumented migrants are cut off from the social safety net. Collective services and provisions are linked to resident status and therefore not accessible for irregular migrants. Only for very narrowly defined groups, such as victims of human trafficking and unaccompanied minors, reception and shelter facilities are provided by the government. Emergency shelter is provided by local municipalities and civil society organizations but the number of shelters is decreasing and are unable to deal with the growing number of homeless undocumented migrants, especially among rejected asylum claimants.

What can be witnessed in the Netherlands is a process of legal exclusion and criminalization of irregular migrants in combination with social exclusion on the labour and housing market. As undocumented migrants are cut off from all government support and alternative survival strategies are becoming increasingly difficult, many are unable to fulfill basic needs and are becoming destitute. The strong legal exclusion of undocumented migrants is meant to discourage irregular migration and by doing so fostering return. However, it is precisely this aspect of national policies

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<sup>110</sup> Conference of European Churches (CEC) v. The Netherlands, Complaint No 90/2013, 21 January 2013.

which have not produced the desired results as many undocumented migrants are unable to return to their countries of origin. These groups are left in limbo with very little perspective on improving their situation. In short, formal exclusion together with the absence of any tolerated legal constructions and the very few possibilities to participate in informal labour, result in very harsh living conditions of undocumented migrants in the Netherlands. These very strict policies by the Dutch government are in some cases corrected by the court, referring to human rights violations.

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## **ANNEX II**

### **List of interviewed stakeholders**

- Stichting LOS
- STIL (Utrecht)
- City of Utrecht
- Het Wereldhuis (Amsterdam)
- Werkgroep Opvang Uitgeprocedeerden (Amsterdam)
- Pauluskerk (Rotterdam)

## **9 THIRD COUNTRY WORKERS IN SPAIN**

### **9.1 Introduction**

For many years great numbers of migrants have come to Spain to benefit from its tremendous economic growth. Recently, however, numerous studies and reports have been published drawing attention to the disquieting situation of immigrants in this country. This situation is largely due to the current economic and financial crisis in Spain, the effects of which have been particularly severe for the migrant population in this country.

This country report is a detailed study of the position of migrants in terms of poverty and destitution. Focus is on the position of migrant workers from third countries. These migrants have become most prone to severe poverty, including homelessness, both because of the limited level of protection afforded to them, as many of them are residing on an illegal basis in Spain, and because of their strong representation in the informal labour market.

Migration from third countries to Spain can essentially be considered a clandestine process, not regulated by Spanish migration law, with the result that migrants are highly vulnerable to destitution and homelessness. We confirm this line of reasoning by examining both the legal system – with reference to the regulatory system of migration management and the levels of protection provided by the Spanish welfare state – and social system, including the daily practices of exploitation experienced by immigrants in the Spanish labour market.

Within the group of third-country workers special attention will be paid to two categories, namely migrants employed in the agricultural sector and those employed in domestic service. No doubt other examples can also be cited as evidence of the legal and social vulnerability of third-country migrants in Spain but as many authors have reported on the highly exploitative situation of migrant workers in these two sectors, we hope to come up with well documented examples of destitution and homelessness in this country.

### **9.2 Destitution among third country workers**

#### **9.2.1 Immigration to Spain**

Spain's foreign population has risen considerably in the last two decades. The result of this constant inflow of migrants is that Spain has gone from being an emigration country to a net recipient of migratory flows. According to aggregate data from local population registers, there were less than one million foreign residents in Spain in the year 2000. Ten years later, this figure had increased to more than six million foreigners (Cala, 2010).

Nowadays foreign residents represent over twelve percent of the total population in Spain, a vast majority of these foreigners originating from less developed countries in Northern Africa and Eastern Europe.

The wave of immigrants into Spain has thus been fast and furious, particularly due to a period of prolonged economic growth in Spain (Arredondo, 2008). The severe economic and financial crisis

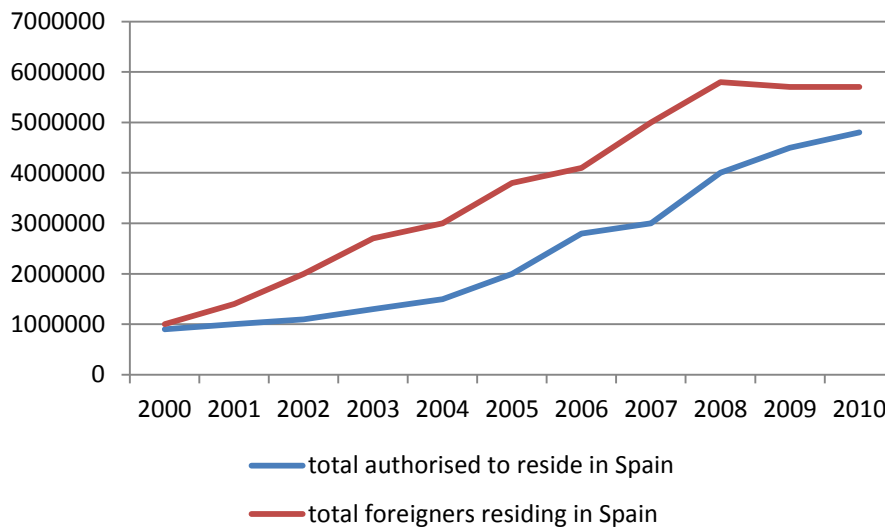
of the recent years has, however, changed the landscape of migration in a dramatic way. In 2011 alone, more than 400,000 foreigners migrated away from this country, particularly to Northern Africa, Southern America and the rest of Europe. Additionally, in the same year another 60,000 Spanish nationals left their country in search of employment abroad (Huffington Post, 2012).

In addition to these formally registered numbers, Spain has always attracted large numbers of undocumented migrants. Obviously, it is not possible to give any accurate number of undocumented migrants in this country. However, if we compare data from the national Ministry of the Interior with local registration data, we observe a difference of more than one million foreign residents (figure 1). This difference is an indication of the number of undocumented migrants in Spain, as illegally residing migrants are allowed to register in a municipality. As explained by Sandell (2006), the incentive to do so is twofold: being registered entitles undocumented migrants to certain social services (in particular health care) and being registered constitutes proof of settlement that may be used in the process of regularisation of legal status afterwards.

The migratory process experienced by Spain in recent decades has certain other unique features as well, one of these being the composition according to nationality. Nowadays, forty percent of all foreign residents originate from the European continent, particularly the European Union. Within this region, Romania and the United Kingdom are the most important suppliers of migrants to Spain. The African continent accounts for almost twenty percent of all foreigners in this country, with Morocco being the most important supplier. Conversely, the share of migrants from Latin America, although still substantial, is gradually decreasing.

Furthermore, the foreign population is far from equally distributed throughout Spain, but tends to be concentrated in certain regions and provinces. Broadly speaking, the distribution reflects the geography of economic development, with large concentrations of migrants along the Mediterranean coast and in the capital of Madrid. In other words, the three autonomous communities of Madrid, Catalonia (Barcelona) and Valencia account for about 55 percent of all legal foreigners in Spain (INE, 2011).

**Figure 9.1 Evolution of the number of foreigners residing in Spain and the number of authorisations to reside in this country**



Source: Fuentes and Callejo (2011) Immigration and the Welfare State in Spain.

### 9.2.2 Migrant workers from third countries

Immigrants arriving in Spain have found employment primarily in sectors with high concentrations of jobs not covered by local workers. A great deal of these workers originate from less developed countries, particularly in Africa and Eastern Europe. As such, we may understand the presence of migrant workers in this country in terms of labour market segmentation (cf. Fuentes and Callejo, 2011). This approach explains how massive unemployment and demand for labour in specific economic niches can exist simultaneously.

Muños de Bustillo and Antón (2012) claim that the representation of foreign workers at the lower levels of the Spanish labour market is very high as compared to other national labour markets in Europe. This pattern closely correlates with the overall skill levels of migrant workers in Spain. In 2008 out of a total of 2,941,100 legally residing third-country nationals employed in Spain, 993,100 (or 34%) were unskilled workers (Bertozzi, 2010).

Between 1996 and 2007 the Spanish economy created almost eight million jobs, representing more than forty percent of the total employment created in the OECD in that period (Fuentes and Callejo, 2011). The economic crisis in Spain has, however, led to the destruction of more than two million jobs. Immigrant workers, who made up a large share of the new workers employed during the expansive years, disproportionately suffered from the economic recession. Their role as a flexible buffer – being hired in times of great need and being fired when their presence is no longer required – is demonstrated by the social security statistics: at the end of 2001, the number of foreigners affiliated to the social security system was around 600,000 (a little less than 4% of affiliated workers). By the end of 2009 the number of affiliated foreigners had increased to almost two million, representing more than 10% of all affiliates (see also table 9.1).

**Table 9.1 Distribution of the foreign population by social security regime affiliation (November 2009)**

	<b>EU foreigners</b>	<b>Non-EU foreigners</b>	<b>Total foreigners</b>	<b>Total</b>
General	429 545	803 946	1 233 490	13 433 108
Self-employed	109 694	89 405	199 099	3 165 517
Agrarian	110 845	139 446	250 291	818 319
Domestic work	22 187	152 703	174 890	289 432
<b>Total</b>	<b>673 986</b>	<b>1 189 358</b>	<b>1 863 344</b>	<b>17 777 153</b>

Source: Fuentes and Callejo (2011)

As can be seen in the overrepresentation of immigrants in the agrarian and domestic regimes, the Spanish labour market acts as a clear mechanism for employment segmentation by nationality and economic activity. No doubt, this segmentation explains to a large extent the differential impact of unemployment on different categories of foreign workers. By the end of 2010 foreigners continued to represent almost ten percent (9.3%) in the general regime, a little more than five percent (6.3%) of the self-employed workers, more than forty percent (41.2%) of those affiliated with the agrarian regime and 60% of those inscribed in the regime for domestic workers.

These immigrant groups working in the sectors most affected by the crisis have suffered severe consequences in terms of unemployment, reaching to a level of around fifty percent among foreigners from Africa and almost thirty percent among migrants from Latin America (Fuente and Callejo, 2011). Third-country workers are therefore among the most affected groups of migrants, due to job cuts in the sectors of the economy where those with employment permits are usually employed. In 2008 the services sector cut employment by 3.25 percent, construction by 17.34 percent, manufacturing industry by 11.89 percent and agriculture by 2.64 percent. This reduction was immediately followed by strongly reducing employment permits to foreign workers in Spain. The total number of employment permits being granted reduced from about 110,000 during the first half of 2008 to a little more than 30,000 during the first quarter of 2009 (EMN, 2009).

What is equally true, however, is that many foreign workers have found employment in the informal or underground economy. Because of their very nature, the precise dimension of these activities is unknown, although various estimates assert that the size of the informal economy accounts for more than one fifth of GDP (Schneider, 2012). The informal economy is concentrated primarily in agriculture, construction, manufacturing and particularly in the service sector (including restaurants, cleaning and domestic services). In these sectors, undeclared work accounts for shares of up to forty percent.<sup>111</sup>

### **9.2.3 Destitution among migrants and third-country workers**

As mentioned before, the economic and financial crisis has taken a particularly high toll on foreigners. During the first years of the crisis alone, more than a million migrants lost their jobs, homes and small businesses (Cala, 2010). As table 9.2 shows, poverty rates among the immigrant population are much higher than among the Spanish population. Different economic thresholds or poverty lines may be used to determine who is considered most disadvantaged. Using a relatively high threshold, considering the poor to be those who earn less than 60% of the

<sup>111</sup> Hazans (2011) gives shares of informal employment (related to total employment in these sectors) for Spain, Portugal and Greece together. These estimates come to 28% informal employment in agriculture and 39% in personal and household services.



median income of the population as a whole, a little less than twenty percent of all people in Spain would be found in this situation. However, for both European immigrants and those from outside Europe these shares are much higher (24% and 30% respectively). When we lower the poverty line to forty percent of the median, differences in poverty rates between native Spaniards and foreign residents in Spain become even more obvious. About one in ten migrants belongs to the poorest of this country.

**Table 9.2 Share of population below the poverty line based on different thresholds, 2008**

	60% of median	40% of median
Spaniards	18.1	6.1
Rest of EU-15	24.0	10.2
Rest of Europe	21.5	12.3
Rest of World	29.6	9.5
Total	18.8	6.4

Source: Fuentes and Callejo (2011)

Unfortunately, no recent figures about poverty are available to estimate evolving trends. Nonetheless as Fuentes and Callejo (2011) observe, poverty rates today must be considerably worse because of the increase in unemployment, which has affected the immigrant population in particular. Recent estimates of Thoreau and Liebig (2012) show that between 2000 and 2010 Spain has been one of the countries of the OECD with strongest job losses among the foreign-born population. Consequently, the immigrant household median income is much lower – estimated at a level of less than eighty percent – as compared to the native-born. This picture does of course not include the position of undocumented migrants in Spain.

**9.2.4 Homelessness among migrants and third-country workers**

Data from surveys held in the large cities of Spain reflect how highly migrants are represented in the number of homeless and roofless persons (Bosch Meda, 2010). A survey carried out in Barcelona in 2008 reported that almost two in three of the homeless respondents were migrants. In Madrid, a local investigation showed that more than half of all those considered homeless were people with a foreign nationality. Homeless migrants can also be found in rural areas as well, particularly in those regions with an extensive agricultural sector (Arjona and Checa, 2007).

The EPSH-Personas survey (INE, 2005) reveals that some nationalities are highly represented among the homeless migrants in Spain.<sup>112</sup> Both the African and European continent are large suppliers of homeless migrants in this country, with 44% and 37% percent of all counted homeless migrants respectively. In addition, as we learn from Bosch Meda (2010), undocumented migrants are also fairly represented in data on homelessness.<sup>113</sup> Information on the housing situation among third country workers suggests that only a small minority is living rough, but that this share is likely to increase for those who recently came to Spain.<sup>114</sup>

<sup>112</sup> The EPSH-Personas survey of homeless people counted 21,900 individuals who were houseless or roofless, of whom more than one in three were living rough. Just over half of the group living rough were migrants (54%).

<sup>113</sup> The Barcelona and Madrid counts that people living rough found that 9.7 and 103.8 per cent respectively of the respondents reported that being an undocumented migrant was one of the reasons why they were homeless.

<sup>114</sup> Among economic migrants who had lived in Spain for less than a year, 4 percent reported living rough. This share dropped to 1.5 percent for those who had been living in Spain two to five years and to 1 percent for those who resided in Spain for five years or longer.

In a recent report of FEANTSA (2012) it becomes obvious that the economic crisis has further worsened the housing situation among migrants in Spain. In 2010, approximately two-third (63%) of all people registered with homeless services in Spain were immigrants. Data from numerous Spanish cities indicate a high and increasing proportion of homeless foreigners over recent years. For instance, between 2008 and 2010 the organisation Fundación Arrels reported a twenty percent increase in the numbers of migrants accessing their services in Catalonia. Moroccans, Romanians and Algerians are the nationalities most strongly represented among the homeless migrants in Spain.

### 9.3 Spanish Immigration law

Spain introduced its first immigration law in 1985, one year before joining the European Community. The current legal and formal framework that regulates the rights of non-EU foreigners is Organic Law 2/2009 on the Rights and Liberties of Foreigners in Spain and their Social Integration. Law 2/2009 was passed in the midst of the economic downturn and was meant to constitute a significant reform of the outdated Law 4/2000 and its subsequent reforms (EMN, 2009; Jonjić and Mavrodi, 2012). An important reason for introducing a new aliens act was to further incorporate EU legislation on asylum and immigration into Spanish law (EMN, 2009).

Similar to the previous act of 2000, law 2/2009 acknowledges certain rights corresponding to foreigners and Spaniards in an identical manner, including the right to life, and to physical and moral integrity, to personal and family privacy, to ideological liberty and to religious freedom. The law also acknowledges another series of rights for all foreigners independent of their administrative status, such as the right to emergency health care; to full health care for foreigners who are registered in the Municipal Census, for minors and for pregnant women; and to mandatory schooling, basic social services and free legal assistance. In addition to these rights, the reform act also introduced a number of new basic rights to be granted to irregularly residing third country nationals. These new rights include: free legal aid, non-compulsory education, and the rights of assembly, association, demonstration, joining a trade union and striking.<sup>115</sup>

In addition, law 2/2009 acknowledges certain conditional rights for foreign residents in Spain. These conditions particularly refer to the legal status of foreigners. As a result, the right to freedom of movement, to work and to receive social security benefits are guaranteed to foreigners who are legal residents. Equally, the rights to receive support in housing issues and family reunification are recognised only for those foreigners with legal residency. Unlike the previous 4/2000 law, the modified act of 2009 provides for the establishment of a progressive system of access rights based on strengthening the legal status by increasing the period of legal residence.

An important legislative activity resulting from the new reform law of 2009 was the passage of Royal Decree 557/2011. The newly implemented Regulation explains and simplifies administrative procedures for third-country nationals, adapting Spanish law to the EU *acquis* (Jonjić and Mavrodi, 2012). The main changes concerning legal migrants include improvement and transparency in the renewal of residence and work permits, as well as measures to promote the integration of the immigrant population. The Regulation also takes into account the rights of

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<sup>115</sup> These basic rights granted to foreigners regardless of their legal situation are included in law 2/2009 under Part I, Article 7 (freedom of assembly and demonstration), Article 8 (freedom of association) and Article 11 (freedom to organize and strike).

migrants in vulnerable situations, such as minors, female victims of gender violence and victims of human trafficking.

### 9.3.1 Immigration policy and access to the Spanish labour market

The position of labour migrants and their legal protection in Spain depends on three factors: the regime for non-EU workers (as laid down in the general regime and the yearly contingencies); the establishment of bilateral and multilateral agreements; and the legalisation campaigns of undocumented migrants in Spain. These regulatory factors will be explained below.

#### *Employment permits issued to third country workers*

Within the framework of the *Régimen General*, employers may arrange temporary residence and work permits for their third-country labourers.<sup>116</sup> The employer has to obtain a certificate from the Public Employment Service stating that the labour market test requirements have been satisfied.<sup>117</sup> The Public Employment Service announces the vacancy, and, if no suitable candidate can be found in the Spanish labour market within fifteen days, the certificate is issued. These permits are only issued on the condition that an employment contract guarantees continuous work for the duration of the work and residence permit. Generally, one in three of all third-country workers enter the Spanish labour market through this *Régimen General* (Van den Broek, 2010).

Since 1993, the Spanish government has established a quota system or annual contingents (*Contingentes*) of immigrant workers who are hired in their countries of origin and who then supply the labour force for jobs that cannot be covered by the national labour market. The contingent has three distinct sections. The first provides a list of permanent job offers, the second provides a quota of visas to seek work, and the third sector establishes the mechanisms for hiring temporary workers. Unlike job offers for permanent positions and the quota for job-seeking visas, the contingent procedure does not plan or define the volume for hiring temporary workers. What matters, however, is that the temporary workers may not be employed for a period of more than nine months, and that they are obliged to sign a written commitment to go back to their countries when the season(s) ends.<sup>118</sup> During the first decade after 1993, these contingents have oscillated between 25,000 to over 30,000 foreign workers each year (Van den Broek, 2010). More recently, and due to the economic downturn, the number of migrant workers involved in the yearly contingents has been reduced to less than 10,000.<sup>119</sup>

#### *Bilateral agreements with non-EU countries*

For many years the signing of bilateral agreements with sending countries was seen as an adequate mechanism to combine the needs of employers with the interest of the Spanish authorities to increase its control over the inflows of immigrants (Tedesco, 2010). In particular, these agreements serve to regulate the management of migration between the respective countries and include different issues, such as the maximum number of immigrants allowed to come to Spain, their remittance, possibilities for family regrouping, the process of hiring workers

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<sup>116</sup> Residence and work authorizations are issued as one document. The initial authorization is valid for one year. It can be renewed twice in two-year increments (four years in total). The first authorization ties the third-country worker to one sector and specific geographical area but not to a specific employer. After one year, if the authorization is renewed, the third-country worker can change sectors or areas.

<sup>117</sup> This is the case for all jobs, which are not listed in the Catalogue of Hard-to-Fill Occupations. This catalogue of hard-to-fill occupations is established yearly in close cooperation with social partners and regional employment bodies.

<sup>118</sup> It is, however, possible to be hired in successive years; workers who are hired for four years are more likely to obtain authorisation for permanent employment.

<sup>119</sup> Figures published by the Ministry for Labour and Immigration, Secretary of State for Immigration and Emigration, Directorate General for Immigration.

prior to their migration and the fight against illegal migration. In fact, these bilateral agreements are closely related to the above mentioned quota system, for they facilitate the recruitment of migrant workers in the countries of origin.

As an outstanding example, the Spanish government signed in 1999 an agreement with Morocco regulating temporary migration to Spain. According to this agreement, those jobs not covered by present workers, either from Spain or the EU, could be offered to potential immigrants from Morocco. The Spanish authorities offered to grant a temporary work permit for a maximum of nine months, health insurance, and public subsidies to cover transportation and accommodation costs. Employers would be responsible for the working and living conditions of the temporary migrants. Similar bilateral agreements were later announced with other countries, particularly in South America but also in Central Africa and Eastern Europe. Nonetheless, the agreement with Morocco has always been considered of exceptional importance, particularly due to the geographical proximity of both countries, the large flows of undocumented migrants coming from this country and the large Moroccan community already settled in Spain (Fuentes, 2005).

Today, the bilateral agreements are still part of official migration management in Spain. However, being confronted with an enormous rise in unemployment among foreign residents, Spain is no longer committed to facilitate new flows of migrants to its national labour market. So rather than managing migration to Spain, initiatives have been undertaken to encourage return. As a result, a bilateral Voluntary Return Plan has been concluded (Tedesco, 2010). This plan establishes that the government will pay unemployment insurance in two instalments to facilitate the reintegration of immigrants in the labour market in their countries of origin. Between 2003 and 2009 more than 6,000 people, and migrants from Latin American countries in particular, have taken advantage of this program (López-Sala and Ferrero-Turrión, 2009).

#### *Multilateral Agreement*

In June 2009, Spain approved the Ibero-American Multilateral Agreement on Social Security, which will finance occupational disability, old age, survival and accidents at work and industrial illness for all migrants in Spain originating from Latin American countries (EMN, 2009). Although many migrant workers from these countries historically linked to Spain are already covered by social security contributions through bilateral agreements, there can be no doubting the importance of this agreement, given its multilateral nature and its personal scope of application. The purpose of this agreement is to adopt measures to ensure that the globalisation of the economy does not harm social protection, as was recommended by the International Labour Organisation (ibid.).

#### *Regularisation of third-country workers*

Despite the good intentions behind these permit systems and international agreements, we must admit that they have remained largely ineffective, particularly due to the persistent strength of spontaneous flows of undocumented migrants to Spain. For many years, and due to the limited size of the contingents, many undocumented workers have simply bypassed the quota system altogether by using the informal economy (López-Sala and Ferrero-Turrión, 2009). Fuentes (2005) argues that these undocumented workers have made the regular import of labour basically unsuccessful.

Due to massive numbers of unauthorised migrants and their close connection with the informal labour market, the Spanish government has slightly adjusted its focus from regulating new

patterns of labour mobility to the regularisation of undocumented migrants working and living in Spain. This way of entering the Spanish labour market must be considered as a more than subsidiary measure, as hundreds of thousands of migrants have been legalised through these regularisation programmes. The 2005 regularisation was the largest and most efficient of Spain's previous extraordinary legalisation campaigns, which occurred in 1986, 1991, 1996 and 2001 (Arango, 2013).

The regularisation programme of 2005 was called 'selective normalisation' aimed at providing work permits to those who could prove they had resided in Spain for the six months preceding the start of the process and who could produce a contract of employment. The latter meant that the work permit would not become effective as long as the immigrant worker was registered in the Social Security system. In fact, it was not the migrant who submitted the application for regularisation but his or her (potential) employer (Fuentes, 2005).<sup>120</sup>

At the end of this process, in May 2005, some 690,000 applications had been submitted. The distribution of these applications gives us a clear picture of the participation of undocumented migrants in Spain's informal economy. It emerges that about one third of the applications were submitted from within the domestic sector, one in five from within the construction sector, nearly one in six from within the agricultural sector and ten percent from within the catering and tourism sector. It is estimated that between three and five percent of the applications were rejected, meaning that this last regularisation process has resulted in the emergence of around 650,000 workers from the underground into the formal economy (Fuentes, 2005).

More recently, on 26 May 2011, the Spanish Parliament enacted the Royal Decree 5/2011, aiming to push forward the regularisation of undeclared work. The programme was carried out in two phases (Eurofound, 2013). In the first phase, undeclared work is defined as paid work undertaken outside the social security system. It does not include other illegal activities or comprise the regularisation of working conditions in a broader sense (wages, working times, etc.). Under the new measures, the onus is on employers to take initiatives to register any undeclared workers they employ with the social security authorities. Then they must sign a contract lasting at least six months. In the second phase, as of 31 July 2011, new measures and sanctions were applied to employers and businesses still employing undeclared workers.<sup>121</sup>

#### **9.4 The social system: social protection and labour law**

Inspired by the typology of welfare regimes in Northern, Western and Central Europe (Esping-Andersen, 1990), a fourth model has been conceptualised with regard to Southern Europe (Ferrera, 1996; Moreno, 2006). This so-called Mediterranean type, as found in Spain and other southern European countries,

combines both social insurance programmes (pension, unemployment benefits) and programmes of a universalist character (education, health care) with a traditional dependence on the family as

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<sup>120</sup> For this reason the 'normalization' campaign has also been criticized, for leaving too much power in the hands of employers. After all, employers could also fire undocumented workers instead of regularizing them, they could make the workers pay all the costs which were involved, or make them work for free in exchange for papers (see, more in detail, Fuentes, 2005).

<sup>121</sup> The introduction of new sanctions modified the Law of Infractions and Sanctions in the Social Order (Royal Decree 5/2000), saying that, amongst others, existing sanctions under the decree become stricter, new sanctions will be linked to the financial help of the government as part of its labour market policies, and any enterprise sanctioned will not be eligible to apply for public contracts for a period of five years.

the principal provider of care to its members. Accordingly, social assistance is poorly developed in Spain.

Under the Spanish social security regime, as explained in detail by Fuentes and Callejo (2011), immigrants have access to social protection in two main ways. On the one hand, foreigners with permission to work access these systems under the same conditions as native born workers through social insurance based on participation in the labour market and affiliation in the social security system. On the other hand, immigrants have access to certain social protection based on their residence in the country. In Spain this would be the case with health care, education, some social services programmes and housing assistance. Residence therefore provides these rights to benefits regardless of an individual's legal situation. Below we explain this dual character in more detail.

#### **9.4.1 Social security**

The social security system constitutes the principal pillar of the Spanish welfare system. Financed basically through contributions from employees and employers, it comprises a series of insurance schemes, which respond to specific social risks linked to the workplace, i.e. unemployment, workplace accidents, disability and retirement. The contributory nature of these programmes implies that the basic criterion defining the right of access is affiliation to social security during a specified period of time. Nationality does not play any role in the established criteria defining the right of access to social security benefits, as both Spaniards and immigrants with work permits or employment in the formal economy have access to these systems under equal conditions. What matters is, however, the legal situation of both the immigrants at work and of the jobs performed by migrant workers.

In Spain, access to social security for undocumented migrants has changed with the reform of the Immigration Act 14/2003, which introduced a new clause concerning the entitlement of irregular migrant workers to social security benefits. Initially, the Aliens Act of 2000 (4/2000) recognised the right to social security benefits only in relation to regular migrant workers. This principle finds its equivalent in the Social Security Act, which limits the right to social security to aliens who are legally staying or residing in Spain.<sup>122</sup> With the reform of the Aliens Act in 2003, this situation has altered in the sense that the lack of a work permit is no longer considered as an obstacle for receiving benefits that might correspond to the labour contract.

The way this new situation is formulated has, however, produced a lot of legal confusion, for it is not clear whether the reform gives rise to obligations on the part of the public social security agencies or if it simply refers to the contractual obligations on the part of the employer. Häusler (2010) has analysed the position of undocumented migrants in the event of an accident at work and concludes that there have been tendencies in the jurisprudence to grant this right to all migrants, independent of their residence status.<sup>123</sup> Conversely, as Veal Diaz (2012) argues, the reform of the Aliens Act, and Article 36 14/2003 in particular, has produced a variety of doctrinal and jurisprudential views as regards the right of undocumented migrants to receive

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<sup>122</sup> *Ley General de la Seguridad Social* (LSGG), Article 7, paragraph 1.

<sup>123</sup> Two decisions taken by the Supreme Court in 2003 stating that given the accepted validity of the employment contracts of irregular migrant workers these migrants cannot be deprived of protection that is inherent to the employment contract under Spanish law (SSTS 9<sup>th</sup> of June 2003 and 7<sup>th</sup> of October 2003) assume particular importance.

unemployment benefits. Therefore, it is necessary to define per social security benefit whether or not an undocumented migrant is entitled to this benefit .

#### **9.4.2 Specific regulations**

In addition to the general regulations that are usually applied, the Spanish social security system also contains special regulations. These regulations assess professional occupations by their nature, particular conditions of time and place or by the nature of the production processes. Nowadays, special regulations apply to agriculture, self-employed workers, domestic employees, coal miners, port and sea workers, and civil servants. Given that our interest specifically focuses on the agriculture and domestic services sectors we explain a number of relevant elements in relation to these sectors below.

##### *Agriculture*

Traditionally, the social protection of Spanish agricultural workers was far inferior to that of workers in other sectors of the Spanish economy. This was due to the fact that until 2012 workers in this sector had a special social security system, the so-called *Régimen Especial Agrario*. However, from the first of January 2012 (wage-earning) workers in agriculture are protected by the General Social Security Scheme. The integration of agricultural workers in the General Arrangements is realised through the creation of a special system within the General Scheme – the so-called Special System for Agricultural Workers – that maintains the specificity of this group.

The incorporation of the agricultural sector into the General Scheme is generally believed to have greatly improved the situation of workers in Spanish agriculture. Nowadays, agricultural workers and small farmers are, under certain conditions, entitled to old age, disability and survivor's benefits.<sup>124</sup> In relation to sickness, maternity and work related injuries, agricultural workers are covered under the same conditions as other employees. This also applies to unemployment benefits. By and large, we should therefore conclude that the social protection of employees in agriculture work is aligned with those employees under the General Scheme. Recent figures (of April 2013) published on the official website of the Spanish government indicate that there are now 212,717 foreign workers registered under the Special System for Agricultural Workers in Spain.

##### *Domestic work*

Domestic work was not recognized in Spanish social security labour law until 1985. Subsequently, the *Special Regime for Domestic Workers* established in *Act 1424/1985* regulated employment in domestic services until 2011. This special regime provided, however, far less social protection as compared to the general regime of social security in Spain. More specifically, the Special Regime did not include unemployment benefits. Neither were occupational illness or accidents recognized as an employment risk under the previous system. Sickness was not covered until day 29 and only up to 45 percent of the salary could be paid in kind. Moreover, the employer was required to pay Social Security contributions only if the number of working hours exceeded twenty per week. Written employment contracts were not required (León, 2010).

Nevertheless, and after many years of political debates, in 2011 the socialist government came to an agreement with the main trade unions to reform the Special Regime, thereby improving the

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<sup>124</sup> Ministerio de Empleo y Seguridad Social, Integración del régimen especial agrario dentro del régimen general de la seguridad social.

status of domestic workers in the social security system. The reform has been legally embedded in two ways (ILO, 2012). Firstly, the Spanish government has promulgated Royal Decree 1620/2011, updating the rules governing the labour relationships of domestic workers, including the improvement of working conditions by bringing these as far as possible in line with those of other workers. Central parts of the Decree are a guarantee of a minimum wage, the increase of a daily rest period, and minimum conditions as regards weekly rest, public holidays and maternity leave. Secondly, Act 27/2011 rules that by 2018 domestic work shall be fully integrated in the General Regime and its rules on social security contributions.<sup>125</sup> However, within the new legal framework, domestic workers remain excluded from unemployment benefits. In April 2013, 229,067 foreign citizens are registered under the Special System for Domestic Workers in Spain.

### 9.4.3 Social assistance and the safety net

Unlike social insurance provisions, social assistance constitutes a rather weak link in the social protection system of Spain. Fuentes and Cajello (2011) argue that the social safety net is vaguely defined and characterised both by its complicated institutional organisation and its inadequate funding. Previously, social services were established in Spain under the military regime of Franco, based on previous charitable schemes. They were therefore intended to provide for a minimum level of care or services to those persons who are excluded from any source of income, including the social security system. After the transition to democracy, the nature of the Spanish welfare state changed profoundly. However, social assistance in Spain continues to be limited to providing care for the most disadvantaged people. In brief, the Spanish welfare state is characterised by its late advancement and its low levels of social spending (Avram, 2009).

It is currently the regions (the so-called *Comunidades Autónomas*) that are responsible for providing social assistance. The services provided are divided into primary social care services and specialized services. The former offer services of a general nature and aims to afford public support to people who are unable to be self-sufficient due to reasons such as illness, disability or age. The latter are aimed at specific population categories or respond to specific problems. Also found among the responsibilities of social services is the management of the safety net, i.e. non-contributory pensions and minimum insertion income, both of which are means-tested programmes requiring income verification. The 1990 Law of Non-Contributory Pensions (*Ley 26/1990*) established a pension system for persons over 65 years of age or with disabilities in situations of economic vulnerability. In addition, the autonomous regions gradually put into effect minimum income schemes aimed at facilitating the social insertion of families at risk of social exclusion (Arriba and Pérez Eransus, 2010).

In seeking access to social services and benefits, both native people and the immigrant population are entitled to these services, as legal residence rather than nationality constitutes a formal criterion for access. Article 14 of Law 4/2000 entitles foreigners legally residing in Spain to basic and specialized social services and benefits under the same conditions as Spanish citizens. Foreigners residing irregularly in Spain generally have no rights to social services and benefits. Nonetheless, inscription in the local population registers gives irregular migration access to healthcare in the municipality in which they reside (Sandell, 2006). Entitlements to other social services may differ between the separate regions in Spain. As Fuentes and Callejo (2011) argue, each autonomous community has resolved in its own way the issue of undocumented immigrants'

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<sup>125</sup> The right to social security protection will be established with respect to health care, occupational rehabilitation, invalidity and retirement, family allowances, social services, and social welfare benefits (ILO, 2012).



access to its social services network. In some regions requirements are flexible in order to facilitate access, while in others parallel mechanisms have been established in relation to undocumented immigrants, generally in collaboration with third sector organisations.

#### **9.4.4 Labour law and migrant workers**

A modern notion of labour law with legal definitions of freedom of association, the right to collective bargaining and the right to strike did not appear in Spanish legislation until the Constitution of 1978. When looking at present Spanish labour law, rules and conditions are, however, very much in line with those applied in other industrialised countries. In modern Spain, labour law performs different essential functions, one of which being to protect the rights of workers as the weaker party to the contract of employment, which is manifested in the recognition of minimum, inalienable individual rights and collective rights whose purpose is to reduce the inequality between the parties to the contract (Eurofound, 2013). The law provides for, amongst others, a minimum working age (set at 16 years of age), a maximum length of a normal working day (set at is forty hours per week on average), minimum wages (yearly set) and clear rules concerning the termination of a contract (Ministerio de Empleo y Seguridad Social, 2012).

With regard to these terms of employment, Spanish labour law does not allow for any distinction on the basis of nationality. In brief, third-country workers enjoy the same rights as any Spanish worker or any worker who is resident in Spain. These rights are enshrined in the Spanish Constitution, which prohibit any unequal treatment on the basis of nationality. In addition, the Spanish

Immigration Act of 2009 (Organic Law 2/2009) formulates its immigration policy in respect of the principles of the effectiveness of non-discrimination for all who live and work legally in Spain and equal treatment in employment conditions and social security.<sup>126</sup> Spanish labour legislation (the Workers' Statute) also explicitly states that any regulatory provision or employer decision that is favourable or adverse to employment – including remuneration, working schedule and other employment conditions – on the grounds of racial or ethnic origin, shall be null and void.<sup>127</sup> Last but not least, seasonal employment of foreigners, through the permit system, is only allowed after a written contract of employment has been signed, indicating that the labour conditions are the same as regards national workers in Spain (Ministerio de Trabajo e Inmigración, 2009).

### **9.5 Legal barriers**

When considering the legal framework causing severe poverty and destitution among migrants in Spain, we should concentrate on its limited span and capacity. These deficiencies manifest themselves as soon as the migrants enter this country. As we have seen, the system of admission remains largely unsuccessful, due to the persistent flows of undocumented migration. For many years, and as a consequence of the limited size of the contingents, many migrant workers evade the permit system and reside in Spain on an illegal basis. The result is that migrants mainly resort to the informal labour market with its poor working conditions, practices of underpayments and its high degree of (income and job) insecurity.

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<sup>126</sup> See Organic Law 2/2009, Art. 2a. Immigration Policy, paragraph e) and I).

<sup>127</sup> Ministry of Employment and Social Security, revised text of the Workers' Statute (Royal Legislative Decree 1/1995), Article 17 (Non-discrimination in employment relations).

What is more, these hundreds of thousands of migrants are not included in the formal system of social security. The Spanish legal and political framework does not allow for the equal or unfair treatment of migrants legally living and working in Spain. This means that migrants who come to this country through the authorized channels and who are also officially employed, are entitled to the same level of protection as native Spaniards. However, as many migrants are not living and working legally in Spain, the assumed level of protection does not apply to this category. In other words, the persistent role of the informal or underground labour market creates inevitable obstacles to immigrants' access to the Spanish welfare state.

Specific risks can even be identified when we consider those migrants who are entitled to social security. The first of these being the nature of social security, with its strong emphasis on contributory benefits and its poorly developed social assistance schemes. As Muños de Bastllo and Antón (2009) found that migrant households in Spain receive fewer cash transfers than local Spaniards, even after controlling for observable characteristics. The authors argue that the profile of the Spanish welfare state, with the non-universal nature of most social transfers – particularly pensions and unemployment schemes – may explain these findings. As migrants are on average much younger than as compared to the native population and many of them have no formal employment history, they are not expected to benefit much from these services.

Another element is its overall low level of social spending. Rodriguez-Planas (2012) refers to Spain as being one of the countries in the EU with very limited social benefits. This low level of protection is present in all the Spanish welfare state schemes, except for unemployment and old-age. Generally, social protection expenditure accounted in 2007 for 21% of GDP in Spain, compared to 27% for the EU-15 as a whole. As referred to above, particularly social assistance lacks an adequate level of social spending. On the basis of large-scale survey data, Muños de Bastllo and Antón (2010) claim that the social transfers to migrants play no substantial role in reducing their monetary deprivation. So the Spanish welfare state provisions have proved to have hardly any impact on the impoverished situation of the migrant population in this country.

## **9.6 Social barriers**

### **9.6.1 Poverty and destitution and the labour market**

Calderon and Hidalgo (2007) claim that ethnic segregation has increased since the end of the previous millennium, both horizontally (between sectors) and vertically (between jobs). The authors argue that labour market inclusion very much depends on two factors: origin from an EU member-state and cultural-linguistic proximity. Therefore, the authors refer to migrants originating from non-EU countries and undocumented migrants as the most vulnerable migrants in terms of labour market segregation. According to Izquierdo (2008), the labour market for immigrants in Spain has increasingly become dualised: there is a top layer for legally working nationals and immigrants, and a bottom layer of undocumented immigrants being employed in the informal economy. Moreover, the representation of foreign workers at the lower levels of the Spanish labour market is very high as compared to other national labour markets in Europe. Muños de Bustillo and Antón (2012) cite Spain as an outstanding example of occupational segregation between migrants and native workers.

Ethnic segmentation should partly be understood against the background of a long term period of national growth in employment and wealth. During more than two decades of economic expansion, starting in the mid-1980s, the Spanish population has come to increasingly reject certain jobs, mainly because of their low salaries, poor employment conditions and high job insecurity (Calderon and Hidalgo, 2007). In this way, migrant workers have contributed to the survival of certain productive sectors – including agriculture, construction and domestic services – that would otherwise have disappeared. According to research conducted by FEDEA (2006), a great number of immigrants enter the Spanish labour market via sectors of low qualification, characterised by a higher presence of temporary contracts in comparison to the national average. The report asserts that around three in every four migrant workers are employed in specific branches (i.e. construction, agriculture, food processing, restaurants and housework activities), all characterized by poor working conditions and low wages.

In addition, new organisational elements have been introduced to the Spanish labour market, including the use of subcontractor relationships and service companies, through which great numbers of migrants have been employed. Krenn and Haidinger (2008) refer to various examples of these practices, being used in the hotel and catering industry, the computer industry and electronics. But also the liberalisation of public services in Spain – such as post, communication and energy services – has paved the way to establishing new subcontract or relationships, also including self-employed migrant labour.

All these industries increasingly rely on (informal) work through the subcontracting system and the use of various service companies and agencies, providing both cheap labour and poor working conditions.

Last but not least, the economic and financial crisis in Spain has had a tremendous impact on the position of immigrants in this country. As concluded before, unemployment is extremely high among immigrants, particularly among third country nationals. Moreover, Godenau et al. (2010) assert that migrants adjust to the worsening employment situation by switching from formal to informal labour market segments. The authors estimate an increase of informal migrant workers in both agriculture and services by about fifteen percent since 2008. So, we may conclude that the severe economic crisis in Spain has worsened the social and economic position of migrant workers in many ways. Below, a more detailed picture will be given with respect to the weak labour market position of migrants in both agriculture and domestic services.

#### *Social practices vis-a-vis third-country workers in agriculture*

Migrant labour in agriculture dates back to many decades ago. A study of Hogert and Mendoza (2000) reveals that of particular relevance to the growth of immigrant employment in this sector has been the juxtaposition of an increase in labour-intensive crop production with an enhanced reluctance by the local population to accept farm work. It is noticeable that in areas that moved into more intensive farming since the 1960s, labour shortfalls were initially met by Spanish workers from other regions and unemployed local residents. It was not until the end of the twentieth century that these sources failed to meet demand, leading to substantial numbers of migrants, initially originating from African countries and later also from Central-Eastern Europe. Hogert and Mendoza (2000) did a large-scale survey study among migrant workers in the province of Girona, in the north of Spain and found out that many of these migrants worked all year round on temporary contracts, which were frequently renewed, or no contracts at all. Wages were generally very low.

A similar story applies to the region of Almería in the south of Spain. Since the 1980s intensive agriculture using immigrant labour has been a successful economic strategy in Almería. Previously, this work has been done by the poor local population, but these workers have been gradually displaced by cheap migrants, especially from the North of Africa (Corkill, 2001). More recently, Repič (2010) has analysed the dependence of the region of Almería on third-country nationals in relation to the expanding sector of intensive agriculture. In this region, the key technology in the successful agricultural sector is the construction of specially adapted plastic-covered greenhouses. In these *invernaderos* vegetables are grown throughout the whole year. Their main quality is to contain moisture in an otherwise completely dry climate. At present and principally on the base of migrant workers from both the African continent and Eastern Europe, this region is developing into one of the leading European fruit and vegetables producing regions.

However important agriculture in this region may be, working conditions are commonly very poor. In these *invernaderos* the desert climate becomes tropical, a climate condition perfect for growing plants but at the same time extremely difficult and unhealthy for workers. According to Ellis (2012) migrants are often working in temperatures reaching 55 degrees at the height of summer. Many do so without any provision of water or food by the owners. Moreover, the intensive cultivation of products is only very partly regulated. To a large extent, as pointed out by Repič (2010), it is the informal sector that requires the employment of many immigrants, among them many being undocumented. Employment in the agricultural sector of Almería is to a great extent informal and even illegal, and based upon oral agreements between employers and migrant workers. Working days of twelve hours are very common, salaries appear to be extremely low, and social and health security are almost nonexistent.

**Box 1 An example of exploitation in agriculture**

*Spain's salad growers are modern-day slaves* (The Guardian, 7 February, 2011)

The situation of migrants working in the tomato, pepper, cucumber and courgette farms of Almería is so desperate that the Red Cross has been handing out free food to thousands of them. Its local coordinator described conditions as "inhuman". Anti-Slavery International said the Guardian's evidence was "deeply disturbing", and raised the "spectre of de facto state sanctioning of slavery in 21st century Europe". Mohammed's story is typical of thousands of Africans working under the sweltering heat of plastic greenhouses. He arrived illegally in southern Spain from Morocco in 2004 to work in the hothouses, having paid €1,000 to smugglers to bring him in a fishing boat. He said back then he could earn €30 for an eight-hour day. Now he's lucky to get € 20 a day. The legal minimum wage for a day's work is currently more than € 44, but the economic crisis has created a newly enlarged surplus of migrants desperate for work, enabling farmers to slash wages. Mohammed's home is a shack in the hothouse area that runs into the tourist town of Roquetas de Mar on the Costa del Sol. It is crudely knocked together from the wooden pallets used to transport the crops and covered with a layer of old agricultural plastic. There is no drinking water or sanitation. There are 100 or so shacks like this next to Mohammed's. Jobs are sporadic, and come not with contracts but by the day or even by the hour. Sometimes, when he and his compatriots have been without work for weeks, there is no food, unless the Red Cross makes one of its food parcel deliveries. "We live like animals scavenging. No work, no money, no food," he said.

### *Social practices vis-à-vis third-country workers in domestic services*

Paid domestic work appears to be a taken-for-granted phenomenon and solution to present and future dilemmas of work and care in the context of a limited welfare state. As Peterson (2013) argues, the framing of paid domestic work as an essentially different kind of work tends to legitimate weaker social rights, which definitively does not challenge the history of servitude and colonialism of the domestic service sector. Domestic workers are understood in terms of providing Spanish families with solutions to their problems of reconciling work and family life in the context of scarce public provisions. The author further claims that the question of how to satisfy the demand of middle class families, rather than the lack of rights of the domestic workers, seems to have dominated the political and social discussions in this country.

A recent study of FRA (2011) on migrants in an irregular situation and employed in domestic work, makes this situation utterly clear.<sup>128</sup> The report concentrates on different fundamental rights which emerged as the most relevant for migrants in an irregular situation, including fair working conditions (such as fair pay, sick leave, compensation for work accidents, rest periods and lodging for live-in workers). On many of these issues, international human rights law and labour law standards prohibit differential treatment, meaning that migrants in an irregular situation are entitled to safe and decent working conditions. In daily practice, however, their applicability is far from evident, and these migrants, predominantly women, are at a heightened risk of exploitation and abuse. Evidence from the interviews proves that migrants are often underpaid and that initial arrangements (regarding tasks, holidays, overtime work, etc.) are not respected. Worse still, illness, accidents or pregnancy of the migrant worker regularly lead to job loss.

#### **Box 2 An example of exploitation in domestic services**

Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude (*Proyecto Esperanza, 2010*)

Ms. F was a student in Ecuador, her country of origin. Due to financial difficulties in her family, the young woman decided to undertake work experience abroad in order to pay for her university studies. She was recruited by a compatriot, and offered a job as a domestic worker in Madrid. Before travelling overseas, she signed a contract stipulating working conditions, remuneration and job description. Ms. F arrived in Spain at the end of 2002 as a tourist and her subsequent stay was not regularized. She was provided with accommodation in the household of an Ecuadorian married couple with a child. She was forced to work 7 days per week, 16 hours per day and was given food once a day. Ms. F had to look after the baby, carry out domestic work and sell artisanal products manufactured in Ecuador. Ms. F used to sleep on the floor or in the van when she went with her employer to sell goods outside the city of Madrid. She was verbally abused and threatened, she was not paid, not allowed to contact her family, and her passport was confiscated by the employer. In case of sickness, she was not allowed to see a doctor. After six months with the family, she asked an Ecuadorian man she met on the street for help. The man finally convinced her to report the abuse to the police. She was assisted by the NGO Proyecto Esperanza.

<sup>128</sup> The study is based on interviews with irregular migrants being employed in domestic services. It was carried out in ten EU member states, also including Spain.

This situation applies to the Spanish case as well. The daily reality of domestic workers is that housework is low-paid, at the bottom of occupational categories and markedly carried out by migrant women in particularly vulnerable situations (León, 2010). Similarly, Peterson (2013) asserts that domestic work in Spain is still to a large degree informal work, and that for many undocumented female migrants' jobs other than in clandestine domestic services are hard to find. Therefore, the author has serious doubts whether the recently implemented upgrading of working conditions and the increased social protection (see section 1.2.2) will have a great impact on the lives of many domestic workers in this country.

### **9.6.2 Social causes of homelessness**

As we saw before (section 1.2.4), migrants face a greater risk of becoming homeless compared to the national population. In order to understand this weak housing position, we must refer to the economic crisis as a significant factor (FEANTSA, 2012). For many migrants in Spain unemployment and an associated lack of resources for paying for housing have become a daily reality. As a result, overcrowding rates, subletting and homelessness have risen as well (Bosch Meda, 2010). Nowadays, many migrants simply lack the financial resources needed to enable them to pay a mortgage or rent. According to the EPHS-Personas survey (2005) only one in six of all homeless migrants reported being employed. Furthermore, the survey indicated that homeless migrants hardly receive any type of welfare payment, such as unemployment benefit, invalidity benefit or retirement pension. This was the case for only 3 percent, compared with 32 percent of the Spanish homeless people.

In addition, however, a number of more structural factors play a role in this field. To begin with, migrants face severe barriers to securing affordable and suitable housing. Similar to countries in Western Europe, the supply of inexpensive housing simply falls short of providing sufficient housing for migrants. Spain lacks a significant social-rented sector, which is said to particularly disadvantage migrants in finding affordable and adequate housing (Czischke, 2007). Most of the housing stock to let is in private hands and run by small operators, mainly families with a small number of properties. Less than five percent is public housing stock (Walliser and Bartolomé, 2010). Furthermore, the housing situation for migrants has deteriorated more since the housing prices have sharply increased from the late 1990s up to 2009. Between 1998 and 2007 alone, housing prices rose at a rate of more than fifteen percent per year on average (Bosch Meda, 2010).

Alongside these shortages, there is sufficient evidence of prejudice and unfairness against migrant groups in the rental market (Bosch et al., 2011; Walliser and Bartolomé, 2010). According to Arredondo (2008), the immigrant community is perhaps the most vulnerable social group, given the difficulty in gaining access to decent housing, whether they buy or rent, especially due to the fact that they are easily discriminated against. The real estate market shows the highest degrees of discrimination and rejection of immigrants. A study on prejudice on the part of landlords against migrants reported that more than half of the respondents experienced prejudice and discriminative practices by these property-owners (Colectivo IOE, 2006). Bosch et al. (2011) conclude that discriminatory practices in the rental housing market seriously contribute to perpetuate the ethnic spatial segregation observed in large Spanish cities.

As explained by Colectivo IOE (2006), rooflessness, the use of informal arrangements, squatting and the use of homeless shelters are relatively widespread among new migrants in Spain.

Difficulties in accessing suitable and affordable housing should therefore also be related to cultural and linguistic differences, as well as the lack of social or family networks. These elements explain why newly arriving migrants in particular face great difficulties in this matter. As time passes, migrant people in Spain appear to experience homelessness at decreasing rates. It should be emphasised, however, that this conclusion is less obvious under the current economic situation in Spain. After all, as will be explained in the next section, immigrants are among the fastest growing clients of homeless services in Spain.

## **9.7 Support structure for migrants in Spain**

Considering housing support on a national level, the Spanish government has tried to improve the housing position of migrants in recent years. One of the aims of the Strategic Plan for Citizenship and Integration 2007-2011 (Ministerio de Trabajo y Asuntos Sociales, 2007) was to combat discrimination against immigrants in the housing market. The plan was created to stimulate relevant bodies to remove barriers for immigrants on the Spanish housing market. Services provided to assist immigrants are for example guidance and information regarding housing support services and acquisition and/or rental of housing, as well as mediation in the rental of accommodation to prevent abusive conditions and/or facilitate access to rented accommodation (Arredondo, 2008).

At a regional level, housing programmes aimed at the immigrant population are limited to a small number of regional projects. The overall effect of these housing programmes is, however, limited as public expenditure remains inadequate. Moreover, as Walliser and Bartolomé (2010) claim, migrants hardly benefit from these housing programmes. To start with, migrants who are illegally residing in Spain have no access to these programmes (and current legislation prohibits renting homes to irregular migrants altogether). What is more, authorized migrants who wish to have access to these public housing programmes must compete with other population groups who may have the similar needs, thus coming into conflict with the native people, who have traditionally been the beneficiaries of these policies.

Also of importance are the projects that were started about two decades ago by municipalities and regional governments to develop systems for providing social assistance to migrants. In so doing, small support networks were initiated by these governments and were (partly) financed with public funds. Many of these services were managed and provided by third sector organizations such as NGOs, immigrant associations and the Catholic Church. Different types of support services were provided by these organizations, for example the provision of basic necessities such as food, clothing and housing (Fuentes and Callejo, 2011).

**Box 3: A good practice: Almería Acoge**

Almería Acoge (Almería welcomes) is a nongovernmental organisation in the city of Almería that assists immigrants settling down in the region. Activities of this organisation are training and sensitization for an intercultural coexistence, getting working offers for migrants, helping immigrants to find a home, offering legal counselling, providing them with both Spanish and their mother tongue lessons, and programming educative activities for children and teenagers.<sup>129</sup> Almería Acoge also helps immigrants in their daily adaptation to a new life by offering practical advice and psychological counselling. They offer immigrants legal assistance to help them to apply for a working permit that some of them will be able to get after three years of residence in Spain. Almería Acoge is also trying to raise awareness in Mali and Senegal to prevent young people from coming to Europe hoping to find a better life.<sup>130</sup> In 2013 a free bicycle-lending scheme was launched by Almería Acoge aimed at immigrants working in Almería's agricultural sector. The scheme was meant to support immigrants who need bicycles to commute, but who cannot afford to buy one.<sup>131</sup>

Last but not least, in most of Spain's largest cities there are many private services provided by homeless shelters, which have been established without any public financing (PICUM, 2010). Fitzpatrick and Stephens (2007) estimate that only one-fifth of all homeless shelters is publicly-funded. In 2010, there were 755 homeless shelters in Spain, within which on average almost 14,000 people were accommodated on a daily basis. These provisions also meet the daily needs of thousands of migrants in Spain. The Spanish Statistical Office (INE, 2010) estimates that a small majority of the homeless shelters mainly accommodate foreigners. According to Bosch Meda (2011) almost two out of three persons that are registered with the homeless network in Spain are migrants. The overall effect of these initiatives undertaken by third-sector (i.e. civil society) organizations is, however, quite insufficient in the view of the needs of so many migrants in Spain (Walliser and Bartolomé, 2010). Particularly vulnerable groups in this respect are undocumented migrants and migrants residing in the less populated areas (i.e. outside the large cities).

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<sup>129</sup> <http://www.almeriaacoge.org/>.

<sup>130</sup> <http://www.alumni.nottingham.ac.uk/netcommunity/>.

<sup>131</sup> <http://www.euoweeklynews.com/news/costa-de-almeria/itemlist/tag/immigrants>



**Box 4: A good practice: Arrels Fundació**

Arrels Fundació is a private foundation based in Barcelona, which has intervention programs aimed at (migrant) homeless persons. Almost one third of their clients are migrants (in absolute numbers: 350 migrants in 2011). The organisation reported an increase of 20% from 2008 to the first part of 2010 in the numbers of migrants using their services in Catalonia (Feantsa, 2010). Some of their activities are:

**Primary needs.** In 2011, the Arrels Fundació has served 22.776 daily meals; 548 homeless persons have used the hygiene services.

**Housing.** In 2011 year, the Arrels Fundació has supplied a dignified and steady roof for 200 people through different kinds of housing.

**The Pere Barné Home.** This is a facility created in order to provide solutions to the lack of mid and long term residential places for people in chronic homelessness.

**Arrels' Open Centre.** It is a free space where people can find a welcoming and friendly atmosphere in which to interact with others, and a series of services to help them improve their living conditions. It is open every afternoon and evening, and attends to a daily average of 92 people.

**The Street Team.** In 2011 this team had contact with 414 homeless persons, of which many suffer from severe mental and physical health problems, and the effects of a harmful long-term life on the streets

The activities of Arrels Fundació are mostly financed by private donations (55%). Almost forty percent comes from public funding. Seven per cent comes directly from clients themselves who, in a step in becoming responsible for their own personal improvement, pay part of their accommodation fees (Arrels Fundació, 2012).

## 9.8 Concluding remarks

Only recently Spain has gone from being an emigration country to a net recipient of migratory flows. Nowadays foreign residents represent over twelve percent of the total population in this country, or more than six million in absolute numbers. In addition to those formally registered numbers, Spain has always attracted large numbers of undocumented migrants. Recent estimates suggest at least one million undocumented migrants in Spain.

A great deal of immigrants – with Central-Eastern Europe and the African continent among the fastest growing suppliers of these people – have come to Spain to benefit from its remarkable economic growth for more than two decades. What should be taken into account, however, is that even during the years of economic expansion, generally between 1985 and 2008, a great number of immigrants have always been working under very unfavourable conditions. Usually, the terms of employment and working conditions are very hostile and undesirable, even including practices of exploitation. These practices appear to apply for third country nationals in particular.

A principal argument underlying the worrying position of migrants in Spain is their overall weak immigration status. Many have come to this country bypassing the formal system of admission in order to find employment in the informal or clandestine labour market. The result of this persistent mobility has been the establishment of a very fragmented labour market, with migrants employed in specific branches, all characterized by poor working conditions and low wages. As we have discussed in relation to agriculture and domestic services sectors in more detail, practices of exploitation are very common and do not seem to be combated very effectively.

This situation of labour market exploitation has emerged along with increasing national economic growth and prosperity. However migrant workers have suffered greatly in the recent economic

and financial crisis in Spain. Many have lost their jobs, while others tried to adjust to the worsening employment situation by switching from formal to informal employment. The result of all this is that a great deal of migrants in Spain is suffering from severe poverty. To date, almost one in three migrant earn less than sixty percent of the median income of the population as a whole. Nowadays, about one in ten migrants unquestionably belongs to the poorest people of the country.

What is more, the Spanish welfare state has proved to be of little help to these migrants. This is due to both its strict conditions for eligibility (excluding undocumented migrants from most of its provisions and services) and its overall low levels of social spending. The emphasis of the Spanish social system on contributory arrangements and its poor social assistance development, implies that many migrants in this country hardly benefit from the Spanish welfare state at all. Worse still, it appears that the social transfers to migrants play no substantial role in reducing their monetary deprivation.

The combined effects of the high importance of the informal economy, the recent economic downturn and the limited impact of the Spanish social system upon migrants have resulted in a situation in which poverty and exploitation are increasingly accompanied with elements of destitution and homelessness. Current testimonies and written reports by local care and homeless centres confirm this picture. As long as migrants from third countries are capable of getting (informal) employment, they seem to manage somehow at the very bottom of Spanish society. This situation may however further deteriorate when these sources of income are no longer available. Private initiatives and informal ways of support then serve as a last resort.

## ANNEX I

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## 10 THIRD COUNTRY WORKERS IN POLAND

### 10.1 Introduction

While it remains above all a country of emigration, Poland is also increasingly becoming a country of immigration. Besides migrants from the Ukraine, migrants from China and other Far Eastern countries have also been coming to Poland with increasing frequency. Ukrainians, however, are invariably the largest immigrant group in Poland; in second place are Vietnamese, and in third place – Belarusians (Office for Foreigners, 2012). For this reason, most of this section will be devoted to migrants from the Ukraine and their employment in the agriculture, construction and household services sectors.

Persons taking up work in these sectors are usually residing legally in Poland, on the basis of a visa with the right to perform seasonal work, but due to a number of factors they concentrate in the grey economy. Some of them prefer informal employment, as their aim is to accumulate as much money as possible. For many migrants, however, this is the only available employment option – but it is linked with a number of risks: lack of insurance, violation of employment rights or – in the long term – problems with integration.

In spite of the fact that the number of economic migrants is gradually growing, existing regulations are focused above all on the issue of access to the labour market and legalisation of stay. The authorities assume that most economic migrants stay in Poland seasonally and do not have settlement plans. As a result, the only existing tools of integration policy are directed exclusively towards forced migrants and social assistance is restricted to a narrow group, i.e. persons staying in Poland for a long period. Given that neither the instruments aimed at protecting employment rights nor migration law address the needs of this group of economic migrants sufficiently, the group has become vulnerable to the phenomenon of exclusion. Due, for example, to difficulties in Poland, many people remain in the informal sectors of the economy for years. Available sources also refer to housing problems as another cause of hardship for migrants, including insecure and inadequate housing as well as discrimination on the housing market.

Knowledge about the phenomenon of poverty and homelessness among working citizens of third countries is very limited in Poland and as yet there has been no in-depth research into this subject. This stems from a series of factors such as the relatively small number of migrants, their dispersion (they do not form ghettos in Poland as they do in Western Europe) and also the relatively short stay of many of them in Poland. Studies and analyses of this issue carried out to date focus primarily on homelessness and housing discrimination among forced migrants as well as more general problems of integration. The situation is somewhat different with regard to such issues as access to the labour market and violation of employment rights, which issues have been the subject of in-depth analysis for several years.

This report is based on a limited amount of statistical data, qualitative and quantitative research and interviews carried out amongst experts involved in the issue of migration. Eurostat reports (2011) addressing a variety of aspects of the socio-economic situation of migrants, including their situation in relation to the labour market, income distribution and poverty, do not cover Poland due to the unavailability or unreliability of data. The same applies with respect to homelessness as

censuses do not collect data according to nationality. As a result this text only presents selected aspects of the issue of poverty and homelessness amongst economic migrants.

## 10.2 Third country workers in Poland

### 10.2.1 Labour migration policy

Polish migration policy has been opening up to immigrants in recent years, especially immigrants needed by the Polish economy (labour migrants from Eastern Europe as well as students and graduates). The biggest demand for foreign labour originates from the so-called secondary labour market that offers physical, repetitive work that does not require specific qualifications. The growing importance of immigration is reflected in the strategic document entitled 'The Polish Migration Policy: current state of play and further actions', which constitutes the first comprehensive strategic document on migration policy.

Under Polish law,<sup>132</sup> only certain groups of foreigners are free to take up employment in Poland. This group includes, among others, persons who have refugee status in Poland, permission to settle or a long term residence permit and citizens of EU/EEA countries and members of their families. The remaining foreigners (apart from those who are exempt from the requirement to hold a permit) must have an appropriate permit in order to work. An employer who intends to employ a foreigner – and not the foreigner himself – should apply for a permit to be issued. A work permit is issued for a specified period and concerns work for a specific employer at a specific place and in a specific post (job).<sup>133</sup>

Certain categories of third country nationals are exempt from the obligation to hold a permit, e.g. persons having permission to stay for a fixed period (defined circumstances), holders of a *Karta Polaka* (Polish Card) and citizens of Belarus, Georgia, Moldova, Russia and the Ukraine who are doing temporary work in Poland.<sup>134</sup> This system has been in effect since 2006, when in response to pressure from the agricultural lobby short term employment for citizens of selected neighbouring countries was introduced – the system was later extended to encompass all sectors of the economy<sup>135</sup>. The seasonal employment system is much easier to use than that for employing a foreigner on the basis of a standard work permit. The employer simply has to register a declaration of intent to employ a foreigner at the Poviats Labour Office, rather than submit an application for a standard work permit.

The seasonal employment system has fundamentally changed the accessibility of the Polish labour market – foreigners subject to the system of declarations have easy access to the Polish labour market (compared to workers from outside the European Union). As a result, most

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<sup>132</sup> Act of 20 April 2004 on employment promotion and labour market institutions, Journal of Laws of 2008, No. 69, item 415 as amended.

<sup>133</sup> The employer places a job offer for a specific post in the Poviats Labour Office. In the case of not finding a worker for the offered job vacancy (test of the labour market), a work permit is issued by the Voivode (Governor).

<sup>134</sup> Regulation of the Minister of Labour and Social Policy of 20 July 2011 on cases in which the assignment of work to a foreigner on Polish territory is permissible without obtaining a work permit (Journal of Laws of 2011, No. 155, item 919).

<sup>135</sup> A foreigner, presenting such a document in a Polish consulate, obtains a visa which allows them to work for a given employer for a period of 180 days in the course of the next twelve months without the need to apply for any additional permission.



foreigners covered by this study currently take up employment in Poland by making use of the system of declarations.

Surveys conducted amongst employers by the National Bank of Poland (Gmuła, Gucwa, Nalepa, Opola, 2011) and East West Link (Wafflard, 2011) indicate that the cause of the great demand for migrant workers amongst Polish employers is, above all, the high wage expectation of Polish workers (35% of those surveyed by the National Bank of Poland), the lower cost of employing foreigners (81% of those surveyed by East West Link) and their high motivation (45% of those surveyed by East West Link). In turn, according to, the authors (Jończy & Kubiciel, 2010) of a survey carried out in Opole Voivodeship, respondents from the secondary labour market most frequently emphasized the opportunity to maintain employment (over 89% of responses).

In spite of several amendments relating to various aspects of migration policy, existing regulations mainly focus on access to the labour market and legalisation of stay but not on integration. According to Migrant Integration Policy Index (2011) in the case of Poland non-EU newcomers with the right to work are both encouraged and discouraged from entering the labour market. On the one hand they are encouraged to enter labour market while at the same time targeted support or mobility is limited. As a result Polish policy on labour market mobility was assessed as halfway favourable (Migrant Integration Policy Index, 2011).

### **10.2.2 Migration statistics**

Although the scale of migration to Poland has been growing in the recent years the percentage of the migrant population in Poland is still relatively low. According to the census of 2011 there were 56.3 thousand residents of other countries living in Poland, including 40.1 thousand persons staying for more than three months. Yet, data obtained during the census are considered to be underestimates due to the methodology of the study and the large-scale of irregular migration. According to the most moderate estimates, the ratio of irregular labour migration could be 50 - 300 000. Certain information on the number of migrants residing in Poland is also provided by the Office for Foreigners. According to the Office statistics, in 2012 there were 111 971 foreigners in Poland with a valid residence card.

The number of work permits granted in Poland has been increasing constantly since 2007. In 2012, 39 144 work permits were issued. The main economic sectors employing foreigners were the construction, retail and wholesale trade, domestic services and transportation sectors. As for the country of origin of foreign employees, according to the Ministry of Labour and Social Policy the largest groups were constituted by citizens of the Ukraine (20295), China (3247), Vietnam (2302), Belarus (1949), India (1090).

As stated above, most foreigners currently take up employment in Poland by making use of the system of declarations. For example, in 2007, 21 797 declarations were registered, while in 2012 – as many as 243 736 were registered. In 2012, most of the declarations concerned the employment of citizens of the Ukraine (223671), followed by citizens of Moldavia (9421) and also Belarus (7636). Somewhat over half of these were registered in the Masovian Voivodeship, 12% – in Lower Silesia, 8% – in Lublin Voivodeship. Thus, as you can see, despite the economic slowdown and the rather bad news from the labour market, the number of Polish employers interested in employing foreign seasonal workers is growing. In 2012, the greatest interest in

seasonal employment was noted in the agriculture (47% of declarations) and in the construction (22% of declarations) sectors.

### **10.2.3 Working conditions, destitution and homelessness among third country workers**

#### ***Working conditions and destitution***

Sociological research has shown that the working conditions and potential labour exploitation of the workers under study are determined by their legal status and their professional position. According to IOM/EC research (Kaźmierkiewicz, 2009), these factors divide them into two groups. The first group includes well-educated and highly skilled professionals (usually not discriminated against, working legally, paid at least the same as their Polish co-workers), whereas the second group encompasses unskilled workers with lower education (more prone to be paid less, exploited, working irregularly).

Some information on the situation of migrants in Poland can be drawn from 2012 OECD data on labour market outcomes. According to the report, Poland ranks rather poorly in terms of employment of immigrants (aged 15-64 years), as only 47.9 % of migrants work, while the OECD average is 64.9 %. On average, in OECD countries, the unemployment rate is 1.5 times higher than that of the native-born – about 12%. In Poland it is close to the OECD average – 11.5%. Poland ranks much better in terms of the employment of highly qualified immigrants with higher education – 77.2 % found jobs in accordance with their qualifications compared to the OECD average of 71.5 %. Yet, it should be underlined that OECD statistics cover all groups of migrants. Migrant workers from the Ukraine staying in Poland access the labour market on the basis of a work permit or work visa and most have employment.

According to the OECD report, Poland ranks worst in terms of the income earned by the migrant population. Migrants earn 9,700 USD in Poland, while the average for the group is 18,372 USD. Furthermore, on average in OECD countries, 17.3 % of immigrants are at risk of poverty compared with 15% of the native born population. Although in many countries, the poverty rate is higher among migrants, in Poland both rates are comparable (10.3%). Conversely, in Norway, Denmark and the Netherlands, the immigrant poverty rate is between 3.9 and 4.5 times higher than that of the native born.

More detailed information about the income of the group covered by the study can be derived from qualitative research (Frelak, 2011). For example, the mean monthly remuneration of seasonal workers employed in agriculture is about 1500 - 2000 zł. By comparison, the monthly salary of respondents in the Ukraine (when they were employed) was 100 – 200 USD. In the domestic services sector, the mean monthly remuneration in 2011 was 1500 PLN net. The average hourly rate for a farmer is 5 – 6 zł, for cleaning 8 zł, for construction work – 15 zł. A comparison of salaries/wages of migrants and Poles in these sectors is very difficult, however, since they often do not work in the same place, or in the same jobs. It is assumed that Poles employed in the same jobs (positions) earn more. Explanations for this situation include: the lack of opportunity for migrants to choose an employer and to negotiate rates in a situation in which they do not have time to look for other work.

As has been mentioned above, migrants working in the agriculture or domestic services sector are usually concentrated in the grey economy. The findings of employment inspections provide only limited information about the scale of informal work performed by foreigners. This is due to the fact that these inspections cover a relatively small percentage of employers. In 2011,

Inspectorate (*PIP*) inspectors carried out 2,199 inspections relating to the legality of employment performed by foreigners. 2057 establishments, providing work for 14,415 foreigners, were inspected. Violation of the law was ascertained in 49% of the inspected establishments, with foreigners working illegally (e.g. without a valid visa, permit, or without concluding the required contracts) in 236 establishments, i.e. in nearly 11% of inspected establishments. Amongst the sectors of the economy in which the greatest amount of informal work performed by foreigners was found, construction dominated, followed by the processing industry and agriculture (National Labour Inspectorate, 2012).

According to research carried out by the Institute of Social Policy, University of Warsaw, amongst a sample of 200 people, a significant majority of seasonal workers (76 per cent) perform work that is inconsistent with their education. For immigrants, pay is the most important thing, and the form and range of work are less significant, according to the authors of the report. The fact that for many of them work in Poland is the only source of income is not without significance either. Not having work in their country of origin, they are somewhat obliged to accept work which can be found quickly (there is no time to look for more attractive work) and which, therefore, is often poorly paid and hard.

Another problem is the instability of employment, above all in agriculture. Due to the specific nature of this employment, in the course of a stay in Poland, migrants work for various employers for a short time. The need for a frequent change of work seems to be the most difficult aspect of a stay in Poland. At the same time, some fear working for one person for several weeks, due to the risk of not obtaining payment. In the case of the domestic services sector, the first years of work in Poland can also be defined as very unstable.

The health situation of migrants in Poland seems to be rather negative. Only one in five (22.5%) expresses a positive opinion about their health. This is the worst in the OECD group, where the average percentage of foreigners in good health is 70%. At the same time, in Poland and other countries in Central and Eastern Europe, the differences compared with the native born are large (34.2% points gap in Poland, 31.6% points gap in Estonia). Due to the lack of methodological note, it is impossible to estimate to what extent OECD data is representative for the entire population of migrants in Poland, especially third country workers.

When it comes to using the health care services, there are not any systematic data that describe the extent of the problem. Available data come from the Polish National Research on General Hospital Morbidity, conducted in 2008-2009. According to Cianciara, Goryński, Seroka (2008) foreigners accounted for 0.8% (57 039), and in 2009 - 3% (178 294) of all hospitalized. Unfortunately, there are no data on the legal status and - up to 98% of the cases - the country of origin of migrant.

There are also a number of obstacles facing migrants seeking to access health care services in Poland. These include a language barrier, a cultural barrier, and a lack of knowledge about the available medical services. What is more, because of the systemic problems of the Polish health care system (e.g. long waiting times to see a doctor) a lot of people entitled to free public health services often use private services.

According to qualitative research (Frelak, 2011) in the case of illness, third country workers (both documented and undocumented) procrastinate until the last minute and do not go to the doctor unless they have to. In extreme cases, they leave Poland. Theoretically, foreigners coming to Poland must have purchased medical insurance. Studies by the Association for Legal Intervention

(2011) have shown that in practice, this is, however, a fiction, since medical insurance documents held by foreigners are often without coverage.

### **Homelessness**

According to the Central Statistical Office report summarizing the 2011 National Census of Population and Housing,<sup>136</sup> the scale of homelessness in Poland can be estimated at more than 24 thousand people. The National Census included two categories of homeless people. The first comprised roofless people, who, for example, spend nights at railway stations, streets and parks. The second group included houseless people using different collective accommodation, such as hostels or night shelters. Most homeless people were recorded in mazowieckie (16.9%), dolnośląskie (13.2%) and zachodnio – pomorskie (11.2%) voivodeships.

As has already been mentioned, national censuses on homelessness do not collect data according to the nationality of homeless people. It is therefore worth recalling the first local census survey that focused only on homeless people with an immigrant background. The survey was carried out by a team from the Institute of Public Affairs and took place on 8 and 9 March 2013 in Warsaw. The survey encompassed both locations of institutional support for the homeless (e.g. night shelters) and the previously identified non-residential places of stay of roofless people. Only about 10 houseless migrants were identified (including forced and economic migrants as well as EU citizens). At the same time, we did not find any roofless migrants in the non-residential locations. According to preliminary conclusions (the report will be published at the end of May 2013), the small number of homeless migrants may indicate the occurrence of discrimination in hostels and dormitories or the avoidance by migrants of this form of assistance. Houseless migrants may prefer different places than do Polish homeless. It may be assumed that extreme homelessness of migrants is minimal and may to a greater extent concern economic migrants coming to Poland during the peak period of seasonal work.

According to experts' estimates published in a study on forced migrants (Wysieńska, 2012), homelessness defined as rooflessness among beneficiaries of international protection ranges between 5 and 10%, whereas houselessness and housing exclusion range between 30 and 40%, with only 20% of refugees, according to key persons, having secure and adequate housing. Thus, according to these estimates, up to about 40% of refugees experience one of the forms of housing exclusion. Taking into account the number of refugees with a valid residence permit (4920 at the end of 2011), there are about 2000 persons experiencing homelessness and housing exclusion.

Unfortunately, similar studies have not been conducted among third-country nationals coming to Poland to earn money. However, in their case, available sources indicate insecure and inadequate housing, as well as overcrowding. Workers employed by small businesses usually rent flats in groups or are often lodged in their employers' premises. Furthermore, they often live in suburban areas, sharing a single room. The evidence also shows (Każmierkiewicz, 2009) that there are instances of irregular workers squatting in abandoned attics, garages in substandard

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<sup>136</sup> Another census survey, commissioned by the Ministry of Labour and Social Policy in 2010, recorded 20,960 homeless people who had been granted accommodation throughout the country. According to the authors of the report, the census did not cover all homeless people, of which about one third did not use accommodation for homeless people. Therefore, on this basis, it can be assumed that the scale of homelessness in Poland is approximately 30,000 people. Yet, according to experts, the scale of the phenomenon of homelessness is considerably higher and ranges from 37 to 70 thousand people.

conditions with no running water and other facilities. As this information comes from qualitative research, it is difficult to determine the scale of this phenomenon.

According to the OECD report, 38.1% of immigrants in Poland live in overcrowded dwellings compared to the OECD average of 20%. Moreover, the housing costs overburden rate of persons living in immigrant households is the highest in Poland, Canada and the UK; in Poland, it is almost 50% in the case of persons living in immigrant households compared to 20% of native born households. On average, in OECD countries, the housing costs overburden rate among immigrants is 18%, compared with 13% among natives.

When analysing the issue of housing exclusion, it should be remembered that the relatively bad housing conditions of persons working in the discussed sectors also stem from the specific nature of such employment. What is more, many people agree to live in substandard conditions due to the low cost of such accommodation.

In the case of work, for example, in agriculture (Frelak, 2011), many people live with their employers, sharing a room with other workers. Another solution is to rent a room (with several other people) in the area, from other farmers. Living together with several people is perceived as an obvious solution, beneficial for the landlords and migrants. The above approach stems from the strategy of minimisation of costs of migration. Housing conditions of persons working in agriculture are sometimes significantly worse than in the case of construction or domestic services. Extreme situations include sleeping in a garage, shed, on the ground, sharing a bed with another person, and accommodating 30–40 persons in one room.

The conditions in which foreigners who work in the domestic services sector live are generally determined by the type of work they perform (Samoraj-Charitonow, 2011). According to available qualitative research, women who began their professional career in agricultural work reminisce that at the beginning of their stay in Poland they lived in very difficult conditions. If they are helpers who “come to work” (care or cleaning), they have to look for a place to live independently. Then they live with other foreigners in rented accommodation, often several people per room.

### **10.3 Barriers causing labour exploitation among third country workers**

#### **10.3.1 The most common violations**

One of the most common violations in this case is work without a contract. Employers do not establish a formal work relationship with migrants, which would involve them registering migrants with the Social Security Service, and the Inland Revenue, providing Health and Safety at Work training, keeping employee records and providing annual leave etc. As a result, migrants must rely on a relationship of trust with the employer. This means that they have to agree with the employer as to their working hours, conditions, scope of responsibilities and pay.

Another of the more frequently occurring problems revealed in qualitative research (Frelak, 2011) is the signing of contracts for minimum pay and receiving part of the income under the table. Yet another problem is receiving lower remuneration than agreed or paying for only a portion of the hours worked. Other scams linked with remuneration include: not counting certain types of work in the working hours, lowering rates after work has been done, and changes in conditions of work. Some employers (e.g. farmers) think up more refined ways to lower the wages of foreign workers, introducing so-called fines or penalties for absurd infractions such as going to a shop, going outside the (farm) premises, lateness, smoking. According to the cited Association of Legal Intervention (SIP) research, persons employed in construction and agriculture are especially at risk of work without remuneration/receiving part of remuneration, and to a significantly smaller extent, in catering and domestic work.

It is also common to disregard health and safety at work regulations. The lack of training is accompanied by a lack of protective or working clothes. It is assumed that the foreigners themselves are responsible for their safety at work. Workers do not undergo any training concerning safety at work, which is of great significance in the case of construction. However, previous research has shown that not only construction but also agriculture and transportation are sectors where work safety rules are violated most often; however, this problem concerns all employees, not just the migrant work force. Nevertheless, legal status is a key factor in the exposure of migrant workers to hazardous and health threatening working conditions. While regular workers are not likely to take the most hazardous jobs, the situation is worse for some groups of undocumented workers (Każmierkiewicz, 2009).

Foreigners often work over 40 hours a week. The standard is a 10- or 12-hour working day. This especially concerns seasonal work, where foreigners come to Poland for a short period, and want to earn as much as possible in this period – and treat this as an obvious state of affairs. The situation is somewhat different when foreigners live in Poland and have permanent work here. The duration of work is also about 12 hours a day, but it is the subject of criticism of migrants, who often do not have the possibility to change jobs.

Women working in the domestic services sector find themselves in a specific situation. Respondents of qualitative research (Samoraj-Charitonow, 2011) who had worked as housemaids while living in the home of the employer most often had a feeling of working around the clock, having to be at the disposal of the employer. However, the largest group is made up of foreign women living away from the employer and working as domestic helps for several employers at the same time. The frequently informal nature of the work and also the long working day mean that most migrants, especially seasonal ones, do not have any private life. Foreigners also suffer from lack of holidays. Some employers agree to employees taking a few days off – of course they are not entitled to payment for this period.

### **10.3.2 Legal causes of labour exploitation**

Liberalization of the rules of employing foreigners in recent years has significantly facilitated access to the Polish labour market; however, a series of factors continues to have a negative impact on the situation of migrants and may contribute to violation of their rights. According to experts there are a number of legal barriers causing labour exploitation but very often it is a rather inadequate implementation of regulations or an incorrect interpretation of these that may lead to labour exploitation (Wencel, 2012).

#### ***Limited mobility on the labour market***

From the point of view of the situation on the labour market, it is significant that a foreigner obtains permission to work for a specific employer and cannot change the employer. According to Wencel (2012) such a solution has obvious advantages – formalities linked to employment (hiring) are the duty of the employer. However, attaching an immigrant to one employer means that in the case of problems (e.g. violation of employment rights), the immigrant cannot change employer. For the immigrant would have previously had to obtain another permit. An even greater problem is automatic loss of stay (residence) rights in the case of job loss.

### ***Separated rules of employment and stay***

Another legal issue is the need to apply for a work permit and legalisation of stay (residence) separately. It should be noted that issues linked with stay are regulated by the Aliens Act (*ustawa o cudzoziemcach*) of 13 June 2003, whilst employment is regulated by the aforementioned Act on employment promotion and labour market institutions of 20 April 2004. In the opinion of experts, separating the rules of employment and stay into two acts and assigning responsibilities to two ministries is not conducive to the transparency of regulations. What is more, the liberalization of regulations linked with employment, unsupported by changes in stay issues may distort the meaning of the introduced changes (Duszczyk, 2012). The new Aliens Act is supposed to introduce changes in this field. In accordance with its assumptions, one will be able to obtain a single permit for both work and stay. The permit will not be linked with only one employer, giving foreigners the possibility of changing jobs much more easily, especially in the event of problems.

### ***Employment conditions***

Employment rights are also generally considered to be a problem area. Although in the application for a permit an employer must give information about the conditions of employment, inspections conducted by the National Labour Inspectorate (*PIP*) indicate a growing number of cases in which foreigners are employed under conditions other than those defined in the issued work permit (lower remuneration, non-payment of insurance, non-observance of working hours and holidays). *PIP* data also confirm Polish citizens. This is an example of problems that arise due to incorrect practices rather than inappropriate regulations.

### ***Problematic aspects of the short-term work regulation***

As has already been mentioned, the opportunity to perform work without a permit in the case of seasonal work has significantly improved the situation of citizens of the five countries falling within the scope of the regulation by limiting the scale of illegality (i.e. stay and work on the basis of a tourist visa). Research findings (Bieniecki, Pawlak, 2010) show that this group currently feels much more confident in the labour market. However, at the same time, this system allows for a series of pathological phenomena.

Again, despite the positive aspects of such regulations, the seasonal hiring of foreigners shows that in spite of the opportunities ensured by the Regulation on short-term work (*rozporządzenie o pracach krótkoterminowych*), the overwhelming majority of foreign workers are still employed irregularly. Furthermore, persons employed seasonally do not have the opportunity to assert (pursue) their rights if the employment conditions are different to those stated at the time the declaration of intention to employ a foreigner is made. The legal basis on which foreigners are employed also raises some reservations. This legal basis usually has the form of a civil contract (service contract or work contract) – due to lower employment costs – which makes control (inspection) by the National Labour Inspectorate impossible.

Due to the lack of tools for monitoring the system of declarations, a so-called “declarations market” has also developed. This document is often used as a basis for legalisation of stay in Poland with the aim of undertaking work for another employer. It is hard to assess what fraction of declarations is used in this way. Employers (often fictional ones) issue declarations in return for money (Segeš Frelak, Bieniecki, 2011). There have been cases of registering several dozen declarations without any actual intention of employing anyone. Neither the employment office nor the consulate has any instruments allowing them to refuse the registering of a declaration or the issuing of a visa.



### ***Implementation of EU regulations***

Since 15 January 2012 the illegal employment of a foreigner in Poland has, as in other EU countries, been punished by heavy sanctions.<sup>137</sup> An employer has, amongst other things, an obligation to check the legality of stay of a specific foreigner before work is commenced. The Act gives an employee the right to claim for payment of wage arrears and also introduces the possibility of legalising the stay of a foreigner for the duration of criminal proceedings against the employer.

In the opinion of experts (Klaus, 2011), the problem with the accepted regulations is that they only relate to undocumented foreigners; however, they do not apply to persons who are residing legally in Poland, but working illegally. As a result, an irregular migrant has greater protection than a documented one, even one who is working legally. The main aim of the changes seems to be combating illegal employment rather than protecting foreign workers.

### **10.3.3 Social causes of labour exploitation**

#### ***Informal work typical for agriculture and domestic services***

The problem of informality is the main problem in relation to the employment of foreigners, although it should be emphasized here that many persons stay in Poland legally, but undertake work in the grey economy. This situation stems from the specific nature of the job, for example, in agriculture or cleaning, where – due, amongst other things, to the short period of employment and the frequent change of employer – both sides frequently avoid formalization of employment (paying taxes and national insurance).

#### ***Widespread acceptance of grey economy***

A significant role is also played here by the general acceptance by both parties of “under the table” (untaxed) work and the prevalence of such employment in the agriculture, construction and domestic services sectors (Segeš Frelak, Bieniecki, 2011). As qualitative studies show, in a situation where “under the table” work is widespread, many persons do not consider that an employment contract is necessary. This situation is confirmed by results of research by the CASE Foundation (Jabłońska, 2009), according to which the greatest percentage of persons working in the grey economy is made up of: farmers (27%), agricultural labourers (24.5%) and also miners and construction workers (20%).

#### ***Higher profits***

As has already been mentioned, one of the main motivations of employers for employing foreigners is their lower remuneration expectations. Frequently foreigners themselves are not interested in the legalisation of work because this would mean lower wages for them. As a result, both sides often prefer not to legalise employment or sign civil contracts (service contract or work contract) – due to lower employment costs.

#### ***Lack of information among migrants and Polish employers***

Many foreigners are also unaware of the obligation to sign an agreement and of the fact that a declaration entitles you to work for one employer and not for many employers. A visa with the right to work – in the opinion of some respondents of a study in 2011 – constitutes the only document necessary for undertaking legal work for many employers. Furthermore, many

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<sup>137</sup> Law on the consequences of assigning work to foreigners staying in the Republic of Poland in violation of regulations (Dz. U. Z 2012 r. nr 0, poz. 769).

employers do not know the law in this area and do not know how they could employ a foreigner and the process seems complicated and expensive to them. Unfortunately, in the case of an inspection (control), most negative consequences fall on the employee who violates the conditions of the residence document (Klaus, 2011).

As knowledge of the regulations in force in Poland is very limited among immigrants they very rarely turn for help to external institutions (for example, the police) in the case of problems at work. Awareness of their rights depends on their position on the market and degree of integration in Poland. According to available research, persons least likely to seek help are those in a worse situation on the market, working illegally or working for the first time in Poland. What is more, there is not much information about the employment rights of foreigners in Poland, especially in foreign languages. There is also a lack of organisations to which foreigners could turn.

### ***Migration strategies***

In relation to the agriculture and the domestic services sector there are of course always some people who would prefer the work to be legal thus , some people, of course, prefer legal employment, incurring, for example, insurance costs or working two shifts to cover the costs of the employer resulting from employment of a foreigner. These are above all people who are planning a longer stay in Poland. Amongst other available ways of legalisation, foreigners often mention opening their own firm, marriage to a Pole (in the case of women) and also trying to obtain Polish citizenship, if you have Polish roots (Samoraj, 2007).

Amongst survey respondents women working in the domestic services sector most often express a desire to stay longer in Poland. However, in surveys foreigners point to legal regulations which do not allow them to take up long-term legal employment and often force them to interrupt work after half a year due to the necessity of returning to their country of origin in order to spend a half-year waiting period there, as required by law.

As a result, migrants who are planning their lives in Poland, cannot plan a longer stay in Poland and do not care about legalisation of employment. They cannot take up work other than temporary work or work that does not require much commitment, which forces them to seek employment on the secondary labour market, making it impossible to work in accordance with their qualifications. Nor can they plan the potential development of their professional career or make use of opportunities to undergo retraining. As a result, they concentrate in the secondary labour market and the grey economy, which exposes them to abuse, exploitation and fraud.

As a rule, however, foreigners come to Poland to accumulate as much money as possible and therefore try to limit their costs of stay to a minimum. Since they are not covered by any integration programmes either (dealt with more fully in the next sections), they must rely on individual adaptation strategies.

#### ***Rare assertion (pursuing) of rights***

Another problem relates to the assertion (pursuance) of rights. Many researchers (Foryś, Klaus, 2011) addressing the issues of employing immigrants emphasize that foreign workers rarely decide to assert their rights, even in situations of evident violations by employers, which is linked to, among other things, fear of deportation, limited knowledge of the Polish language and also the aforementioned low awareness of their rights.

The opportunities for immigrants to defend their rights are, according to respondents of available surveys, minimal – the only thing immigrants can do (in their opinion) in such a situation is to give up work, due to the informal form of employment. The most frequent strategy for dealing with such situations is avoiding “bad employers”. Polish authorities and the uniformed services are rather negatively perceived by foreigners.

In the event of scams or violations of laws by employers, some foreigners decide to take legal action. Of course, this only concerns a small group of undocumented persons and persons working on the basis of employment contracts concluded with employers.

## 10.4 Housing and social policy in Poland (access to the social safety net)

### 10.4.1 Social housing policy

#### **Context**

Poland ranks far behind other EU countries in the area of housing, both with regard to the number of apartments, the size of these and housing conditions. According to available estimates, the current housing shortage in Poland amounts to 1.4 – 1.5 million apartments. Over the years, the accessibility of apartments has been a major problem, as well as the annually increasing disproportion between the average price per square meter of an apartment and the average salary in Poland. Consequently, only part of Polish society can afford to buy their own flat and apartment prices in Poland are comparable, or even higher, to prices of comparable flats in selected EU countries with significantly higher incomes. At the same time, credits sometimes consume 1/3 or even ½ of the monthly household budget of immigrants. Additionally, there is lack of cheap housing for groups with lower income (Olech, 2008).

Other problems relate to overcrowding and living in substandard accommodation. According to current data provided by Eurostat in 2010, the highest overcrowding rates were registered in Latvia (57.1 %), Romania (54.9 %) and Poland (47.5 %), compared to EU-27 average of 17.6 %. Across the EU-27 as a whole, in 2010 5.7 % of the population suffered from severe housing deprivation, while in Poland about 14%.

The situation under Polish social housing policy is equally disadvantageous. Unfortunately, there are no detailed statistics on the number of social apartments. There is also no definition or term of social housing, although it might include council flats (7.9% of total housing) including social flats (constituting part of council resources of housing – about 61 thousand) and TBS (social building society) flats (about 79 thousand).<sup>138</sup> In Poland, housing as a whole consists of social apartments (10%), private apartments (70%) and apartments belonging to housing cooperatives (20%). For comparison, in Netherlands social housing makes up 33%, and private – 57% of all apartments. The percentage of social housing in Sweden, Denmark, France and Great Britain is also higher than 20% (Olech, 2011a).

The stock of social flats is certainly too small given the demand for housing. Consequently, waiting lists can be as long as several years. In the case of the largest cities with over 200 000 inhabitants, the average waiting time for social apartments in 2008-2010 was 7.5 years. According to an audit conducted by the Supreme Audit Office (NIK), which focused on the years 2004 – 2010, it is possible that the lack of housing may affect up to 80% of persons in need. Experts on social housing issues indicate (Dębski, 2013) even more problems related to this issue: ghettoization of social apartments, as well as a small and continually diminishing share of social housing in the number of new apartments being built in Poland.

The difficult housing situation results in evictions and a large percentage of people experiencing problems in keeping up with payments for the use of a housing unit. Another result of Polish poverty, visible in the Central Statistical Office (GUS), is the number of persons who were granted housing benefits of various types. At the end of 2011, almost 5 million such benefits had been paid out, totalling nearly 900 million PLN.

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<sup>138</sup> Data for 2009 provided by Central Statistical Office of Poland (GUS).

### ***Access to social housing***

Only persons in poor health or in a difficult family or social situation are eligible to social housing. Persons with eviction orders from council, cooperative or private flats are given priority. Social housing aims to meet the needs of people in difficult situations who are unable to provide for themselves and who rent accommodation in the commercial market.

In the process of granting the right to social housing, the following criteria are taken into consideration (Olech, 2008): place of residence (residents in the municipality have the right to a social apartment in the first instance); income (social apartments are granted only to "people in need") and housing and social situation (e.g. living in buildings destined for demolition, homelessness, overcrowding, needs of children's home alumni).

According to the Act of 2001 it is the municipality that is responsible for providing public (social) housing and meeting the housing needs of low income households. The Act does not specify who has the right to housing from municipality housing stock, so it is assumed that all inhabitants of a given municipality, including migrants (regardless of their legal status in Poland), theoretically have the right to this housing. Unfortunately, due to the problems of social housing policy, the fulfilling of these obligations by municipalities remains to a large extent a fiction.

The family or single person that has financial problems and is not in a position to pay the rent can apply for housing benefits. The right to claim benefits includes persons who have a legal title (with some exceptions) to the premises and who meet certain conditions defined by the Act on Housing Benefits. Obtaining benefits depends on family income, housing space and maintenance costs. As in the case of social housing, the Act makes no distinction between Polish citizens and foreigners. So if the migrant rents or owns the accommodation, he/she may apply for a housing allowance.

## 10.4.2 Social policy

### **Context**

According to calculations by the Central Statistical Office of Poland (GUS) presented in the report "Poverty in Poland in 2011," the proportion of people living below subsistence level was 6.7%.<sup>139</sup> For years unemployed persons and their families have been particularly vulnerable to poverty and children and youths have been at much greater risk than adults. In 2011 these groups represented 31% of the population at risk of extreme poverty. Similar to the preceding years, the degree of poverty was definitely bigger in the countryside than in the cities. Countryside residents made up more than 60% of the people living below the extreme and statutory poverty line.

The comprehensive reform of social assistance aiming at mitigating the social costs of economic reforms was implemented at the beginning of the nineties. Since then, social policy has been developing based on three strategies and related trends: (1) the progressive institutionalization of social welfare (2) decentralization of social assistance (related to the growing role of local government in social policy), and (3) the professionalization of social services (Grewiński & Krzyszkowski, 2011).

Many experts indicate however that the changes have not improved the organization of the welfare system. Social assistance is also criticized for its high costs, bureaucracy and inefficiency. For a long time social policy focused on the implementation of welfare functions, neglecting the important issue of activation. In recent years, there has been a reorientation towards social inclusion and activation.

According to Rybka (2006), in the case of structural unemployment and mass poverty, the role of social assistance in solving social problems is very limited and does not provide minimal social protection. It focuses primarily on the payment of benefits with a lack of effective social work. As a result, clients often become dependent on income support rather than gaining independence.

In contrast to many European countries, Poland has not implemented a strategy to combat homelessness. Existing regulations and programmes are to the large extend diffused and do not constitute the comprehensive social policy. In this context it is worth mentioning two programmes, the implementation of which proves that there is a large potential for actions aimed at overcoming the homelessness issue in Poland.

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<sup>139</sup> According to Eurostat data from 2011 27,2 % of Polish population were at risk of poverty and social exclusion (EU – 27 average – 24.2 %). Slightly more than 10% of population was severely materially deprived (the EU-27 average - 8.8 %), in: Eurostat. (October 2012). *Income distribution statistics*. Retrieved June 20, 2013 from the World Wide Web [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Income\\_distribution\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Income_distribution_statistics).

The Ministry of Labour and Social Policy has been implementing a support programme for non-government organizations to combat homelessness since 2000.<sup>140</sup> The programme has supported organizations in providing relief and intervention assistance for many years, and in 2006 another module was introduced, including activities related to social integration and escaping from homelessness. The programme is a very useful instrument, as it aims to support organizations dealing with ca. 80 – 90 % of needs related to homelessness (Olech, 2011b).

Another government programme related to homelessness is aimed at supporting municipalities in providing social housing, protected flats, night shelters and houses for the homeless. Financial support under the pilot project allowed for the creation of over 5 thousand social flats and about 500 places in night shelters and houses for the homeless. Programme evaluation showed that the number of flats created was much smaller than assumed, which is, among other things, related to limited use of available funds (Olech, 2011b).

### ***Access to social assistance***

Generally, social assistance is aimed at helping persons and families to overcome difficult situations in life. Social assistance in Poland is granted on the basis of two criteria, the first of which is related to income, and the other to the social risk affecting a person or family, such as poverty, orphanage, homelessness, unemployment, disability.

Social assistance is organized by organs of state and local governments. The social assistance system utilizes two types of support: financial and non-financial. Financial support is mostly based on two commonly referred to benefits: permanent benefit and periodical benefit. Non-financial support is generally identified with services rendered under social assistance for persons at social risk, the most common of which is social work. Non-financial support also includes such activities as paying health and social insurance contributions, in kind aid, and providing shelter, food and clothes. In addition, homeless people may enter the so called individual programmes for escaping from homelessness. Key instruments used therein are social work, specialist counselling and institutional paths to get out from homelessness. According to the Central Statistical Office of Poland (GUS) in 2011 social benefits (cash and non-financial) came to about 3 billion 700 thousand PLN and covered 2.0 million persons that were members of 1.3 million families. Overall, these families consisted of 3.5 million persons. In 2011, assistance was most often rendered because of poverty and unemployment.

According to the Act on Social Assistance of 2008, municipalities also assure shelter to the roofless, for example in the form of night shelters, day-and-night shelters and houses for homeless persons. Research indicates that the average number of these institutions largely depends on the total number of residents: the bigger the municipality, the more of these institutions are present. The relatively high number of shelters in the area of big cities is also related to the fact that big cities “pull” homeless people. According to PFWB data (Dębski, 2013) in the majority of Polish municipalities, the lack of places for homeless persons is not a problem.

According to the provisions in the Act on Social Assistance, Polish citizens and some categories of persons residing in Poland are entitled to social assistance benefits. These categories include foreigners holding a permanent residence permit or European Community long-term residence permit. This group also includes persons who have been granted refugee status or subsidiary

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<sup>140</sup> The Programme Supporting the Return of Homeless People to Society, MPIPS, <http://www.mpips.gov.pl/pomoc-spoleczna/programy/program-wspierajacy-powrot-osob-bezdomnych-do-spolecznosci/> (in Polish).

protection. In addition, citizens of the member states of the European Union have an unlimited right to social assistance. Similar rules apply for family benefits that are also available to specific groups of foreigners covered by the provisions on the coordination of social security systems and citizens of countries that signed bilateral agreements on social security.

The right use of labour market instruments (except the Poles and citizens of the EU, EEA and their family members) is also limited to specific groups of foreigners, including forced migrants, people holding a permanent residence permit and spouses of Polish citizens. As a result, temporary migrants (holding a residence permit for a defined period of time) are deprived of the possibility to register at the employment office (in order to receive insurance and benefits).

Foreigners staying on the territory of Poland based on the tolerated residence permit possess only the right to shelter, food, necessary clothing and purpose benefit. Victims of human trafficking can obtain benefits in the form of crisis intervention, shelter, food, necessary clothes and purpose benefit. However, foreigners holding a residence permit for a defined period of time complemented by a work permit are completely shorn of the possibility of seeking assistance, while this group of people constitutes the largest number of foreigners residing in Poland.

Polish regulations limit access to health care services financed from public funds to citizens and foreigners who are insured. According to this principle the following groups of foreigners may be subject to the provision of free health care: European Union citizens and third-country nationals who are covered by mandatory or voluntary insurance. At the same time, there is a broad group of foreigners who do not meet the above criteria, but have access public health services, namely European Union citizens insured in the country of residence. Uninsured persons, both migrants and Polish citizens are required to pay for their treatment (Jabłeczka, 2013).

Regardless of the legality of residence the benefits are available to unaccompanied minor children and persons applying for refugee status. As a general rule, foreigners staying in Poland illegally are not entitled to health care services financed from public funds. There are however certain exceptions including the treatment of infections and infectious diseases and assistance in the event of an urgent health threat by the emergency medical teams outside hospital (Kędzierska, 2012).

According to the Act on the Education System, compulsory education covers all children up to the age of 18, including migrants (who are legally and illegally in Poland). There is also a duty to organize additional Polish language classes if the child does not speak the language sufficiently. A new solution is the employment of so-called teaching assistants, which helps to overcome language and cultural barriers among migrant students. This regulation remains to the great extent a dead letter since schools are reluctant to employ such persons according to Wencel (2012).

According to the Ministry of Labour and Social Policy data, the total value of benefits from social assistance rendered to persons from third countries in 2004 – 2011 amounted to ca. 4.8 million PLN and was provided to 4586 persons, the majority of whom stayed on the territory of Poland on a permanent residence permit. Interestingly, the assistance was also provided to a small number of people staying in Poland based on a residence permit for a defined period of time. In the opinion of administration representatives, rendering assistance to this last group is a result of social workers' lack of knowledge or conscious actions of local authorities, which decide to



support a broader group of people. As mentioned above, forced migrants also benefit from social assistance. In 2004-2011, for comparison, 10,065 persons under international protection used social assistance (amounting to the total value of 8.130 million PLN).

## **10.5 Services for the destitute and the homeless migrants**

Individual Integration Programmes (IPIs) for persons, who have been granted refugee status or subsidiary protection are the one and only component of social policy aimed at foreigners in Poland. Thereby, policy on the social integration of foreigners in Poland is limited to forced migrants. Programmes are managed by District Family Support Centres or City Social Assistance Centres. The main goal of these programmes is assistance in overcoming the language, material and social barriers in the everyday functioning of a migrant, as well as mitigating the problems related to the situation that caused the refugee to be granted status or subsidiary protection. Integration assistance consists of several components: financial support, paying health insurance contributions, social work, specialist counselling. In addition the beneficiaries of IPIs receive assistance in looking for an apartment. In the years 2004 – 2011, District Family Support Centres have implemented 3911 Individual Integration Programmes, in which 18,563 persons participated. The total value of expenses came to about 37.8 million PLN. Although the establishment of IPIs should be considered to be a very positive decision, for many years now the programmes have been criticized for their limited effectiveness, the main reason being that few participants actually have stable work, a flat or speak Polish at the programme's end (J. Frelak, W. Klaus, J. Wiśniewski, 2008).

For many years the lack of integration policy addressing economic migrants was justified by the relatively small number of migrants and the temporary nature of their residence. But in the past few years this situation has changed, which is reflected in the statistics indicating the rising scale of both residential and temporary migrations. In the government document „Polish Migration Policy”, some changes in the state's attitude towards the integration of various group of migrants are visible, but these still remain at the level of declarations (Ministry Interior, 2012).

The problems of social housing in Poland lie behind the difficult situation of foreigners in Poland where only selected categories of these foreigners have access to special housing support. As mentioned above, assistance targeted at migrants is limited to forced migrants and includes housing support within Individual Integration Programmes and housing support in some cities as well as projects implemented by the NGO sector.

Furthermore, persons applying for the recognition of refugee status, have guaranteed places at a centre for asylum seekers for the duration of their procedure. Apart from the possibility of staying in open centres, there is also a system of benefits available outside of the centre, allowing foreigners to rent an apartment in the free market. Victims of human trafficking may also count on support in seeking shelter. Other categories of foreigners are not entitled to housing assistance after their arrival in Poland (Wencel, 2011).

It is worth considering two cities, Lublin and Warsaw, which implemented special solutions in the matter of social housing for forced migrants. In the city of Warsaw, a special resolution was adopted granting refugees and persons with subsidiary protection 5 council flats per year, based on a competition organized by Warsaw Family Support Centre (WCPR). Once a year, a special

Commission established by WCPR selects 5 families from among the foreigners applying for housing assistance, taking into consideration the situation of applicants based on following criteria: family, housing, health and material situation, period of stay in Poland including integration efforts.<sup>141</sup> In Lublin, there are 3 sheltered flats, in which, until June 2012, 30 foreigners (5 families) have been supposed to live. Refugees receive a sheltered flat for half a year with the possibility to extend this for another three months (Szlachetka, 2011).

Apart from the state support, services for the destitute and the homeless are also provided by embassies and consulates, NGOs and trade unions. In general, migrants from WNIS countries approach these institutions relatively rarely, opting for NGO organisations and state institutions. Generally speaking, migrants working legally are aware of the possibility of applying for institutional help, while irregularly working migrants avoid public institutions, even in cases of serious need. When in trouble migrant workers are generally more willing to contact the members of their informal network than any authorities or organisations. Informal self-assistance networks have developed especially among migrants from the Ukraine. For example, the Greek Catholic Church in Warsaw where migrant workers meet, exchange information, seek job opportunities and legal advice is a good example of such an initiative.

In general migrants have little contact with their embassies when they feel their rights have been violated. This could imply that may lead to the conclusion that the migrants do not consider it the duty of the embassies (or consulates) to be active in the protection of their rights (Każmierkiewicz, 2009).

Since the launch of the European Fund for the Integration of Third-Country Nationals, the number of non-governmental organizations whose activities are aimed at direct support for third country workers has been growing. Direct support includes: legal and social counselling, language courses, reskilling, etc. The projects within the fund are in fact the only relatively permanent source of funding of integration measures, which does however indicate a number of shortcomings. Firstly, this situation should not occur: the non-governmental sector should not replace state institutions in the field of integration policy. Secondly, many valuable actions disappear on the completion of the project and a number of organizations are not able to implement projects due to the complicated procedures and the need to provide their own financial contribution.

## **10.6 Legal and social causes of destitution and homelessness**

Researchers on the subject have long emphasized that besides employment issues housing issues form the most important barriers to the integration of immigrants. The authorities do not really seem to be aware of the problem, stressing that it is not only foreigners who encounter difficulties in obtaining accommodation (housing) – as has already been mentioned, a significant group of Polish citizens find themselves in a situation identical to that of foreigners.

As the available data cited in this report show, in the case of third country workers we are dealing with a problem of insecure and inadequate housing (rather than extreme homelessness) and a weak position on the employment market, which makes these third country workers particularly

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<sup>141</sup> Resolution of the Council of the Capital City of Warsaw No. LVIII/1751/2009 of 9 July 2009 on rules of renting apartments, which are part of the Capital City of Warsaw housing stock.

susceptible to exploitation by employers. In other words, in the case of Poland existing evidence proves that the problems are connected with integration and discrimination rather than destitution. Forced migrants certainly find themselves in a much worse situation – many of them experience housing exclusion and homelessness. The scale of this phenomenon among them is alarming – according to experts' estimates, the housing needs of only 20% of refugees living in Poland have been secured. Factors contributing to this situation are presented below:

### **Housing problems linked with the bad condition of housing (including social housing) in Poland**

When talking about homelessness and poverty among third country workers, one cannot overlook housing problems in general. As has already been mentioned, one of the most important causes of homelessness in Poland is the low availability on the market of low-rent housing. What is more, Poles themselves, not just foreigners, live in substandard and overcrowded housing. Many Poles – and foreigners even more so – cannot afford to repay mortgages, utilities and maintenance are also expensive, and thus one of the most common causes of homelessness is debt on the part of tenants (Ministry of Labour and Social Policy, 2010).

The bad housing situation in Poland means that the vast majority of homeless persons have very little chance of finding accommodation. The situation often arises in which a homeless person who is ready to exit from homelessness (e.g. due to having a permanent job) is forced to remain in a centre for homeless people due to a lack of public (social) housing. Such a state of affairs is a symptom not only of the bad housing situation in Poland but also of the poor functioning of the system of aid to homeless people, which often has nothing to do with the field of housing (Dębski, 2010).

### **Prejudice and discrimination**

Stereotypes about foreigners functioning in Polish society and prejudice against strangers are also a significant problem. Public opinion polls show that the perception of foreigners is dependent on whether the immigrant in question is “poor” and from across the eastern border or a rich foreigner from the West. Topping the list of the most popular nations are Czechs and Slovaks. The most liked nations by Poles also include the British, Italians and Spanish. Ukrainians and Belarusians are liked at more or less the same frequency as they are disliked. We noted a predominance of negative attitudes to Chinese, Vietnamese and also Russians (CBOS, 2013).

In this context it is worth mentioning research on “neighbourly relations”, which was carried out by the Centre for Migration Research in 2011 in three Warsaw neighbourhoods with a relatively high number of migrants. According to Górny and Toruńczyk-Ruiz (2011), migrants tended to positively assess mutual relations, although in this case, the choice of the group has significant meaning – the studied persons were mainly Vietnamese, who are “culturally” not conflictual. At the same time they tend to assess their neighbourhoods more positively than natives. The more negative opinions on the studied areas expressed by natives can be related to the fact that these neighbourhoods are inhabited by migrants. However, the authors argue that we are not experiencing negative stigmatisation of Warsaw locations where migrants live. Poor areas overpopulated by migrant groups are still absent from the map of Warsaw or any larger Polish city. At the same time, xenophobic attitudes are rather rare in the researched areas. This may be related to the low number of migrants present in Poland, which makes the issue of migrant inflow a problem of a rather abstract nature.

Neighbourhood issues are important because they can indicate possible sources of behaviour that is discriminatory against migrants in the area of housing.<sup>142</sup> The European Commission Against Racism and Intolerance (ECRI), in a report concerning Poland of 2010, states that discrimination against foreigners takes place in housing and especially emphasizes the difficult situation of forced migrants and the Roma minority.

An experimental study by the Institute of Public Affairs carried out at the beginning of 2013 in Warsaw, Lublin and Białystok indicates discriminatory behaviour in access to housing. It was aimed at studying the reaction of owners in terms of three dimensions: the possibility of renting a flat, the possibility of signing a tenancy agreement and the possibility of temporary *zameldowanie* (registered residence). Approximately 400 telephone tests were conducted, from which it transpired that foreigners (of Belarusian and Chechen origin) were treated worse than Poles. The frequent refusal to rent out accommodation at the very beginning of the conversation with the foreigner was striking – for example, 112 foreigners but only 43 Poles phoning in answer to exactly the same adverts received the reply that the tenancy offer is no longer current. Poles also justified refusal to rent a flat to foreigners by potential legal problems. If we take into account nationality, people from Chechnya are treated worse than Poles and Belarusians. The study clearly shows that the cause of housing problems may be the negative attitude of some Poles towards foreigners and fears that coming into contact with a foreigner may be linked with problems of an unspecified (unknown) nature.

Another problem is also indirect discrimination, which may include, for example, inappropriate wording of some provisions, discriminatory behaviour (verbal or nonverbal) and the discriminatory practice of selected (government/local government) offices or officials themselves.

According to Klaus (2010) this situation results partly from the poor preparation of the Polish authorities dealing with clients - foreigners. This not only regards the knowledge of foreign languages but also of the culture and the situation in the country of origin. Although the situation is constantly improving, migrants still face several problems while dealing with Polish institutions, e.g. discretionary decisions made by officials, especially in the absence of precise provisions or different practices preferred by various authorities. An example of such a situation is the policy of transcription of names from languages with a different alphabet. Due to a different practice being adopted by the Office for Foreigners and registry offices, parents often have a different name than their children, which causes difficulties, especially when travelling abroad. Furthermore, public servants not dealing with migrants on a daily basis tend not to distinguish refugees from economic migrants and citizens of the EU countries.

### **Communication problems**

The problem of communication particularly concerns social and health care services. There is a lack of interpreters in the course of treatment. In relation to education experts also underline the language barrier, a lack of preparation for working in a multicultural environment, a lack of psychological support, problems arising from cultural differences, a lack of knowledge of the Polish language on the part of parents and a lack of specialized textbooks and teaching aids for working with foreign students.

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<sup>142</sup> One can refer here to cases of protests by local people, e.g. in Jastrzębia Góra, where inhabitants protested against a planned centre for refugees. A centre in Katowice was closed earlier, as a result of strong opposition of local authorities and community (Wencel, 2011)

## Legal restrictions

As has already been mentioned, the access of foreigners from third countries to social assistance and instruments of the labour market is in many cases more limited than in the case of Poles or other groups of migrants. What is more, they do not fall within the scope of integration policy, which is orientated towards forced migrants.

In the case of the right to public (social) housing, the act does not specify which groups of migrants have the right to housing from municipality housing stock, so it is assumed that all inhabitants of a given municipality, including migrants, have the right to this housing. They may after some time of stay try for accommodation on general principles (the same as for Poles); however, meeting the stringent conditions is in their case very difficult. An example of such a situation in which it is more difficult for foreigners to fulfil requirements for obtaining social housing is the requirement of “binding” an applicant with a given district. It is very difficult for this group to fulfil this condition, for example due to frequent migration from district to district in search of cheap accommodation. Another problematic requirement of some locations may include *zameldowanie* (registered residence), as Polish landlords are reluctant to fulfil this obligation even in the case of Polish tenants. Moreover, persons holding residence permit for a defined period of time may also be perceived as temporary migrants not attached to the district of their residence despite living in Poland for many years.

Experts dealing with migration issues also indicate problems in interpretation of regulations concerning foreigners staying in Poland. Their cause may vary and stem from, amongst other things, insufficient knowledge on the part of officials, communication barriers or the mentioned prejudices. Moreover, Polish law defines the concept of homelessness very narrowly. A homeless person is defined as someone who may be registered or not and who has no accommodation to live in.<sup>143</sup>

In the case of legal barriers in access to free health care the problem of migrant children, pregnant women and disabled persons that are not insured should be highlighted. According to the Polish Constitution, public authorities are obliged to ensure special health care to these groups, regardless of whether or not they possess Polish citizenship (Chrzanowska & Klaus, 2011). At the same time, the Act on Publicly Funded Healthcare Benefits restricts this obligation to persons under eighteen years of age and women in pregnancy, childbirth and postpartum who hold Polish citizenship and have a place of residence on the territory of Poland. As a result uninsured pregnant migrant women are deprived of the right to free health benefits beyond the assistance provided by the emergency teams. The situation of children - third-country nationals is similar; the range of free services provided to them is extended only to preventive health care on the condition that they attend Polish schools (Kędzierska, 2012).

In the case of education, one of the biggest barriers seems to be the lack of access to free education for adults, both for forced migrants and other categories of foreigners. Only children under the age of 18 are entitled to a free education, but experience shows that it is implemented in various ways. The real problem is the lack of school attendance of migrant children placed in detention centres (Chrzanowska & Klaus).

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<sup>143</sup> Act on social assistance of 2004.

## **10.7 Possible improvements instead of good practices**

As already mentioned in the case of third country workers it is difficult to identify the good practices that could be widely implemented due to the lack of systematic solutions covering this group. Certainly, the good practices that could be extended to those most vulnerable are the solutions applied in Warsaw (the competition for housing for forced migrants) or Lublin (sheltered housing where forced migrants live temporarily).

Another possible solution that could limit the freedom of offices in the interpretation of the law or that could increase the efficiency of their work is the establishment of consultative bodies/forums for cooperation, similar to those concerning other social problems/groups. Especially given that according to the experts, the lack of cooperation and exchange of information between the institutions and between the authorities and NGOs remains a serious problem.

Solutions should be introduced allowing irregular migrant workers to change their status in Poland. For example, instruments should be created allowing this group to acquire new abilities: learning a language or professional training, including enabling migrants to make use of previously acquired skills. It is worth using the experience of other countries. For example, in Spain seasonal migrants sign a binding commitment to return home after work in Spain. After four years of following the rules, the migrant gains easier access to permanent work authorisation. At the same time, newly arrived workers are provided with information about health care and other services, remittance transfers and labour regulations. In addition, the Farmer Solidarity Foundation (FAS) supports returning migrants in setting up small businesses (Newland, Rannveig Agunias, Terrazas, 2008).

In the expert's opinion the important cause of migrant's problems in Poland results from lack of information so it is therefore important to seek for good practices in this area. Klaus (2010) suggest that solutions aimed at increasing access to information should be accompanied by an improved preparation on the part of Polish institutions working with migrants.

According to Mickiewicz & Wencel (2013) Poland should sign the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which will ensure the protection of all groups of migrant workers from exploitation, abuse and allow the implementation of the standards set by the Convention on social security and social protection. They also recommend adopting the ETHOS typology as the definition of homelessness, which is much broader than the Polish definition. It would make it possible to classify the homeless according to their housing conditions and create a more accurate picture of the phenomenon.

## **10.8 Concluding remarks**

As the available data quoted in this report show, in the case of third country workers a key problem is their weak position on the market and the insecure and inadequate housing available to them. Limited data indicate that the problem of extreme homelessness is relatively rare in this group.

The changes introduced in the field of migration law, especially those concerning seasonal work, have not limited the informal sector (grey economy) in its employment of migrants. What is more,

major problems among immigrants very often stem from not understanding regulations that directly concern them. Such a situation is a result of the lack of clarity of binding regulations and the considerable freedom the various offices have in interpreting these regulations. Third country workers also encounter specific forms of discrimination on the labour market. Perhaps it would be appropriate to introduce additional requirements allowing for the employment conditions of this group to be monitored by the relevant state institutions. The available instruments for protecting employment rights and migration law neither take sufficient account of the specific situation of foreigners nor do they create guarantees for persons who have been exploited by employers or who are not working in accordance with the law.

Bad housing conditions stem, however, from amongst other things, the weak housing situation in Poland, the limited right to cheap housing and discriminatory behaviour, which makes it difficult for foreigners to rent/acquire accommodation on the same terms as Poles.

Although Ukrainians appear to be the group most predisposed to integration in Poland, they often remain for whole years as seasonal migrants and function outside society. In spite of the fact that they constitute the largest group of migrants in Poland, they are completely ignored in integration policy. Neither are their needs taken into account in such areas as social or housing policy.

In the government document "Polish migration policy", certain changes can be seen in the approach to the issue of the integration of various groups of migrants. It is hoped that Poland's integration policy – being discussed at the moment of drawing up this report – will translate into concrete action aimed at supporting economic migrants.

## ANNEX I

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## **ANNEX II**

### **List of interviewed stakeholders**

Ministry of Labour and Social Policy (3 persons)

Association for Legal Intervention (2 persons)

Warsaw Labour Office (1 person)

National Labour Inspectorate (2 persons)

Pomeranian Forum in Aid of Getting Out of Homelessness (1 person)

Institute of Migration Studies (1 person)

## 11 MOBILE EU CITIZENS OF ROMA ORIGIN IN ITALY

### 11.1 Introduction

Since the delivery of the Lisbon strategy to tackle poverty in 2000, the European Union has been in the forefront of the effort to achieve inclusive growth. The designation by the European Parliament of 2010 as the European Year for Combating Poverty and Social Exclusion, and the Europe 2020 goals, has constituted an opportunity to revise strategies and implement change. These actions take place in times of dire economic crisis which have put considerable strains on states' welfares and dramatically reduced job supply leading to record high incidence of Europeans living below the poverty threshold. Further, the situation appears even more grim when migrants are taken into account; this is so for a variety of reasons, including discrimination and lack of status, that reinforce their exclusion and ensuing poverty cycle. The position of Roma appears to be particularly disadvantaged as a consequence of century-long distrust, marginalisation and segregation. Since 2007, the debate over their inclusion has intensified in light of their emigration from new Member States. The report, therefore, draws on the confluence of manifold dimensions that need be synthesised so as to understand the extent and the reasons behind EU Roma's poverty and destitution.

The specific situation of Roma, segregated in camps, makes it most challenging to operate a step-by-step comparison between the situation of Italians, migrants and mobile EU citizens of Roma origin. Notwithstanding this, we set forth to investigate the citizen and ethnic informed links to general poverty, as conducive to destitution and homelessness. In order to do so, the study relies on a vast array of official indicators on income, poverty, material deprivation which offer useful comparisons between Italians and foreigners as well as quali-quantitative information, estimates, often at a local level, that highlight the specific condition of the EU Roma living in Italy vis-à-vis Italians, on one hand, and non-EU Roma, on the other. By doing so, it will be clear that discrimination plays a key role in ordering these sub-groups of the total population in a sort of hierarchical manner.

Hence, such findings are important inasmuch as they clarify how the free movement of EU Roma is still hindered by social, legal, bureaucratic and economic factors. It is possible to argue, therefore, that the target group's movement to Italy has by no means led to more windows of opportunity. Indeed, if poverty and discrimination constitute the main push factors for EU Roma, pull factors responding to aspirations for an improved life are often based on a false assumption about the real opportunities in Italy as a destination country. Finally, such situation is also related to EU Roma migration patterns that involve large-scale, group rather than individual, mobility of unskilled workers, which has been tackled with an emergency and security-based response by the Italian governments.

## 11.2 Extent of destitution and homelessness

Italy is one of the main European destinations of migratory flows from a vast array of different countries (Fig.1). However, migrants from Romania, Albania, Morocco, China and Ukraine constitute more than half of the total inflow (Tab.1). As of 1 January 2011 foreigners living in Italy amount to 4 million and 570 thousand, that is 7.5 per cent of the entire population. Foreign population has increased steadily over the course of the last decade and has more than tripled since 2002 (Fig.2). The Council of Europe Roma and Travellers Division (CoE) estimates (2010)<sup>144</sup> that 140,000 Roma<sup>145</sup> live in Italy as an average amount corresponding to 0.23 per cent of the total population, ranging between 110,000 (as a minimum) and 170,000 (as a maximum). The majority of Roma, about 50-60 per cent, are Italian citizens while the remaining 40-50 per cent is made up of foreign citizens who arrived in Italy within successive flows. According to ERRC (in Strati: 2010, 4) 20-25 per cent are from other EU member states, chiefly Romanian and Bulgarian; a percentage that translates to around 35,000-Roma with EU citizenship. However, ECRI (2012:31) estimates a total of 50.000 Roma mainly from Romania.

### 11.2.1 Destitution

According to 2009 EU-SILC data (in Eurostat, 2011), the median annual equivalised disposable income in the prime working ages of 25-54 is 71 per cent of the median disposable income of the total population for third country nationals and 81 per cent for EU migrants (Tab. A). These difference can be partly explained by noting that foreigners are usually employed in unskilled jobs and/or are underemployed. In fact, while university graduates' salaries are 75 per cent higher than salaries of people with a primary school certificate for Italians, the gap decreases to as little as 8 per cent for non-Italians (ISTAT:2011b).

Always according to 2009 EU-SILC data (in Eurostat, 2011), the proportion of third country nationals aged 20-64 at risk of poverty or social exclusion is 18 percentage points higher than the proportion for the total population in this age group (42 per cent against 24 per cent), this effect is much stronger for third country nationals than for citizens of other EU Member States for whom the difference in percentage points equals 7 (31 per cent) (Tab. A). The total percentage of persons at risk of poverty after social transfers drops by eight points to 16. Again, EU nationals score better than third-country nationals, 22 per cent against 29 per cent. However, the highest drop of risk-of-poverty before and after social transfers is recorded in both third country nationals age groups: the 25-54 age group's prevalence drops from as high as 43 per cent to 30 per cent while the 55-64 one's from 46 per cent to 28 per cent (Tab. 11.1).

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<sup>144</sup> <http://www.coe.int/t/dg3/romatravellers/Source/documents/stats.xls>

<sup>145</sup> Unfortunately, Roma in Italy are mostly considered as a whole and it is possible to find further disaggregation only in few sources. When we mention "Roma" we refer to both Italian and non-Italian since no disaggregated data is available. "EU Roma" refers to migrant Roma in Italy from other EU countries and "migrant Roma" to non-Italian Roma who are not from EU countries either. When data is not available for EU Roma the study refers to data regarding Roma in general, with the general assumption that the latter score better than the former due, to a certain extent, to their length of stay in Italy. This important aspect constitutes a central feature of the current analysis.

**Table 11.1 Indicators of Destitution**

ITALY	Total Population			Foreign-Born			Of Which					
							EU Born			Non-EU Born		
	Population at age											
	20-64	Of which		20-64	Of which		20-64	Of which		20-64	Of which	
25-54		55-64	25-54		55-64	25-54		55-64	25-54		55-64	
Median equivalised disposable income	100	100	100	75	74	81	83	81	98	72	71	74
At risk of poverty and social exclusion	24	23	25	39	40	37	31	32	16u	42	43	46
At risk of poverty after social transfers	16	16	13	27	28	22	22	22	6	29	30	28

Source: Eurostat, EU-Statistics on Income and Living Conditions, 2011

To this regard, ISTAT (2011b) notes that 90,6 per cent of foreigners' net income depends on salaries; by contrast, the figure stands at a mere 63,8 per cent for Italian households. The high rate of access to the job market is confirmed by the higher percentage of foreigners who received unemployment monetary transfers (20,3% as opposed to 9,3% of Italians), which are category-based as there is no universal unemployment insurance. This data underlines job insecurity, on one hand, and the substantial participation to the regular job market, without which requirements would not be met, on the other.

There is no comprehensive data on income related to the specific target group. However, according to a Milan-based voluntary association's survey, NAGA (2011), out of the 809 EU Roma interviewed only 129 were employed (16%): 22 were women and 107 were men. A survey by Save the Children (2008) on a sample of 76 (mainly) EU Roma women recorded 17 cases of employment (22,4%). A survey by FRA (2012) on Roma, without disaggregating by nationality, reported that: a) 10% of Roma were employed, excluding self-employment; b) roughly 25% declared themselves as self-employed; c) roughly 97% were at risk of poverty. A last survey, Tarnovschi (2012), reported that 37,80% of Italian Roma were employed.

The condition of material deprivation<sup>146</sup> concerns 37,3% of foreign<sup>147</sup> households, 24,9% of mixed households and 13,9% of Italian ones. Looking at the indicator of severe material deprivation, which involves the lack of four items instead of three, the highest share is to be found again in foreign households totalling 19,9%, followed by mixed households at 11,1% and, finally, Italian ones at 6%. (Tab.2) There is no data on material deprivation for the target group.

<sup>146</sup> The EU MD rate is currently defined as the proportion of people living in households who cannot afford at least 3 of the following 9 items: coping with unexpected expenses; one week annual holiday away from home; avoiding arrears (in mortgage or rent, utility bills or hire purchase installments); a meal with meat, chicken, fish or vegetarian equivalent every second day; keeping the home adequately warm; a washing machine; a colour TV; a telephone; a personal car.

<sup>147</sup> No further disaggregation as per nationality and ethnicity is available

## 11.2.2 Homelessness

According to Istat (2011a), compared to Italian households, foreigners' record higher rates of severe housing deprivation, that is a situation of overcrowding together with at least another housing problem (4.7 % and 14,9% respectively). Overcrowding is of utmost relevance, 41,1% of foreign household live in this situation as opposed to 14,6% of Italian households and 24,1 of mixed ones. There is no specific data on EU Roma; however, data is available for Roma in general (both migrant and Italian). According to FRA (2012), for what regards availability of sufficient personal space and availability of basic amenities (indoor kitchen, indoor toilet, indoor shower or bath and electricity) the differences between Roma and non-Roma in Italy are particularly high as compared to the rest of EU member states analysed. The percentage of households lacking at least one of the listed facilities is inferior to 1 per cent for the non-Roma households and around 30 per cent for the Roma ones (Table 11.2).

**Table 11.2 Indicators of Housing Deprivation**

Housing deprivation	Foreign Households	Mixed Households	Italian Households	Roma (Migrant and Italian)
Severe housing deprivation	14.9	7.8	4.7	-
Overcrowding	41.1	24.1	14.6	-
Lack of either inside bath, inside toilet or warm water	3.7	-	1.1	30 <sup>148</sup>

Re-elaboration on Istat (2011a) and FRA (2012) for data on Roma

According to Istat (2011a) Italians are predominantly owner of their abode (71,6%) as opposed to only 15,1% of foreign households. The majority of foreign households rent or sub-rent (64,7%) as opposed to 16% of Italian ones. Further, the share of foreign households living in accommodations provided by their employer is high. Concerning Roma, according to Tarnovschi (2012), 70% of the sampled EU Roma respondents lived in unstable conditions: 43,4% in shanty towns and caves, 18,7% in temporary barracks, 3,2% in mobile homes, 2,4% in caravans, 2,2% in spaces designed for other purposes other than housing. Only 14,6% lived in apartments and 11% lived in a house or part of a house; By contrast, a quarter of Italian Roma families lived in single-family houses, 20% lived in condominiums, while "only" nearly half of respondents (48.5per cent) lived in unstable conditions, i.e. housed in temporary barracks (21.3%), mobile homes (20.7%), caravans (4.1per cent) or other unstructured solutions. (Tab. 11.3).

<sup>148</sup> In addition, FRA (2009a) warns that provisions on utilities are among the least respected of all the provisions of the regional laws. Concerning overcrowding, the average number of persons per room (excluding kitchen, corridor, toilet, bathroom and any room rented out) is around 0,8 for non-Roma households and more than 2,5 for Roma ones. According to ECRI (2012) authorised camps are densely populated by various containers aligned in rows; each container accommodates 4 people and the average area per person is less than a half of what is prescribed by the Property Construction Code (*Codice per l'edilizia*, Presidential Decree 380/2001).

**Table 11.3 Type of housing, (%) of different Roma groups in Italy**

Type of housing	Italian Roma	Bulgarian Roma	Romanian Roma	EU Roma
House	23.1	4.9	5.2	5.1
Part of a house	1.8	9.8	6.2	6.9
Apartment in a building < 10 dwellings	8.3	12.7	7.5	8.5
Apartment in a building ≥ 10 dwellings	18.3	0.0	7.8	6.1
Temporary barracks	21.3	2.9	23.1	18.7
Mobile homes/ Trailers	20.7	3.9	3.1	3.2
Caravans	4.1	7.8	1.0	2.4
Dwelling in a student or worker home	-	1.0	0.0	0.2
Shanty towns, caves and similar	1.8	<b>49.0</b>	<b>42.3</b>	<b>43.4</b>
Spaces designed for purposes other than housing	-	2.9	2.1	2.2
Homeless	-	3.9	1.3	1.8
Other	0.6	1.0	0.3	0.4

Source: Re-elaboration on Tarnovschi, 2012

An important criticality of poor housing pertains to house insecurity. In Rome, the municipality evicted more than 15,000 Roma; similarly, a respondent from the Federation of Roma and Sinti interviewed by FRA (2009a:61) commented that “In Milan, during the last two years, there has been a policy of continuous evictions, mainly targeted at the Romanian Roma community, without official announcements and viable alternatives”. By and large, the policy of eviction has affected a substantial number of people, as out of 167 settlements identified in 2008, 124 were unauthorised. The policy has been closely linked to the recent “Nomad” Emergency.

Together with evictions, threats of violence contribute directly to the insecurity of housing and their overall substandard conditions. ERRC (2000, 2008, 2012), ECRI (2006, 2012), ENAR (2008) and FRA (2008) have investigated this phenomenon, in conjunction with evictions and hate speech, warning that it has become even more acute following the “state of emergency” and the inflow of EU Roma living in segregated settlement as shown by the in-depth FRA (2008) report on the attacks to the Roma camps located in Ponticelli (Naples).

According to estimates on homelessness by the Italian Federation of Associations for the Homeless (*Federazione Italiana Organismi Persone Senza Dimora*, Fiopsd), that, together with ISTAT, carried out a survey inherent to the access to homeless services in 150 Italian municipalities in 2011, figures stand at 47.640 (ISTAT, 2011e). This is a sharp increase as compared to the 17,000 homeless recorded by Fondazione Zancan in 2000. Foreigners constitute the majority (59,4 per cent), they are younger than Italians and have higher education. [Istat:2011d; Fondazione Zancan:2000].

The survey by ISTAT/Fiopsd does not take Roma into account. The only source available is the abovementioned study by Tarnovschi that sets, based on the survey, EU Roma homelessness at 1,8 per cent (Tarnovschi,2012). The definition of homelessness in this study, however, is restrictive and focuses on rooflessness. Thus, if one adopted a broader interpretation, such as the one contained in the FEANTSA typology (houselessness, rooflessness, inadequate and insecure housing) the proportion would be much higher and would encompass the great majority of the EU Roma population in Italy. According to FRA (2009b:53), homelessness is an experience more common among EU Roma in Italy than in any other member state.

In sum, while there is no targeted data on EU Roma homelessness, the great majority of this group would fall within its broad definition as provided by FEANTSA. A total of 43,4 per cent of EU Roma live in shanty towns, caves and similar underlining a situation of severe housing inadequacy and deprivation coupled with insecurity. The latter is linked to the frequent evictions and recurrent waves of violence by the neighbouring locals. Their housing situation is compounded by their destitution as at least 97 per cent of the target group is at risk-of poverty and



rates of unemployment and informal work<sup>149</sup> are particularly high. Lastly, their spatial segregation in mainly unauthorised camps constitutes a prominent feature of their vulnerability. Indeed, their vertical, socio-economic, and horizontal, spatial, discrimination reinforce each other. While Italian Roma are more disadvantaged than foreigners in general, they are better off than EU Roma. In addition, also migrant Roma who are not EU appear less vulnerable than the target group. The former live mainly in authorised camps while the latter predominantly live in unauthorised settlements. An important element in explaining this phenomenon is the length of their stay in Italy. Studies on migration in Italy are unanimous in affirming that non-Roma migrants improve their living conditions after years of residence. The same reasoning seems to apply to Roma migrants. In fact, EU Roma inflow is more recent than the other groups' and is often on a seasonal basis.

## **11.3 National policies and legislative context in the field of housing and social assistance**

### **11.3.1 Social Housing**

The Italian social housing model can be classified as targeted-generalist. Targeted models' objective is to satisfy the excess of housing demand left unmatched by the market supply. Further, generalist models allocate housing according to (mainly<sup>150</sup>) income levels. [DG-Internal Policies: 2013]

In Italy there are three main types of publicly supported housing schemes: subsidised housing (*edilizia sovvenzionata*), assisted housing (*edilizia agevolata*) and agreed housing (*edilizia convenzionata*). Subsidised housing refers to the rental of houses owned by the public sector addressing those with the lowest income: subsidies range between 60 and 100 per cent of the rent depending on the tenant's income. Assisted housing is also public sector housing provided both for rent and for sale; it is aimed at households on low to middle income. Subsidies range between 20 and 60 per cent of the cost. Agreed housing is private housing provided both for rent and for sale and whose costs are regulated by agreements between the Municipality and the housing provider who receives tax and land lease benefits. [CECODHAS:2012, IRPET:2010]

Pursuant to Legislative Decree 112/98 housing competences have been transferred from the central government to the regional ones. The public sector is mainly represented by the former *Istituto Autonomo Case Popolari* (IACP), autonomous public agencies present across the various municipalities, that own and manage public housing stock, and municipalities. Housing cooperatives and other private providers are also involved in the provision of social housing. Most recently, new operators have started entering the social housing scene, mainly foundations. As noted by EUMC (2005), as regional governments are responsible for housing policies, national frameworks are interpreted and implemented in differing ways; Federcasa&Censis (2008) goes on to argue that decentralisation has led to the widening of the north-south divide in service supply.

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<sup>149</sup> Such as collecting scrap for money, working on construction sites, fruits picking, itinerant musicians, prostitution, begging, drug trafficking, etc

[http://urbact.eu/fileadmin/Projects/Roma\\_Net/outputs\\_media/Thematic\\_report\\_Employability\\_Landscape.pdf](http://urbact.eu/fileadmin/Projects/Roma_Net/outputs_media/Thematic_report_Employability_Landscape.pdf)

<sup>150</sup> In Italy, the eligibility for accessing social housing is mainly based on income. In fact, there exists a set of criteria for registration in waiting lists. Such requisites include: an occupational and/or residential link with the municipality and means-tested income thresholds (the so-called ISE and ISEE). Factors that are weighted so as to gain points may include: the presence of minors in monoparental families; presence of each person with a disability higher than 66%; being homeless or facing a severe housing deprivation; being older than 65; having divorced and being sentenced to abandon one's abode and so forth. These criteria, however, are local and significant geographical variation emerges in terms of potential beneficiaries and eligibility.

Moreover, both a decrease in supply and an increase in demand have come about. Firstly, building stock devoted to social housing have been progressively sold, pursuant to Law 560/93, and with Law 410/2001 the tax which was financing social housing, so-called GESCAL, was abrogated. Secondly, rental market was liberalised, pursuant to Law 431/98. Evidently, the main goal was to reduce public debt. Nonetheless, the policy was informed by a false understanding of the social situation: in fact, the social housing was deemed redundant in a country where natives had a high rate of house ownership. (IRPET:2010) As a result, social rental housing currently represents a mere 4% of the national housing stock. (CECODHAS:2012). The size of this crude indicator of the social housing supply is discomfoting when bearing in mind that the recent economic crisis has created an exogenous demand shock for the social housing market. In 2012, 630,000 applicants were registered on waiting lists for social housing in Italy. According to DG-Internal Policies (2013:15) “recent surveys conducted in Italy reveal that approximately one million social housing units would need to be built”.

While there is no comprehensive quantitative data on the access of regular migrants to social housing, the phenomenon is quite widespread<sup>151</sup> but presents differences among municipalities. Fondazione Michelucci (2012) shows that in Turin 10 per cent of social housing was assigned to foreigners while their incidence on the total population is higher (14 per cent) and that in Florence 17 per cent was assigned to foreigners while their incidence on the total population is lower (10 per cent).

By contrast, social housing schemes are not available options for neither EU Roma nor for Italian Roma. This is a result of: a) direct and indirect discrimination (*infra*, 11.4.1 and 11.4.2); b) the underlying tendency to equate the Roma, as an ethnic group, regardless of one’s citizenship, to the camp-based model<sup>152</sup> (*infra*, 11.4.2); c) lack of residence registration (*infra*, 11.4.1).

### 11.3.2 Social Assistance

According to Eurostat (2012), Italy’s welfare expenditure, in percentage of GDP, equalled 29.9 points, that is 0.4 percentage points higher than the EU average, in 2010. Italy is the European country that, in percentage of total social benefits, spent the most for old-age pensions and survivors (60.6% as opposed to an EU average of 45.0% ). Conversely, spending for family and children, unemployment, housing and social exclusion was significantly lower (7.8%) than the EU average (17.6). In particular, family and children accounted for 4.6%, unemployment for 2.9% and housing and social exclusion for a mere 0.3%. Health care accounted for 31.5 of the total social expenditure, also lower than the EU average of 37.4%.

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<sup>151</sup> Conversely, the uptake of social housing by foreigners is used instrumentally by populist parties. The latter lament that social housing are nowadays built for third country nationals only and call for different ways to allocate waiting lists points. Available data do not confirm such a foreigners-preference viewpoint.

<sup>152</sup> The system of governance for the Roma corresponds to a multicultural-communitarian framework shaped by the regional laws issued since the mid-eighties and the recent declaration of the State of Emergency in 2008. It is possible to find initiatives that envisage new housing solutions for Roma, including social housing, but they are mainly unstructured projects, rather than policies, that fall within the domain of good practices. However, the recent National Strategy for the Inclusion of Roma, Sinti and Travellers contains a strong commitment against the camp-based approach and considers different housing solutions, such as: subsidised housing (*edilizia sovvenzionata*), assisted housing (*edilizia agevolata*), agreed housing (*edilizia convenzionata*), self-construction, regularisation of caravans on agricultural fields, etc.

**Table 11.4 Italy's welfare expenditure as compared to EU27**

	Expenditure:			PPS per capita, EU27=100	Benefits by function, in % of total social benefits				
	In % of GDP				Old age & survivors	Sickness/ healthcare & disability	Family & children	Unemployment	Housing & social exclusion
	2007	2009	2010						
<b>EU27</b>	26.1	29.6	29.4	100	45.0	37.4	8.0	6.0	3.6
<b>Italy</b>	26.6	29.9	29.9	102	60.6	31.5	4.6	2.9	0.3

Source: Eurostat:2012

These data are consistent with several studies regarding the Italian welfare system. The taxonomy proposed by Esping-Andersen (1990) included it in the Conservative ideal-type. The latter is characterized by employment-based protection measures, prevalence of monetary benefits (73%, ISTAT:2011b) as opposed to the provision of in-kind services and by the male-bread winner model. Ferrera (1996) defined it as a variant of the Conservative system which is common to Mediterranean countries insofar as low levels of social expenditure are recorded in favour of family support, children, elderly, disabled as well as to counter poverty. Further distinct features of the Italian welfare system are its Bismarckian pension system, first adopted in the interwar period, coupled with a Beveridge-type health care, adopted in 1978, that partly modified the system original occupational path in favour of universal health coverage.

Yet, all these classifications do not seem entirely satisfactory given that local entities have increased their autonomy to such a degree that is now possible to refer to a welfare mix instead of a welfare state (CIES:2011). In fact, pursuant to Law 328/200 and to Law 3/2001, that has modified article 117 of the Constitution, social assistance (*strictu sensu*) is implemented and financed, through general fiscality, by a multi-level governance, that includes state, regions and municipalities as well as provinces, albeit to a lesser extent. As a result, social assistance (*strictu sensu*) is a composite mosaic of over 8000 Italian municipalities, in 20 regions, subject to co-funding on a year by year basis.<sup>153</sup>

Migrants' access to pension benefits is scarce as this kind of transfers can be received after a long period of employment.<sup>154</sup> This is especially true for migrants who plan on leaving the country before retirement or seasonal migrants. According to ISTAT (2011b) only 3,2% of foreigners had access to pension as opposed to 34,3% of Italians. There is no data on EU Roma access to pension benefits; while absence of evidence is not evidence of absence, it could be inferred that they have no access to it for three reasons: their migratory wave is most recent<sup>155</sup>, they have high unemployment rates, a part of their migratory wave is seasonal.

Italy lacks a national minimum income scheme and a universalistic system of unemployment benefits is not in place. Access to social assistance (*latu sensu*) is linked to employment status. Such criteria privilege migrants, who have high employment rates. According to ISTAT (2011b) 20% of foreigners had access to them as opposed to 9% of Italians. By contrast, these criteria exclude Roma due, again, to their difficulty in accessing the job market, and especially EU Roma. Sickness and maternity allowances are also contributory and pay between 50% (sickness) and

<sup>153</sup> Hence, local welfare is more generous in the richest areas of the country, where local authorities autonomously own more abundant resources. The heterogeneity of social assistance throughout the 20 regions is deepened by the fact that the state has so far failed to define minimum provision levels. At the same time, these areas are those where migrants are more likely to settle because of the higher demand for unskilled labour.

<sup>154</sup> The statutory retirement age is 62 years for women and 66 for men, with both retiring at 66 by 2018. Also, 20 years of contributions are required. The pension system has undergone a recent amendment pursuant to Law 214/2011.

<sup>155</sup> The same cannot be said about Italian Roma and non-EU migrant Roma

80% (maternity) of the current wage for a maximum period of 180 days for sickness leave or 5 months for maternity. Also in this case EU Roma remain largely uncovered by the social safety net due to their being work-related. Similarly, family allowances can be claimed by employed people or persons receiving social security benefits such as unemployment, maternity or sickness leave and pensions: their amount depends on family size and income.

Education is offered freely to all residents, including migrants and even children of illegal migrants are required to comply with compulsory schooling. However, school attendance by Roma remains very limited. Save the Children (2008) surveyed three (mainly) EU Roma inhabited camps and recorded that no child younger than 5 went to school while the rate of drop outs within the year was high. Also, it points out that school attendance before primary school could favour schooling and limit drop outs. ISMU (2013) reports that Roma students enrolled in school in 2011/2012 amounted to 11.899 while, according to UNAR, the number of Roma in school age is as high as 70.000.

Together with education, also access to the national health system is universal; further, both are tax based. Italians, regular third country nationals and employed EU nationals and their relatives have the right to register to the National Health Service (*Servizio Sanitario Nazionale*). By contrast, undocumented third country nationals may only receive emergency treatments across the national territory by the means of a special card called *Tesserino STP (Straniero Temporaneamente Presente)*.

EU nationals who either are not in possession of medical insurance from their country of origin (Romania, Bulgaria), thus are not in possession of the TEAM card (*Tessera Europea Assicurazione Malattia*), or are not regularly employed in Italy find themselves in a position of vulnerability since they cannot access the services of STP any longer. This has led, for some time, to a paradoxical situation whereby third country nationals Roma were in a more advantaged situation than EU Roma. However, albeit heterogeneously, regions have provided for a specific card, called ENI (*Europeo non iscritto*) which puts them on a par with STP holders. It ought to be noted, that, since EU Roma face difficulties in being employed, their situation is of particular vulnerability in those regions where the ENI card has not been put in place, such as Lombardy.

A report by Caritas (2009) describing the extension to five cities (Messina, Palermo, Florence, Milan, Trento) of a project, aimed at improving accessibility of health service by Roma, that had first taken place in Rome, recorded very low access to the SSN by EU Roma<sup>156</sup>. By contrast, a FRA survey (2012) found access to health care as high as 80 per cent. The proportion, which is similar to that related to Italians (living in the same neighbourhood), seems very high. However, as the survey includes Roma not living in settlements, the data reinforces the view that spatial segregation is key in limiting access to health care. Further, the asymmetry between higher need for access to healthcare and limited access is particularly worrisome<sup>157</sup>.

In sum, the Italian welfare system offers very limited support for destitute EU Roma. Firstly, as high as 60,3 per cent of the expenditure is directed towards pension schemes that can hardly be accessed as they require a prolonged stay and formal employment. Secondly, although 31,0 per cent of social expenditure covers health and sickness, EU Roma access is low due to their spatial

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<sup>156</sup> In Messina, over a total of 44 interviewees, no one was registered to the SNN; 24 were in possession of the ENI card and 20 did not have any kind of access to health services. In Milan (Lombardy), 850 EU Roma on a total of 907, did not have any kind of access (SNN, TEAM, ENI, STP).

<sup>157</sup> To this regard it also ought to be highlighted that the hygienic conditions of camps are deplorable, making them particularly unfit and unhealthy. The situation is even worse in illegal camps. As a consequence, the incidence of respiratory diseases, skin diseases and gastrointestinal diseases is particularly high, especially among minors. Further, lack of gas or electricity compels the inhabitants to use self-made devices, which bear two main consequences: on one hand they aggravate the abovementioned diseases; on the other, they raise the likelihood of fires. Monasta et al. (2012) indicate that from March 2010 to August 2011 seven children between one and thirteen years of age died in settlements for causes related to the precarious living conditions. ERRC (2008) lists a series of accidents whose victims were mostly minors of Romanian citizenship.

segregation and their lack of either a TEAM or ENI card. Thirdly, access to benefits is generally linked to employment status. Fourthly, the percentage of welfare aiming at combating extreme poverty and aiding families is residual. Finally, local welfare is territorially heterogeneous and eligibility is usually subject to habitual residence.

## 11.4 Legal and social causes of destitution and homelessness

### 11.4.1 Legal barriers

#### Qualifying conditions for migrants for social assistance and housing schemes

In Italy, access to social assistance and housing schemes is linked to the registration of residence (*iscrizione anagrafica*) in the municipality.

Regarding regular third country nationals, registration is regulated by art.6 par 7 of the Consolidated Act on Immigration (286/1998) and by art. 15 of its implementing regulation (D.P.R. n. 394/99) that prescribe the same treatment as for Italian citizens.

Concerning EU citizens, the EU has adopted an organic regulation of free movement and residence pursuant to Directive 2004/38, transposed in Italy with Legislative Decree 30/2007. Registration of residence is issued by the municipality where the citizen has established her/his habitual residence on presentation of a valid document and, pursuant to art. 8 directive 2004/38, of proof that the conditions referred to in article 7<sup>158</sup> of the Free Movement directive are complied with. However, these requirements (*infra*) often prevent EU Roma from registering their residence. It ought to be emphasised that EU states have been allowed to apply the so-called “transitional arrangements” temporarily prohibiting or limiting the movement of new workers from Bulgaria and Romania, under the Accession Agreements. However, Italy placed only limited restrictions on dependent employment, between 1 January 2007 and 1 January 2012, and immediately liberalised various employment sectors: self-employment; agriculture; hotel and tourism; domestic work and caregivers; construction; metalworker; highly skilled; seasonal work; maritime sector. By contrast, for all the sectors not included in the list, it was necessary for the employer to obtain permission (*nulla osta*) from the provincial Immigration Office (*Sportello Unico per l'Immigrazione della provincia*) by the means of a simplified procedure entailing the submission of a specific form<sup>159</sup>. Also, no quotas were envisaged. There is neither evidence of improvement in the situation of EU Roma after 1 January 2012, when the transitional restrictions were abolished, nor of worsening in the period 1 January 2007- 1 January 2012, when the restrictions were in place. Neither desk research nor interviews with Associazione 21 Luglio and Idea Rom have been conducive in finding evidence of awareness pertaining to these limitations, let alone their impact. What appears to be clear, therefore, is that the restrictions have not constituted a central feature of EU Roma poverty and exclusion in Italy.

More to the point, the European Commission Report on the application of Directive 2004/38 noted that Italy had transposed the notion of “sufficient resources” incorrectly with regard to defining the minimum amount that would be regarded as sufficient inasmuch as it had failed to take the

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<sup>158</sup> Article 6 par.1 of the so-called Free Movement Directive provides every EU citizen with the right of residence in another Member State for up to three months, with the only condition of holding a valid travel document. However, during these first three months, the EU citizen is not entitled to general social assistance if s/he is not employed. According to Article 7, the right of residence for more than three months is subject to certain conditions, such as: being workers or self-employed or students (including vocational training); having sufficient resources; being in possession of comprehensive sickness insurance; or being a family member of a EU citizen who complies with the abovementioned requirements.

<sup>159</sup> <http://www.lavoro.gov.it/NR/rdonlyres/3ECB7467-4F76-46D3-88F3-A9D9B3DCC52C/0/ModelloSubNeocomunitari.pdf>

decision on the basis of personal circumstances, availability of savings or of money donated by a third party, as well as the broader goal of the directive aiming at facilitating rather than limiting the free movement. Thus, Circular 18/2009 by the Ministry of Interior has subsequently corrected<sup>160</sup> the previous restrictive interpretation of art.7 letter b of the Free Movement Directive as transposed in art. 9, par. 1, letters b e c of Legislative Decree 30/2007.

Nonetheless, the criteria of sufficient resources so as not to constitute an unreasonable burden on welfare remains hard to meet for EU Roma. This is also true in consideration of the difficulty in meeting the other requirement pertaining to holding either a medical insurance from the country of origin (TEAM card) or a private insurance. To this regard, FRA (2009b) notes that while the 'sufficient resources' requirement applies equally to both Roma and non-Roma, it disproportionately impacts on Roma due to their being employed in the informal labour market.

In addition, Law 94/2009 (so-called Security Package) has amended art. 1 of Law 1228/1954, adding a sub-paragraph prescribing that "registration or change of residence *may*<sup>161</sup> entail sanitary audit [...] of the (static) property"<sup>162</sup>. According to Simoni (2009), the regulation, while apparently neutral, is directed against "nomads". EU Roma rarely live in houses or flats while the property (*immobile*) art.1 par.1 Law 1228/1954 refers to, ought to be a permanent one. A further obstacle is constituted by the sanitary audit as the conditions of EU Roma camps suffer of extreme unhealthiness. If one adopted a narrow viewpoint, one "that misses the forest for the trees" as the adage goes, he/she would risk overlooking the problematic nature of this dimension. As a matter of fact, such audit does not (directly) impact on the residence registration but may result in evictions: it's a vicious circle inasmuch as evictions may impact on the criteria of possessing habitual residence. As a result, the sanitary audit may, albeit indirectly, impact on the residence registration. Besides, there have been instances where the sanitary audit has directly impacted on residence registration and courts have had to rule against such practices.<sup>163</sup> Lastly, the discretionary nature of the audit leaves room for discriminatory practices targeting specific vulnerable groups. It is worth considering this final point bearing in mind the extent of prejudice and ethnic stereotyping against Roma at both the micro and meso level.

As previously mentioned, foreigners who are legally residing in Italy may access social assistance and housing schemes on a par with Italians, while undocumented ones may only access emergency care<sup>164</sup>. However, equal treatment ought to be interpreted extensively. According to EU law, the notion of discrimination, pertains both to its direct and indirect nuance. Such understanding of discrimination, derived from Directive 2000/43/CE, Directive 2000/78 CE as well as from the European Court of Human Rights and the European Court of Justice, ought to be taken into account as for what regards several local provisions pertaining to periods of residence in the municipality or region so as to access social assistance and housing schemes. During the first decade of 2000s the Constitutional Court had recognized clearly defined periods of

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<sup>160</sup> [http://servizidemografici.interno.it/sites/default/files/circ18\\_2009.pdf](http://servizidemografici.interno.it/sites/default/files/circ18_2009.pdf)

<sup>161</sup> The original proposal (Disegno di legge or ddl) envisaged a compulsory audit.

<sup>162</sup> "*L'iscrizione e la richiesta di variazione anagrafica possono dar luogo alla verifica, da parte dei competenti uffici comunali, delle condizioni igienico-sanitarie dell'immobile in cui il richiedente intende fissare la propria residenza, ai sensi delle vigenti norme sanitarie*".

<sup>163</sup> Trib. Brescia, ord. n. 588/11; Trib Brescia ord. n. 1009/11; Tar Lombardia, ord. 21.5.2010; Trib. Vicenza, ord. n. 1684/11, Trib. Brescia ord. n. 513/2010).

<sup>164</sup> International obligations regarding foreigners are binding in light of art. 10 par 2 and art. 117 par. 1 of the Constitution. Further, the Consolidated Act on Immigration (Legislative Decree 1998 n.286) as amended by Law 189/2002 recognizes the right to access shelters and social housing (art. 40) as well as social assistance schemes (art. 41) on a par with Italian citizens.

residence as legitimate. By contrast, in a legal opinion<sup>165</sup> dating back to 2009, the Italian National Office against Racial Discrimination (UNAR), identified such growing practices as discriminatory, thus foreshadowing the later ruling of the Constitutional Court. In fact, starting 2011 a consistent ruling of the latter has found such criteria to violate the principles of equality and reasonableness. Sentence 40/2011 tackled art. 4 Friuli Venezia Giulia regional law 24/2009 that excluded third country nationals altogether and imposed a minimum period of residence of 36 months for EU citizens, including Italian citizens, while sentences 2/2013, 4/2013 and 133/2013 addressed the differential treatment of third country nationals on the basis of clearly defined periods of residence (5 years) in the Province of Bolzano, in Calabria, and in Trentino Alto Adige respectively. More to the point, sentence 172/2013 found art. 9 par. 1 of law 15/2012 of the Provincia Autonoma di Trento to violate art. 21 par. 1 TFEU as well as the principles of equality and reasonableness. Similarly, and specifically pertaining to housing schemes, on 7 December 2012 the Italian state petitioned the Constitutional Court with regard to law 15/2012 of the Umbria region. The latter set a minimum period of 5 years, residing or working in the region, as requirements to access social housing. To be clear, restrictive provisions on the basis of periods of residence are still enforced by municipalities and regions but, when challenged in Court, the new standing of the Constitutional Court has led in certain cases to their disapplication.

Regarding direct discrimination, the Milan Tribunal with sentence 21.3.2002 n. 3614 has judged unlawful the municipality of Milan announcement for social housing that established extra points for Italian citizens. Similarly, ordinance 25.2.2005, n. 264 Administrative Regional Tribunal (TAR) of Lombardy judged as unlawful a regulation by the municipality of Brescia that subordinated social housing on condition of reciprocity.

### **Relation with criminal law**

The regulatory scheme vis-à-vis undocumented migration is based on the Consolidated Act on Immigration (Law 286/98) and its various amendments including Law 189/2002 (so-called Bossi-Fini); the so-called “security decree” (Legislative Decree 92/2008) and by the so-called “security package” (Law 94/2009). Illegal stay and entry have, thus, become criminal offences pursuant to art. 10 bis Law 286/98 that entails a fine ranging from €5.000 to €10.000 or expulsion for no less than 5 years. Aiding and abetting illegal entry is also a crime pursuant to art. 12 Law 286/98 and entails a fine of € 15.000 and at least 5 years of imprisonment. The criminalisation of illegal entry and stay curtails even more the rights of immigrants and make them vulnerable to exploitation and abuse. Neither helping and/or assisting irregular immigrants nor vagrancy are criminal offences.

As they regard undocumented migration, these aspects are applicable to third country nationals only. However, criminal law infringes on EU Roma rights for what regards article 235 par. 1 and article 312 Criminal Code (*infra, Expulsions*).

Article 600 of the Criminal Code criminalizes the reduction and maintenance in slavery / servitude. The concepts of slavery and servitude refer to a variety of criminal conducts, including: coercion in sexual performance, labour exploitation, begging and organ removal<sup>166</sup>.

### **Right to housing**

The Italian Constitution does not explicitly recognize the right to housing. However, manifold provisions implicitly recognize such right<sup>167</sup>. According to FioPSD (2008) the right to housing is

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<sup>165</sup> [http://109.232.32.23/VirtualCommunity/\\_image.aspx?id=db69ffaa-e3ed-44f2-8d43-816d6952848b](http://109.232.32.23/VirtualCommunity/_image.aspx?id=db69ffaa-e3ed-44f2-8d43-816d6952848b)

<sup>166</sup> The article also lists a series of coercive methods (violence, threats, abuse of authority, etc.) in accordance with the Additional Protocol on Trafficking in Human Beings.

<sup>167</sup> Article 2 recognizes and guarantees inviolable human rights; article 14 protects the inviolability of the domicile;

usually invoked in case of separation and divorce; squatting of social housing; and eviction. Regarding legal protection of the right to housing, even if the Constitution does not straightforwardly configure such right, the Constitutional Court (*Corte Costituzionale*) has recognized it as an inviolable human right (Sent. 7 April 1988, n. 404). Also, a sentence by the Court of Cassation (*Corte di Cassazione*)<sup>168</sup>, regarding squatting of social housing, concluded that the fact did not constitute a crime given the state of need (*stato di necessità*) pursuant to art. 54 Criminal Code linked to an inviolable right pursuant to art. 2 of the Constitution.

Moreover, Italy has ratified both the original version of the European Social Charter in 1965 and the revised one in 1999. The European Committee of Social Rights (ECSR), in its Decision<sup>169</sup> on the merits of the complaint ERRC v Italy found in Italy not in conformity with Article 31<sup>170</sup> par. 1, 2 and 3 in combination with Article E with respect to the right to housing of Roma. The grounds of nonconformity were the insufficiency and inadequacy of camping sites (Articles 31 par.1 and E); forced eviction<sup>171</sup> and other sanctions (Articles 31 par. 2 and E); and the lack of permanent dwellings (Articles 31 par.1 and 3; and E).

On 25 June 2010, on its Decision<sup>172</sup> on the merits of the complaint Centre on Housing Rights and Evictions (COHRE) v. Italy, the ECSR found that Italian authorities had not ensured a proper follow-up to the previous Decision and that the adoption of “Pacts for Security” (as of November 2006) and of so called “Nomad” state of emergency Decrees (as of May 2008) had: a) worsened living conditions, as also demonstrated by the assessment of the OSCE High Commissioner on National Minorities in March 2009; b) rendered numerous Roma homeless due to unlawful evictions; 3) not provided any evidence to establish that it had taken steps to make permanent dwellings (i.e. social housing) accessible and affordable.

### **Right to Social Assistance**

The Italian Constitution guarantees social rights in view of the decent existence of the person (art.2 and 3 Constitution) or in view of him/her being employed (art.38). Chapter 2 deals with family, maternity, infancy, education and healthcare; chapter 3 deals with rights of employed persons. Article. 41 Consolidated Act on Immigration prescribes equal access to social assistance for foreigners in a regular position as also confirmed by art. 2 par. 1 Law. 328/2000 and by Legislative Decree 215/2003 transposing Directive 2000/43. As noted, access to social assistance is curtailed by: 1) the difficulty in achieving residence registration, because of lack of habitual residence as well as the difficulty to comply with the requirements set out in Directive 2004/38, 2) the measures being largely employment-based, 3) by the period of residence requirement which can be seen as indirect discrimination.

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article 31 stresses the need that public authorities provide measures to ensure the formation of families; article 36 underlines the need that salaries ensure a free and dignified life to the worker and his family; article 42 recognizes the social function of private property; article 47 requires that savings to access private ownership of the house be encouraged.

<sup>168</sup> Corte di Cassazione, Sentenza del 26/09/2007 n. 35580.

<sup>169</sup> [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC27Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC27Merits_en.pdf)

<sup>170</sup> Pursuant to art. 31 states have: “to promote access to housing of an adequate standard” (par.1); “prevent and reduce homelessness with a view to its gradual elimination” (par.2); and “make the price of housing accessible to those without adequate resources” (par.3). Also, article E prescribes that the enjoyment of the rights set forth in the Charter ought to be secured without discrimination.

<sup>171</sup> According to the ESCR Conclusion (2003), evictions must be justified and carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available. The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided.

<sup>172</sup> [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC58Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC58Merits_en.pdf)



## Access to justice

General protection against discrimination is established by article 3 of the Constitution. However, such constitutional equality clause can be enforced against the State but not against private actors. The key legislative provision has long been Legislative Decree 286/98 (Consolidated Act on Immigration): article 43 contains a definition of direct and indirect discrimination that is similar to the one present in the Directives and article 44 instituted a specific civil action – both individual and class action - against discrimination based on race, colour, descent, national or ethnic origin and religious belief in all instances where either a private entity or a public body has caused discrimination. Further, Legislative Decree 215/2003 has implemented Directive 2000/43/EC and Legislative Decree 216/2003 has implemented Directive 2000/78/EC. Both Legislative Decrees provide with procedural remedies - individual action and class action.

National laws against discrimination provides also access to non-judicial procedures in order to obtain redress. These procedures are complementary to other legal remedies. Legislative Decree 215/2003, in accordance with Article 13 of Directive 2000/43, created the Italian equality body UNAR. The latter provides support to victims of discrimination by: providing legal support; raising awareness and conducting investigations and inquiries.

Finally, as legal aid is a constitutional right, pursuant to art. 24 of the Constitution, free legal assistance is provided. According to Presidential Decree 115/2002, applicants are entitled to legal aid, including discrimination cases, if their annual income is less than €10.628,16. However, according to FioPSD<sup>173</sup> “free legal aid is not *de facto* accessible as the application requires the presentation of legal historical records and residence registration; both requirements prove to be a formidable bureaucratic barrier”.

## Expulsions

The withdrawal of the right of residence is enforced according to two principles: firstly, in case the EU citizen does not possess or is not in possession any longer of the requirements to reside (art. 14 and 15 Directive 2004/38)<sup>174</sup>; secondly, on grounds of public security or public health (articles 27-33 Directive 2004/38).<sup>175</sup> According to Paolo Bonetti and Giulia Perin<sup>176</sup>, however, as the former type of expulsion measure does not forbid re-entering the country, administrative authorities tend to issue security-based ones (that impede re-entering for a period of no more than 5 years) even in the cases inherent to failure to comply with residence requirements. In fact, the latter statement follows from article 21 par. 4 legislative decree 30/2007. This provides that breach of the obligation to leave the country, following the order by the prefect on termination of the right of residence, gives the prefect the option to adopt a measure of expulsion on public

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<sup>173</sup> Interview.

<sup>174</sup> Expulsions pursuant to art. 14 and 15 of the Directive are regulated by articles 11 and 12 of Legislative Decree 30/2007 as amended by Legislative Decrees 181/2007; 249/2007; 32/2008 and 89/2011. Further, according to article 21, expulsion measures are not an automatic consequence of a Union citizen's, or his or her family member's, recourse to the social assistance system but ought to be evaluated on a case-by-case basis.

<sup>175</sup> Expulsion measures on grounds of security and public health in Italy are regulated by art. 20 of Legislative Decree 30/2007 which includes different circumstances: on grounds of: public security (allontanamento per motivi di sicurezza dello stato); imperative reasons of public security (motivi imperativi di pubblica sicurezza); other reasons of public order and security (altri motivi di ordine pubblico o pubblica sicurezza); public health (motivi di salute pubblica) Paragraph 4 art. 20 Legislative Decree. 30/2007, common to all typologies, is informed by EU principles. To this regard, the Court of Justice has affirmed three principles: personal situation; grave danger and proportionality that should inform expulsions. These principles have been further analysed by the European Commission in its communication to the European Parliament and the Council “on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

<sup>176</sup> [http://www.asgi.it/public/parser\\_download/save/allontanamento.cittadini.dell.ue.e.loro.familiari.23.febbraio.2012.purin.corr.bonetti.marzo.2012.pdf](http://www.asgi.it/public/parser_download/save/allontanamento.cittadini.dell.ue.e.loro.familiari.23.febbraio.2012.purin.corr.bonetti.marzo.2012.pdf)

security grounds pursuant to art. 20 legislative decree 30/2007 and on conditions specified by the same article in its paragraphs 4, 5 and 10.

Further, article 235 par. 1 Criminal Code, as amended by Legislative Decree 92/2008 and Law 125/2008, envisages yet another typology which establishes an “expulsion” referred to as “*allontanamento*” for EU citizens, in case the EU citizen is imposed a penalty of more than 2 years of detention<sup>177</sup>. Article 312 establishes the same “*allontanamento*” for crimes against the state (*delitti contro la personalità dello stato*). The European Committee on Social Rights, in its Decision 58/2009, stated that “even if according to the Italian legislation [...] no collective expulsion might be allowed, [...] the so-called “*emergenza rom*” offers a collective basis to proceed in identical abstract terms to these collective expulsions. According to Sigona (2008) the first amendment to Legislative Decree 30/2007 produced, as of 18 December 2007, a total of 408 expulsions: 262 on grounds of public security; 123 on grounds of imperative reasons of public security and 22 on economic/work related grounds. According to Cousin and Mariani (2011), the statement that following the so-called nomad-emergency expulsions have undergone a steady increase<sup>178</sup> does not match available data nor judicial decisions. In fact, the latter have often<sup>179</sup> rejected administrative authorities’ expulsion measures due to the lack of “concrete, effective, grave menace to people and public security”. If both expulsions and evictions impede formulating a life plan, in Italy evictions seem to affect Roma more than expulsions inasmuch as they involve a continuous displacement that impedes habitual residence.

Concerning assisted voluntary returns, the Italian legal system only envisages such solution vis-à-vis third country nationals pursuant to Law 129/2011 that transposed the EU return directive. Assisted voluntary return in Italy is the responsibility of the International Organisation for Migration. Nonetheless, voluntary repatriation became somewhat customary in the Tuscany region between 2009 and 2012. Public funds devolved by the Tuscany region, with resolution 24 April n. 279/2011, to the municipality of Florence (€ 200.000) and to the Società della Salute Zona Fiorentina Nord Ovest<sup>180</sup> (€ 200.000), for an “integration” project, were used to set up a voluntary repatriation scheme<sup>181</sup> involving the municipality of Florence, the municipality of Sesto Fiorentino the third-sector association Caritas, and Società della Salute. With resolution 18 June n.544/2012 the Tuscany region approved the repatriation of EU Roma from Lucca to the Romanian city of Gruia<sup>182</sup>. . Also in Tuscany, in 2009 the municipality of Pisa signed agreements with EU Roma compensating them with € 500 to 1000 but denying the re-entry to Pisa and to Italy for at least a year.<sup>183</sup> Voluntary repatriation of EU Roma also occurred in Lombardy, in 2011.<sup>184</sup>

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<sup>177</sup> “Il giudice ordina l’espulsione dello straniero ovvero l’allontanamento dal territorio dello Stato del cittadino appartenente ad uno Stato membro dell’Unione europea, oltre che nei casi espressamente previsti dalla legge, quando lo straniero o il cittadino appartenente ad uno Stato membro dell’Unione europea sia condannato alla reclusione per un tempo superiore ai due anni”. <http://www.altalex.com/index.php?idnot=42644>

<sup>178</sup> See, for instance, “Recent Migration of Roma in Europe” OSCE, 2010:52.

<sup>179</sup> Trib. Bologna, 31 May 2008, Sentence Venice Police Commissioner vs Radeć; Trib. Florence, Decree 4 July 2008 Casentino; Trib Milan, Decree 1 October 2008, Ferrari da Grado; Trib. Rome, Decree 9 March 2009, Pagliari

<sup>180</sup> Page 127, describes the purposes of such subsidiary within the municipality of Sesto Fiorentino. They include the “direct involvement of local communities [...] and the promotion of the well-being of *citizens*” (Italics added).

[http://www.comune.sesto-](http://www.comune.sesto-fiorentino.fi.it/Engine/RAServeFile.php/f/Comune_di_Sesto_Fiorentino_partecipate_2013_web_%281%29.pdf)

[fiorentino.fi.it/Engine/RAServeFile.php/f/Comune\\_di\\_Sesto\\_Fiorentino\\_partecipate\\_2013\\_web\\_%281%29.pdf](http://www.comune.sesto-fiorentino.fi.it/Engine/RAServeFile.php/f/Comune_di_Sesto_Fiorentino_partecipate_2013_web_%281%29.pdf)

<sup>181</sup> The resolution is available at [https://docs.google.com/viewer?a=v&q=cache:xLgkgt-](https://docs.google.com/viewer?a=v&q=cache:xLgkgt-gMKQJ:xa.yimg.com/kq/groups/13663251/1488632417/name/DELIBERA%2BROM%2BQUARACCHI%2B-%2BComune%2Bdi%2BFirenze%2B16%2Bgiugno%2B2011.doc+&hl=it&gl=it&pid=bl&srcid=ADGEEsGlamWbb01u5D-jyVXWp-3gFyh80JodQeMhV4sSMMz7M6AyCnrjR47dneHZqkUEzSevyCx5SKbjEcAoQHb-11vcPV5ELzXK-hFBB0Vuj8EOY4-ZCw9oxud2fu-qzPyaqy46&sig=AHIEtbRnLeP8IIIk52uqt6GmYHD1WJuiA)

[gMKQJ:xa.yimg.com/kq/groups/13663251/1488632417/name/DELIBERA%2BROM%2BQUARACCHI%2B-%2BComune%2Bdi%2BFirenze%2B16%2Bgiugno%2B2011.doc+&hl=it&gl=it&pid=bl&srcid=ADGEEsGlamWbb01u5D-jyVXWp-3gFyh80JodQeMhV4sSMMz7M6AyCnrjR47dneHZqkUEzSevyCx5SKbjEcAoQHb-11vcPV5ELzXK-hFBB0Vuj8EOY4-ZCw9oxud2fu-qzPyaqy46&sig=AHIEtbRnLeP8IIIk52uqt6GmYHD1WJuiA](https://docs.google.com/viewer?a=v&q=cache:xLgkgt-gMKQJ:xa.yimg.com/kq/groups/13663251/1488632417/name/DELIBERA%2BROM%2BQUARACCHI%2B-%2BComune%2Bdi%2BFirenze%2B16%2Bgiugno%2B2011.doc+&hl=it&gl=it&pid=bl&srcid=ADGEEsGlamWbb01u5D-jyVXWp-3gFyh80JodQeMhV4sSMMz7M6AyCnrjR47dneHZqkUEzSevyCx5SKbjEcAoQHb-11vcPV5ELzXK-hFBB0Vuj8EOY4-ZCw9oxud2fu-qzPyaqy46&sig=AHIEtbRnLeP8IIIk52uqt6GmYHD1WJuiA)

<sup>182</sup> <http://www.comune.seravezza.lucca.it/files/Rendiconto%20finale%20ALLEGATO.pdf>

<sup>183</sup> <http://bastasgomerirom.myblog.it/archive/2011/06/25/toscana-progetto-per-l-inclusione-ed-il-rimpatrio->

In sum, the legal conditions that hinder the social inclusion of EU Roma in Italy, respectively influencing the levels of their destitution and homelessness, absorb various dimensions. It is crucial to emphasize the difficulty in complying with the conditions set out in EU law in order to secure residence registration which entitles to social housing and social assistance. This is so due to EU Roma lack of formal employment; their lack of sufficient resources; the denial of registration to homeless and Roma living in camps, requirements regarding period of residence, the emphasis on assisted return, frequent evictions that impede habitual residence, and the *de facto* withdrawal of free legal aid due to bureaucratic barriers.

#### 11.4.2 Social Barriers

##### The stereotype of Roma as nomadic people

The deeply-rooted antiziganism has been surveyed by ISPO (2008). This research shows how 90 per cent of Italians think that Roma exploit minors; regularly commit petty crimes and are unwilling to integrate. Widespread prejudices are coupled with misinformation as 35 per cent of Italian overestimate Roma presence of Italy - ranging from 500,000 to over 2,000,000 - while only 9 per cent either underestimate or correctly estimate their demographic presence. In addition, 24 per cent of Italians know that around half of the entire Roma population is Italian; 16 per cent that they are not predominantly nomadic and 37 per cent that they are not a homogenous people. Only 3 per cent of the surveyed population, however, know all the three facts correctly.<sup>185</sup>

Indeed, various studies agree on the fact that there is a strong correlation between discrimination and the spatial segregation of Roma. FRA (2009b) is a strong advocate of the fact that the cause for poor housing of Roma and Travellers is racial discrimination fuelled by right-wing political parties and the media. However, as Fra (2009a), ERRC (2000 and 2008) and Picker (2011) point out, the perception of Roma as nomads has permeated housing policies towards these groups since the mid-80s. As Picker goes on to argue, since the mid-80s, a number of Regional policies emerged, due to a lack of integrated national policies. The Tuscany regional laws 17/1988 and 73/1995 were framed within a discourse on nomadism and spatial differentiation although a Fondazione Michelucci research, in 1993, had found that the majority of Roma in Tuscany were not nomads.

Sigona (2010), similarly to Picker, while conceding that the right-wing parties cannot be deemed the initiators of such an approach, stresses that they have gone a long way in manipulating anti-Romani hysteria to become a political tool. Recurrent and particular intense racist waves towards these groups have been recorded following murder (2007, Reggiani case) or attempted kidnapping (2008, Ponticelli incidents) allegedly committed by a Roma. Such “witch-hunts”, have been fomented by combined political and media campaigns (ENAR:2008; FRA:2008) and, as far as discrimination towards Roma is concerned, ENAR (2008) reports that the two groups that mostly faced racism and discrimination in 2008 were Romanian Roma and Sinti populations.

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[assistito.html](http://www.immigrazioneoggi.it/daily_news/2009/maggio/04_3.html) ; [http://www.immigrazioneoggi.it/daily\\_news/2009/maggio/04\\_3.html](http://www.immigrazioneoggi.it/daily_news/2009/maggio/04_3.html)

<sup>184</sup> [http://www.avsi.org/wp-content/uploads/2011/09/schedaAVSI\\_Italia-Romania.pdf](http://www.avsi.org/wp-content/uploads/2011/09/schedaAVSI_Italia-Romania.pdf)

<sup>185</sup> Similarly, the latest Eurobarometer asked to indicate on a scale from 1 to 10 how comfortable citizens would feel if their children had Roma schoolmates: 48% of Italians were uncomfortable (1-4); 29% fairly uncomfortable (5-6); and 19% comfortable (7-10). The average resulted in 4.5, that is to say between the uncomfortable and fairly uncomfortable threshold. Further, when European respondents were asked whether society could benefit from a better integration of the Roma, Italy and Cyprus were the only two Member States where an absolute majority of respondents disagreed, 51% and 50% respectively, while the EU27 average was 33%.

[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf)

Concerning the role of the media, the Committee for the Elimination of Racial Discrimination<sup>186</sup> stressed their crucial role in spreading stereotypes and igniting hate campaigns, especially in occasion of the approval of the so-called “security package”. The Committee has recommended the Italian government to encourage “media to have a positive role in combatting prejudice and negative stereotypes [...] to adopt all necessary measures to combat racism in the media”. Sigona (2006a) undertook an analysis of the media coverage of Roma and Sinti issues during a campaign for local elections as well as the role of the “Gypsy issue” in the electoral campaigns of the main political coalitions. He argues that media coverage appears biased, incomplete and lacking any sort of depth and that Roma and Sinti issues revolved mainly around petty crimes, antisocial behaviour, begging and folklore.

The Ponticelli incident, constitutes a tailor-made example of the convergence between spatial segregation, media hate campaign and political discourse (while also highlighting the insecurity of Roma housing conditions). In May 2008, attacks were carried out against Roma, many of them Romanians, living in informal settlements in the Ponticelli area of Naples, after a Roma girl was charged with attempted kidnapping and unlawful intrusion. The FRA (2008) report focuses on the security oriented legislative response – the so-called security package- as well as on the reaction, both international and local, to such responses. Further, it provides an abundance of references to the event made by national and local newspapers, thus confirming Sigona’s (2006a) abovementioned conclusions.

In such context, the situation of Roma women is most vulnerable inasmuch as they face multiple discrimination, including sex discrimination both outside and within their community. Accordingly, Corsi (2008) notes that women may face exclusion in more spheres of their lives than men and that multiple barriers seriously hamper their full integration in society.

### **Housing in public and private sector**

According to UNAR<sup>187</sup> cases of discrimination in the housing sector are the most common, after those in the employment sector. At the moment, however, there are no disaggregated data on Roma, but it is unanimously recognized that the target group suffers of a particular vulnerability, even in comparison with migrants in general. According to NGOs such as Idea Rom<sup>188</sup>, it is most complex to find a landlord who rents to Roma without any form of mediation. Also, there have been cases of welcoming landlords who were forced not to rent their apartments due to the protests of the wider neighbourhood. According to IRS (2008), in a study requested by the European Parliament’s Committee on Employment and Social Affairs (EMPL), while 24% of the non-Roma EU27 population experience uneasiness having a Roma neighbour, in Italy the percentage is as high as 47%.

Regarding discrimination by municipalities a two-fold distinction must be made between the provision of camps and social housing. According to regional laws, municipalities are responsible for the construction and management of the Roma camps and halting sites but tend not use the funds made available at regional level to build authorised camps, therefore reducing the supply of them and, by doing so, encouraging the construction of unauthorised camps at risk of eviction. Regarding social housing, in January 2013, it seemed that 1500 Roma (both Italian and mobile) out of the 3 680 living in the camps in the outskirts of Rome would have been entitled to access

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<sup>186</sup> UN CERD, *Consideration of reports submitted by states parties under article 9 of the convention. Concluding observations of the Committee on the Elimination of Racial Discrimination – ITALY*, March 2008, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-ITA-CO-15.pdf>

<sup>187</sup> Interview.

<sup>188</sup> Interview.

subsidised housing.<sup>189</sup> The majority (2180 out 3680) were left out since they were not in possession of all the supplementary requisites, such as: permit of stay for the last two years, for third-country nationals, and residence registration, for EU Roma. Nonetheless, a sizable minority, who had been assisted by local NGOs in compiling the form, scored high points since the notice of competition included “severe housing deprivation in temporary facilities” as one of the indicators. However, the municipality of Rome has then claimed that Roma were not to be included since their facilities were not temporary but permanent<sup>190</sup> albeit the same facilities being considered temporary until then.

Another aspect worth of attention relates to the Roma “poverty trap” which is compounded by the widespread lack of access to credit. This is so inasmuch as access to financial services is contingent on economic resources and employment conditions (World Bank, 2005). Other factors relate to the fact that: property does not offer sufficient guarantee, access to financial services is hindered by language problems and limited understanding of the financial system. Reportedly, there are also cases of discrimination by financial institution in terms of ethnicity, reinforced by discrimination on the grounds of gender for Roma women (Corsi, 2008). Finally, a dimension of credit that remains uninvestigated is the one of the market of usury (IRS, 2008).

### **Social assistance**

Negative experiences with public officers and corrupt practices related to the residence registration which entitles to social assistance were reported by FRA (2009b). FRA (2009b) argues that “in terms of the experience of integration of Roma EU citizens this research establishes a broad continuum from treatment that is equivalent to that of national citizens to effective exclusion from social assistance”. In fact, this is only partially true. On one hand, Roma are the most vulnerable group to destitution and homeless, due in no small account to discrimination, yet, on the other, the situation of EU Roma appears even more disadvantaged. According to data collected through the EU-inclusive research (2012a) it is shown that the issue of citizenship represents an important variable for the access to services: Italians use them more frequently (55%) compared to Bulgarian Roma (30%) and Romanians (25%).

A second variable pointed out by the EU-Inclusive study is that the housing situation matters as 60% of those living in houses have used services in the last six months of the research while the percentage is far lower for those living in authorised camps (43%) and decreases further for Roma in irregular settlements (19%). This can be explained by the interplay of many factors revolving around the centrality of territorial segregation. As noted, the latter makes Roma’s access to welfare services even more difficult. It is to be emphasised, therefore, that together with a hierarchical and vertical ordering there exists a spatial and horizontal one that reinforces the former. Moreover, spatial segregation has precluded the opportunity to integrate, to tear down the walls of prejudice, to empower Roma and, thus, to enhance their protection against discrimination. Hence, any strategy that sought to decrease their exclusion must rely firmly on the need for mediation: on one hand, because there exist a great distrust by Roma with respect to the social services as well as its reciprocal; on the other, to overcome language barriers and poor information.

Social barriers seem to constitute a central aspect of EU Roma destitution and homelessness. Prejudice, fomented by media and political parties, is widespread and reinforced by the stereotype of Roma as nomadic people, on one hand, and their spatial segregation, on the other. Discrimination by landlords and the wider neighbourhoods imposes obstacles on Roma access to

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<sup>189</sup> [http://roma.corriere.it/roma/notizie/cronaca/13\\_gennaio\\_30/abitazioni-rom-sinti-2113774967891.shtml](http://roma.corriere.it/roma/notizie/cronaca/13_gennaio_30/abitazioni-rom-sinti-2113774967891.shtml)

<sup>190</sup> <http://www.pressenza.com/it/2013/03/il-comune-di-roma-nega-ai-rom-le-case-popolari/>

the private housing market. This problem is compounded by Roma lack of access to credit. Discrimination in the field of social housing occurs as a *de facto* withdrawal of entitlements.

## 11.5 Local initiatives and good practices aimed at homeless migrants

### 11.5.1 Services for the homeless

Italian social assistance is entrusted to municipalities, regions, associations and private social organisations. The shift towards local welfare has taken place pursuant to Law 328/2000 as well as to the reform of the Constitution. Emergency oriented policies are prevalent in Italy. According to ISTAT (2011e), emergency services (food, clothes, personal hygiene, mobile street units, monetary-based transfers to support income) account for a third of the total service provision; followed by the so-called *servizi di segretariato sociale* (legal and administrative support services), 24.1%; services of *presa in carico ed accompagnamento* (re-integration services), 21.2%; night shelters, 16.6%, and day shelters, 4.1%. (Fig. 3)

Co-operation between local actors (public, voluntary and private social) is standard practice in a country where the third sector has a strong tradition. The public sectors both encourages the further development of the third sector and institutionalises the synergies created on the field. However, arrangements vary widely across the national territory giving rise either to more integrated services or to the delegation of the latter.

The geographical heterogeneity that characterises the entire social assistance system applies also for homeless related policies that witness the co-existence of very different local models. The aggregate spending of municipalities for homelessness and extreme poverty was 8,3% of their total social assistance expenditure in 2009 of roughly 7 billion euros (Figure 4); despite this, the figure conceals a growing North-South divide as well as different sensibilities across regions in the same macro-territorial area (North-West, North-East, Centre, South, Islands) both in term of absolute expenditure, areas and methods of intervention. In general, however, southern Italy is still locked in the emergency measures approach while northern and central Italy have attempted to move beyond the traditional emergency-based welfare and to adopt multidimensional services. (ANCI:2013, Meo:2001, Tosi:2005)

Data regarding the use of homeless services show that migrants constitute the majority (59,4 per cent, ISTAT:2011d). There is no data regarding the use of homeless services by Roma. The official national surveys conducted by ISTAT on homeless and homeless service did not take Roma into account but, rather, distinguished between Italians and foreigners. The only estimate regarding Roma homeless was found in Tarnovschi (2012) and recorded 1,8% of EU Roma in such a situation.<sup>191</sup>

While Roma do not access the general homeless services that are in place, there is a wealth of unstructured services which are offered at a local level by the third sector and local governments. Generally, this is a distinctive trait of the Italian welfare system which benefits various groups in most vulnerable situations, ranging from refugees, victims of human trafficking, unaccompanied minors, etc. Specifically, this is a consequence of the regional “nomad” laws passed in the mid-eighties. However, the overall provision of services towards Roma, in terms of quality and quantity, is more rudimentary as compared to other vulnerable groups. This depends on the predominance of the camp system in informing policies; on the scarce interest in developing structured solutions, other than emergency and security-based ones, demonstrated by the regional and local governments for decades; and by the absence of a National Strategy for the

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<sup>191</sup> The figure refers to a narrow definition of homelessness centred on rooflessness.

Inclusion of Roma until recently. The latter has been presented as a document implementing Communication No 173/2011 of the European Commission but still lacks implementation.

As EU Roma have increasingly become the centre of the attention, both in terms of social alarm fomented by both media and political parties in the wave of EU enlargement, on one hand, and in terms of demands for more inclusive integration by international organisations, on the other, the approach in the last five years has been influenced even more by this security-inclusive dichotomy. At first, the response has been a security-based one, following the Declaration of the State of Emergency. Later, following judgment n. 6050/2011 by the State Council, the latter was declared illegitimate for lack of sufficient reasons for its decreeing. Therefore, the main trend, following the illegitimacy of the State of Emergency and the redaction of the National Roma Integration Strategy, is the planning of more coordinated interventions involving different stakeholders. As noted, such interventions do already exist but are scarcely institutionalised and present throughout the national territory, thus remaining little pervasive or incisive.

Financial resources to implement inclusive projects are limited. The total amount of social expenditures for immigrants and “nomads” varies between 2.3 % (ANCI:2013) and 2.7% (Strati:2011) of the overall expenditure of municipalities on social services. It is not clear, however, what percentage is allotted to Roma and, more specifically, to EU Roma, if any. Also, projects are currently funded by EU structural funds such as the ESF (EURoma:2010). Notwithstanding the scarce resources, the third sectors, mainly NGOs working with Roma and religious organisations like Caritas, together with local entities, offer solutions which try to escape the emergency approach by offering multidimensional interventions.

General interventions pertain to the management of the camps. Moving from general to particular, four main areas of intervention can be identified: housing, employment, health, education. The common denominator is constituted by the effort to tear down the walls of distrust between professionals, accompanied by mediators, and Roma, as a first step, so as to later be able to bridge the gulf between the Roma and the wider society. To this regard, mobile units directly visiting the camps play a key role. A further denominator is represented by the solutions being tailor-made, thus acknowledging the different skills (employment) or frailties (health) of the target group. Moreover, similarly to homeless services in general, legal and administrative support services are deemed essential to counter obstacles at the individual levels as well as discrimination at the meso-level, by public officers and administrations. Lastly, projects strive to offer structured multidimensional solutions that include more than one category of intervention, for instance housing together with employment or access to health care together with education.

### **11.5.2 Good Practices**

Writing about good practices in Italy is usually an easy task as there exist a great deal of projects at a local level that distinguish themselves as being multidimensional and, thus, offer a holistic approach that truly strives to improve the lives of the most vulnerable. However, the task is also a sort of melancholic one insofar as the abundance of good practices (i.e. projects) works as a sort of a *contrario* indicator of the paucity of institutionalised good policies in a country where heterogeneity among 20 regions and 8.092 municipalities is the main underlining trait. In the case of Roma, the lack of a national integration strategy until February 2012 has added to the fragmentary results of the interventions.

Therefore, the limited availability of good practices, on one hand, coupled with their narrow scope, on the other, is most striking. The recent economic crisis has limited financial resources both at a national and local level and has led to the closing of many projects that could not rely on differentiated (private-public) funding sources. Further, the Roma “witch-hunt”, boosted by the

media, following EU enlargement, has undermined the frail civil society support to such actions. As a result, projects previously regarded by national and international observers as meeting the criteria of good practices are no longer available. For instance, the project Città Sottili, that provided with a specific set of initiatives in order to close all the camps around Pisa and substitute them with houses, was ended by the Municipality of Pisa. The latter has later undertaken a programme aiming at the repatriation of EU Roma. Also, the social secretariat for Roma managed by the NGO Opera Nomadi ended because the Municipality of Rome failed to renew its financing. Another striking aspect pertains to the narrow scope of the projects. In fact, due to the camp-based system, the latter remains limited to exiting such an emergency and security-based approach but does not generally extend to offer broader opportunities of empowerment and protection such as, for instance, access to microcredit or training of police officers. Therefore, two out of the three good practices presented offer a sketch of the Italian paradigm vis-à-vis the supply of scattered local practices and the inherent problems of marginalisation they intend to tackle: housing, employment, education and health. By contrast, the third practice refers to the Dosta! awareness raising campaign promoted by the Council of Europe and, in Italy, managed by UNAR.

## **II Dado/The Dice**

Aim: *Il Dado* is a project of auto-recovery and auto-construction addressed to Romanian Roma families. The core objective is to help them exiting the system of unauthorised settlements, and to undertake the path to housing, social and economic emancipation.

Description of methodology: Families, selected in the unauthorised settlements, are offered possibilities for job inclusion, integration of minors and integration in the territory.<sup>192</sup> Families are then channelled into a path of autonomy and *ad hoc* housing solution are provided. However, Romanian Roma are not inserted in the mainstream<sup>193</sup> social housing path due to two reasons: firstly, residence for at least 3 years is required; secondly, social housing is offered by the Municipality of Turin while the beneficiaries reside in the municipality of Settimo Torinese. Having accomplished their path of autonomy thanks to constant mediation and networking of various local actors, there occurs a turn over whereby new families enter *Il Dado*.

Stakeholders: Romanian Roma, Terra del Fuoco (NGO), Province of Turin, Municipality of Turin, Foundation Compagnia di San Paolo, Cassa di Risparmio Torino. Foundation Compagnia di San Paolo sponsored *Il Dado* as a pilot project within its housing programme<sup>194</sup>, in the region of Piedmont, that does not specifically target Roma. Terra del Fuoco promoted the pilot project specifically addressing Romanian Roma.

Financing: The Province of Turin signed an agreement with Terra del Fuoco and funds the project with € 35.000 on a yearly basis (2011-2014). The Province also provided with the building - *Il Dado* - to be renovated. Foundation Compagnia di San Paolo funded the project with two instalments of €150.000 aimed at paying the expenses for self-recovery and the introduction of a photovoltaic system. Residual financing was provided by Cassa di Risparmio di Torino (Savings bank) for the installation of a hot water heater.

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<sup>192</sup> Such offers include advanced courses of Italian, accompaniment in the access to public services, support in the achievement of documents and qualifications (driving licenses, residence registration, educational or professional diplomas), enrolment in professional courses and apprenticeships, job search, etc. The minors are supported in school inclusion, integration in sports and integration in the social environment. This territorial integration is also pursued by means of the organisation of public events.

<sup>193</sup> Point 4 of the 10 Common Basic Principles for Roma Inclusion.

<sup>194</sup> <http://www.programmahousing.org/>



Results: In 50% of the cases both parents reached job stability. Some of the families achieved housing autonomy. All minors attend school, with an attendance rate and performance in some cases higher than their Italian peers.

Preconditions: Differentiation of funding sources; network of various stakeholders, inclusion of the target group in the planning of each action, continuity of the operators' presence.

Replicability: Given the abovementioned preconditions, and taking into account the particular vulnerability of Roma in Italy, the project appears to be highly replicable. Terra del Fuoco suggests that projects of micro-communities are better started with a small-scale action and then replicated in another location rather than enlarging the size of the community.

### **Salute senza Esclusione/Inclusive Health**

Aim: Increase vaccine coverage, improve access to mainstream health services, healthcare education, training of healthcare personnel.

Description of methodology:

Operators first defined the target group by the means of a census of the settlements. Specific activities were planned having gathered information on the territorial distribution of healthcare services (provided by each local health unit). The main activities pertained to: firstly, health care services orientation (the target group was invited to turn to the relevant health care services<sup>195</sup>) devoting particular attention to pregnant women and children without vaccine coverage; secondly, health care education<sup>196</sup> (prevention of infectious and chronic diseases, promotion of minors' and adults' healthy lifestyles); thirdly, training of healthcare personnel.<sup>197</sup>

Stakeholders: Roma and Romanian immigrants living in camps, Caritas Rome and other 8 local NGOs, Lazio Region, Municipality of Rome, 5 branches of the local health unit (ASL).

Financing: Private social, public and EU funding, in particular: Church-related funding from CEI (Conferenza Episcopale Italiana), European Integration Fund (EIF), and Ministry of Health. Regions and municipalities provided technical assistance.

Results: The results have been in line with the abovementioned objectives of the project. Also, the project has fostered greater willingness to cooperate with the target group by the local healthcare units (ASL). As a result, the monitoring of Roma health conditions and the supply of services has been furthered by concrete initiatives taken by the ASL that had not been previously planned.

The project caught the attention of the Ministry of Health that extended it to five more cities: Milan, Palermo, Messina, Florence and Trento.

Preconditions: Establishment of a wide network, including private-public synergies, know-how possessed by Caritas Roma that had started the first interventions in 1987, multiprofessional team (physicians, anthropologist, psychologist, Roma mediator), involvement of the target group.

Replicability: While aimed at Roma living in camps, the project is replicable in two main aspects, namely: training of healthcare personnel and healthcare education.

### **Dosta!<sup>198</sup> / Enough!**

Aim: Awareness raising for the media and the wider civil society

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<sup>195</sup> In case of partial autonomy, Roma were accompanied to the local facilities or, alternatively, health services were provided in the camps. The latter option is seen as a first – short-term – step, while, in the medium run, access to mainstream healthcare services is the main objective.

<sup>196</sup> A leaflet, titled *Scegli la Salute* (Choose Health) was distributed and explained. The leaflet was translated in Romanian and Serb.

<sup>197</sup> A two day seminar was organised. The seminar started with the assessment of personnel's knowledge by the means of a pre-test. After the seminar, 20 hours of camp activity was performed over the course of 10 days.

<sup>198</sup> Romani word.

Description of methodology: UNAR, set up a technical panel for a permanent coordination with the Roma and Sinti associations and federations. This panel has met several times drawing up the essential profiles of the campaign, gathering ideas, projects and initiatives to be organised throughout the country, namely: training of journalists, awareness raising initiatives in 40 cities, awareness raising initiatives at school, video advertisements,

More pointedly, in 2011, with the event ROMNEWS, training courses for professional journalists have been held in Rome, Milan and Naples, with a substantial presence of professionals coming from the Italian national TV and the most important newspapers. Secondly, a total of 40 Italian cities were involved in public exhibitions, concerts, cultural and sport events, theatre pieces, public debates and confrontations among Roma associations and local authorities. Thirdly, at school level, a dissemination of a tool-kit with spot and movies for a better knowledge of Roma was carried out. Fourthly, a television advertisement and promotional videos were produced and broadcasted on national TV and on video screens in subway stations and on buses in some cities.

Stakeholders: Council of Europe, UNAR, civil society organisations, including Roma ones, and an Interministerial Panel (*Cabina di regia*) established by the Minister on International Cooperation and Integration jointly with the Minister of Labour and Social Affairs, the Minister of Interior, the Minister on Health, the Minister on Education, University and Research, and the Minister of Justice.

Financing: UNAR 200.000 euros per year (2010-2013)

Replicability: The Dosta! campaign was implemented in Albania, Bosnia and Herzegovina, Montenegro, the Republic of Serbia, and "the former Yugoslav Republic of Macedonia", during 2006 and 2007. As it raised the interest of other states, in 2008-2010, it was launched in Ukraine, Moldova, Italy, Romania, Croatia, Slovenia, Latvia, Bulgaria and France.

## 11.6 Conclusion

In 1983 Benedict Anderson, in what has become a classic in studies of nationalism, wrote that the sense of belonging is based on imagined communities "because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion" (Anderson, 1983:7). According to Anderson, mass media are central in the process of creative collective imagery vis-à-vis identity, territoriality, and citizenship.

In Italy, collective imagery continues to frame Roma as a *pariah* group and reproduces the Manichean dichotomy between "us and them", "light and darkness", "civilised and savage". As noted, "witch-hunts" have been nurtured by political and media campaigns and the Ponticelli incident constitutes a

tailor-made example of the convergence between media hate campaign fomented by discriminatory political discourse and spatial segregation.

In fact, Roma appear to be more disadvantaged than migrants in general due to a centuries-long distrust, on one hand, and their confinement into segregated, inadequate and insecure camps, on the other. It is to say that Roma exclusion from the collective imagery has been reinforced by their marginalisation in the physical domain, corresponding to a lack of entitlements to partake of the "homeland", be them Italians (albeit to a lesser extent), EU or third-country nationals.

Indeed, 43,4 per cent of Romanian and Bulgarian Roma face the direst housing conditions as they live predominantly in shanty towns, caves and similar (Tarnovschi,2012). Evidence suggests

that the housing segregation of Roma is directly correlated to lower access to: a) employment; b) education; c) local social services. Firstly, up to 4 to 5 times more Roma than non-Roma are unemployed (FRA, 2012); further, roughly 97 per cent of Roma are at risk of poverty (FRA, 2012) as opposed to 22 per cent of EU migrants and 29 per cent of third-country nationals ones (Eurostat, 2011).<sup>199</sup> Secondly, Roma students enrolled in school in 2011/2012 amounted to 11.899 (ISMU, 2013) while the number of school age Roma is as high as 70.000.<sup>200</sup> Thirdly, while 60 per cent of Roma living in houses have access to services, the percentage decreases to 43 for those living in authorised camps and to 19 for Roma in irregular settlements (19%), that are mainly inhabited by EU Roma (EU-Inclusive, 2012a). Fourthly, very low access to healthcare services were recorded across the national territory, and particularly in Milan where 850 EU Roma on a total of 907, did not have any kind of access (NAGA, 2011). By contrast, access to health care is as high as 80 per cent if Roma not living in settlements are included (FRA, 2012); thus, this reinforces, instead of undermining, the view that spatial segregation is key in limiting access to social services.

The housing insecurity, linked to frequent evictions, criminalisation of their illegal stay and ensuing expulsions, together with the hostility by the locals, increase even further their marginalisation: school attendance is interfered with, the chance to retain a job is hampered and the possibility to make a real life plan seriously curtailed. Their inadequate housing in squalid slums affects their health limiting their employability, which is already scarce due to lack of status, low educational attainment and anachronistic job skills, and urges for better access to healthcare which is, by contrast, hindered by poor information regarding entitlements, the supply of territorial services, and by discrimination by improperly trained healthcare personnel.

A predominant aspect of EU Roma vulnerability refers to the fact that access to social assistance and housing schemes is linked to the registration of residence (*iscrizione anagrafica*) in the municipality. To this regard, the limited access to the formal job market, the requirement of sufficient resources, the vicious circle of evictions that impedes meeting the habitual residence requirement (and that negatively correlates with retaining a job) and discriminatory practices coupled with prejudices, lead to the *de iure* or *de facto* withdrawal of such rights.

Moreover, together with a *de iure* or *de facto* lack of entitlements, the Italian welfare system seems ill-suited to meet the needs of the Roma, for four main reasons. Firstly, Italy records high levels of expenditure for old-age pensions while the figures to counter poverty are hardly sufficient to prevent people from becoming destitute and homeless. Secondly, as most of the benefits are employment-based, Roma rarely qualify for them: this is an important aspect that sets them apart even with regard to regular migrants in general. However, the specific status of EU Roma within the framework of the EU10 freedom of movement transitory measures does not seem to constitute a central factor of destitution and homelessness since Italy immediately liberalised those sectors where Roma are most employed and has then proceeded to lift the restrictions in January 2012. Thirdly, the social housing system is largely dysfunctional and limited, thus unable to meet the needs of the poor as it constitutes a mere 4% of the total housing stock. Lastly, both social assistance and social housing are highly decentralised, a situation that *per se* bears grave consequences.

Specifically, the decentralisation of the welfare systems entails that the national framework is interpreted and implemented heterogeneously. On one hand, there is evidence of an increasing

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<sup>199</sup> After social transfers in the age group 20-64.

<sup>200</sup> The data is particularly worrisome as education is conducive to better jobs and improved life prospects while and by raising the chances of upward social mobility. Available information point to the difficulty in accessing services due to Roma housing spatial segregation; the distrust towards institutions and the wider society, that have confined them in camps; and the insecurity of their tenure due to evictions. Tarnovschi (2012) recorded the reasons for school drop outs by EU Roma, the main ones were: 17,6 % was not interested in school, 16,5% stated that the school was too far away, 5,2% mentioned constant displacement, and 4,1% had gotten pregnant.

North-South divide in service supply due to asymmetries in financial resources at a regional and municipal level; on the other, notwithstanding the anti-discrimination legal framework, several “colour-blind” provisions pertaining to periods of residence so as to access social assistance and housing schemes are, in fact, indirectly discriminatory and violate the principles of reasonableness, equality as well as the free movement of EU citizens (sentence 172/2013 Constitutional Court).

Bearing this wide spectrum of criticalities in mind, any possible remedy to tackle the particular vulnerability of EU Roma would have to target the core causes of the problem: housing segregation, employment, and prejudice. While these three dimensions are strongly interlocked, it is important to analyse them separately. Concerning housing, action should aim at using as many of the different options available to exit the camp based approach: subsidised housing (*edilizia sovvenzionata*), assisted housing (*edilizia agevolata*) and agreed housing (*edilizia convenzionata*), self-construction and renovation, regularisation of trailers, improved access to financial support, and upgrading of camps as a mere transitory measure. These interventions may well prove financially effective as well as more inclusive and flexible with regard to the needs of the Roma and should be coupled with social and legal integration projects. By contrast, it should be excluded that there could be a one-size-fits-all approach mainly relying on social housing, not least because of the scarcity of supply. Regarding employment, emphasis should be put on offering vocational training, apprenticeships, support in job search both for men and women, access to micro-credit and broader opportunities for self-employment schemes. While more inclusive integration could be fostered thanks to these two dimensions, further actions pertaining to breaking the walls of prejudice vis-à-vis Roma should be upheld. To this regard, a truly holistic and multidimensional approach would include incisive and pervasive awareness raising campaigns and training of personnel at various levels to avoid the *de facto* withdrawal of rights. As of today, however, the National Strategy of Roma inclusion, that covers these aspects, lacks full implementation. A close monitoring by the EU is, therefore, fundamental. Such monitoring should bear in mind three criticalities: firstly, the difficulty in achieving a homogenous standard in such a decentralised system; secondly, the difficulty in changing the inertia of long established practices at the political and bureaucratic level; thirdly, the prejudiced reaction by the civil society, even when institutions and political elites prove cooperative, inasmuch as it bars the progress of inclusive policies.

In conclusion, the measures envisioned aim at the empowerment of Roma thanks to the recognition of their entitlement to partake of the social, physical and legal domains within the national community. Evidently, such measures shall move beyond the emergency and security-based approach that has hitherto informed policies. To put it concisely, the real challenge is to start fighting poverty instead of the poor, thus providing a larger and more inclusive scale of solidarity. As, in the words of Ernest Renan (1882), a major influence to Benedict Anderson’s work, “ a nation’s existence is a daily plebiscite”, the challenge is also the one to foster the willingness of people to live together instead of creating hierarchical and spatial ranking, discrimination, social exclusion and second-class citizenship.

## ANNEX I

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## ANNEX II

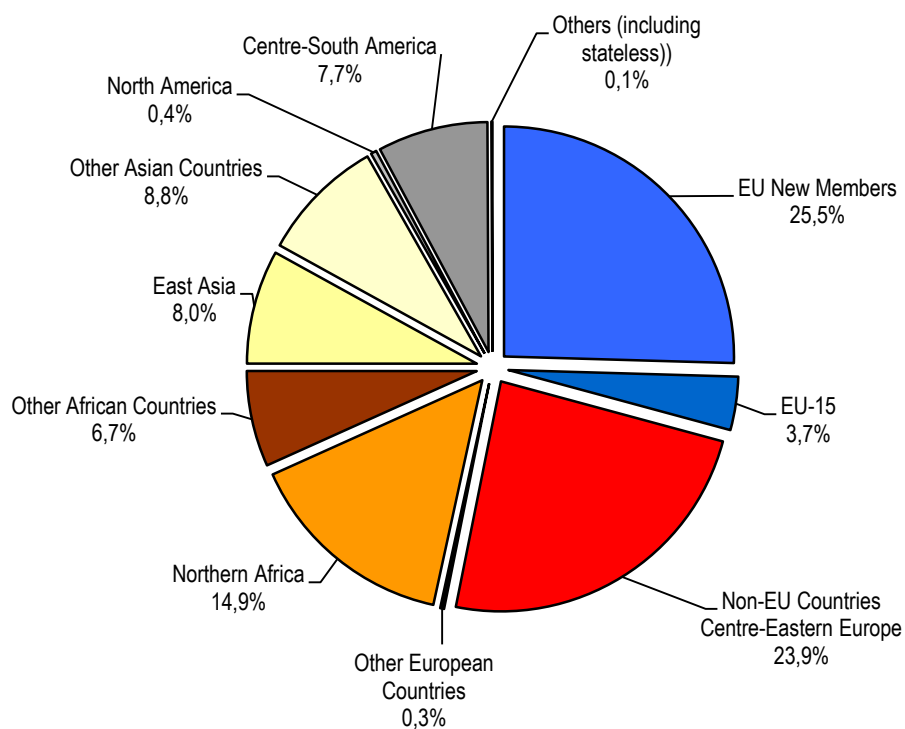
### List of abbreviations

ANCI	National Association of Italian Municipalities
ASL	Local Health Unit
CECODHAS	The European federation of public, cooperative and social housing
CIES	Committee on Social Exclusion
COHRE	Centre on Housing Rights and Evictions
D.P.R	Presidential decree
ECRI	European Commission against Racism and Intolerance
ECSR	European Committee of Social Rights
ENAR	European Network against Racism
ENI	Non registered European (healthcare card)
ERRC	European Roma Rights Centre
EUMC	European Monitoring Centre on Racism and Xenophobia
FEANTSA	European Federation of National Organisations working with the Homeless
FioPSD	Italian Federation of Associations for the Homeless
FRA	EU Agency on Fundamental Human Rights
IACP	Autonomous Institute for Social Housing
IRPET	Tuscany Regional Institute for Economic Planning
IRS	Institute for Social Research
ISEE	Indicator of equivalent economic situation
ISTAT	National Institute for Statistics
ISMU	Institute for Multi-ethnic Research
ISPO	Institute for Studies on Public Opinion
NAGA	Milan-based NGO
OSCE	Organisation for Security and Co-operation in Europe
SSN	National Health Service
STP	Temporarily Present Foreigner (healthcare card)
TAR	Administrative Regional Tribunal
TEAM	European Health Insurance (healthcare card)
UNAR	Italian National Office against Racial Discrimination.

## ANNEX III

### Tables and Figures

Figure 1 Foreigners in Italy by geographical area of origin – 1st January 2011



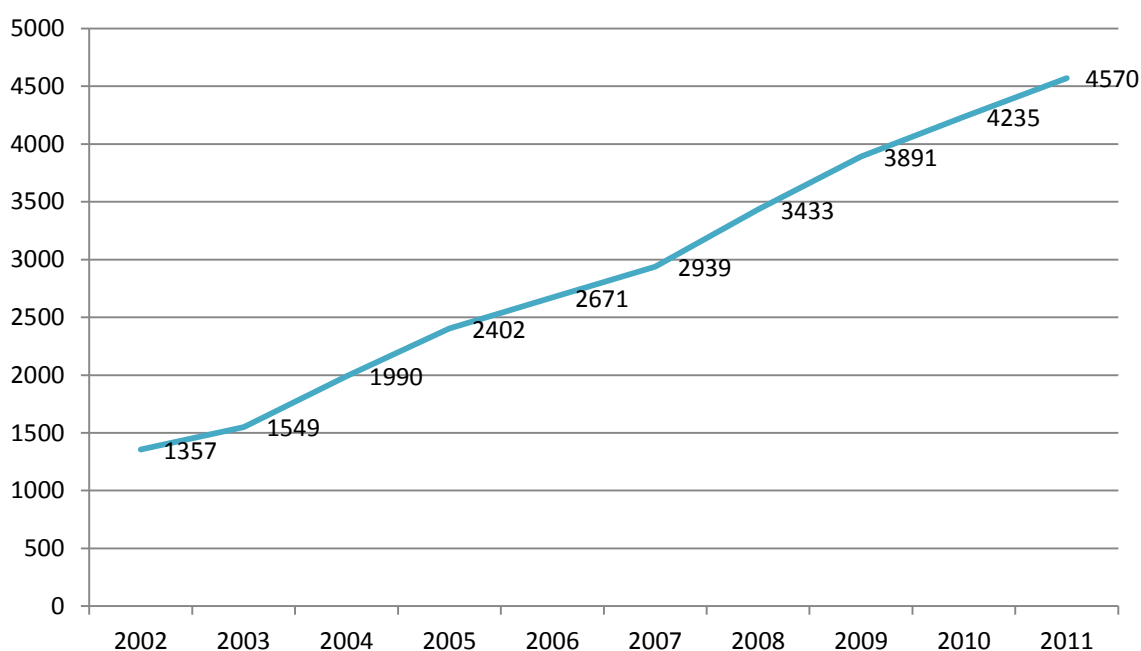
Source: Istat 2011f

Table 1 Foreigners in Italy by country of origin

Country	1 <sup>st</sup> January 2011	
	Total	%
Romania	968 576	21.19
Albania	482 627	10.56
Morocco	452 424	9.89
China	209 934	4.59
Ukraine	200 730	4.39
<b>Total 5 Countries</b>	<b>2 314 291</b>	<b>50.68</b>
<b>Total 16 Countries</b>	<b>3 449 715</b>	<b>75.48</b>
Bulgaria	51 134	1.12
<b>TOTAL</b>	<b>4 570 317</b>	<b>100</b>

Source: Re-elaboration on Istat 2011f

**Figure 2** Foreigners in Italy 1 January 2002-1 January 2011, thousands



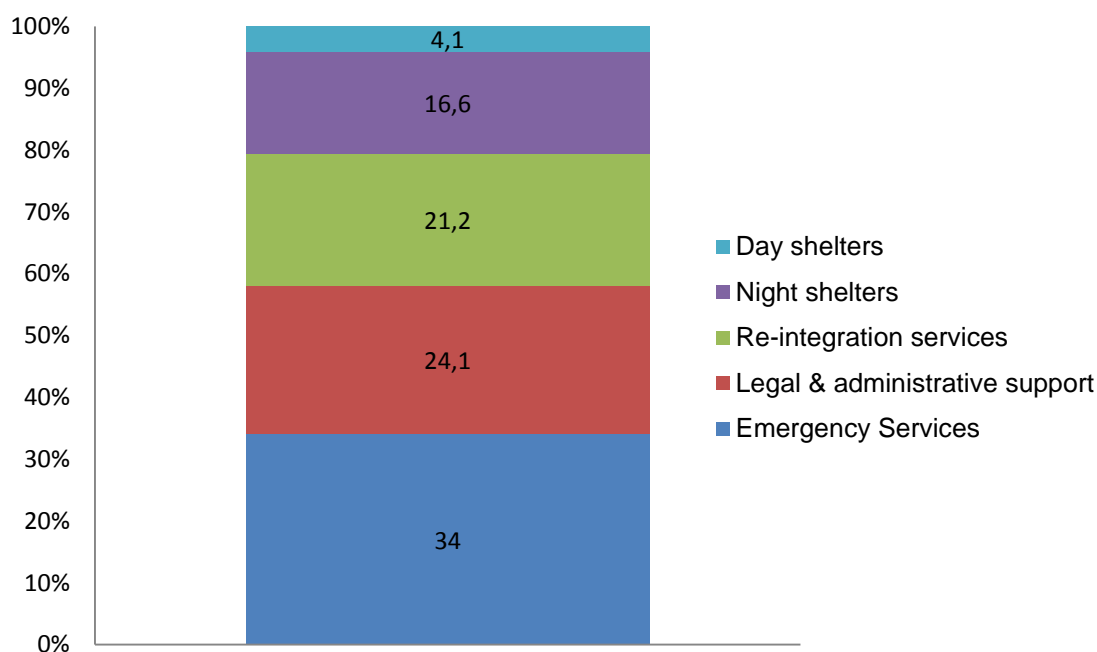
Source: Istat, 2011f

**Table 2** Material Deprivation and Severe Material Deprivation in Italy, 2009 (%)

	Material Deprivation	Severe Material Deprivation
Foreign Households	37.3	19.9
Mixed Households	24.9	11.1
Italian Households	13.9	6.0

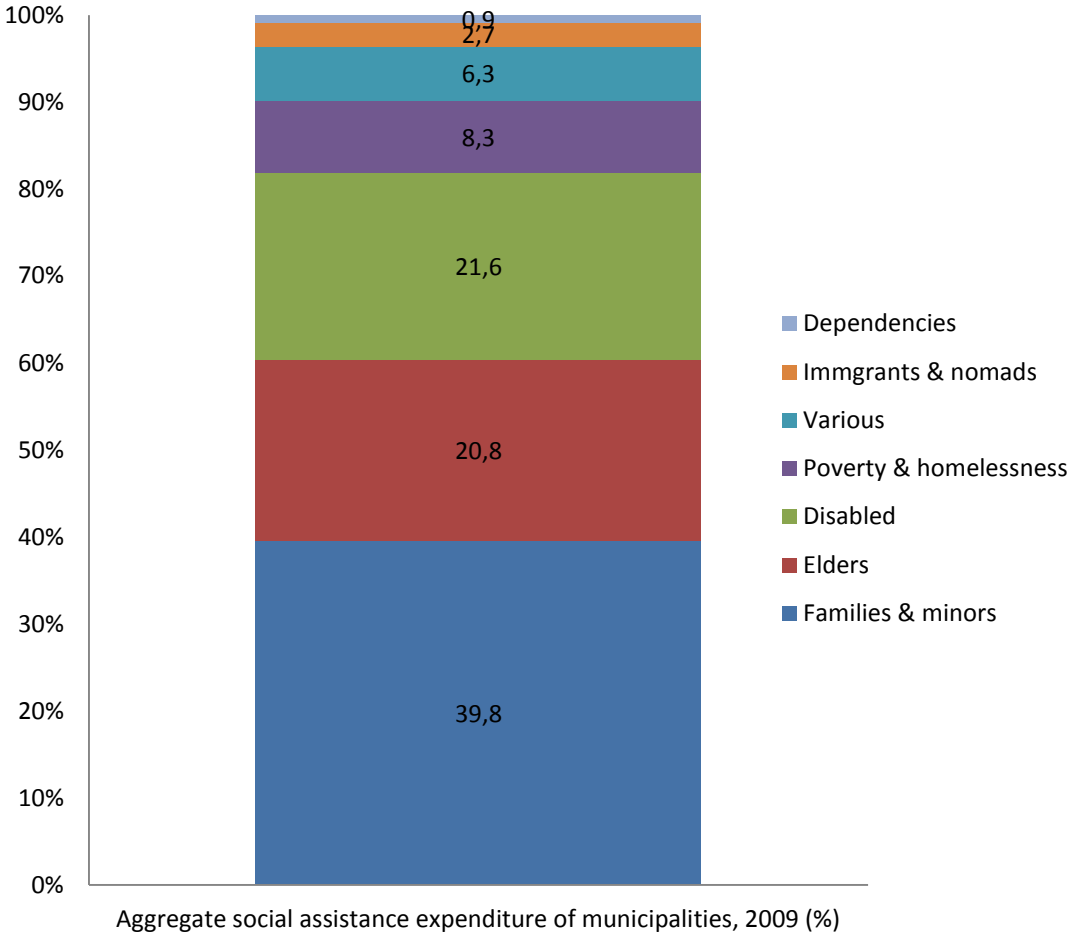
Source: Istat, 2011a

**Figure 3** Services for the homeless in Italy by typology, 2010 (%)



Source: ISTAT 2011e

**Figure 4 Aggregate Social Assistance Expenditure of Municipalities in Italy, 2009 (%)**



Source: ANCI, 2013

**ANNEX IV**

**List of interviews**

- Associazione 21 Luglio    Enrico Guida
- Caritas Roma              Fulvia Motta
- FioPSD                      Michele Ferraris
- IDEA Rom                  Vesna Vuletic and Giulio Taurisano
- UNAR                        Maja Bova and Pietro Vulpiani

## 12 MOBILE EU CITIZENS OF ROMA ORIGIN IN FRANCE

### 12.1 Introduction

The current report seeks to analyze the situation of homelessness and destitution among EU Roma<sup>201</sup> in France. The situation of EU Roma merits special attention due to the extreme forms of destitution and homelessness witnessed in illicit Roma settlements in France – phenomenon that has received substantial international outcry by human rights bodies. Secondly, the situation of EU Roma in France deserves a detailed analysis due to the specific and paradoxical legal status of the migrant group. Most of the migrant Roma are EU citizens, but they are nevertheless excluded from Community social protection regimes because of transitory labour market regulations that were in place, and hence are especially vulnerable to homelessness and social exclusion. Last but not least, the situation of EU Roma merits in-depth analysis due to the centuries of experience of discrimination across Europe – an experience that acts as push factor for migration (FRA 2009) from the countries of origin and yet becomes one of the main social causes of destitution and homelessness of the migrants in the country of destination. In the context of an increasing wave of xenophobia and anti-gypsyism across Europe and in France in particular (CoE 2012), the social causes of exclusion of Roma migrants deserve heightened attention.

The subject of this study are EU Roma, nationals from predominantly but not exclusively the two newest EU Member States – Bulgaria and Romania.<sup>202</sup> The exact number of these mobile EU citizens of Roma origin in France is difficult to establish, as many of them are not registered and do not have a permanent status. Nevertheless, expert assessments range between 10,000 - 12,000 (Liégeois 2008) to 20,000 (Romeurope 2010). Public bodies acknowledge that the number of Roma originating mostly from Bulgaria and Romania are in the “tens of thousands” (HALDE 2008). In addition to this most numerous group of EU Roma, “several thousand” Roma from Kosovo received refugee status in France after the Kosovo conflict in 1998. The latter group, however, is not analysed in this report due to the difference in legal status and to scarcity of evidence on their socio-economic conditions.

This study will seek to analyse how transitional labour market restrictions and no-recourse to public funds provisions in immigration law interplay with discriminatory attitudes by public authorities manifested in extreme measures such as forced evictions to produce a high vulnerability to homelessness and destitution among this migrant group. The report is presented in four chapters: the first chapter provides statistical evidence on the extent of destitution and homelessness among migrants in France, the second chapter provides an overview of the social assistance framework and in particular -social housing strategies, the third chapter seeks to identify legal and non-legal causes of destitution and homelessness among EU Roma, while the fourth chapter provides an overview on services and good practices at a local level.

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<sup>201</sup> In this report, we will use the term “Roma” to refer to variety of subgroups of the minority present across Europe and in particular in France. The author of the report does not wish to underestimate the cultural diversity and specific characteristic of the different subgroups. Rather, the collective term “Roma” is used for ease of reference.

<sup>202</sup> These EU Roma should be distinguished from the around 400 000 Roma who live in France as established communities and are French nationals.



## 12.2 Destitution and homelessness

With 3 737 500 foreigners residing on French territory, France is among the 5 countries in Europe with highest number of migrants in absolute terms. Most migrants come from outside the EU, mainly from Maghreb countries, and to a smaller extent from sub-Saharan countries (from former French African colonies).

**Table 12.1 Migrants by country of origin, France**

	2009	
	%	1 000
<b>Europe</b>	<b>39.4</b>	<b>1 484</b>
<b>Europe 27</b>	<b>35.1</b>	<b>1 323</b>
Spanish	3.4	128
Italians	4.6	174
Portuguese	13.1	493
British	4.1	154
Other nationalities from EU 27	9.9	375
Other nationalities Europe	4.3	161
<b>Africa</b>	<b>40.7</b>	<b>1 534</b>
Algerians	12.4	468
Moroccans	11.7	440
Tunisians	3.8	144
Other African nationalities	12.8	482
<b>Asia</b>	<b>13.8</b>	<b>520</b>
Turkish	5.9	222
Cambodians, Laotians, Vietnamese	1.1	41
Other Asian nationalities	6.8	258
<b>Nationals of America and Oceania</b>	<b>6.2</b>	<b>232</b>
<b>Total</b>	<b>100</b>	<b>3 771</b>

Source: insee, Census 2009

Even though France is a traditional destination country for migrants and has a long history of inward migration and a large share of second generation migrants, non-nationals are still in significantly disadvantaged social and economic situation as compared to nationals. Extreme forms of social exclusion including destitution and homelessness are present among migrant groups and there are grounds to conclude that migrants are overrepresented in the share of persons faced with poverty, destitution and deplorable living conditions.

### 12.2.1 Destitution

Statistical evidence of the extent of destitution and homelessness among migrants and nationals can be gathered from several sources: national statistics, comparative EU statistics, local surveys conducted by non-public bodies, as well as data from service providers to destitute and homeless persons. Notably, in France publicly available national statistics on poverty and social exclusion do not disaggregate by citizenship. To fill this gap, data from EU SILC on France was referred to. For the extent of homelessness among migrants and nationals, national statistics were used to illustrate the extent of homelessness in general and some national data on housing types of migrants was referred to. The research established that quantitative data on the situation of the

Roma in particular is unavailable (for reasons discussed further in this chapter) – a data gap that was compensated to some extent by quantitative assessment, few available statistics from local surveys, and the general knowledge on the situation of the minority in the sending countries.

The EU SILC surveys cover migrant population and provide data on important indicators such as at risk of poverty rates, poor housing, self-assessed health status, unemployment, reliance on social support, which taken together allow a perception on the extent of destitution and social exclusion of migrants in France. Nevertheless, the use of EU data has several limitations that are particularly relevant to the current report. For one, some migrants will be omitted from the sampling frame, which is aimed at providing data on the overall population, rather than foreign citizens. Moreover, EU SILC is conducted in private households, which means that migrants living in collective institutions or sleeping rough are entirely omitted and their situation is not depicted. Notably, EU Roma residing in illicit settlement are also under the radar. Furthermore, non-response rates among migrants due to lack authorization to remain in the country or language barriers undermines gathering of evidence of these poorly integrated foreign citizens. There is no information on the ethnic status of respondents, which means that the Roma could not be depicted in the survey. In addition, the categorization of the migrant groups into “EU” and “non-EU” is rather broad and the groups distinguished are heterogeneous. Thus, important differences that may occur between EU Roma and other EU migrant groups are unaccounted.

An advantage of the use of EU SILC data is the comparability across EU countries. Having in mind all limitations of the use of data, several key indicators of destitution and social exclusion among migrants in France are reviewed, while taking into account that the EU SILC data provides a generally more optimistic portrayal of the situation of non-nationals. Nevertheless, key indicators for destitution and social exclusion such as at risk of poverty rates, poor housing, unemployment and reliance on social assistance, reveal that in France, migrants, and especially third country nationals, are in a the least favourable position than the native population.

The **at-risk-of-poverty or social exclusion rates** reveal that non-EU migrants in France are in an especially vulnerable position.

**Table 12.2 France; At-risk-of-poverty or social exclusion age group 20-64**

Total population	Non-EU migrants	EU citizens
19%	40%	20%

Source: Eurostat, EU SILC

Earlier data from 2007, which distinguishes between French nationals (rather than overall population) and migrants shows that the percentage of non-EU migrants in France at risk of poverty is 29% as compared to a national of 11.6 % – a distinction that is almost threefold.

A large share of the migrants in France has significantly lower educational attainments than the native population. 44% of the foreign born population has only achieved primary or lower education, as compared to 28% of the total population which has only primary school level.

**Table 12.3 Share of population aged 20-64 with primary of less than primary education as highest educational attainment %**

Total Population	Foreign Born	EU Born	Non-EU Born
28.00	44.00	45.00	43.00

Source: Eurostat, LFS 2009

The low level of educational attainment translates into low level of participation in the labour market and high unemployment rates among migrants. A closer look at unemployment rates reveals that third country nationals are especially vulnerable to labour market exclusion. The share of unemployment among third country nationals is 17%, a difference that is almost twofold as compared to the total population where 9% of the persons aged 20-64 were unemployed in 2009 according to EU SILC data. The high unemployment rates are largely due to the lower level of participation of women in the labour market. The differences in activity rate between third-country national and national women aged 25–54 is 30% according to EU SILC data from 2008.

Unemployment rates and at high risk of poverty among migrants are explanatory factors of the higher rates of **reliance on social support**. EU SILC data provides statistics on a range of social support, including payments related to the following circumstances: unemployment, sickness, disability and old-age, and payments related to having children. When receipt of all social support combined is considered, **the proportion of non-EU immigrants receiving supports exceeds that of the native born**.

**Table 12.5 Ratio of receipt of all types of support: comparison immigrants to natives**

Migrant group	Non-EU	EU
Ratio compared to natives	1.2	1.1

Source: EU SILC 2007

Looking at indicators of **poor housing, there are substantial differences in the overcrowding rates of migrants as compared to nationals, whereas migrants are much more likely to live in overcrowded dwellings**. Male, third country migrants are especially vulnerable to overcrowding: 46% of them live in overcrowded dwellings, as compared to only 8% of the male nationals aged 25-54.

**Table 12.6 Overcrowding rate – differences between foreign citizens and third country nationals and nationals, 2008 (1) (percentage points)**

Country	Foreigners compared with nationals	Third-country nationals compared with nationals
EU-27	8.00	12.00
FR	26.00	37.00

Source: Eurostat, EU-SILC 2008

**Table 12.7 Overcrowding rate of persons aged 25-54 by groups of country of citizenship and gender, 2008 (%)**

	Nationals			Foreign citizens			Of which					
	Total	Man	Women	Total	Man	Woman	EU-27 citizens			Third-country nationals		
							Total	Man	Woman	Total	Man	Woman
<b>EU-27</b>	19	19	19	27	27	26	18	18	18	31	31	30
<b>FR</b>	8	8	8	35	34	35	17	18	16	45	46	44

Source: Eurostat, EU-SILC 2008

In addition to EU SILC, national surveys among newly arrived migrants provide some evidence of high rates of substandard living conditions among foreigners. The Department of Statistics, Studies and Documentation at the Secretary General for Immigration and Integration (Département des statistiques, des études et de la documentation - DSED) provides data on the signatories of the contrat d'accueil et d'intégration (CAI) – France's Integration Contract -- who experience some type of problems with their housing. According to DSED data from 2013, 45% of the migrants live in lodging that is too small, 26% of them live in a place that is too expensive to heat, 17% live in a lodging that is in a bad condition, 5% live without toilets and another 5% without a shower (Jourdan 2013). When considering this data, it needs to be taken account that they are only representatives of signatories of the integration contract, which is a group of migrants that is relatively more integrated than irregulars or migrants without registration.

Studies across the EU (Eurofound 2012) show that poor living conditions are positively correlated with the extent of **poor health**. Current and publically accessible data on two critical indicators of poor health – lower life expectancy rates and severe health risks – is not available. Current surveys by the National Institute for Demographic Studies - Institut National d'Etudes Démographiques (INED) - provide information only on self-assessed health status and use of health services. Grouping responses of very bad health, bad health, medium health into a category of “altered health”, the survey shows that 15% of the majority male population declares itself in “altered health” as compared to 18% of the immigrant population. The rates for the females in “altered health” are 16% and 25% respectively (Moisy, M and Hamel, C 2013).

Although EU SILC as well as national surveys provided some evidence of the higher vulnerability of migrants to social exclusion and destitution, quantitative information on the situation of EU Roma in France is unavailable.<sup>203</sup> The prohibition of ethnic belonging as a category in official statistics in France is one of the reasons for the lack of data on the Roma. Another reason is that it is difficult to capture the situation of the EU Roma in representative surveys, due to the small size of the EU Roma group and its geographical dispersion. In addition, the unofficial legal status of the members of the minority makes them disinclined to take part in surveys.

Nevertheless, assumptions on the higher vulnerability of the Roma minority in France to social exclusion and destitution can be made based on available information on the socio-economic status of the ethnic minority in the sending countries – Bulgaria and Romania. In contrast to host societies of EU Roma migrants, in countries with traditional Roma minorities (mostly in South-East

<sup>203</sup> This conclusion is also drawn in other reports on the situation of Roma migrants: see for instance Situation sanitaire et sociale des « Roms migrants » en Île-de-France Janvier 2012, Île-de-France, Observatoire régional de santé d'Île-de-France.

Europe) there is ample evidence on the social exclusion of the ethnic minority, provided by surveys from UNDP, World Bank, FRA among others. Such surveys reveal high levels of illiteracy among the minority, high levels of at risk of poverty, low levels of educational achievements, poor health status that is marked by lower life expectancy and high rates of infant mortality (UNDP 2002, WB 2011, FRA 2009).

Studies on the situation of EU Roma in France have also relied on information about the socio-economic and health status and health determinants of the minorities in their countries of origin to infer about their status in the country of destination. For instance, a report on the social and health situation of EU Roma in Île-de-France refers to data on the health status of the Roma minority in the countries of origin (Romania and Bulgaria), while also taking into account both the postulates that normally healthier groups are the ones to migrate and remain on the host territory, and also the media evidence of the precarious living conditions of the migrants in illicit settlements and the lack of access to health services (discussed in next sections) to conclude that EU Roma migrants have generally poor mental and physical health (ORS 2012). These conclusions are confirmed by health service providers who work with the migrant groups as well as by the outbreaks of diseases such as tuberculosis in the EU Roma migrant camps of in Île-de-France (ORS 2012).

Available data in other typical destination countries for EU Roma migrants reveals that the educational status of the migrants is in fact lower than the average educational attainments of the minority group in the country of origin. For instance, in Italy, a survey revealed that the educational status of Bulgarian Roma migrants is actually lower than the average status of the ethnic minority of the country of origin. One fifth of the Bulgarian Roma migrants in Italy had no education at all, as compared to 12% of the Bulgarian Roma, who have no educational achievement (Tarnovschi, D. 2012). Assuming that there are no significant distinctions between the socio-economic profiles of EU Roma migrants in Italy and France (media reports on returning migrants confirm this assumption) it could be expected that the EU Roma migrants in France are especially vulnerable to destitution due to factors such as low level of education, lack of qualifications and in addition – lack of proficiency in the language of this host society. Interviews with stakeholders from associations providing assistance to EU Roma in France confirm the assumptions of the socio-economic status<sup>204</sup> of the migrants, though quantitative information remains a gap.

Paradoxically, the higher vulnerability of the EU Roma in France to destitution contrasts the general findings that EU migrants are less likely to be vulnerable to social exclusion than third country nationals. The explanation for this particular position of the Roma is provided in section 12.4 of this report.

### **12.2.2 Homelessness: houselessness and rooflessness**

Although there is a general assessment that immigrants and in particular recent immigrants are a significant and an increasing proportion of people living rough (FEANTSA 2012), the exact extend of homelessness (houselessness and rooflessness) among migrants in France is difficult to establish. There have been good examples of measuring housing situation (including precarious housing) among migrant groups in France -- surveys conducted by the National Institute for Demographic Surveys (INED) and the National Institute for Economics and Statistics (INSEE) in

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<sup>204</sup> Telephone interview Bruno Mattei, ATD Quatre Monde, 20 May 2013, telephone interview with Claire Sabah, Secours Catholique France, 22 May, 2013

the 1990s offered data on migrants and their children. However, these records are outdated and cannot offer an up-to-date account of the houselessness and rooflessness of foreign born citizens. Further studies on homelessness were undertaken by INSEE and INED in early 2000, but all (with the exception of one national survey) were focused on specific regions and it is not clear whether they provide disaggregated data by migration status (data is not publicly available.) A survey among non-fluent French speakers who use assistance services for homeless persons was undertaken in 2002 in Paris, Strasbourg, Marseilles, though again, the data is outdated, region specific and not publicly available (Martine Quaglia, M and Vivier, G 2010).

The current approach on studying the housing situation of migrants undertaken by INED seems to be focused on spatial segregation, discrimination in housing and the relation between those two (Pan Ké Shon, J-L and Scodellaro, C 2011). However, the focus of the study is on immigrants who are not in most precarious situation such as rooflessness and homelessness and who have achieved a higher degree of social inclusion. Similarly, the Department of Statistics, Studies and Documentation at the Secretary General for Immigration and Integration (Département des statistiques, des études et de la documentation - DSED) provides data for three indicators on the type of housing of new migrants: personal housing (rented or owned), hosted by others (family, friends) or transitory housing situation, which could include living in a corridor of an apartment, in a hotel room, in an accommodation provided by service providers for vulnerable groups, or in a squat. According to recent report, 8% of the migrants are in such transitory situation, as compared to 1% of French nationals (Jourdan, V 2012). However, the data does not differentiate by the type of transitory settlement. Moreover, the data is representative of new migrants who have signed the integration agreement, and are thus not in a situation of extreme social exclusion.

More current data provides an illustration of the overall situation of precarious living conditions in France in general. According to Fondation Abbé Pierre, one of the most prominent sources and most active whistle-blowers on destitution and poor housing in France, 3.6 million people are inadequately housed, including 133,000 homeless people (Abbé Pierre 2013). The data on homelessness corresponds to the statistics provided by a survey conducted by INSEE in 2000, which shows that 133 000 people in France were deemed to be homeless; 33 000 were on the streets or in emergency hostels, and 100 000 were in temporary accommodation for long periods. Moreover, 2.9 million people were found to be living in overcrowded housing or homes lacking amenities (Briant and Donzeau, 2011).

A confirmation of the vulnerability of immigrants to rooflessness and homelessness is provided by accounts of service provision and emergency help to persons living on the street. The extensive reliance on services for the homeless by non-nationals is most evident in Paris. The Samusocial of Paris (SSP) was established in November 1993 and became the largest provider of services to homeless, including shelter and emergency intervention. According to recent data, more than 17 000 parents and children have been taken into care by this organization since the beginning of winter 2011. Remarkably, 90% of the heads of family accommodated after having dialled the Parisian 115 number for emergency accommodation state that they were born abroad (FEANTSA 2010). Although migrants have equal access to emergency accommodation as nationals, this overrepresentation is due to the high concentration of migrants in this region and the traditional use of services for the homeless by non-nationals. A review of data of the clients of another

service provider to homeless in Paris, the Kiosque – run by two voluntary agencies, Emmaüs and France Terre d'Asile, shows that 60% (about 380) are covered by the Dublin procedure,<sup>205</sup> 15% are asylum seekers and 25% are priority procedure claimants (FEANTSA 2010).

Numerous reports (FEANTSA 2012) as well as the data from service providers show that asylum seekers and undocumented migrants are among the categories of migrants that are especially vulnerable to homelessness. Another vulnerable category appear to be EU Roma, which are dealt with in more detail in the next section of the report. Le Collectif des associations unies pour une nouvelle politique publique des personnes sans abri et mal loge (The Union Associations for a New Public Policy of Homeless and Poorly Housed) warns that collective expulsions among Roma camps lead to immediate increase in the calls made to the telephone line for emergency help 115. Very often, such calls do not lead to referrals to services and thus lead to an increased number of homeless Roma.

Aside few examples of data collection on regional/service provider level, and having in mind the lack of representative quantitative data on migrants and homelessness, it is impossible to provide an account on the extent of vulnerability of migrants in accordance to demographic characteristics or to analyze trends for the past two decades. FEANTSA provides an expert assessment of an increasing diversity among homeless persons in France in the past five years, including lone parents, people in low paid employment, asylum seekers (including people without leave to remain), people with mental health problems and people with problematic drug use (FEANTSA 2012). Vulnerable groups of migrants are reflected in the two categories (asylum seekers and migrants without a right to remain) but are also likely to be represented or overrepresented in other categories, such as people in low paid employment, lone parents and people with problematic drug use.

Although the housing situation of the Roma has remained subject of heightened international attention, there is very little quantitative evidence on the living conditions of the Roma in France. Nevertheless, accounts of rights watch organizations based on qualitative data as well as surveys undertaken among the Roma community by service providers give some indication about the extent of homelessness among mobile EU citizens of Roma origin in France.

A survey, conducted by Medecins du Monde between 2010 and 2011 in four French cities (Nantes, Bordeaux, Marseille and Strasbourg) among 281 EU Roma migrants aged below 30 and referred to by rights watch organizations and the CoE Commissioner on human rights reveals that 53% of the respondents lived in rundown caravans, 21% lived in self-constructed huts and the remaining 5% lived either in tents, on the street or squatted in unconverted abandoned buildings (Eurofound 2012).

For reasons mentioned above, it is difficult to establish the number of EU Roma migrants living in such conditions. Some assessments are made with regards to the situation of Roma and travellers as a whole without providing a specific account of the EU Roma migrants, which form part of this group. According to the association of organizations working in the field of assisting the Roma minority, the number of those who remain in a highly visible situation because of their precarious living conditions in squats or shanty-towns (and who, furthermore, do not all self-identify as Roma), has remained stable for several years, standing at around 10 to 15 thousand

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<sup>205</sup> 3 The European mechanism for the determination of the Member State responsible for an application for international protection.

people throughout the whole of France. (Romeurope 2010). According to government estimates, there are around 539 unauthorized settlements of Roma and travellers (Severance 2010).

EU Roma migrants typically occupy squats or "bidonvilles" -- illicit settlements or literally, villages made of "tins" and other type of makeshift housing. They bidonvilles are most often situated on the outskirts of major towns including Paris, Lyon, Marseille, Lille, Nantes, Saint-Etienne, Bordeaux, Toulouse. The largest settlements are in Île-de-France where around 5 000 Roma reside, a larger part of them in Seine-Saint-Denis (ORS). Estimates of an organisation working with EU Roma migrants point out that in the spring of 2013 in Lyon alone, at least 2,300 people were in squats or "bidonvilles" (L'Alpil 2013). They are characterized by makeshift dwellings made of planks, old sacks, cardboard, tarpaulins and other materials to hand. The bidonvilles lack sanitary facilities, have sparse drinking water, use dangerous forms of electricity supply and heating and lack essential public services such as garbage collection (MDM Complaint No. 67/2011). A survey conducted among 75 bidonvilles by the Medical Aid Committee in 2009 and cited by Rome Europe reveals that less than a third of the settlements had municipally arranged garbage collection and a dozen installations had one water point on site - in other cases, the source of water (often fire hydrants) was located 15 minutes on average from their housing (Romeurope 2012).



## 12.3 Social safety net in France: housing and social assistance

### 12.3.1 Social Housing

France has a relatively well developed and extensive social housing sector, which accounts for **about 18%** of the housing stock -- a share that is among the highest in Europe.

The size of the social rented stock in France is comparatively high at 4.5 million units. The government funding for social house increase from 40 000 in 2000 to over 130 000 in 2010 (Houard, N 2011) and another 115,000 were financed in 2011 (Fondation Abbé Pierre 2013). The Law on the Right to Housing (commonly referred to as DALO) introduced in 2007 sets a target of producing 440 000 to 500 000 new homes a year up to 2015 (Fondation Abbé Pierre, 2011). Nevertheless, the number of new houses starting to be built has decreased since 2007: only 333 000 new units were started in 2009 compared to 435 000 in 2007 – down 23% in 2 years (Houard, N 2011).

Social housing provision in France is primarily provided through Habitation à Loyer Modéré 'HLM' organisations, providing housing at moderated rents as well as to a lesser extent by semi-public enterprises (Société d'économie mixte, SEM) and some non-profit associations. HLM organisations include both publicly and privately owned companies acting on a non-profit basis and under the control of the Ministry of Housing and Finance. HLM is a specific sector of the housing market, which is governed by legislative and regulatory provisions, separate from common law and regulated by the Construction and Housing Code (Code de la Construction et de l'Habitation, CCH). The provision of social housing includes construction, development, allocation, and management of rented social housing as well as of dwellings for social home ownership (CECODHAS Housing Europe).

Access to social housing is determined by income ceilings, which are determined at the national level by specific regulation and vary according to the location area of the dwelling as well as the number of household's components. Income ceilings are set at a liberal level, allowing a large proportion of the population (70%) to be eligible for social housing. However, the proportion of poor households using HML has increased significantly over the past decade and currently 35% of all HLM households live on incomes below the poverty line. Furthermore, the DALO act establishes priority access for bona fide applicants in the following 6 categories: homeless; people at risk of eviction who do not have the possibility of finding another accommodation; people with temporary accommodation; persons in unhealthy or unfit accommodation; households with children in overcrowded or indecent dwellings; disabled. The law allows for people to seek for legal redress vis-a-vis the local authority in case their request for an accommodation is not answered.

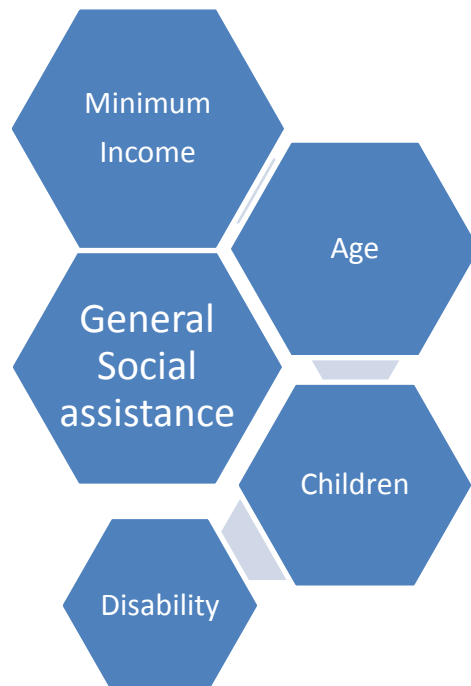
The cost of rent paid by the inhabitants is based on the net construction cost, which is lowered by subsidies from the national and local authorities and tax incentives. Housing benefits are also available for the poorest households paying rent. However, if a household's income increases to the point that it exceeds the income ceiling, rents rise accordingly.

### 12.3.2 Social assistance

The French welfare system is organized along the principles of social security and social assistance. Considering the financing of the two schemes, social assistance has a substantially lower weight, as the amount devoted to this type of allocation (about 15 billion through the national level and less than 20 billion through the Départements) is about ten times lower than the amount of insurance benefit (392 billion in 2004) (Gramain, A et al 2006). In 2011, total net spending for social aid in France amounted to 31.3 billion euros an increase in of 0.7% over 2010 (DREES 2013). Social assistance is funded by the state through the National Solidarity Fund for Autonomy (Caisse nationale de solidarité pour l'autonomie (CNSA) and the Fund raising for departmental integration (Fonds de mobilisation départementale pour l'insertion (FMDI), by the tax on petroleum products (TIPP) donated to the Departments and by the Departments themselves.

The social assistance system is organized along four types of assistance -- guaranteed minimum income, benefits for the elderly, benefits for children, allowances for persons with disability. The most significant social assistance benefit – the Le revenu de solidarité active (RSA) is a guaranteed minimum income allowance, aimed at preventing permanent exclusion of people deprived of resources and increasing the disposable income of those in low paid jobs. With 7.5 billion euros in France, RMI represent 28% of spending on four main categories of social aid. Net expenditure for the elderly amounted to 6.8 billion euros in 2011. Net welfare spending for children, nearly half correspond to investments in facilities, totalled € 6.7 billion, or half a point more in 2010 in constant euros, in line with the increase in the number of beneficiaries (1.5%). Finally, the remaining 22% went to the net welfare spending in favour of persons with disabilities, equalling EUR 5.8 billion in 2011 (DREES 2013).

**Diagram 12.1 Social Assistance in France**



In addition, people can apply for aid specific to their needs, such as independent living/ home care services for vulnerable groups (aide domicile), social services for children and youth aged 21 and below (les mesures de l'aide sociale à l'enfance (ASE), and housing assistance (aide à l'accueil). The housing aid is managed and financed through the municipalities through Funds for Solidarity for Accommodation - FSL (des fonds de solidarité pour le logement). The FSL was decentralized in 2005. Households in need receive three types of assistance: assistance to access housing, assistance to remain in the housing or assistance to pay consumables (energy, water or phone). The aid for "access" aims to help households experiencing difficulties at their entry into a rental unit. Financial aid paid under grants or loans, may cover the payment of the deposit, the first month's rent, contribute to the cost installation etc. The aid to remain can be in the form of grant or lease and can be used by households experiencing difficulties to cover costs of rent or credit. The latest publicly available data (2005-2009) shows that most of the households assisted received aid for consumables, followed by those who received aid for access to housing (DREES).

### **12.3.3 Access to social housing and social assistance of migrants**

Mobile EU citizens legally residing in France have access to social security, social assistance and housing aid and migrants with permanent residence are also entitled to social support.

Concerning social support, EU SILC data provided in the first section of this report revealed that migrants both from EU and non-EU countries are more likely to be recipients of social security when the following types of aid are considered - unemployment, sickness, disability and old-age, and payments related to having children. In France, non-EU migrants are 1.2 more likely to receive aid than nationals, while the ration of EU migrants to nationals in receipt of support is 1.1.<sup>206</sup>

More information on the access of migrants to the social safety network is available in the field of social housing. In fact, social housing is the predominant type of lodging among specific migrant groups. Over the last four decades, the HML housing has turned into the primary type of lodging of immigrants from Sub-Saharan Africa (whereas 56% of them occupy HML), from Algeria (whereas 55% of the Algerian migrants occupy HML) as well as for Moroccan and Tunisian migrants (whereas about 45% of each group occupy HML) (Pan Ké Shon, J-L and Scodellaro, C 2011). The reliance on social housing among these immigrant groups is correlated to higher levels of unemployment as well as lower income levels among the migrants. In absolute terms, however, members of the majority population are the predominant occupants of HML: 60% of the occupants of HML are from the majority population, 12,8 % are Africans and immigrants from Maghreb countries and 10.3% are descendants of the latter. (Pan Ké Shon, J-L 2011).

Although immigrants from African and Maghreb countries seem to have a relatively good access to social housing, there is a clear tendency of spatial segregation of these immigrant groups. A study conducted by INED established that immigrants tend to be placed in social housing neighbourhoods with high immigrant population, regardless of their choice of mixed neighbourhoods. Moreover, immigrants from Sub-Saharan Africa, Maghreb countries and Turks and their descendants tend to be placed in precarious neighbourhoods three to four times more often than the majority population (Pan Ké Shon, J-L and Scodellaro, C 2011).

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<sup>206</sup> The higher proportion of reliance on social security of migrant to nationals is atypical for EU MS and is in fact present in only 5 countries.

**Table 12.8 Types of occupied neighbourhoods (year 2008)**

	Majority population	Descendants of AMT*	AMT
<b>Precarious (9e)</b>	10.00	34.00	42.00
<b>Modest (7e-8e)</b>	20.00	25.00	26.00
<b>Medium type (5e-6e)</b>	23.00	18.00	15.00
<b>Relatively well-off<sup>207</sup> (3e-4e)</b>	23.00	12.00	10.00
<b>Well-Off<sup>208</sup> (1e-2e)</b>	25.00	8.00	6.00

Source: Enquête Trajectoires et Origines, INED-INSEE, 2008

Immigrants from Sub-Saharan Africa, Magreb countries and Turks and their descendants are grouped together as a vulnerable category “AMT”

Although segregation and discrimination exist, it could be concluded that migrants in France in general benefit from the social support network. The case of EU Roma migrants, however, is peculiar, as regardless of their status as EU citizens, they do not have access to social aid or social housing. The specific legal and non-legal barriers to the social support network faced by EU Roma migrants are discussed in the following sections.

## **12.4 Legal and social causes of destitution and homelessness**

### **12.4.1 Legal barriers**

The right to adequate housing is stipulated in Article 31 of the European Social Charter (Article 31) and interpreted by the European Committee of Social Rights: “[s]tates must guarantee to everyone the right to adequate housing. They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems. The notion of adequate housing must be defined in law. ‘Adequate housing’ means: 1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc. and where specific dangers such as the presence of lead or asbestos are under control; 2. a dwelling which is not overcrowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence, 3. a dwelling with secure tenure supported by the law.” The European Committee of Social Rights has noted that states must adopt appropriate measures for the provision of social housing that should target, in particular, the most disadvantaged (COE p 138).

France is a signatory of the European Social Charter. In addition to Community law, the right to adequate housing in France is stipulated in the DALO law. Access to housing is granted to citizen of the European Union legally residing on the territory; residence permit is not required. Foreign (third country) nationals can also access social housing, provided that they fulfil requirements of lawful permanent residence in France as prescribed by Order<sup>17</sup>: Europeans must prove their right of residence as required by Article L. 121-1 of the immigration law Code de l'entrée et du séjour

<sup>207</sup> “Quartier moyen – aisé” in French

<sup>208</sup> “Quartier Aisé” in French.

des étrangers et du droit d'asile<sup>209</sup>, commonly referred to as CEDESA law. A person without employment must have health insurance (CMU) cover and sufficient resources not to become an unreasonable burden on society. Article R. 121-4 CESEDA provides that whether resources, capped at the fixed RSA (earned income supplement) or ASPA (old age low income benefit) thresholds, are sufficient is to be assessed taking into account the individual's personal circumstances. EU nationals who have a right of residence but whose applications for social housing are unsuccessful can go first to conciliation then to the courts under the so-called "DALO" procedure which places a performance requirement on the state.<sup>210</sup>

In line with the French Code of Social Action and Families a homeless person in a situation of medical, psychological and social distress can at any time access emergency accommodation provision (L. 345-2-2 CASF) and must be able to remain there until a better solution is offered, and receive social support (L. 345-2-3 CASF). According to Housing Rights Watch reports on France, foreign nationals whose administrative situation is not straightforward tend to be referred to emergency provision, which is unsuited for family life, while economically inactive EU citizens (claimed to be unreasonable burden) may be sheltered for a few nights only. Although under performance obligation of "DALO" appeal procedure, applicants seeking short-term accommodation are not required to have lawful residence, according to Housing Watch, the shortage of places, directly frustrates this minimum intake requirement (Housing Watch 2010).

The access to housing of EU citizens in France is predicated by meeting the conditions for rightful stay. As citizens of Romania and Bulgaria, and in line with the Freedom of Movement Directive, Roma migrants have the right to remain on French for territory three months. Beyond this period, the migrants need to be employed or self-employed or to prove that they have "sufficient resources" and a comprehensive medical insurance (CMU) not to become an "unreasonable burden" on the social assistance system. However, in line with temporary restrictions to the labour market for Bulgarian and Romanian nationals in force until 2014, the access of Roma from Romania and Bulgaria was conditional upon the acquisition of a work permit. The acquisition of a work permit in France is conditional upon the „situation of the labour market“, whereas high levels of unemployment can be a reason to refuse employment to workers, needing a permit. France has a list of sectors that are liberalized and do not acquire a permit. In August 2012 the list of "open" professions was expanded and the taxation that needed to be paid by any employer employing such nationals was removed -- a measure that was publicly proclaimed as targeting integration of Bulgaria and Romania's Roma migrants. However, the impact of this measure was likely to be insignificant, as the liberalised sectors, with the exception of construction and to some extent food and beverages, are not traditional fields of Roma employment and most of them are in the realm of highly qualified labour.

The restricted access to the labour market of the Bulgarian and Romanian Roma thus have limited the opportunity for gainful employment, thus making the right to remain legally and thus access social rights including housing aid dependent on the proving the sufficient adequate resources. However, adequate resources may be difficult to obtain without access to gainful employment, which leaves EU Roma migrants in a situation of particular vulnerability to destitution and homelessness.

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<sup>209</sup> <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20080116>

<sup>210</sup> 26 R . 300-1 CHC quoted in Housing Rights of Roma and Travellers Across Europe, A Special Housing Watch Issue, Housing Watch 2010

Provisions regarding the use of public funds and becoming “unreasonable burden on society” can be enacted through immigration law to enforce sanctions in the form of deportation. The CEDESA law allows for deportation of Community national if he becomes “an unreasonable burden on the social security system” or if “his stay constitutes an abuse of rights” (Article 39 para. 3 of the law - L. 511-3-1 2 of the CESEDA).

A large wave of evictions of Roma from illicit settlements and expulsions in 2010 prompted strong criticisms of rights watch organizations and the European Commission. An administrative circular drafted by the French Interior Ministry on August 5, 2010 instructing local officials to target and dismantle Roma camps as priority was revoked by President Sarkozy in early September. In addition, human rights organizations reported that the expulsions, that followed the camp evictions contradicted the Freedom of Movement Directive, as article 14 states explicitly that *having recourse to the social security system by an EU citizen or a member of his family does not automatically incur expulsion* (Romeurope 2011). Instances of use of standardised deportation forms for expulsion revealed that the procedures of individually assessing each case of presumed “unreasonable burden” in line with the EC Guidelines for the implementation of the Directive<sup>211</sup> were not followed (Romeurope 2010).

Following a formal notice by the EC in 2010 that infringement proceedings would be launched if France fails to transpose correctly the Freedom of Movement Directive (BBC 2010), changes to the CEDESA law (Law No. 2011-672 on Immigration, Integration and Nationality) were enacted in June, 2011. In conformity with article 27 of Directive 2004/38/EC, the law specifies that the authorities may order an EU citizen to leave the country (*obligation de quitter le territoire français*, OQTF) within the first three months of their stay in France if the person’s conduct represents a “genuine, present and sufficiently serious threat to one of the fundamental interests of society” (article 39(3) of French law). In conformity with article 28 of the Directive, the law also stipulates that such orders be subject to an *individual assessment* of the EU citizen’s personal circumstances. In addition, changes to the immigration law allowed deportation if a person keeps coming and going between France and his country of origin “with the aim of maintaining himself on French territory” and “enjoying the benefits of the social security system” (Romeurope 2011).

While the legislative changes were deemed satisfactory to the Commission, human rights organizations have questioned whether they have fully addressed discrimination towards the Roma. Human Rights Watch states that the burden of proof on not constituting an unreasonable burden on the social system remains on the migrant and that in some cases orders to leave the territory (OQTF) were made merely on the assumption that Roma would rely on social assistance (Human Rights Watch 2011, 2012). In fact finding missions in 2011 and 2012, the European Roma Rights Center monitored the handling of expulsion orders during evictions of illicit settlements. The monitoring revealed that in many cases expulsion orders were handed “en masse” without assessment of the personal situation of the migrant. During 66 operations of mass distribution of OQTFs ERRC reported that almost all expulsion orders were based on the assumption of lack of economic resources (ERRC 2013.)

In many cases, orders based on such assumptions are challenged by the courts. Yet, court decisions also vary, whereas according to rights watch report, in Lyon alone, between October 2010 and April 2011, one chamber of the administrative court annulled 12 OQTF orders because

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<sup>211</sup> Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States p.3, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

there had been no individual assessment, while another chamber rejected 11 appeals against identical orders (Human Rights Watch 2011a). In 2012, the ERRC assisted 52 Roma migrants who received OQTF and among these in 38 cases appeals were allowed while in 14 cases appeals were pending at time of the report (ERRC 2013). OQTFs continued to be challenged by the courts in 2012- 2013, though reportedly, local authorities often relied that the vulnerable migrants would not have an opportunity to seek legal aid within 30 days period for appeal (Romeurope 2012 - 2013)

Paradoxically, regardless of the introduction of safeguards to the Directive and the role of the courts in challenging unsubstantiated OQTFs, the expulsions of Roma in France has remained on the rise since 2010. According to statistical data provided by the Permanent Representation of Romania to the European Union in Brussels and cited in Carrera, the total number of forced expulsions (OQTF) of Romanian nationals by France was 1,446 in 2010, 1,931 in 2011, 2,010 in 2012 and 715 from January to April 2013 (Carrera, 2013, pp 11-12), According to the author, expert interviews confirm that an overwhelming majority of the deported migrants from Romania were of Roma origin (Carrera, 2013).

Other legal provisions related to the increased vulnerability of migrant EU Roma to expulsion from the territory is the criminalization of begging and the possibility to deport migrants who constitute a menace to society. According to the immigration act, a Community national can be subject to deportation if his personal behaviour constitutes a real and present menace which is sufficiently serious in respect of the fundamental interests of French society (26 Article 39 para.4 of the law – L.511-3-1 3° of the CESEDA). Having in mind that France has criminalized “aggressive begging”<sup>212</sup> and municipalities have adopted by-laws allowing for detention of beggars, this subsistence strategy adopted by many Roma who lack alternative means of income, has become a cause for discontinuing their stay in France. The anti-discrimination body of France, HALDE, has warned that the enforcement of anti-begging legislation aggravates the already precarious situation of the Roma (HALDE 2008), while at the same time the Minister of the Interior has boasted its effectiveness in December 2011: “...the by-laws complete the measures, passed in September, to stop begging on the Champs-Élysées and have already led to questioning of some 300 suspects and 70 deportation cases”. (Quoted in Romeurope p.18).

Deportation of EU Roma migrants may intercept any efforts for integration in the host society and increases the vulnerability of the migrants towards destitution and homelessness upon their return in the home countries. Other provision in the criminal code that heighten the vulnerability of Roma to social exclusion are related to the criminalization of “illegal gathering on a site belonging to a public or private person with a view to putting up housing, incurring serious risks to public health, safety, and peace”, as well as „disturbing public order“ (Loi d'orientation et de programmation pour la performance de la sécurité intérieure LOPSSI 2). By means of LOPSSI a prefect could give notice occupants to a site if the housing posed serious risks to public health, safety and peace”. If notice had no effect, the prefect could proceed with forced evacuation of the site and request of the president of the TGI in chambers to authorise him to destroy the illegal buildings.

Evictions from illegal camps were first organized by police authorities, following a public outcry against Roma “criminality in 2007. Three years later, a circular of 5 August 2010 addressed to police chiefs by the Director of the Minister of the Interior's private office<sup>213</sup>, instructing the eviction

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<sup>212</sup> Article L 312-12-1 of the penal code.

the unlawful Roma settlements as a priority led to increased targeting by the police of the Roma camps. Reportedly, almost 11 000 EU Roma migrants have been evicted from 116 sites between January 2010 and September 2011 (CoE 2012).

The evictions of EU Roma migrants have been criticized on several grounds by human rights bodies and non-governmental organizations. In response to a collective complaint (No. 63/2010) brought forward by the Centre on Housing Rights and Evictions (COHRE) against France, the European Committee of Social Rights found France guilty of violating the right to non-discrimination (article E) in conjunction with the right to housing (article 31) and in conjunction with the right to migrant workers and their families to protection and assistance (article 19). Notably, no alternative housing solutions were pursued by the targets of the eviction as the proof of residence does not make them eligible to access housing as per DALO provisions.

The emergency evictions from illicit settlements have in some cases interrupted efforts towards regularization of status and improved access to health, including through vaccination of children, and integration efforts through school insertion of minors. France's anti-discrimination body reports that the constant threat of evictions from camps dissuades parents from enrolling children in school. Instead, children are involved along with parents in the informal economy or fall into delinquencies and further social exclusion (HALDE 2008.) With regards to effects on healthcare, a collective complaint by Médecins du Monde (Mdm) of 2011 to the European Committee of Social Rights illustrated that four expulsions carried out in Marseille in December 2012 affecting 120 persons interrupted a hepatitis A vaccination campaign carried out by Mdm among 29 children. The conducting of expulsions in the winter months and the evictions of children and pregnant women alike have been claimed by Mdm to seriously threaten the precarious health status of Roma. The decision of the European Committee of Social Rights that found France in violation of key social rights, among which right to housing, to education of the children, to health assistance and to protection of the health (Press release Mdm).

In response to the growing number of evictions and their negative impact on the migrants living in illicit settlements, an important ordinance was passed in August 2012 aiming to outline the procedures for conducting evacuation from illicit camps. The interministerial ordinance on the planning and accompanying actions of evacuation of illegal settlements (CIRCULAIRE INTERMINISTERIELLE NOR INTK1233053C du 26/08/2012 relative à l'anticipation et à l'accompagnement des opérations d'évacuation des campements illicites) prescribes that the authorities conduct a diagnosis of each individual inhabitant of the settlement in view assessing his needs and finding an alternative housing solution. In addition, with the exception of cases where the illicit settlements pose a threat to public security or health or order, the evacuations need to take place following a court decision. In addition, with the exception of emergency operations, evictions need to take place after a two months' notice to the inhabitants to evacuate the territory.

A year after the adoption of the ordinance on evacuation of illegal settlements, service providers and human rights organizations report that the regulation has a limited impact on the conduct of operations. At the same time, record levels of evictions of illicit settlements were registered in 2013, affecting 21,537 Roma who were evacuated from squatting sites (LDH 2014).

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<sup>213</sup> Quoted in CoE European Committee of Social Rights Decision of the Merits, 28 June 2010, Complaint No. 63/2010, Centre on Housing Rights and Evictions (COHRE) vs France, available at: [http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC63Merits\\_en.pdf](http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC63Merits_en.pdf)



For one, about one fifth of evacuations were planned as emergency operations, without a court decision and notification (LDH 2014). Moreover, many prefectures proceed with evacuation without diagnosis of the individual situation and needs of the inhabitants of the camps (whereas due attention should be given to vulnerable groups) and without finding an alternative lodging solution. For instance, in august 28, 2012, 150 persons, including 50 minors were left homeless, following an evacuation from rue des Temps modernes in Saint Priest (Rhône) (Romeurope 2013:80). In 2013, in Ile de France, more than 1700 persons were evacuated without being offered a systematic and suitable relocation option (Letter CNDCH to Jean Daubigny, Préfet de la région Ile de France, December 17, 2013)

In cases where alternative lodging solution was found, it was limited to a few nights stay in emergency accommodation, without considerations of needs of families (Romeurope 2013:80-84, LDH 2014). According to the League des Droits De L'Homme, in 2013 21537 migrants were evacuated from 187 settlements, and in 74 cases solutions, "similar to re-lodging" were pursued, but it is unclear to how many persons were these solutions offered, and if they were durable or needs specific. Furthermore, having in mind that the number of those affected by the evictions is larger than the number of occupants of illicit settlements (estimated at 16,9491), it becomes evident that many of the EU Roma migrants became subject to evictions more than once.

As previously mentioned, in many cases evacuations are accompanied by distribution deportation orders.<sup>214</sup> Another option for the inhabitants of the illicit settlements is "assisted voluntary return", where the immigration services cover the return flight of the migrant and a relocation grant. The AVR were a widely used strategy in 2010-2011 and were criticized for their ineffectiveness (Cendrowicz 2010) and use of threats to persuade the migrants to opt for voluntary return. According to service providers, working with EU Roma migrants, the people returned through AVR to Romania and Bulgaria most often return to France and in many cases go back to the same terrain that they previously occupied. According to service providers, the poverty and miserable conditions faced in the country of origin is in many cases worse than their situation in France, which prompts the return to the country of destination. Currently, the ministry of interior is conducting a reform of the AVR scheme, aiming to diminishing the amount of aid, though the impact of such reform is yet to be seen.

The evictions of the bidonvilles are thus likely to be one of the main causes of homelessness among EU Roma migrants. While France's interior minister has notoriously stated that "Roma should go home"<sup>215</sup>, such scenario is unlikely having in mind the dire socio-economic situation and the social exclusion faced by Roma in Bulgaria and Romania. Factors of vulnerability to homelessness and destitution thus would need to be addressed both in sending and receiving societies.

### **Access to Justice**

Homeless persons can seek legal redress both in terms of access to housing as well as protection from discrimination. As previously mentioned, appeal procedure can be instigated under the DALO performance obligation. Negotiation settlements are envisaged, and in the case of failure, judicial proceedings are triggered. According to figures provided by the Ministry of Ecology, Energy, Sustainable Development and Maritime Affairs, at the end of December 2010, three years

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<sup>214</sup> Reportedly, such practices continued in 2013. Such practices took place in Paris (75), Porte de la Chapelle on 9<sup>th</sup> of April 2013 where about a hundred orders to leave the territory were handed out to the squatters (LDH 2014).

<sup>215</sup> Samuel Henry, *Roma should 'go home', says France's interior minister* The Telegraph, September, 25 2013.

after the introduction of negotiated settlements and two years after the introduction of judicial review, 185 000 housing appeals had been lodged; 143 665 had been reviewed by mediation committees; 57 561 households had been identified as priority cases in urgent need of re-housing. According to the statistics only 35 000 households had been re-housed as a direct or indirect result of the DALO Act. In judicial review cases, findings were made against the state in 5 585 cases for failure to offer appropriate housing within the statutory time-limits (quoted in Houard, N 2011)

Discrimination is prohibited in the French constitution, as well as in the criminal code under the so called Pleven Law (Law No. 72-545, 1 July 1972). According to Fundamental Rights Agency, it is difficult to obtain justice under this law, as in order to prove discrimination, the victims must provide a compelling evidence that the discrimination took place based on these criteria (FRA 2009). Decisions by the authorities relating to discrimination or a denial of rights, can be brought to appeal to the Administrative Tribunal, regardless of the accused (government, regional and local authorities), the form (court order, decree, letter) or the content. The administrative department concerned is required to apply, and more broadly, to comply with it the decision of the Administrative Tribunal. (FRA 2009)

In addition, discrimination cases can be addressed to the High Authority for the Fight against Discrimination and for Equality (HALDE), established by Law 2004-1486 of 30 December 2004 as an Independent Administrative Authority. HALDE has a Commission on travellers and receives about 30 complaints each year (related to discrimination in school enrolment, refusal to insure caravans etc), but no information is available on complaints from migrant Roma.

Finally, discrimination cases could be addressed to the Ombudsman established by the 1973 law. Complaints can be brought forward by any person who, regardless of nationality, finds themselves in conflict with a government department, a land agency or any public service organisation. However, the Ombudsman has not been called upon to address any complaint concerning housing discrimination made by Roma or Travellers (FRA 2009).

While France has developed a legislative framework and institutions that could address complaints related to access to housing and discrimination of homeless migrants, these mechanisms could not be employed by EU migrant Roma due to their legal status and lack of residency permit. That is why, even though there are examples of discrimination in housing and access to social rights (illustrated earlier in this chapter), they do not translate into individual complaints to the official bodies. Rather, as illustrated by the COHRE and MdM complains, such cases are addressed through collective complaints to European human rights bodies.

#### **12.4.2 Social barriers**

The vulnerability of EU Roma migrants to destitution and homelessness could also be explained in terms of non-legal aspects of the social system, related to the public perceptions of the minority and the general attitudes towards immigrants and growing tendencies of discrimination of racial and religious minorities.

Discrimination and negative attitudes on the grounds of ethnicity is impossible to measure in France, due to the limitations regarding data disaggregated by ethnicity and due to the non-recognition of ethnic minorities. Nevertheless, the discrimination towards the Roma minority can

be explained in the context of general increase of racism and xenophobia that is perceived across Europe as well as in France, and also through analysis of specific cases by local administrations cited by rights watch organizations.

In its last report on racism, anti-Semitism and xenophobia in France, the National Consultative Commission on Human Rights (Commission Nationale Consultative Des Droits De L'Homme-CNCDH) warns of both growing intolerance towards these minority groups and an increase in the violent acts committed towards Muslims, Jews and foreigners over the last three years. The Roma are not analysed along these two indicators, although a question, related to the failure of integration of specific groups reveals that in 2011, 77% of the respondents perceive that the Roma are “becoming a separate group, a percentage that has increased in 11 points since 2010 and has remained the same in 2012. Notably, once included as a separate category in the survey in 2011, the Roma are perceived as a separate group by the largest number of respondents, in comparison to 12 other minority groups, followed by Travellers, Muslims, Magrebs, Asians, Africans and five other minority groups (CNCDH 2012).

The report warns that for a significant part of the majority population, the image of the foreigner brings about feelings of insecurity, be it social or economic. A large majority perceive immigrants as “leeching on” or abusing the social system (CNCDH 2012). Not surprisingly, these public perceptions are translated into acts of discrimination by authorities and society as a whole. As previously mentioned immigrants who access social housing tend to be placed in segregated neighbourhoods, with precarious living conditions. The higher concentration of poverty in such neighbourhoods thus produces side effects such as higher rates of delinquencies and criminality, which in turn serve reinforce feelings of threat and insecurity about immigrant groups.

As EU Roma migrants do not qualify for housing or other type of social assistance (see previous part of this chapter: Legal barriers), an analysis on the preconditions on accessing social support is more relevant than discussion of discrimination by authorities in allocating social assistance.

As aforementioned, EU Roma migrants can access the social assistance network if they can meet the requirements of rightful stay i.e. they have gainful employment or they can prove that they are not an unreasonable burden on the social system. Due to the transitional restriction measures to the labour market applied by France to nationals of Bulgaria and Romania, citizens of these countries could only seek employment in a list of predetermined sectors and among over 150 “open professions”. However, Roma rights NGOs have indicated that procedural obstacles could be very dissuasive for any employer seeking to employ a Bulgarian or Romanian national in any of the liberated sectors. Such obstacles include an extensive list of documents to be provided, long waiting periods for the contract to be approved by official authorities. According to Romeurope, the waiting periods are around two months and vary according to the departments, none of them meet the requirements to process applications of EU citizens as a priority. According to service providers, the entire application period takes between 6-9 months – a period which dissuades employers to employ EU Roma migrants.<sup>216</sup>

In addition, discriminatory practices by some departments, such as refusal to grant short term contracts (which could be much more appropriate to seasonal work, often pursued by Roma workers), or to accept applications where the CV does not meet strict qualifications of the

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<sup>216</sup> Telephone interview Claire Sabah, Secours Catholique, Caritas France, 22 May 2013.

profession (even for unskilled work), have provided real obstacles to gainful employment and therefore a residence permit to Roma workers (Romeurope 2010).

Aside for obstacles to legalising their status on the basis of work permit, discrimination with regards to the other provision for achieving rightful stay and access to social rights– proving not to be unreasonable burden on society – has been evidenced on local level. Romeurope reports that many prefectures apply the concept of unreasonable burden discriminately towards Roma, without following procedures for assessment of the individual situation of the migrant. For instance, standard forms for deportation used by Val de Marne prefecture were used to designate that a person has resided in France for more than three months, does not satisfy the conditions for a long term stay, has no fixed abode, and thus constitutes an unreasonable burden on the French State. Forms used by the Seine-Saint-Denis prefecture affirm similarly that the person concerned has been in France for more than three months without satisfying the conditions and thus constitutes an unreasonable burden on the French State. Going even further and placing the burden of proof on the migrant, the prefectures of Loire, Haute Savoie, Drôme, and Rhône indicated that the person concerned has no proof of being in France for less than three months and state that this person has no proof of having sufficient resources not to become a burden on the social security system (Romeurope 2012). A positive development yet a proof of the discriminatory nature of such practice is the annulation of “stereotyped” deportation orders by a judge, in cases where such orders were challenged in court (Romeurope 2013).

The significant barriers (both social and legal) to accessing the labour market or to obtaining a legal status that would allow EU Roma migrants to access social assistance have pushed the minority into subsistence strategies (such as begging) and appalling living conditions that have received significant international outcry. As aforementioned, the bidonvilles are often dismantled by police authorities and the inhabitants are evicted. In line with an ordinance of 28 August 2012, concerning accompanying measures for the eviction of illicit camps, the authorities need to diagnose the needs of the households affected by the evictions and to find alternative solutions for the persons affected by evacuations. However, the research revealed that lack of political will by the local municipalities, makes the finding such solutions the exception, rather than the rule. Interviews with service providers reveal that municipalities are pressured by the local populations that do not accept the bidonvilles and see them as threat to security and are also inclined to follow the general political doctrine that the Roma needed to be returned as they are „problems of the countries of origin“.<sup>217</sup> Thus most often alternative solutions are not pursued, the Roma are returned through AVR procedures described above. Those EU Roma migrants, who are not made to return have the right, as homeless persons, to be placed in emergency accommodation. The services for the homeless as well as the few alternatives to finding lodging solutions for Roma victims of evictions are described in the next two sections.

## **12.5 Services for the homeless**

In terms of policies, targeting the homeless, France is undergoing a policy shift from providing temporary accommodation and gradual integration to mainstream housing, to following a “Housing First” model meaning that access to permanent housing should be provided immediately to those in need. The first homeless support strategies were focused on providing emergency

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<sup>217</sup> Telephone interview interview Clair Sabah, Secours Catholique Caritas France, 22 May, 2013; telephone interview Andre Gachet, La Fapil, 17 May, 2013, telephone interview Bruno Mattei, ATD Quatre Monde , 20 May 2013.

care, notably exemplified by the Paris Samusocial, created in 1993 by Dr. Xavier Emmanuelli. The clients assisted would then follow “a staircase model” of different temporary accommodation (mostly “social motels”) and (depending on status) social services to gradually achieve mainstream housing. Temporary motel accommodation was almost exclusively used for immigrant families and therefore became a substitutive solution both for homeless centres and centres designed for asylum seekers (Le Méner, E and Oppenchain, N 2012). Critiques of this model pointed out that clients may end up in labyrinth of temporary services without achieving permanent housing. In addition, evidence existed that temporary facilities proliferated at the expense of permanent housing, that the admission criteria had been tightened over the years while the length of stays increased (Houard, N 2011).

The adoption of the Reinforced Strategy for Persons Experiencing Homelessness (PARSA) on 8 January 2007 and the Act Establishing the Enforceable Right to Housing (DALO law) of 5 March 2007 was supposed to address many of the deficiencies of the “staircase model”. Encouraged by FEANTSA findings on effective models for addressing homelessness and prompted by public outrage by the growing number of homeless in France, the “Housing First” model was officially publicly recognized in 2009. The paradigm shift and the adoption of the DALO law led to accelerated construction of permanent social housing and the philosophy of the model is that people in need, including homeless people, problematic drug and alcohol users must be provided with permanent housing and ‘normal’ conditions in the community. The National Homeless or Poorly Housed People Strategy 2009-2012 affirmed the “Housing First” model, stating that access to permanent housing should be the goal and priority of the emergency and reintegration services (Republique Francaise 2012).

The new National Homeless or Poorly Housed People Strategy follows two basic principles – unconditionality and continuity of access to housing. The strategy aims to “humanize” (renovate or built new) accommodation centers, evacuate “unfit” housing which is hazardous to the health and security of the tenants, and increase the rate of opening up new accommodation facilities. In addition, in tenancy intermediation programs such as “Solibail”, an association or social organization plays the role of an intermediary between the tenant and the landlord, thus offering additional guarantees for people who have difficulties in accessing or maintaining housing arrangements. Through the “Solibail” system 261 housing arrangements were mobilized and 188 families were rehoused, 74% of them were previously housed in hotels or collective structures.

In general, the government has increased spending on facilities and housing allowances for homeless. According to data published in the summarized Strategy for the Homeless, there has been a 20% increase in the amount spent on facilities and allowances for homeless persons.

**Table 12.9 Government spending on accommodation facilities and housing allowances for the homeless in EUR**

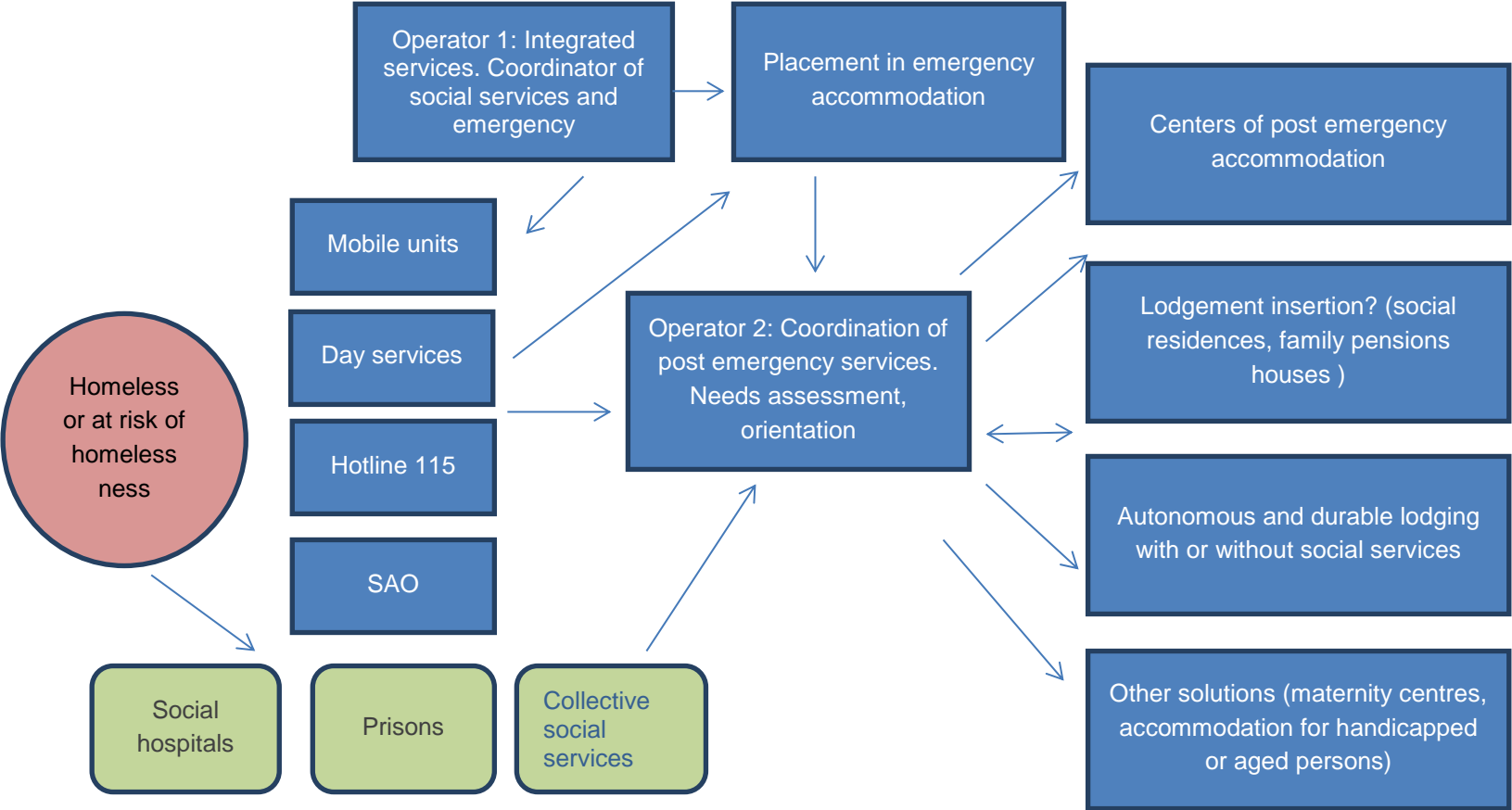
	<b>2007</b>	<b>2009</b>	<b>Evolution</b>
<b>Emergency accommodation</b>	255 126 943	271 321 240	6%
<b>CHRS (Social Accommodation and Rehabilitation Centres)</b>	506 650 497	601 567 789	16%
<b>ALT (temporary housing allowance)</b>	41 000 000	41 656 000	2%
<b>Intermediate Houses</b>	22 506 232	53 996 272	58%
<b>AGLS (Assistance to social tenancy management)</b>	5 716 328	5 724 496	0
<b>Housing Accommodation Total budget</b>	/ 877 000 000	1 100 000 000	20%

Source: French Homeless and Poorly Houses People National Strategy.

An important aspect of the strategy for the homeless is the improvement of the needs assessment and individual consultation of the users of services. For this purpose, an Integrated Reception and Counselling Service is established, with the aim of collecting and analysing data on the responses provided.

The strategy aims to improve access to services for the homeless by engaging 2 000 youth volunteers in mobile teams, working on the streets and offering assistance to people in need. Access to services is also provided through the 115 hotline and the services for accommodation and orientation. Two operators -- one specialized in emergency services, and another one facilitating long term integration -- are responsible for the support and orientation of a homeless person or person at risk of homelessness.

Diagram 12.2 Access to homeless services



Although France has undertaken an important paradigm shift in the provision of housing solutions to homeless, the new course of action has not been spared criticism. One of the strongest arguments that the Housing First model is not providing adequate response to the needs of homeless and destitute is directed towards its authenticity. Analysts point out that the building of temporary accommodation has not subsided, while the targets of annual social housing construction are not met. Referral to temporary accommodation of homeless persons seems to be the preferred strategy of many Departments/ Prefectures. An argument that is linked to the first criticism points to the inability of the model to meet the high and increasing demand for housing by homeless and destitute persons. Fondation Abbé Pierre warns that in the winter of 2012, 78% of the calls made to the emergency line 115 remained without referral, and among the cases that were assisted, a few received accommodation for one night only. According to the Foundation, the principles of unconditional and continuous accommodation, enshrined in the law, are thus breached and the capacity of social housing remains insufficient (Fondation Abbé Pierre 2013).

The increased demand for temporary lodging as well as mainstream housing is attributed to the effects of the financial and economic crisis (Fondation Abbé Pierre 2013). In France, the unemployment rates have been spiralling since 2007; the number of people living in poverty has reached 8.6 million in 2010 (14% of the population), as compared to 8.2 million in 2009. The tightening of household budgets has led to difficulties in payment of rent and social services. According to Fondation Abbé Pierre, 1,305,200 households had difficulties to fulfil the payment of rent in 2012, 3,8 million live in energy poverty and 1 180 000 million are on the waiting list for social housing (2013). In many cases, households which cannot cover the costs of rent or bank credit payments and thus end up in situation of rooflessness and destitution.

In accordance with the principle of unconditionality of access to emergency housing, migrants as well as EU Roma migrants, have access to the services for the homeless, regardless of their legal status. While migrants (mostly third country nationals) are primary users of the services for the homeless in regions such as Paris – Ile de France, the case of Roma is quite different. Roma victims of evictions of illicit settlements are the most vulnerable to homelessness. In line with an ordinance of 28 August 2012, concerning accompanying measures for the eviction of illicit camps, the authorities need to diagnose the needs of the households affected by the evictions and to find alternative solutions for the persons affected by evacuations. Solutions include setting up of so called “integration villages”, finding alternative terrains for the families or regulating the illicit settlements and providing basic infrastructure in the encampments. Lack of political will by the local municipalities, however, makes finding such solutions the exception, rather than the rule.<sup>218</sup> Such initiatives will be described in more detailed in the next section on Good Practices. Roma, subject to evictions, who are not settled in alternative terrains, can access emergency accommodation facilities for the homeless. Although such solutions have been pursued for some families, review of the practices reveals that the principle of unconditionality of services is not always adhered to, while the principle of continuity of assistance to the point of integration into mainstream housing is never pursued for the EU Roma migrants.

Interviews with organizations working with EU Roma migrants as well as NGO reports point out that placement of EU Roma migrants in emergency accommodation for the homeless had taken place in some cases evictions or hazards at the bidonvilles. For instance, an interviewee referred to the placement of 28 persons in the region of Lille in emergency accommodation center, following an international outcry on the situation of these families. The EU Roma migrants,

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<sup>218</sup> Telephone interview Clair Sabah, Secours Catholique Caritas France, May , 2013, telephone interview Andre Gachet, La Fapil, 17 May, 2013, telephone interview Bruno Mattei, ATD Quatre Monde , 20 May 2013



however, could only remain in the facility for the night and had to leave at 8 am to return after 18 hrs.<sup>219</sup> Other instances referred to EU Roma migrants who had been evicted or whose settlements had caught fire – an incident that occurs very often in the illicit camps due to use of candles for light or irregular electrical devices for heating (Alain 2013). In most cases, however, the users of temporary accommodation have to abide to some sort of regime and leave the facilities during the day.

Service providers have indicated that in practice the acceptance of Roma in emergency accommodation is not unconditional. In many cases, access can be denied for Roma who have been in the territory for more than three months in line with the overall political doctrine that these migrants do not have the right to remain on the territory.<sup>220</sup> Having in mind the inability of the facilities to meet the heightened demand for services for the homeless, it is not surprising that the status of EU Roma migrants and the discriminatory attitudes can pose barriers to the access to services.

Most importantly, even in cases where referrals of EU Roma migrants to facilities for homeless are successful, one of the main principles of access to housing is denied – the principle of continuity. Although in principle, emergency accommodation should be followed by integration services and achievement of full autonomy and access to mainstream housing of the homeless persons, the legal status of the Roma migrants precludes access to long term housing and to full integration in French society.

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<sup>219</sup> Telephone interview Andre Gachet, La Fapil, 17 May, 2013.

<sup>220</sup> Telephone interview Bruno Mattei, ATD Quatre Monde , 20 May 2013.

## 12.6 Good practices

Although there are no unconditionally positive or effective initiatives at the local level aimed at providing long term assistance to homeless migrant EU Roma, some evidence of political will of local municipalities to find solutions for EU Roma migrants exists. Unfortunately, such initiatives have not been carefully described, assessed and documented, so it is difficult to draw conclusions on their effectiveness and impact on the communities. Nevertheless, having in mind the general political climate and practices of discrimination, a few such initiatives deserve to be described at least as exceptional, if not unconditionally positive. Actions of local authorities can be grouped into following types:

**Provision of integration and mediation services** to homeless Roma families in view of assisting their integration through labour market inclusion, school insertion of Roma children and health assessment of the needs of homeless families. For instance, the in 2010 the Mayor of Bordeaux employed two mediators to support Roma families in the administrative steps they have to take in order to get genuine access to mainstream services. In Lille, three mediators were employed to support desperately destitute Roma families. In Nantes, a local task force including the employment office, the prefecture, the Job Center, Nantes conurbation and the Department Council, has implemented a specific procedure to enable a faster labour appointment of Romanians and Bulgarians (Romeurope 2011).

**Temporary regularization and provision of infrastructure at the land of the Roma settlements.** For instance, the municipality of Paris has regularized the terrain of the Roma encampment Triel-sur-Seine, where 40 families (and around 90 children) live since 2007. With the support of Catholic Relief Services, the camp was provided with water and heating materials and the dirt road was paved. Several initiatives of non-profit organizations, such as mobile library and volunteer support for Roma school children have assisted the overall integration of the community. During this period, other opportunities for housing and social inclusion are sought.<sup>221</sup>

**Setting up of new terrains or finding alternative lodging solutions for homeless Roma, victims of evictions.** For instance, temporary housing solutions for Romanian Roma victims of evictions were found in Montreuil. In Lyon, Région Rhône-Alpes, local stakeholders involved in housing have found temporary housing solutions for about 20 Roma households per year for the past 5 years (L'Alpil 2013). However, the legal status of the Roma, tied to their right to remain on the territory, limits the type of housing arrangements that could be made available.

A debated type of solution along these lines is the setting up of so-called integration villages, that are established to accommodate some of the evicted Roma. For instance, in order to eliminate the largest bidonvilles, which emerged in industrial wasteland on the outskirts of Paris on the municipalities of Saint-Ouen (PCF), Saint-Denis (PCF), Aubervilliers (PS) of Bagnolet (PC) and Montreuil (Greens), the sub-prefectures of Saint-Denis and Bobigny with the help of the municipalities concerned, set up six integration villages. The villages each host twenty families in modular buildings of prefabricated wood. Besides accommodation, provided for a period of three to five years, beneficiaries are offered social support performed by approved associations. While offering a temporary housing solution for homeless EU Roma migrants, there are many ethical as well as practical concerns related to these villages. For one, a very small percentage of Roma victims of an eviction have access to such villages, and the selection of appropriate families has been put into question by NGOs. For instance, during an evacuation of a bidonville at street

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<sup>221</sup> Telephone interview and e-mail exchange Claire Sabah, Secours Catholique France, 22 May, 2013.

Campra in Saint-Denis between 20-25 families were selected among 300 families subject to eviction in what seemed to be a random procedure conducted in 30 minutes (Legros 2010). The extensive surveillance both through cameras and police presence also limit the rights of privacy of the inhabitants of the villages and serves to reaffirm stereotypes of Roma criminality. Another ethical concern is the ethnisation of this housing solution, exclusively pursued for persons of Roma origin, who are not given any other housing options. In terms of practical considerations, the integration villages have proven to be very costly and it is generally difficult to find and secure an appropriate terrain for the setting up of this type of accommodation (Legros 2010, interview C Sabah). A careful assessment of the impact on the prospect of integration for EU Roma migrants of the integration villages is needed in order to make informed public decisions about their implementation or possible adaptation without some of the negative aspects.

While local authorities provide few examples of initiatives that prove to ameliorate the situation of homeless and destitute EU Roma migrants, many non-governmental organizations have been active and effective in providing assistance to the Roma. Notably, the Collectif National Droits de l'Homme Romeurope – an association with over 30 members<sup>222</sup> – has been very active with advocacy work on Roma rights, including access to housing of EU Roma migrants. The organizations, members of Romeurope, provide different types of services to Roma and EU Roma migrants in particular, including legal aid, mediation and orientation, medical assistance and immunizations, support with school insertion of Roma children and support to finding housing solutions.

A promising initiative is about to be implemented by two organizations, members of Romeurope, L'Apil and Fnsat. The two organizations propose the development of so called “toolkit” for finding local solutions for homeless EU Roma migrants, living in bidonvilles and subject to evictions. The toolkit would assist the local authorities in linking the needs of the Roma residents to the possible available sustainable housing solutions in the context of limited supply of accommodation, budget constraints and social concerns about public order. The toolkit would envisage establishing a network of stakeholders, working towards assessing the needs of the Roma community and local population, assessing available infrastructure as well as geographic sites/terrains, pooling knowledge on existing good practices in lodging solutions for Roma, identifying new possible sources of financing and setting up a management and monitoring system of implementation of housing integration projects. The organizations have suggested piloting this initiative in two or three pilot sites in the region Rhône-Alpes, but projects are yet to be implemented and results are yet to be seen.

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<sup>222</sup> Members of Romeurope listed in the 2011 report: ABCR (Association Biterroise Contre le Racisme) – ALPIL (Action pour l'insertion sociale par le logement) – AMPIL (Action Méditerranéenne Pour l'Insertion sociale par le Logement) – ASAV (Association pour l'accueil des voyageurs) – ASET (Aide à la scolarisation des enfants tsiganes) – ASFR (Association de Solidarité avec les Familles Roumaines) – CIMADE (Comité intermouvements auprès des évacués) – CLASSES (Collectif Lyonnais pour l'Accès à la Scolarisation et le Soutien des Enfants des Squats) – MAC (Medical Aid Committee) – CCFD (Comité Catholique contre la Faim et pour le Développement) – FNASAT-Gens du voyage –Hors la Rue – Imédiat – LDH (French Human Rights League) – Liens Tsiganes – MDM (Médecins du Monde) – MRAP (Mouvement contre le racisme et pour l'amitié entre les peuples) – Mouvement catholique des gens du voyage – PARADA – PROCOM – Rencontres tsiganes – RomActions – Réseau de solidarité avec les Rroms de St Etienne – Romeurope Val-de-Marne – Secours catholique (Caritas France) – SICHEM (Service de Coopération Humanitaire pour les Etrangers et les Migrants) – Une famille un toit 44 – URAVIF (Union régionale des associations voyageurs d'Ile-de-France). Support Committees of Montreuil, Northwest Paris, St. Michel-sur-Orge, Meudon, the Romeurope Group of Nantes, the Rrom Group of associations of the Metropolitan area of Lyon, the Collectif de soutien aux familles roms de Roumanie, the Collectif des sans papiers de Melun, the Collectif dijonnais de soutien aux Roms.

## 12.7 Conclusion

Poverty, discrimination and social exclusion have pushed Roma communities from former Communist countries to pursue opportunities for employment and better living conditions in old EU Member states (FRA 2009). Migration of Romanian and Bulgarian nationals of Roma origin started prior to the accession of the two countries to the EU and continued after accession, though the size of the migrant group is still insignificant in comparison to the overall migrant population or the general Roma and traveller community. Although in general migrants from EU countries in France fare better in all indicators of destitution and homelessness, this study has revealed that migrant EU Roma are especially vulnerable to destitution and homelessness in France regardless of their EU citizenship.

The situation of vulnerability to homelessness and social exclusion is driven by legal as well as social factors. Studies have revealed that EU Roma migration to the EU (FRA 2009, Angelov 2011), including France, is economic, though transitory labour market restrictions have limited the access of Bulgarian and Romanian nationals to gainful employment. Measures have been taken to liberate further the access to the labour market in France by increasing the list of „open professions“ though these professions are not typical fields of Roma employment.

In line with Freedom of Movement Directive and national immigration law, EU Roma migrants, citizens of EU countries have the right to remain on the territory of France for three months, beyond which they have to prove that they have valid medical insurance, and most importantly, that they do not pose a burden on the social system. With no access to the labour market, EU Roma migrants have resorted to subsistence strategies such as begging or informal labour which are denounced by the native population and persecuted by the national authorities.

Although guidelines on the implementation of the Freedom of Movement Directive prescribe that each case of an EU citizen needs to be viewed and assessed individually and that stay beyond 3 months should not automatically result in deportation, French authorities have used the no recourse to public funds as grounds for en masse deportations of Roma migrants, citizens of Bulgaria and Romania. Roma, who remain beyond this period, do not have access to the social safety network as they cannot obtain residence permit, which would entitle them to rights such as the right to housing and family assistance.

Along with legal barriers, social barriers such as negative attitudes towards the Roma, political doctrine that perceives the migrants as „problems of their countries of origin“<sup>223</sup>, who thus need to be expediently returned, have closed the door for any possibilities for integration and social inclusion in France. Evidence exists that heavy bureaucratic procedures and lack of support from local authorities dissuade most local employers from employing EU Roma migrants. In many cases, local authorities are also disinclined to process applications for residency permit, while measures aimed at the exclusion and return of Roma are taken with priority and expediency.

The social and legal barriers to inclusion as well as the lack of access to the social safety net have pushed the Roma into deplorable living conditions, which have received significant international attention. The conditions of the bidonvilles, typical settlements of EU Roma migrants, provide an example of an extreme form of homelessness and destitution. In order to remove these embarrassing sights and to respond to pressure of the local populations, discontent with such neighbours, the prevailing practice of local authorities has been to collectively and hastily evict such settlements and return the migrants through dubiously voluntary returns. Aside from established as discriminatory, as these measures target primarily Roma settlements, the evictions and returns have proven to be highly ineffective. Most EU Roma migrants, faced with unbearable conditions in countries of origin, soon return to France to populate the same sites.

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<sup>223</sup> Telephone interview Bruno Mattei, ATD Quatre Monde , 20 May 2013.

Access to services for the homeless provide some temporary lodging solution for homeless EU Roma migrants, victims of evictions. However, in the context of insufficient places for emergency accommodation and the overall political doctrine of return of the migrants, homeless Roma are often last on the list of provision of emergency lodging. Most importantly, due to their lack of legal status and residency permit, EU Roma migrants cannot benefit from the main principle of provision of housing – the principle of continuity, whereas emergency accommodation should lead to gradual social insertion and access to mainstream housing.

In this difficult context of negative public opinion and political discourse, an economic crisis and heightened competition for assistance of a growing number of homeless and destitute persons, few municipalities have proactively sought to find alternative lodging solutions for homeless EU Roma migrants. An important realisation is that access to housing should go hand in hand with other measures supporting social integration, such as labour market mediation, improved access to health and immunisation, support for school insertion of Roma children. Effects of experiments such as integration villages are yet to be tested, though warnings of the risks of negative side effects have already been advanced by NGOs working with Roma. Temporary regularisation of the Roma camps/bidonvilles, coupled with improvement of infrastructure could also provide a lodging solution for the homeless Roma. It is important that such regularisation or placement in alternative terrains is perceived as a temporary solution, which, together with social assistance for labour market insertion, educational inclusion, should lead to access to sustainable housing.

## ANNEX I

### List of abbreviations

AVR	Assisted Voluntary Return
CAI	Contrat d'accueil et d'intégration (Integration contract)
CASF	Code de l'action sociale et des familles (Code of Social Action and Families)
CCH	Code de la Construction et de l'Habitation (Construction and Housing Code)
CEDESA	Code de l'entrée et du séjour des étrangers et du droit d'asile (law on entry and remaining on the territory for foreigners and asylum seekers)
CMU	Couverture Maladie Universelle (Comprehensive medical insurance)
CNSA	Caisse nationale de solidarité pour l'autonomie (National Solidarity Fund for Autonomy)
CoE	Council of Europe
DALO	Droit au logement opposable (Law on the Right to Housing)
DSED	Département des statistiques, des études et de la documentation (Department of statistics, studies and documentation)
FEANTSA	European Federation of National Organisations working with the Homeless
FMDI	Fonds de mobilisation départementale pour l'insertion (Fund raising for departmental integration),
FRA	European Fundamental Rights Agency
HALDE	Haute autorité de lutte contre les discriminations et pour l'égalité, (Equal Opportunities and Anti-Discrimination Commission)
INED	Institut National d'Etudes Démographiques (National Institute for Demographic Surveys)
INSEE	L'Institut national de la statistique, des études économiques (National Institute for Economics and Statistics)
LFS	Labour Force Survey
LOPSSI	Loi d'orientation et de programmation pour la performance de la sécurité intérieure (Law on Guidelines and Programming for the Performance of Internal Security)

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## ANNEX III

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[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF)

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#### National laws

Code de l'action sociale et des familles

Code de l'entrée et du séjour des étrangers et du droit d'asile (Ceseda), [www.gisti.org/ceseda](http://www.gisti.org/ceseda)

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## 13 EU10 MOBILE CITIZENS IN THE UNITED KINGDOM

### 13.1 Introduction

With the expansion of the European Union in 2004 with eight new member states in Central and Eastern Europe, the United Kingdom - unlike most member states - allowed for an unrestricted access to its labour market for these EU8 nationals. This resulted in a substantial rise in the volume of labour migration from these countries. Between 2004 and 2011 more than 1.1 million EU8 migrants were registered through the so called Workers Registration Scheme. In addition an unknown number of migrants from the EU8 countries came unregistered to the United Kingdom. With the accession in 2007 of Bulgaria and Romania the UK followed a less liberal course as labour market restrictions for EU2 nationals were imposed, which were in place until the end of 2013. Nevertheless, the immigration from these countries has also increased in recent years.

While generally most mobile citizens from the newly acceded member states have fared reasonably well in the UK in terms of employment, there is a growing concern of a increasing incidence of destitution and homelessness among segments of the EU10 population in the United Kingdom. Vulnerable groups in this respect are EU10-nationals who have become unemployed or have not been able to find a job in the first place and who fall through the mazes of the social safety, either because they lack entitlements or are unable to access these services. This chapter will look into the extent and causes of homelessness among EU10 mobile citizens in the UK and will specifically focus on the position of jobseekers and overstayers in terms of entitlements to social assistance.

Directive 2004/38/EC grants an unconditional right of residence to EU nationals during the first three months after arrival, provided they do not become an unreasonable burden on the social assistance system (Art. 6 (1) Directive 2004/38/EC and Art. 14 (1) Directive 2004/38/EC). It also states that jobseekers may not be expelled as long as the EU citizen can provide evidence that they are continuing to seek employment and have a genuine chance of finding work (Art. 14 (4) lit. b Directive 2004/38/EC).

A jobseeker is a person who moves to another Member State than the one of her/his origin in order to seek employment there. These first-time jobseekers have to be distinguished from EU citizens who retain their status as worker or self-employed person in certain cases after their employment or economic activity has ended as specified in Art. 7 para. 3 Directive 2004/38/EC. Overstayers are persons overstaying their period of job seeking after becoming unemployed within one year of their initial employment. In Art. 7 para. 3 (c) Directive 2004/38/EC, a minimum period of six months after becoming unemployed is specified.

The information in this chapter is based on available secondary sources. Most sociological and economic studies do, however, not make an explicit distinction between EU10 mobile citizens in general and the – in legal terms - very specific group of EU10-jobseekers and overstayers. As a result we will not always be able to make an explicit reference to these groups when discussing the extent of homelessness and destitution and when discussing the social causes of extreme marginalization among segments of the EU10-migrant population. It is also worth mentioning that the position of EU8 workers in the UK is far better documented than the position of EU2 workers. In as much as this is possible we will present data for both groups.

## **13.2 Destitution and homelessness among EU10 mobile citizens**

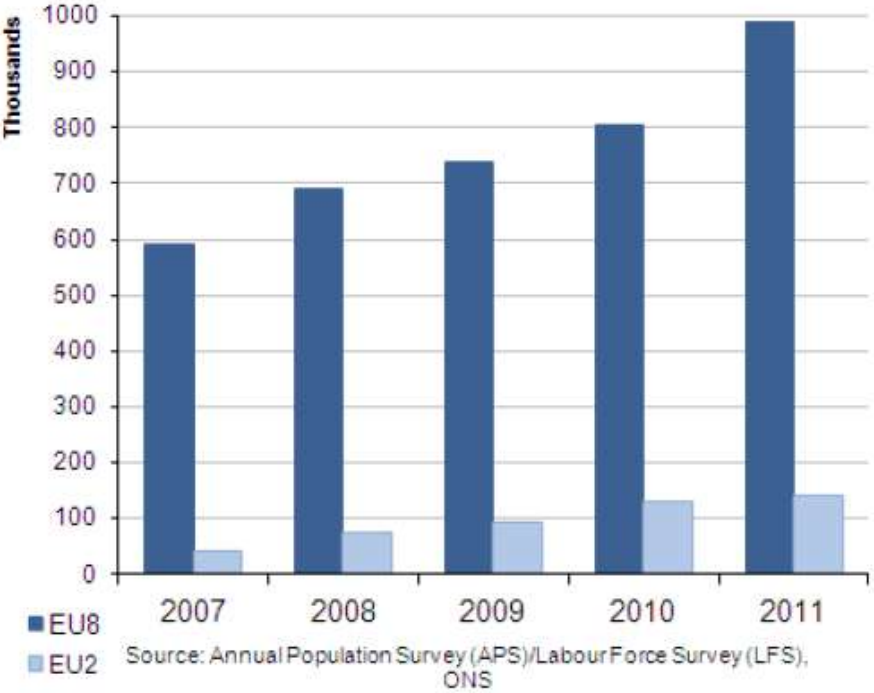
### **13.2.1 The immigrant population in the United Kingdom and characteristics of EU10 mobile citizens**

According to the Annual Population Survey the foreign born population in the UK was 7.5 million at the end of 2011, which accounts for 12 percent of the resident population. Approximately two thirds of the foreign born population came from outside the EU and one third came from within the EU (Office for National Statistics, 2012).

With respect to intra-European migration, a substantial increase in immigration from the recently acceded states can be witnessed in recent years. Between 2005 and 2009, the Polish population in the UK rose from a population of approximately 136.000 to 529.000; an increase of 289 percent. A similar increase can be witnessed for nationals from Romania. For this immigrant group population numbers rose from 15.000 in 2005 to 53.000 in 2009; an increase of 253 percent (McCollum et al., 2012).

By the end of 2011 more than 1,1 million EU10-born residents were living in the UK: approximately 1 million EU8-born residents and 140,000 EU2-born residents (see figure 13.1).

**Figure 13.1** Number of EU8 and EU2 migrants in the United Kingdom in the period 2007-2011 (x 1,000)



Source: Office for National Statistics (2012)

There is a discrepancy between the size of the net inflow of nationals from Central and Eastern European countries and the actual size of the resident EU10 population in the UK as counted in the population surveys, suggesting significant return migration. Several studies indeed point to strong patterns of temporary and circular migration among EU8-migrants (Blancheflower and Lawton, 2008; Equality and Human Rights Commission, 2010). Evidence from the Workers Registration Scheme also shows that many EU8 migrants only intend to stay in the UK for a few months, thus suggesting a pattern of return or circular migration (McCollum et al., 2012).

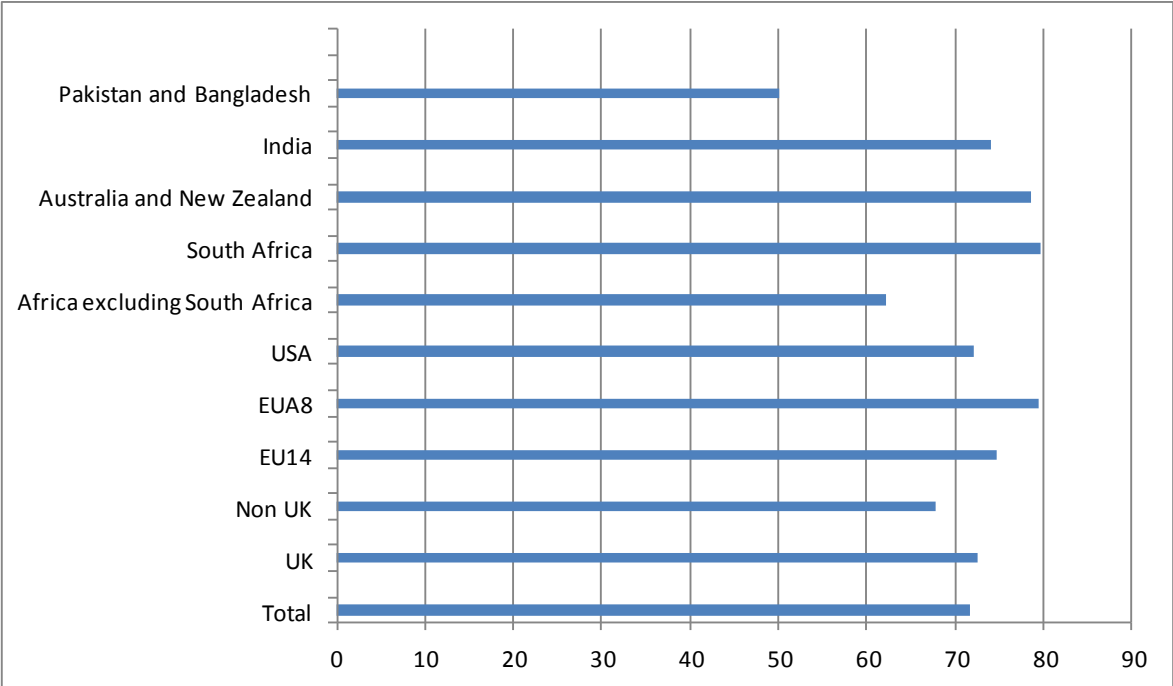
*Characteristics of EU10 mobile citizens*

EU10 mobile citizens are young compared to the UK-born population and other immigrant groups. In 2008, 70 percent of EU8-mobile citizens and 60 percent of EU2-mobile citizens were between the ages of 18 and 35. This share was one-third among all immigrants and less than a quarter among natives (Equality and Human Rights Commission, 2010). Studies also report higher educational levels on average among the recent immigrants from EU10-countries. In 2008, non-immigrants left school at age 16, while EU10-mobile citizens had a median school leaving age of 19 years of age (ibid).

Mobile EU citizens from the new central and eastern European Member States are more geographically dispersed than other immigrant groups. In 2008 approximately 26 percent of EU8 mobile citizens lived in London compared to 38 percent of non-EU8 immigrants. Certain rural areas have received significant proportions of EU8 workers, often in areas that were previously untouched by immigration. It is suggested that this geographic dispersal can have implications for short-term integration as common sources of help and information might be less accessible in these areas (Equality and human Rights commission, 2010).

Another distinguishing feature of the recent immigration from the new member states, is the relatively successful labour market insertion of EU10-mobile citizens (Dustmann et al.,2009). In 2012, nearly 80 percent of EU8-nationals were employed. A share which is significantly higher than among the UK-born population. Together with persons born in Australia and New Zealand and South Africa, EU8 mobile citizens have the highest employment rates in the UK (see Figure 13.2).

**Figure 13.2 Employment rates (persons aged 16 to 64 years) by country of birth between Oct-Dec 2012, in percentages, not seasonally adjusted.**



Source: Labour Force Survey ([labour.market@ons.gov.uk](mailto:labour.market@ons.gov.uk))

Overall unemployment rates among EU8-workers have been relatively low. While unemployment rates for some EU8-workers have been relatively high in the first year of living in the UK, these rates subsequently declined below that of UK-born workers after two years. These data indicate a pattern of successful integration of EU8 mobile citizens over time, but also selective return migration is likely to play a role in these low unemployment rates (Equality and human Rights commission, 2010). It is noteworthy that in the economic crisis of 2008 – 2009 unemployment rates of EU8 workers remained low in contrast to rising unemployment rates for other groups (ibid). The fact that EU8-workers are predominantly employed in hospitality and agricultural sectors might explain this limited effect of the economic crisis, as particularly in agriculture the demand for immigrant labour has been relatively consistent. In other sectors the requirement for immigrant workers has receded to a large extent in recent years (McCollum et al, 2012).

Overall, EU8 workers work in less skilled occupations than other immigrant groups, notwithstanding their generally higher educational levels. Many EU8-migrants have in fact downgraded their occupational status upon migration to the UK. Pollard, Latorre and Sriskandarajay (2008) note that more than half of EU8 workers hold jobs in unskilled occupations, as compared to twenty percent of other immigrants and 18 percent of natives. Generally EU8

mobile citizens have low wages (they typically earn between 60 to 70 percent of natives' median wage in the same year) and work on short time contracts in high turnover industries. These low wages in combination with involuntary job changes can put workers in a precarious position. The fact that many workers find jobs through recruitment agencies instead of directly with employers also contributes to the sense of job insecurity (Equality and Human Rights Commission, 2010). The situation of EU2 migrants is more favourable in this respect as the majority of EU2 workers have jobs in the top two occupational skill groups (Migration Advisory Committee, 2008). This is a direct result of the labour market restrictions these groups faced until the end of 2013. EU2 nationals could only work in highly skilled occupations, self employment and in lower skilled work through sector based schemes and quotas. Some suggest that with the ban of the labour market restrictions, the situation of the EU2 mobile citizens might come to resemble the EU8 mobile citizens (Migration Advisory Committee, 2008).

### **13.2.2 Poverty among the immigrant population in general and the EU10 mobile citizens in the United Kingdom**

In 2011, almost 23 percent of the total UK population were considered to be 'at risk of poverty or social exclusion' according to the official EU definition. According to this definition people are considered 'at risk of poverty and social exclusion' if they are experiencing at least one of three conditions i.e. having a household income below the poverty threshold, being severely materially deprived, or living in a household with low work intensity. The UK share of persons at risk of poverty and social exclusion is somewhat below the EU average (Office of National Statistics, 2013). The experience of poverty is, however, not distributed evenly across different segments of the UK population. Indeed, many studies document unfavourable circumstances in terms of poverty and social exclusion for Black and Minority Ethnic (BME) groups in the UK. BME groups are more likely to be living in poverty and to experience homelessness, are more likely to be unemployed and are more likely to experience ill health than 'white' British people.<sup>224</sup> Particularly vulnerable in this respect are the black Caribbean and African communities and the Bangladeshi and Pakistani communities.

It is difficult to present specific data on poverty and social exclusion for EU10 nationals. In studies which focus on ethnicity and poverty migrants from the Central and Eastern European countries are lumped together under the category 'white other' (in order to differentiate this group from 'British white').<sup>225</sup> Needless to say, this category is far too wide (i.e. including persons from many different 'Western' countries and including both established communities and new immigrants) to provide any accurate details on the specific situation of EU10 nationals.

EU-SILC presents data by country of birth which are more suitable to describe the situation of immigrants, but also in this case specific information on EU10 nationals are lacking. For 2010, EU-SILC data shows that for the total UK population 'the at risk of poverty or social exclusion rate' was 21 percent, whereas for the foreign born this share was 28 percent. The risk of poverty or social exclusion rate is highest among non-EU-born people and lowest among EU born. In fact, the poverty rate among EU born is significantly lower than for the population as a whole (see table 13.1). Again, we are not able to differentiate between nationals from various European countries.

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<sup>224</sup> <http://www.irr.org.uk/research/statistics/poverty/>

<sup>225</sup> The UK Census classifies ethnicity into several groups: White, Black, Asian, Mixed, Chinese and Other. These categories form the basis for all National Statistics ethnicity statistics



**Table 13.1 Persons at risk of poverty or social exclusion by groups of country of birth (20-64 years) in 2010 (%)**

	<b>Risk of poverty or social exclusion</b>
Total population	21%
Foreign born	28%
EU born	14%
Non-EU born	34%

Source: EU-SILC, 2012

While there is evidence that some segments of the EU10 population are experiencing (extreme) poverty in the UK, it is impossible to establish the exact extent of poverty and destitution among this group as specific data is lacking. The fact that labour market participation rates are very high among this group could lead one to suggest that the incidence of poverty among EU10 migrants is relatively limited. However, this positive element might be counteracted by the fact that many EU10 nationals are performing insecure un- or low-skilled jobs. What the final outcome is of the interplay of these factors on poverty and social exclusion is hard to establish as robust data on poverty and destitution among EU10 nationals in the UK is lacking.

### **13.2.3 Housing and homelessness**

Three out of four recent migrants in the UK are housed in the private rental sector (Perry, 2012). New migrants rely on this sector because it offers more flexibility and is more accessible than the social rented and owner-occupied sectors. In the social sector migrants are confronted with eligibility criteria and waiting lists. Buying a house is often constrained by deposit demands and a tight mortgage market.

Like most new arrivals in the UK, EU10 mobile citizens are heavily concentrated in the private rented sector. Little use is made by these new immigrant groups of social housing due to eligibility criteria (see also section 13.3.1) and local waiting lists, though it is expected that the use of social housing will grow as EU10-mobile citizens decide to stay for longer periods in the UK. Migrant workers are often concentrated in certain neighbourhoods. Wiles et al (2008) show that informal networks, information sharing and mutual assistance are very important sources in finding (initial) accommodation. Employers and agents also play a role in placing migrants in houses in multiple occupations (Perry, 2012)

Several studies report precarious housing conditions for many EU8 mobile citizens. Their housing situation is characterized by overcrowding, high rents, poor conditions, insecurity and employer-provided housing with unclear and undocumented tenancy arrangements (Equality and Human Rights Commission, 2010; Local Government Association, 2007; Spencer et al, 2007; McNaughton, 2008). Wiles et al. (2008) found particularly acute housing situations in agricultural areas with people being housed in caravans and farm out buildings. Poor housing conditions and overcrowding are sometimes the responsibility of the landlord, especially in cases of tied housing, but migrants themselves also choose to sublet in order to reduce housing costs. Spencer et al (2007) point to the trade off migrants make between earning and saving as much money as possible and acceptable housing conditions. The fact that many migrants viewed their situation as temporary explains to some extent why they accept unsatisfactory housing conditions.

According to Pleace (2010) only a minority of persons from EU10 countries are actually becoming homeless in the minimal sense, i.e. sleeping rough or depending on shelter accommodation.

Nevertheless, homelessness does occur among these groups and appears to be growing in numbers. Available data, - often based on surveys by frontline homelessness agencies - illustrate this increase (see table 13.2).

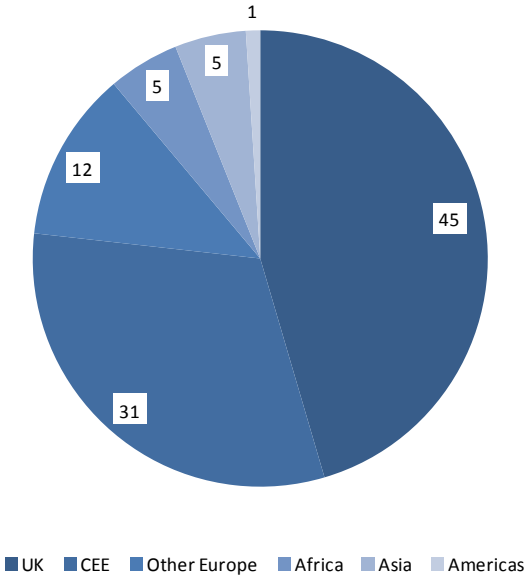
**Table 13.2 Share of EU10 nationals among rough sleepers, based on street counts or contacts by street workers**

Source	City	2006	2007	2008	2009	2010	2011	2012
Homeless Link (2010)	London	15%	18%	25%				
Shelter (2008)	London			15 - 20%				
Street to home/ CHAIN (2012)	London						25%	31%

While the different data sets show differences in the proportion of EU10 mobile citizens among the rough sleepers in London, all sources indicate a growing proportion of EU10 nationals among the capital’s rough sleepers.

The Combined Homelessness and Information Network (CHAIN) database provides the most recent information on the background of rough sleepers in London based on information on rough sleepers who have been contacted by outreach teams or who have accessed accommodation for rough sleepers (see figure 13.3). From these data it becomes evident that EU10 nationals are the second largest group, after the UK born, among London’s rough sleeper population.

**Figure 13.3 Nationality of people seen rough sleeping by outreach or BBS services (nov-dec 2012)**



Source: Street to home.

A more detailed breakdown in nationalities shows that most rough sleepers among EU10 nationals come from Poland and – to a lesser extent in absolute numbers – from Romania.<sup>226</sup> Together these two groups account for more than half of the EU10 rough sleepers population (see table 13.3). More anecdotal evidence comes from recent newspaper articles addressing the growing problem of Romanian Roma found begging and rough sleeping on the streets of London and accessing frontline homeless services.<sup>227</sup>

**Table 13.3 Nationality of rough sleepers in London**

Nationality (or continent)	Number	%
<b>United Kingdom</b>	<b>1,744</b>	<b>48</b>
<u>Rest of Europe</u>		
Poland	404	11
Romania	210	6
Lithuania	121	3
Republic of Ireland	105	3
Czech Republic	73	2
Portugal	62	2
Slovakia	58	2
Latvia	54	1
Hungary	45	1
Bulgaria	34	1
Estonia	15	0
Slovenia	2	0
Other Europe	240	7
<i>Of which:</i>		
CEE countries that joined the EU in 2004 or 2007 <sup>(a)</sup>	1,016	28
<u>Rest of the world</u>		
Africa (excluding Eritrea)	189	5
Asia	185	5
America	32	1
Eritrea	30	1
Australasia	4	0
<b>Total non-UK</b>	<b>1,863</b>	<b>52</b>
<b>Total for which information exists</b>	<b>3,607</b>	<b>100</b>
<i>Missing data</i>	268	-
<i>Not known</i>	100	-
<b>TOTAL</b>	<b>3,975</b>	

(a) Central and Eastern European Countries joining the EU in 2004 or 2007 are also known as the A10 countries. They are all the individual countries listed under 'Rest of Europe' except the Republic of Ireland and Portugal.

Source: Street to home. CHAIN Bi – Monthly Report 1<sup>st</sup> November – 31<sup>st</sup> December 2012

<sup>226</sup> Considering the size of the total Romanian population in the UK, the share of homeless people among this group is in effect larger than among the Polish population.

<sup>227</sup> See e.g. [http://www.thetimes.co.uk/tto/news/uk/article3767290\\_ece](http://www.thetimes.co.uk/tto/news/uk/article3767290_ece); <http://www.dailymail.co.uk/news/article-2314252/Bryanston-Square-Marylebone-turned-dump-homeless-Romanians.html>

Data on 2006, show that homeless EU8 nationals are more likely to be male and are generally older than the average EU8 mobile citizens (as compared to statistics from the Worker Registration Scheme). The vast majority were unemployed or working irregularly and were less likely to be registered on the WRS (Homeless Link, 2006).

Based on information from frontline homelessness agencies McNaughton (2008) makes a distinction between two types of homeless EU8 mobile citizens in the UK i.e. EU8 nationals with long term and complex needs in relation to substance use and mental illness and EU8 nationals who came insufficiently prepared for life in the UK. While robust data on the actual size of these groups is lacking, service providers acknowledge that the needs of these two group vary substantially. For the latter group information, access to employment, help with documents and (sometimes) assisted return are ways to resolve their homelessness.

### **13.3 Access to the social safety net and legal causes for destitution**

#### **13.3.1 Housing: social housing and housing benefits and allowances**

Approximately 18 percent of the total housing stock in the UK consists of social or public housing. While originally social housing was solely built and administered by local authorities, since the late 1970s other organizations also provide social housing. To date, approximately 40 percent of the social housing stock is owned by local authorities (often referred to as council housing), another 45 percent by non-profit housing associations (also known as Registered Social Landlords) and 15 percent by so called arm's length management organizations where the housing stock stays with the local authority but is managed by a not-for-profit organization. Since the mid 1980s the UK has tried to reduce council housing by introducing 'right to buy legislation' which enables secure tenants of councils and housing associations the legal right to buy the home they are living in. A substantial part of the UK's population nevertheless still live in council housing. In 2008 an estimated 1.6 million households were on waiting lists, which is the equivalent or around 4 million people (Robinson, 2009).

To help people with limited income to pay for rented accommodation Housing Benefit is available. Housing Benefit is a means-tested social security benefit for tenants in the social housing sector. The primary legislation governing Housing Benefit is the Social Security Contributions and Benefits Act 1992. In 2008 the so called Local Housing Allowance (LHA) was introduced to provide housing benefits entitlements to tenants renting accommodation in the private sector. The legislation to enable LHA was introduced under the Welfare Reform Act (2007). LHA is also means-tested and is calculated on the basis of the number of bedrooms (in relation to household size) and a maximum 'reasonable' rent for the area given the property size. LHA is administered by the local authority in whose area the property being rented lies. Council tenants receive the Housing Benefit as a rebate, thereby reducing the level of rent payable by the tenant. LHA is paid directly to the claimant. Only in very specific cases is the allowance directly paid to the landlord. By August 2012 there were more than five million claimants of Housing Benefits in the UK (Private Eye, Issue 1332, p.9).

As with Housing Benefit, low earners and unemployed people may be eligible for help in paying Council Tax. The Council Tax Reduction is available to renters and homeowners. Additionally, housing payments are available to those who need further help to meet their housing costs. Only persons who are eligible for Housing or Council Tax Reduction can claim Discretionary Housing

Payments (DHP). The funds for DHP are cash limited and are awarded entirely at the discretion of a Local Authority. This benefit is often used to prevent high levels of hardship among Housing Benefit claimants e.g. due to unforeseen legal costs, extra costs for child maintenance or care for relative or friends, additional heating costs due to sickness or disability.

Housing benefits are only available to those who are treated as liable to pay rent, have a permanent right to reside in the UK and who pass the Habitual Residence Test (Regulation 9 of the Housing Benefit Regulations) (see also 13.3.4). In addition, Housing Benefit claimants (and their partners) have to have a valid national insurance number. If a person who does not have permanent residence rights submits a claim, the Home Office may be informed, which could result in deportation. In practice, this does however not usually seem to be the case due to the operation of the Data Protection Act. New or re-entrants into the country who claim Housing Benefits within two years of entry may also be excluded from benefits.

### **13.3.2 Social housing and homelessness assistance and local connection criteria**

The United Kingdom does not have a written constitution. The right to housing and housing assistance is laid down in the Housing Act 1996 and the Housing and Regeneration Act 2008. Additionally, statutory guidance helping local authorities handle housing situations for the homeless, can be found in the Homelessness Code of Guidance for Local Authorities 2006 and in Allocation of accommodation: Guidance for local housing authorities in England 2012. Housing, housing benefits and homelessness assistance are all administered by local councils. All local authorities have a Housing Strategy to ensure that council houses are let fairly and that the legal obligations to rehouse people in need are met. Properties may be reserved for priority cases e.g. people living in poor overcrowded conditions, with medical or welfare needs and for the legally homeless, provided they are not intentionally homeless.

The council must provide help to persons classified as legally homeless, which can range from providing (emergency) housing or advice and assistance to help resolve a housing problem. Persons who are not classified as legally homeless, are not entitled to the same level of help. Persons may be classified as legally homeless based on the following criteria:

- lack of legal rights to live in an accommodation anywhere in the world;
- inability to physically access their home e.g. due to the fact that they are locked out by the landlord;
- persons who cannot stay in their home due to risk of violence or abuse;
- persons who are forced to live apart from family and people they normally live with because there is no suitable accommodation;
- persons living in very poor conditions (e.g. overcrowding).<sup>228</sup>

Eligibility for assistance depends on immigration status. EU nationals who are classified as workers or self-employed can get help from a local council if they become homeless, provided that they are classified as legally homeless and are unintentionally homeless. Jobseekers, EU nationals in the first three months of their stay in England and EU nationals who are supporting themselves financially and are 'habitually resident', are not entitled to help from the council if they become homeless.

Officially, once a person is eligible to housing and housing benefit everyone should be treated the same and have equal opportunity to housing. However in practice there may be obstacles, especially for immigrants, due to a local connection test which local councils can apply. Criteria for a local connection are whether a person has 1) lived in the area and for how long (6 months out of the last 12 months or 3 years out of the last five years); 2) a family connection in the area; 3) work in the area; 4) a connection with the area for another special reason (e.g. specialist health care or religious reasons).<sup>229</sup> If a council decides that an applicant does not have a local connection, it may decide to send the applicant to a council in another area.

In 2011, the court in *Bah v United Kingdom* found that "it is legitimate to put in place criteria according to which a benefit such as social housing can be allocated, when there is insufficient supply available to satisfy demand, so long as such criteria are not arbitrary or discriminatory".<sup>230</sup> Thus it is acceptable to put in tests such as the local connection test, in order to protect the small amount of social housing, as long as the test is not openly discriminatory. The local connection criteria is harder for migrants (for EU born as well as non-EU born) to fulfil. While it is not directly discriminatory it may indirectly negatively affect migrants.

Indeed, local attachment has increasingly become an important aspect in the allocation of social housing. The 2011 Localism Act, gave more power to local councils in how to administer the housing in their area. It allowed the local councils more freedom in deciding how to distribute social housing. According to Wilson (2013) this has given local authorities an instrument to bar immigrants. More recently, in the Queen's Speech of May 2013 measures were proposed to focus on the local element even more in the distribution of social housing. This may have implications for access to social housing for immigrants, even though it should be noted that 95 percent of new immigrants are housed in the private sector. More worrisome however, could be the new requirement on private landlord to check tenants immigration status. Some fear that this

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<sup>228</sup> <https://www.gov.uk/emergency-housing-if-homeless>

<sup>229</sup> Information obtained from:

[http://england.shelter.org.uk/get\\_advice/homelessness/help\\_from\\_the\\_council\\_when\\_homeless/local\\_connection](http://england.shelter.org.uk/get_advice/homelessness/help_from_the_council_when_homeless/local_connection)

<sup>230</sup> *Bah v United Kingdom* [2011] ECHR 1448, paragraph 49

requirement could put off respectable landlords from renting to any migrant. This could drive migrants further into the worst parts of the private rental sector (Perry, 2013).<sup>231</sup>

### 13.3.3 Social assistance

The social security system in the UK is a complex and hybrid combination of social insurance schemes (contributory benefits), national insurance schemes (universal benefits) and means-tested benefits. After the Second World War, many national insurance acts regarding to health, poverty, employment, training and housing were introduced in the UK, planning to cover people 'from cradle to grave'. The basis for these policies was the Beveridge Report (1942) which proposed to cover the entire population with the same flat rate benefits financed by the government through taxation. However, this objective of serving the entire population was never achieved and has resulted in the introduction of other benefits – particularly means-tested benefits – to amend inadequate and poor coverage of the national insurance schemes. To date a patchwork of benefits are available; the website of the Department of Work and Pensions mentions 26 different types of benefits.<sup>232</sup> In an attempt to simplify the highly complex and individuated benefit system, the Cameron government announced the Universal Credit in April 2013, which is expected to roll out across the country by 2017. This credit combines 7 means-tested unemployment benefits and tax credits into a single payment in an attempt to make it easier for claimants to afford to move from benefits into work.

Paul Sicker identifies the Pension Credit, Jobseeker's Allowance, Employment and Support Allowance and Income Support as the four basic elements of the UK's social safety net which are particularly important as they guarantee a minimum level of income for many recipients.<sup>233</sup>

#### *Pension Credit*

Pension credit is a tax-free benefit for people of State Pension Age in the UK. It consists of two parts, i.e. guaranteed credit which tops up the weekly income to a guaranteed minimum amount and a savings credit for people who have saved some money towards their retirement such as a pension.

#### *Jobseeker's Allowance*

Persons over 18 years old and under the state pension age who are out of work, but are capable of working and are actively seeking employment are eligible for Jobseeker's Allowance (JSA). A distinction can be made between contribution-based JSA and income-based JSA. The former is for people who have paid National Insurance Contributions over the last two years. This benefit is available for a maximum of 182 days. The latter benefit is for persons who have not paid (enough) National Insurance Contributions and is based on income plus savings. It is paid until the person finds work.

Eligibility for JSA is based on registration as a jobseeker at a Jobcentre, actively looking for work, having a right to reside and having habitual residency.

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<sup>231</sup> <http://www.guardian.co.uk/housing-network/2013/may/15/housing-clampdown-migrants-poor-accommodation>

<sup>232</sup> See: [www.gov.uk/benefits-adviser](http://www.gov.uk/benefits-adviser)

<sup>233</sup> Information obtained from: <http://www2.rgu.ac.uk/publicpolicy/introduction/socialsecurity.htm>. Based on the more detailed textbook by Paul Spicker (2011) *How social security works: An introduction to benefits in Britain*. Policy Press.

### *Employment and support allowance*

Employment and support allowance (ESA) is paid to persons whose ability to work is affected by an illness or disability. Persons unable to work or in need of support in order to work may be eligible for ESA.

### *Income support*

Income support is extra finance to help people on a low income, whether they are employed or unemployed. Jobseekers who do not want to sign on for JSA can apply for income support but they cannot claim both. Income support is e.g. given to people who are unable to work because they are disabled, are caring for somebody full-time or are a single parent,

## **13.3.4 Habitual Residence Test**

Most applicants for local authority housing or welfare benefits have to pass the Habitual Residence Test. The Habitual Residence Test was first established in 1994. The test is meant to prevent persons claiming social benefits immediately upon arrival in the UK. The test applies to the following benefits: income support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit, Housing Benefit, Council Tax Reductions and access to local authority housing.<sup>234</sup>

As of 2004, the test is part of a two step approach, first a right to reside must be proven before the actual test is considered. Habitual residence is not narrowly defined, but is instead decided upon by looking at all the facts of a case. However, two main requirements are essential, i.e. residence must be for an 'appreciable period of time' and there must be an intention to settle in the UK. What exactly qualifies as an 'appreciable period of time' is assessed on the basis of the length, continuity and nature of the residence, however, case law suggests that the period lies between one and three months (CIS/4474/2003). In the Guidance provided by the Department of Work and Pensions<sup>235</sup> this is explained as follows: "The term 'habitual residence' is not defined in regulations but it is intended to convey a degree of permanence in the person's residence in the CTA."<sup>236</sup> In particular, it is intended to refer to a regular physical presence enduring for some time, usually (but not always) beginning at a date in the past and intended to continue into the foreseeable future. It implies an association between the individual and the country and relies substantially on fact. It will be necessary to decide in the light of the law, caselaw, the available guidance and the facts of each individual case whether a claimant is habitually resident in the CTA."(C4 4.80).

Based on this guidance relevant factors to be taken into account are length and continuity of residence, reasons for coming to the UK, future intentions, employment prospects and centre of interest. In the Guidance of DWP it is stated that: "The list is not exhaustive and should not be used as a tick sheet or as a means of scoring points for and against a person satisfying the test. No single aspect is consistently likely to be the deciding factor though some may be more persuasive in certain circumstances than in others" (C4 4.86).

EEA nationals who are not covered by the regulations supporting work and self-employment have to pass the Habitual Residence Test. Other categories of EEA nationals are exempt from the Habitual Residence Test (see box 1.6 for an overview).

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<sup>234</sup> Information based on <http://www.housing-rights.info/habitual-residence-test.php> , retrieved on 25 April 2013.

<sup>235</sup> <http://www.dwp.gov.uk/docs/hbqm-c4-people-from-abroad.pdf> accessed on May 23th, 2013.

<sup>236</sup> CTA refers to the Common Travel Area which encompasses the UK, Channel Islands, Isle of Man and the Republic of Ireland.



**Box 1.6: EEA nationals exempted from the habitual residence test**

EEA nationals and their family members (including nationals of Bulgaria and Romania) in self-employment, including periods when they are temporarily not working due to sickness;

EEA nationals and their family members (including nationals of Bulgaria and Romania) engaged in employment;

EEA nationals and their family members (other than nationals of Bulgaria and Romania in their first year of authorized work in the UK) who are temporarily unable to work but who continue to be treated as workers;

EEA nationals and their family members (other than nationals of Bulgaria and Romania in their first year of authorized work in the UK) in certain circumstances who have retired from employment or self-employment in the UK due to incapacity or old age.

Source: <http://www.housing-rights.info/habitual-residence-test.php>

### 13.3.5 Access to the social safety net for EU10 mobile citizens

Many European citizens living and working in the UK are allowed to apply for social housing and social benefits, but some have restricted rights. The following section describes the situation for England only.<sup>237</sup>

EEA nationals have a right to live in England for three months after arriving in the UK. Persons who are not working during these three months are not eligible for emergency housing in case of homelessness, cannot apply to go on the waiting list for social housing and cannot apply for social security benefits. The situation is different for EEA nationals who are working or who are self-employed. These categories do have a right to apply for social housing, can claim welfare benefits and can get help from a local council if they become homeless. EEA nationals are classified as workers in the following circumstances: 1) they are currently working; 2) they are temporarily unable to work because of sickness or an accident; 3) were working for at least one year and are now registered as a jobseeker; 4) were in work but are now in vocational training. In addition, if a worker last lost his job and has worked for less than one year, this persons remains 'a worker' for six months after losing his job, as long as he is registered as a jobseeker.

Until the end of 2013 transitional regulations were in place for Bulgarian and Romanian nationals. Nationals from these two countries had only rights as workers (i.e. access to social housing, social benefits and homelessness support) as long as they are employed. If EU2 workers lost their job or stopped working for other reasons within 12 months of working in the UK, they were no longer eligible for homelessness support from a local council and the right to apply for social housing and social benefits.

Restricted rights apply to EU nationals who are jobseekers. Jobseekers do not have the right to apply for social housing and are not entitled to help from the council if they become homeless. However, in some circumstances they may be able to claim some social benefits if they are also 'habitually resident'. However, this latter requirement they are unlikely to fulfil which in practice excludes them from benefits.

To sum up, access to the safety net for EU10 mobile citizens depends on their status as workers or self-employed. The most precarious situations exists for jobseekers and overstayers as they are not entitled to housing support. Social benefits can only be obtained after passing the habitual

<sup>237</sup> Information obtained from: <http://england.shelter.org.uk>.

residence test. Weiss (2013) refers to this situation as a 'hole in this safety net'. The habitual residence test requires proof of the right to reside and habitual residency. Particularly the vulnerable jobseekers with social problems and little employment prospects are very unlikely to pass this test. However, as Weiss (2013) shows also long-term migrants are sometimes excluded. For example a single parent who gives up work to look after her child is not covered, neither is a person who was economically supported by her spouse she (or he) has divorced or left. The restrictions imposed on EU mobile citizens in accessing social benefits has led to infringement procedures by the Commission against the UK.

**Box 1.7: Discussion on the use of social benefits by EU mobile citizens in UK**

Early 2013 the British prime minister Cameron declared that EU mobile citizens in the UK were overusing the social security system and were imposing a disproportionate burden on the UK taxpayer. A heated discussion followed and several proposals were announced by the Cameron government to curb the use of benefits for EU nationals.

What is the situation? EU mobile citizens are entitled to the same benefits as UK citizens once they have become habitually resident. Due to the fact that the UK benefit system for those of working age is predominantly means-tested, i.e. based on income and residence and not on contribution, EU citizens – especially from the poorer EU countries – fare better than they would in countries with more contributory based systems. However, as Portes (2013) explains this does not imply a disproportionate burden on British taxpayers. In fact, research seems to indicate that EU mobile citizens – especially those from the newly acceded member states – are net contributors to the Public Treasury

Dustmann et al. (2009), for example, showed that EU8 mobile citizens were 60 percent less likely to receive state benefits or tax credits and were 58 percent less likely to live in social housing than the native population. Even after correction for demographic characteristics, EU8 mobile citizens were still 13 percent less likely to receive benefits and 28 percent less likely to live in social housing. The study also shows that between 2004 and 2008, EU8 mobile citizens made a positive contribution to public finance due to higher labour force participation rates, relative higher payment of indirect taxes and a lower use of benefits and social services (ibid).

Portes (2013) adds that even EU mobile citizens who are not working are less likely to claim benefits than the native born population. Of all EU mobile citizens of working age about 5 percent claim an 'out of work benefit', while this share is 13 percent for the native born.

### **13.4 Social causes of destitution and homelessness**

Studies report various causes of homeless and destitution among EU10 mobile citizens, mostly relating to individual characteristics of migrants and exploitative practices by employers. Loss of marginal employment or failure to obtain such employment are often a direct cause of homelessness among EU10 nationals, however, at the root lie other factors which make particular segments of the EU10 population vulnerable for destitution and homelessness. Lack of English language skills, insufficient knowledge on relevant issues such as work documents or how to access accommodation and support, insufficient consideration of the job offer received (salary, temporary contract, tied housing) and an unrealistic estimation of the cost of living in the UK are frequently mentioned underlying factors which contribute to homelessness among EU10 mobile citizens (Crunch and Homeless Link, 2011; Wiles et al, 2008). In addition, some homeless EU10

nationals have migrated because they were having problems such as mental ill health and substance use in their home countries and hoped to make a fresh start in the UK. Many of them however, we never able to find (steady) work in the UK (Stephens et al. 2010). These studies conclude that many homeless EU10 mobile citizens often are ill prepared for life in the UK. Research among homeless EU10 nationals indeed shows that many EU10 mobile citizens who end up sleeping rough come from poor backgrounds and/or areas of high unemployment in their home countries and have relatively low levels of education and work skills. However, evidence also suggests that the majority of these migrants – despite coming from poor backgrounds - have not experienced homelessness in their countries of origin (Crunch and Homeless Link, 2011). All in all we can conclude that homeless EU10 migrants deviate from the general characteristics of EU10 workers in terms of age and education, which seems to indicate that homeless EU10 mobile citizens are a specific segment of the EU10 population.

Another interesting observation is that homeless EU10 nationals are more likely to use informal routes into work in the UK, accessing work through their social network or unregistered employment agencies. These informal routes make them more vulnerable to labour exploitation and trafficking. Indeed, several studies report incidences of labour exploitation among migrant workers from the Central and Eastern European countries (Equality and Human Rights Commission, 2010; Crunch and Homeless Link, 2011). Research points to the withholding of salary, disproportionate wage deductions for housing tied to the job, the withholding of documents and passports and dangerous or unhealthy working conditions. Language barriers and lack of knowledge about working practices in the UK make them vulnerable to exploitation. Often they are reluctant to report to the authorities for fear of losing their jobs.

### **13.5 Services for the homeless and good practices**

There is a vast array of schemes and services targeted at the homeless in the UK. As explained before, local authorities are obliged to provide support – ranging from emergency shelter to providing advice - for the legally homeless. There are many charities working in the field of housing and homelessness. For example Shelter England is the largest charity providing services such as advice and information directly to homeless people in England, but also engaging in research and lobbying for better solutions for homeless people and providing training for professionals working in the sector. Shelter is primarily funded by donations from individuals, organizations, charitable foundations and businesses. In addition, there are day centers, night shelters, hostels and outreach teams in many cities throughout the UK which are run by various charities. Homeless Link represents over 500 of these front line homelessness organizations. Homeless Link also provides information on available homelessness services at a local and regional level which can be obtained from an online directory *Homeless UK*. In 2011, Homeless Link reported approximately 200 day centers in England serving 10,000 persons a day. There are an estimated 43,000 bed spaces in direct access hostels and second stage accommodation for non-statutory homeless people in England.<sup>238</sup>

These frontline organizations have over the last years increasingly been confronted with homeless migrants from the new accession countries. A study from 2006 by Homeless Link showed that many of these homeless EU8 nationals had problems due to lack of work and

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<sup>238</sup> <http://homeless.org.uk/sites/default/files/Rough%20Sleeping%20Mar%202011.pdf>

accommodation, sometimes in combination with language barriers. For this group support needs concentrated on straight-forward advice and short time help in getting a job and a place to live. However, some EU8 homeless experienced more serious problems which need more specialist support. This support could often not be given due to a lack of recourse to public funding. Some types of support, e.g. hostel accommodation, is dependent of Housing Benefits. Jobseekers are very unlikely to qualify for this benefit. The lack of access to more specialized support has been identified as a risk factor for rough sleeping (Homeless Link, 2006).

Homeless EU10 nationals who are not eligible for mainstream hostels and other temporary forms of accommodations funded through Housing Benefit, often depend on emergency shelters and drop ins. These drop ins provide food, a place to stay during the day, sometimes a bed overnight, washing facilities, advice and access to other services. Many of these drop ins are managed by faith based organizations. In 2008, McNaughton (2008) signalled that some of these organizations found themselves strained by the demand from EU8 migrants and, as a consequence, were turning people away and were rationing their services to EU8 migrants. However, many more organization have developed targeted support for this group, e.g. through bilingual advice workers or volunteers. By providing information on how to access employment and search for accommodation, these services assist EU10 nationals that came insufficiently prepared for life in the UK. Some organizations have also tried to link individuals into support to address additional support needs, such as dealing with substance abuse. An example of short-term targeted support to Eastern Europeans is the Olallo project in Euston, London (cf Crunch and Homeless Link, 2011). This project focuses on re-integration of migrant workers in the UK labour market (see box 1.8).

**Box 1.8: The Olallo project for EU10 rough sleepers**

The Olallo project is a charitable funded accommodation project for EU10 rough sleepers in London who need support in (re-)entering the UK labour market. The project offers housing for rough sleepers in apartments with self-contained kitchens. Apart from accommodation, the project also offers employment training programmes. Migrants are helped to improve their English and to use computers. The focus of the project is on those who are capable of employment. Those who cannot work due to a lack of skills, motivation or other support issues, are offered reconnection services back to the home country. The funding of the project comes from the church and private donations.

Source: <http://www.saintjohnofgod.org/servicedetail.php?passedid=37>, accessed on May 28, 2013.

According to McNaughton (2008) the limited access to welfare provisions of EU8 nationals until January 2012, might help explain why charities have focused on finding employment for this group as the fastest way out of homelessness. The author, however, also poses questions whether this approach offers a sound solution for certain categories of vulnerable homeless EU10 nationals with multiple problems. As restrictions for EU8 workers to welfare provisions have been lifted since 2012 and for EU2 workers since 2014, there seems to be less formal barriers to providing homelessness assistance to this group. However, homeless jobseekers remain a very vulnerable category as they are not entitled to benefits.

Apart from the initiatives discussed above aimed at providing information and practical support to homeless EU10 nationals to finding employment and accommodation, there is also a group of homeless EU10 nationals with multiple problems whose needs are unlikely to be met in the UK. For these extremely vulnerable and socially excluded EU10 mobile citizens other approaches are adopted, basically along two lines i.e. assisted voluntary return (reconnection) and prevention of

migration. An example of the latter strategy is *Monar Markot*, a Polish homelessness charity which tries to discourage migration to other EU countries among people who are considered as very vulnerable to social exclusion and homelessness. In order to achieve this aim, the organization offers accommodation and support services and tries to generate local work opportunities (Crunch and Homeless Link, 2011).

The activities by Barka Foundation are an example of initiatives aimed at repatriation of destitute and homeless Polish immigrants. In partnership with a London Borough Council and a homeless service provider in London, Barka Foundation offers reconnection services for individuals back to their home country. Bilingual workers from Barka are employed at a mainstream homelessness agency in London. During outreach activities these workers try to contact Eastern European rough sleepers and invite them to the day centres for the homeless. These workers provide information and general advice and can assist people with additional support needs in returning to Poland by e.g. helping to access support in Poland or making contact with family networks. Those who are unable to connect with their communities and families, can be integrated in a rehabilitation programme (the Barka Network of Inclusion Program) in Poland where they can access detox and learn new work skills. More than 1.000 homeless Eastern European Migrants, 90 percent of whom are Polish, have returned from London to Poland for detox, social rehabilitation and employment programs.<sup>239</sup> These activities are not wholly uncriticized as not all returnees are successfully re-integrated into mainstream society in Poland.

The initiative 'Routes Home' provides a website with initiatives aimed at reconnection of EU nationals who are rough sleeping to their countries of origin. The site provides information on available services for people who need additional assistance in order to return successfully. The site is part of the Mayor of London's programme to end rough sleeping and provides information on homeless services in sixteen EU member states.<sup>240</sup>

While reconnection might be a solution for certain categories of destitute and homeless EU10 mobile citizens, it is certainly not an overall solution to homelessness among EU10 nationals as some have warned (cf McNaughton 2008). For those not wishing to return and able and willing to work in the UK, practical assistance in accessing services and employment remains an important support strategy.

## 13.6 Concluding remarks

As one of the first countries to open up its labour market to the newly acceded Member States in Central and Eastern Europe, the UK has witnessed significant migration flows from the EU10 countries. As a matter of fact, nowadays the Polish are the second largest foreign born migrant group in the UK. Migration from the EU10 countries predominantly consists of young adults who are generally better educated than the native born population. As this migration is employment driven, it is not surprising to find very high employment levels among EU10 mobile citizens. Many, however, are employed in lower skilled occupations and earn wages below that of the average native born population.

It is safe to say that the large majority of EU10 mobile citizens are doing reasonably well in the UK. This is not to deny problems related to poor housing conditions and exploitative practices

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<sup>239</sup> <http://www.barkauk.org/news/reconnections/> Accessed March, 8, 2013.

<sup>240</sup> <http://www.thamesreach.org.uk/what-we-do/routes-home/about-routes-home/> Retrieved June 27, 2013.

from employers, but there is no evidence of widespread destitution among this group. As a matter of fact, most EU10 mobile citizens are having jobs and are able to fend for themselves in economic terms. Unfavourable housing conditions are, nevertheless, rather common among EU10 mobile citizens, due to a combination of personal choice in which migrants make a trade off between acceptable housing conditions and earning and saving as much as possible, and exploitative practices of landlords or employers who provide housing tied to employment.

EU10 mobile citizens presently have the same rights and entitlements to social assistance as other EU workers. As EU workers they have access to social housing, housing benefits and other social benefits such as jobseekers allowance (JSA), employment and support allowance and income support. The only vulnerable group which remains are jobseekers and unemployed persons who lose their job within one year of their initial contract and who overstay the period in which they can seek for new employment. These persons largely fall outside the scope of the social safety net.

This study shows that only a minority of EU10 mobile citizens actually end up being homeless in the minimal sense of sleeping rough or depending on shelter accommodation. The interesting question is, what explains their homelessness? Often the direct cause of homelessness is unemployment from insecure work or the inability to find work in the first place, but behind this employment related causes lie other factors which explain homelessness among EU10 mobile citizens. Many homeless EU10 national came ill-prepared to the UK and lack social and human capital to make their migration successful. Common factors are language problems; lack of access to information on support services with regard to finding housing, accessing benefits or addressing exploitative practices by employers; and social-psychological problems relating to e.g. mental illness or substance use.

Important causes of homelessness among EU10-mobile citizens in the UK are related to social factors. In addition, for some categories of EU10 nationals, particularly the jobseekers and overstayers, legal barriers in accessing the social safety net do exist. These barriers can be found in the form of exclusion of benefits to jobseekers, the habitual residence test requirements and local attachment criteria in accessing social housing.

What we witness is a segment of the EU10 population in the UK who has proved to be vulnerable for homelessness and destitution. Solutions to solve the problems of this small, albeit growing, group are twofold 1) supporting those who are able and willing to work with practical assistance in securing housing and employment in the UK; and 2) offering voluntary repatriation programmes for those homeless with more extensive support needs.

## ANNEX I

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## **14 EU10 MOBILE CITIZENS IN GERMANY**

### **14.1 Introduction**

In Germany, restrictions on the free movement of workers from the EU8 countries were not lifted until 1 May 2011; 7 years after these countries became members of the European Union (EU). Germany, like most other members of the EU 15 feared labour market disruption and pressure on the welfare state and therefore maintained tight restrictions on EU8 workers in the years following the accession of these countries. When in 2007 Bulgaria and Romania entered the EU, the same restrictions were imposed on workers from these countries. For these nationals all restrictions were lifted in 2014. Despite the limitations on free movement, Germany has experienced a steady influx of EU10 nationals in recent years.

The recent increase in immigration coincides with the economic recession that has had a severe impact on the economies of the UK and Ireland, important hosting countries for workers from the EU8 countries. Germany in turn, does not seem to be influenced as much by the economic downturn of the last years. Most EU10 mobile citizens in Germany are faring relatively well. However, in recent years news reports from various cities seem to indicate a growing problem of poverty and homelessness among a small segment of the EU10 mobile citizens, particularly among Roma from Bulgaria and Romania.

The aim of this chapter is to shed light on the position of the group of EU10 mobile citizens in Germany. In particular we will elaborate on their position on the labour and housing market and their access to the general safety net. In section 13.2 a general description is provided of the group of EU10 mobile citizens in terms of background characteristics, labour market position and the extent to which they are subject to poverty and homelessness. Subsequently we will address the legal position of these migrants in terms of their access to social assistance and housing facilities (13.3). This is followed by a discussion of the social causes of destitution and homelessness among EU10 mobile citizens. The final sections of this chapter are dedicated to providing an analysis of the available infrastructure for the homeless in Germany and of the initiatives that are specifically geared toward homeless EU10 mobile citizens.

### **14.2 Destitution and homelessness among EU10 mobile citizens**

This section analyses the size and characteristics of the EU10 migrant population in Germany and gives an assessment of the incidence of poverty, destitution and homelessness among (recent) EU10 mobile citizens.

### 14.2.1 The immigrant population in Germany and the characteristics of EU10 mobile citizens

In 2011, Germany numbered 80.2 million inhabitants. The share of the population with a migration background<sup>241</sup> in the total population was 18.7% or in absolute numbers: 15,016,960 million.<sup>242</sup> The main countries of origin are Turkey and Poland. More than half of these migrants entered Germany after 1990.

The number of foreign born European nationals increased significantly following the EU enlargements in 2004 and 2007. This growth was caused by the new member states, first the EU8, and later the EU2. Between 2004 and 2011 the number of immigrants from EU8 countries grew from 438,828 to 691,228<sup>243</sup>, an increase of 57.5%. By far the largest groups among these immigrants were the Poles, with 468,481 migrants in 2011.

The EU2 population in Germany increased between 2008 and 2011 by 124.9% counting a total of 93,889 Bulgarians and 159,222 Romanians in 2011. In 2011 alone, almost 33,000 Romanians entered the country. Although official statistics are lacking, authorities suspect a high number of Roma within this group of migrants.

**Table 14.1 Persons from the EU8 and EU2 countries living in Germany – 2004-2011**

Nationality	2004	2005	2006	2007	2008	2009	2010	2011	2011/ 2004
EU8	438 828	481 672	525 078	554 372	567 466	576 432	612 310	691 228	+57.5%
EU2	112 532	112 196	112 406	131 402	148 310	166 834	201 405	253 111	+124.9%
Foreigners in total	6 717 115	6 755 811	6 751 002	6 744 879	6 727 618	6 694 776	6 753 621	6 930 896	+ 3.2%

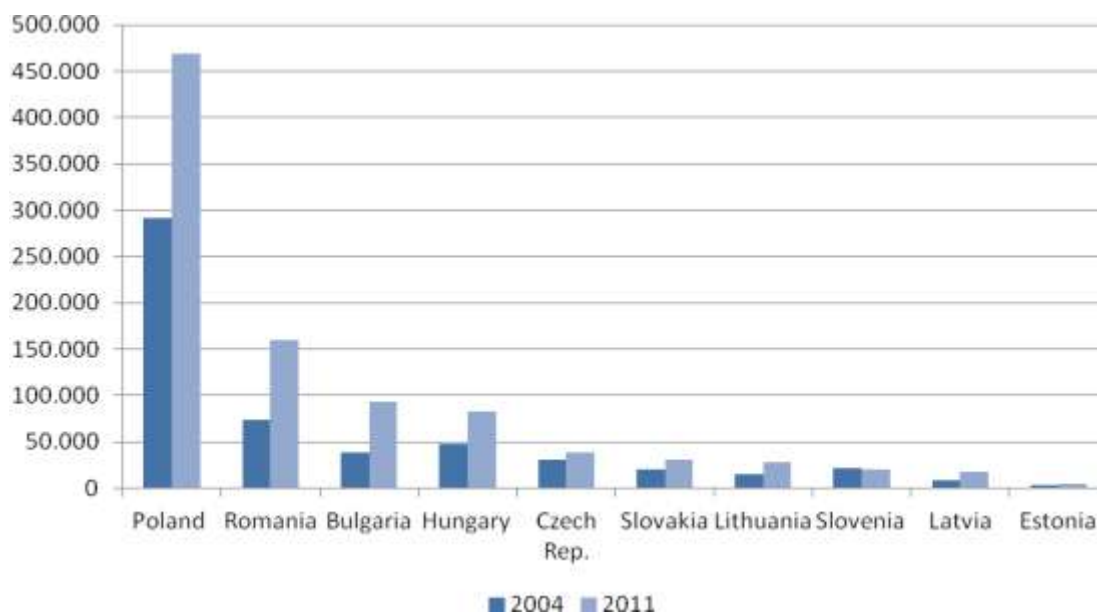
Source: Bundesamtes für Migration und Flüchtlinge 2013

<sup>241</sup> Based on the country of birth definition.

<sup>242</sup> Zensus 2011.; available also on Internet: [https://ergebnisse.zensus2011.de/#StaticContent:00,BEV\\_2\\_2\\_8,m,table](https://ergebnisse.zensus2011.de/#StaticContent:00,BEV_2_2_8,m,table)

<sup>243</sup> These numbers are derived from the "Ausländer Zentral Register". This source only registers long term immigration. Temporary labour migration is not included. Therefore these numbers can be quite lower than the ones from Federal Statistics' migration figures. In: Bundesministerium des Innern, Migrationsbericht 2011.

**Figure 14.1 EU10 Nationals in Germany 2004-2011 by country of origin**



Source: Migrationsbericht des Bundesamtes für Migration und Flüchtlinge (2013)

The influx of EU citizens from the new member states in 2011 amounted to approximately 400,000 which constitutes 42% of the total immigration in that year. The largest group of immigrants in 2011 consisted of Poles: they made up 41 percent of the total immigration of EU citizens.

It should be noted that a significant share of migrants from Poland are temporary migrants. In 2010 Poles only constituted 12.7% of the immigrant population that stayed for a longer period, which is a significant contrast to their 18% share within the total immigration statistics. (Bundesamtes für Migration und Flüchtlinge, 2013, p.23), The same applies for Romanian and Bulgarian citizens who sought temporary stay more often than other migrant groups.

However, even though short term migration is a common phenomenon among EU10 migrants (and particularly Polish migrants), the total number of EU10 mobile citizens in Germany continues to grow at a faster pace than other foreign nationals.

EU10 mobile citizens are predominantly settling in the 'old' federal states. In the *Länder* of the territory of the former German Democratic Republic only 6.2% of the EU8 population in Germany can be found. The immigrants tend to settle in bigger cities and in regions where the economy is doing well. This results in a specific spatial settlement pattern with clear concentrations in Berlin, Hamburg, Munich and the Ruhr area. Relatively few immigrants are found in former Eastern Germany (Spiegel Online 19 February 2013.)

Apart from the economic reasons to settle in bigger cities, it seems that social or ethnic considerations play an important role, especially for the Roma. For instance, the city-quarter Hochfeld in Duisburg experienced an extremely high number of Roma immigrants from the second half of 2012. Around 4,000 Roma settled in that part of the city, representing one quarter of the total population of the neighbourhood. Similar concentrations are found in Berlin (Neukölln).

### The other immigration of EU10!

An interesting pattern of migration is that of Polish households into the North East of Germany (Landkreisen Uckermark und Uecker-Randow). The main reason for these groups to move into Germany is not employment, but the supply of affordable housing. This German region underwent significant negative demographic development after the unification of Germany. Many, in particular young and better educated inhabitants left the region for the western part of Germany. Unemployment rose and housing prices dropped. For the Polish living just across the border, for instance in the city of Stettin, this meant an opportunity to buy real estate for modest prices. In the regional centre like the town of Löcknitz-Penkun 10 percent of the population is currently Polish. These immigrants seeking a housing career were accompanied by the Polish entrepreneur, filling niches in the market supplying goods and services.

Source: Lada & Frelak 2012

### Characteristics of EU10 migrants

Eisner and Zimmerman (2013) conducted an extensive study into different waves of migration to Germany. They describe three waves of immigration out of the EU8 countries. Unsurprisingly, given that this was initially the only option for accessing the German labour market, after the accession of the EU8 to the EU there was a strong increase in the numbers of self-employed persons. In table 2 the different demographics of the EU8 mobile citizens are presented.

**Table 14.2 Demographics of EU8 mobile citizens in Germany<sup>244</sup>**

	Arrival cohort 2001-2003		Arrival cohort 2005-2007		Arrival cohort 2008-2009	
	Immigrants	Germans	Immigrants	Germans	Immigrants	Germans
Age (average)	31	42	34	42	33	43
Male (%)	37	50	39	50	41	50
Married (%)	67	59	57	55	46	55
Dropouts (%)	7	7	4	2	3	3
Lower sec. (%)	38	60	44	60	41	49
Upper sec. (%)	32	17	29	20	27	20
Third-level (%)	23	16	23	18	29	18
Unemployed	18	11	14	8	9	8
Av. wage	847	1 423	1 054	1 513	1 155	1 534
Permanent employment (%)	54	79	37	78	35	78
Temporary employment (%)	40	10	23	11	36	11
Self-employed (%)	6	11	41	11	28	11
<b>observations</b>	<b>551</b>	<b>281 520</b>	<b>805</b>	<b>264 922</b>	<b>864</b>	<b>266 259</b>

Source: Elsner and Zimmermann (2013)

Throughout the three waves, the labour market characteristics of the immigrants were strong, even stronger than that of the average German. They were well educated and young.<sup>245</sup> While the

<sup>244</sup> Descriptive statistics for the working-age population (age 18-64). Arrival cohort 2001-2003: EU-8 immigrants in the 2004 micro census who arrived between 2001 and 2003. Statistics for the arrival cohorts 2005-2007 and 2008-2009 calculated based on the 2008 and 2009 micro census, respectively. Average wages: monthly nominal net income in Euro for workers with a positive income. Type of employment (permanent/temporary/self-employed) conditional on employment status.

<sup>245</sup> A recent study by several German research foundations in fact found that: "An analysis of the micro census about the qualification profiles of the EU citizens living in Germany shows certainly that due to immigration from the

first wave showed a relatively high unemployment rate, the latter waves are narrowing the gap with the native population. Even though EU8 mobile citizens perform well on the labour market, it is noteworthy that average wages of EU8 mobile citizens fall (well) below that of German nationals.

In terms of education, the profile of recent EU2 mobile citizens is different from that of the EU8 mobile citizens. A large share (almost 40 percent) of recent immigrants from Romania and Bulgaria has no professional qualifications whatsoever. This lack of education is likely to affect the labour market performance of these groups (Statistisches Bundesamt 2012).

Data relating to 2011 shows that almost one in five (19%) of EU10 mobile citizens work in low skilled jobs. For those EU10 nationals who migrated after accession to the EU this share is even higher at 25 percent. Germans and other EU nationals are far less likely to be employed in low skilled jobs (see table 3). As EU8 mobile citizens are generally better educated than the average German population, it is fair to conclude that many EU8 mobile citizens are employed below their skill levels.

**Table 14.3 Qualification profile of work performed in 2011 according to country of origin and period of immigration, in percentages**

	High skilled			Median skilled			Low skilled		
	total	Before accession	After accession	total	Before accession	After accession	total	Before accession	After accession
Persons without migration back-ground	45.5			47.0			7.5%		
EU14	39.7	35.8	40.9	45.5	50.0	44.1	14.8	14.2	15.0
EU10	30.7	36.0	20.7	50.8	49.1	53.8	15.5	14.9	25.4
EU2	34.6	39.6	22.0	43.8	43.2	46.3	21.6	17.1	31.7
Third country nationals	24.8			49.8			25.7		
Spät-/Aussiedler	28.3			52.8			19.0		

Source: Statistisches Bundesamt (2012, September)

Before the restrictions on labour mobility were lifted, immigrants from the EU8 countries were overrepresented in agriculture and fishery (seasonal work). Almost 12% of the Polish males were active in these sectors whereas only a small 1% of all active men in Germany were employed in this sector. Female immigrants from all EU10 countries were strongly overrepresented in the accommodation and food services sector. In particular Bulgarian and Romanian female immigrants were found there (Friedrich Ebert Stiftung, 2010) After April 2011, there has been a significant shift of EU8 mobile citizens to other sectors, in particular to building and industry.

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*new EU member states the level of qualification of the German population has increased". Sachverständigenrat deutscher Stiftungen für Integration und Migration, 2013, p. 62.*

## 14.2.2 Poverty among the immigrant population in general and the EU10 mobile citizens in Germany

Persons at-risk-of-poverty are those living in a household with an equivalised disposable income below the risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income for the population as a whole (after social transfers).<sup>246</sup> In 2013 in Germany, this meant EUR 11,426 on a yearly basis or EUR 952 per month.

In 2011 the at risk of poverty rate was 15.1% whereas among first generation migrants the at risk of poverty rate was 26.6%. Table 4 clearly demonstrates that first generation migrants have a significantly higher at risk of poverty rate (26.6%) than the total German population. The at risk of poverty rate for European migrants however, is only slightly higher (18.4%) than the rate for the total population. It is noteworthy that the at risk of poverty rate for Polish and Romanian nationals lies somewhat below the average rate for the EU27 and is only marginally higher than the average for the total German population. This data thus seems to suggest that EU10 mobile citizens are not at increased risks of poverty.

**Table 14.4 Risk of poverty rate for 1<sup>st</sup> generation migrant groups in Germany 2011 (in %)**

	All	Single parents	Singles
Total 1 <sup>st</sup> generation	26.6	53.2	37.3
Europe	25.6	52.1	35.2
EU27	18.4	47.6	28.1
Greece	24.9	--	34
Italy	22.8	--	34.6
Poland	17.8	47.3	28
Romania	17.8	--	28.6
Rest Europe	31.9	55.8	46.1

Source: Statistisches Bundesamt 2012

However, there are indications of a growing poverty problem among these groups. This growth is related to the more recent phenomenon of so called "poverty-migration". Attracted by stories of family and friends poor Bulgarians and Romanians migrate to Germany to improve their chances of finding work and to gain access healthcare.<sup>247</sup>

Hence, a distinction must be made between the immigrant populations of EU10 nationals in general, who do not have a much higher risk of poverty and homelessness than the German population and specific segments of the migrant population who do not follow this pattern. Aid institutions are observing an influx of people without any means from the new member states and, again, from Bulgaria and Romania in particular (BAG W, 2013 April 10).

The *Deutscher Städtetag*, the community of all city governments in Germany, published a paper in January 2013 in which the municipal governments clearly expressed their concern about the immigration of Bulgarian and Romanian nationals. This group that often has severe language deficits, a lack of social security and employment perspectives, can frequently be found in accommodation with very bad conditions or even without a home living on the streets. According

<sup>246</sup> The equivalised income is calculated by dividing the total household income by its size determined after applying the following weights: 1.0 to the first adult, 0.5 to each other household members aged 14 or over and 0.3 to each household member aged less than 14 years old.

<sup>247</sup> <http://www.dradio.de/dlf/sendungen/hintergrundpolitik/2081309/>

to the municipal governments, these groups cause serious challenges for the local education, social and health systems as well as for the labour and housing market (Deutscher Städtetag, 2013).

Due to the fact that these immigrants in most cases settle in neighbourhoods that even before their immigration were characterized by a higher rate of unemployment and other social irregularities, the municipalities not only fear overburdening costs but also social constellations that are also highly problematic for the society in general.<sup>248</sup> The existing providers of services and local initiatives cannot handle this extraordinary situation properly.

In January of 2013 the city of *Duisburg* published a "State of Affairs" concerning the immigration of southeast Europeans. At that moment, Duisburg counted 6,176 immigrants from Romania or Bulgaria within its city limits, with a concentration in the district of Hochfeld. A considerable amount of them were registered as self-employed. In January 2013 there were 628 Bulgarian and 188 Romanian companies registered in the city of Duisburg. The city stipulates that this self-employment can eventually lead to a claim on (Aufstockendes) ALG II. The report states that poverty shapes the life of these immigrants. They are impacted by the prohibition of (waged) work and by the poor living conditions in houses and apartments that are actually not fit to live in. Moreover they suffer from a lack of knowledge of the German language, customs and traditions. Children cannot be placed in schools immediately because of a lack of places. The city notes that the tenants from Bulgaria and Romania are not complaining about the overcrowding, bad hygiene or construction deficits. Other inhabitants of the quarters in their turn do complain about noise, waste and disturbances.

#### **14.2.3 Homelessness among the immigrant population in general and the EU10 mobile citizens in Germany**

In Germany there are no official statistics about homelessness. The government has refrained from collecting national statistics due to the separation of competences between the central government and the federal governments of the *Länder*, but also due to the impossibility of acquiring reliable data.<sup>249</sup>

The most cited and reliable numbers are provided by the *Bundesarbeitsgemeinschaft Wohnungslosenhilfe e.V.* (BAG W) the head organisation of the local shelter organisations.<sup>250</sup> According to their statistics the number of homeless decreased from 440,000 people in 2001 to 248,000 in 2010. Between 2001 and 2008 the number of homeless steadily decreased. In recent years the numbers are, however, increasing again (see figure 14.2). Another constant number of 106,000 people (53,000 households) were threatened by homelessness.<sup>251</sup> Unfortunately more recent data is not available. However, the number of people sleeping rough is, at approximately 22,000, much smaller because the first number includes those sleeping in provided accommodation or with friends or family.

The largest group of people without a home are male persons in the middle of their working life, but the numbers of young homeless people have been steadily increasing in recent years.<sup>252</sup>

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<sup>248</sup> Ibid.

<sup>249</sup> BT-Drucks 17/12661, p. 7.

<sup>250</sup> This organisation operates on national level as working group of social organisations and private and public providers of social services and institutions for homeless people.

<sup>251</sup> <http://www.bag-wohnungslosenhilfe.de/fakten/1.phtml>.

<sup>252</sup> In 2007 27% of homeless people were under 30, in 2010 it were 32%.



**Figure 14.2 Homeless people in Germany between 2001-2010 (x 1,000)**



Quelle: Bundesarbeitsgemeinschaft Wohnungslosenhilfe e.V., Bielefeld, den 09. November 2011

The significant decrease in the number of homeless is ascribed to a combination of developments in the housing market and demographic factors (Specht 2010). In many regions there is still a surplus in larger dwellings whereas in the same period there was a clear drop in the number of households with three or more members seeking housing.

According to the statistic of the *BAG W*, almost 25% of the homeless in 2011 were people with a migration background, of whom at least one of the parents was born outside Germany. This percentage has increased from a mere 8.6% in 2004.

**Table 14.5 Proportion of persons with migration background among total group of homeless**

	2004	2005	2006	2007	2008	2010	2011
Abs	1074	1338	1441	1991	2759	4757	5510
%	8.6	11.3	10.9	14	17	21.7	24.4

Source: BAG W Statistikbericht 2008, 2010 and 2011

When looking at nationality however, only 15% of the homeless is not German and 6% of the homeless group is originating from another EU country (Specht, 2010).

**Table 14.6 Homeless according to nationality and sex 2011**

	Male %	Female %	Total
German	85.7	80.6	84.6
EU	5.6	7.0	5.9
Other	8.6	12.3	9.4
Stateless	0.1	0.2	0.1
Total abs.	18 412	5 170	<b>23 582</b>

Source: BAG W Statistikbericht 2011, Tabellenversion

There are no specific statistics on the number of homeless originating from the EU10 countries (Deutsche Bundestag, 2013, March 11). Indications however do point to a fair representation of in particular Polish, Bulgarian and Romanian immigrants among the homeless.

*Indications: evidence from various cities*

In a study on patients of a private clinic for homeless in *Berlin*, of the 440 patients, 15% were originating from one of the EU10 countries, in particular Poland (80% of the homeless EU10 nationals) (Bauer, 2012).

Several reports on homelessness among EU10 nationals come from the city of *Hamburg*. In a study on causes of death of homeless in Hamburg, 12% of the investigated dead were foreigners, of which one third came from Poland (11 persons) (Grabs 2006). The German magazine *Der Spiegel* reported on the experience in a homeless shelter in Hamburg (*Spaldingstrasse*) where in the winter of 2012-2013 two-thirds of the visitors originated from Poland, Romania or Bulgaria (Schmid, 2013).

Two empirical studies about homelessness in the city of *Hamburg* (Schaak, 2009) showed an increase of non-German homeless people from 17% in 2002 to 26.6% in 2009. Although the individual nationalities were not registered, the 2009 study speaks of a growth of Eastern European homeless. The non-German group on average was much younger than the group of Germans.

Of the homeless Germans, 55% was receiving *ALG II*. Of the non-Germans this percentage was only 20%. As main means of income the non-Germans stated "begging", "other ways" or no "income". Of the Germans, 77% said they have health insurance. This percentage was only 30% with the non-Germans. Finally, the non-Germans hardly ever turned to the infrastructure in the city for help. All these aspects indicate a marginalized position in society.

The Hamburg shelters distinguish two groups of homeless Eastern Europeans. First of all the Polish homeless. This groups resembles the German homeless population; often they have been in Germany for quite a while but have lost their job and housing due to social problems such as alcohol addiction. The second group consists of low educated new immigrants from Bulgaria and Romania. They are lured to Germany with promises of jobs and housing and put to work as (bogus) self-employed for very low rates. Informants in the Hamburg area speak of "modern slavery" (Witte, 2012).

In the city of *Köln* a group of 124 homeless Romanians and Bulgarians were interviewed. They were partly living in tents and squats in the woods. They were mostly young low educated men, with a family in their homeland. One third of them answered "Romani" as being their first language.

When asked for their source of income, 54% said "all kinds of odd jobs", 49% collected bottles, 31% was begging and 13% earned money through prostituting. None of them were enjoying social assistance of any kind, but almost all of them were relying on the help of the homeless centers (Frangenberg, 2013).

### **14.3 Access to the social safety net and legal causes for destitution**

The EU10 nationals that have entered Germany seem to have in general a rather strong labour market position. Nevertheless, they can also encounter unemployment, illness or other life events that threaten their wellbeing. This raises the question as to how well the German safety net works for those people and how easily accessible the facilities of the welfare state are.

Germany's welfare system is based upon art 20 para 1 of the Federal Constitution (Grundgesetz - **GG**). In this article, it is stated that Germany is a "*Sozialstaat*" which implies social responsibility for its citizens. Taken together with art 1 GG, the guarantee of a life in human dignity, a duty of the state to secure a human minimal standard of life, the "socio-cultural minimum subsistence" ("*soziokulturelles Existenzminimum*") came into existence.

This abstract constitutional right is translated into a material right through a system of social laws. In this chapter we will describe the legal position of EU10 nationals in Germany, with a focus on their access to the social safety net.

We concentrate in particular on the social housing schemes and benefits and social assistance.

### 14.3.1 Housing

The housing market in Germany is characterized on the one hand by empty dwellings in regions with a declining population and on the other hand by a very tight housing market in growth regions, such as the bigger German cities. What both regions have in common is the fact that renting is still the commonest type of tenure.

In Germany one can find two major policy schemes which aim at providing affordable housing and at facilitating access to the housing market, i.e. Social housing and housing allowance, the so called *Wohngeld*.

It must be stated that the trend in Germany clearly is to support the individual (*Subjektförderung*) with *Wohngeld* rather than providing cheap accommodation (*Objektförderung*) which was also reflected in the *Wohnraumförderungs-gesetz* from 2001.

However, before explaining the schemes of social housing and *Wohngeld* in more detail it should be mentioned that the main social assistance schemes, *Arbeitslosengeld II (ALG II)* and **Sozialhilfe** cover costs of livelihood as well as housing costs. A certain amount, primarily dependent on the size of the household and the housing market of the particular city, will be granted to receivers of social benefits that enables them to act on the normal housing market, which is an explicit expression of the preferred *Subjektförderung*. The idea behind the housing benefit of *ALG II*, *Sozialhilfe* and *Wohngeld* is similar. The advantage of this concept is that it lowers the risk of social segregation because no neighbourhoods full of social housing will be established, but of course it also offers fewer opportunities to exercise direct control over affordable houses.

#### **Social housing**

Since the so called *Föderalismusreform I* (reform of federalism) in 2006, social housing became the full responsibility of the 16 federal states. The *Länder* receive a payment from the Federal government. Those seeking social housing or housing benefit should apply to the local social housing or social office.

The idea behind this change of competence was that the *Länder* should be better able to ensure suitable social housing at a local level for persons in need. But governmental housing policy nowadays also includes urban development promotion programmes (*Städtebauförderung*) such as for instance the programme "socially integrative city" (*Soziale Stadt*) that aims to close socio-spatial gaps in cities.

The concept of social housing once was a very important element in German social policy but through privatization, especially in the 1990s and policy change towards a benefit system that also covers renting costs, social housing fell considerably in significance. This trend started in the

1980s when the direct support of dwellings decreased in favour of financial support for individual households.

A well-known example of privatization in Germany can be found in the city of Dresden where the communal housing corporation was sold to an American investor (Kofner, 2011). Subsequently, tenants worried about unfair behaviour from their new landlord; however the city of Dresden claimed that it secured influence and protected rent control thanks to a “social charter”. Nevertheless, court proceedings about assumed breaches of this charter took place.

The social housing sector contains only 6% of the overall accommodation which compared to other European countries is relatively low<sup>253</sup> and following Droste and Knorr-Siedow (2007, p 93) this number decreased enormously since the late 1980s. At this moment, it is estimated that around 1.6 million accommodations are classified as social housing<sup>254</sup> while estimations regarding eligible households reach up to 6 million.

The current concept of social housing does not primarily consist of publicly owned accommodation that is rented to eligible persons for low prices. It is a hybrid-form of private housing with public support and influence.

Usually the state provides cheap loans or other forms of subsidies to housing companies or private investors to enable them to build or renovate houses for affordable costs. As a return the companies or investors have to declare the generated flats as social housing for a certain period. During this period, which lasted up to 40 years in the 1970s and 80s but now often only 12 to 20 years (Evers, 2012, p.11), the landlords undertake to let the flats only to eligible persons that have a so called *Wohnberechtigungsschein* (“certificate of eligibility for public housing”) and only with restricted autonomy regarding the price. The usual model was or still is in the most federal states the *Kostenmiete* (“cost rent”), albeit the states are not bound to it and can apply different models for determination of the rent. As soon as the fixed period expires, the house will become at the complete disposal of the owner.

Because public subsidies are still decreasing and the length of the fixed period in which a subsidised flat must be available for social housing (*Wohnraumbindung*) is being reduced, the stock of social housing is decreasing considerably (in 2011, 57 000 tenants lost the status of social housing). Indeed, in Germany “quasi social housing” will sometimes be created after the fixed time period if (municipal) companies decide to lease their flats for similar costs as before.

However, in big cities like Berlin, Munich, Hamburg or Frankfurt, the housing market demands new affordable housing in particular with regard to a growing gentrification. This need for affordable housing has also been acknowledged by the government (Coalition treaty, 2009).

Households with a migration history are predominantly housed in rented dwellings; 71.4% in contrast to 48.4% of the households without a migration background (Friedrich 2008). In 2006 9.5% of the household with a migration background was living in social housing, compared to 2.9% of the households without a migration background. Both percentages have dropped considerably since 1997. In that year the respective figures were 16 and 4.8. The decrease is mainly due to the transformation of social housing into free market housing.

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<sup>253</sup> In other countries social housing has a greater share: Netherlands (35%), Austria (25%), Denmark (21%), Sweden (20%), England (18%), France (17%), Ireland 8%). From the countries under research only Hungary (4%) has less social housing facilities than Germany. But the sources of data and the date of elevation were different. Data from: *Whitehead, C. & Scanlon K. (2007), 'Social Housing in Europe', p. 9.*

<sup>254</sup> See the answer from the German government to the question from the member of the *Bundestag* Caren Lay, available online: [www.caren-lay.de/serveDocument.php?id=35.970.pdf](http://www.caren-lay.de/serveDocument.php?id=35.970.pdf); *Mejer, J. (2013), 'Sozialwohnungen verschwinden'.*

### ***Wohngeld (housing allowance)***

The policy approach to pay direct benefits to individual households is realized with a housing allowance that is called *Wohngeld* which is meant either to cover the rent (*Mietzuschuss*) or the costs of owned housing (*Lastenzuschuss*). In 2011, 903,000 households received these benefits which is equivalent to 2.2% of all households in Germany (Statistisches Bundesamt, 2013). In 2011, around 1.5 billion euro was spent on housing allowances. The largest group that receives *Wohngeld* are pensioners with 47%, followed by workers with 36 %. Unemployed persons (6%) and others (11%) hold a relatively low share.

As regards the amount of this benefit, besides the personal income, the number of people living in one household is taken into account as well as the level of rents in the specific city.

Households that receive *ALG II* or *Sozialhilfe* have their housing expenses (to a fixed maximum, depending on the city) paid through an additional benefit.

A problem that often occurs in practice in relation to *Wohngeld* and the *ALG II* housing benefit is that the amounts and limits that are set for suitable accommodation are not even able to cover the real costs of cheap housing. The consequence of exceeding these limits is that the surplus must be fully paid by the renting household itself.

In the city of Freiburg for instance, in 2011, a single person is entitled to a dwelling of 45 square meter maximum up to a maximum of EUR 305. Square meter prices in Freiburg however are seldom under EUR 9 or 10. So, consequently the *ALG II* housing allowance often falls short and people will be forced to look for cheaper housing, which is not always available.<sup>255</sup>

### **14.3.2 System of social assistance in Germany**

In Germany, it is common to speak of social law (*Sozialrecht*), rather than social security law. Almost all different laws concerning social aspects are merged into one single law, the *Sozialgesetzbuch (SGB)*. Within this framework, the area of German social security was drastically reformed by the so called Harz committee. The fourth wave of these reforms (**Harz IV**) was implemented in 2005 and introduced a differentiation between *Arbeitslosengeld II (ALG II)* for able bodied unemployed persons and *Sozialhilfe* for those not able to work.

The first level of social security is *Arbeitslosengeld I* (Unemployment Benefit I; **ALG I**). This insurance scheme for which both employer and employee pay half of the premiums, is earning related and pays up to 67% of the most recently earned salary for up to a maximum of 12 months. Its legal basis is the third book of the German Social Code (Drittes Sozialgesetzbuch, **SGB III**).

The second book of the German Social Code (Zweites Sozialgesetzbuch, **SGB II**) concerns basic security benefits for job-seekers without rights to *ALG I* and sets out the regulations for the *Grundsicherung für Arbeitsuchende* which is also called *ALG II*. This applies to needy people capable of working with a habitual residence in Germany, whereas people not capable of working receive benefits from the social assistance scheme of *Sozialhilfe*, which is regulated in *SGB XII*. In fact both schemes are based on similar principles and usually provide a monthly payment of up to EUR 382 (2013) for a single (parent) and the costs of housing. Those who receive social

<sup>255</sup> 'Es kann jeden treffen', (2011), Straßenzeitung Freiburg.

assistance under one of the two schemes also enjoy a health insurance either through automatic membership (*ALG II*) or assumption of costs (*Sozialhilfe*).

The main reference point for benefits according to *SGB II* is the so called *Bedarfsgemeinschaft* (benefit community). In general, the *Bedarfsgemeinschaft* corresponds with the household but also takes earning capacity and social obligations into account. If in a household a second person applies for *ALG II*, the amount is lower than the above mentioned EUR 382.

The scheme of *ALG II* allows members of the household to earn additional income through employment so that the first EUR 100 that are earned will not be deducted from the benefit. When earnings increase, so does the deduction.

Because of the relatively low benefits, many recipients combine the received benefit with work. Many of them are so-called one-euro jobs. These are jobs intended to gain work experience and re-integrate the person in the labour market. They always need the permission of the *Bundesagentur für Arbeit (BA)*.

A main point supporting the introduction of the new scheme was the need to increase the efforts of the non-working population to find and perform work in order to reduce reliance on assistance from the community. (Burkiczak, 2013) The regulations of the *SGB II* put much emphasis on the subsidiary character of state assistance. That is particularly evident with regard to possible sanctions for non-cooperative behaviour that hinder a positive integration into the labour market. It therefore also focuses on (mandatory) methods the employments centres (*BA*) have to take to re-integrate jobless persons into the job market (sec. 4 *SGB II*), for example by means of language courses, further education, etc. The one euro jobs are also an example of this.

However, in Germany, there is criticism questioning how useful certain integration methods and sometimes expensive mandatory means are and whether they effectively motivate the right target group (Göricke, 2006). It is also stated that company training has a more positive impact on the re-integration of job-seekers than classroom training (e.g. application training) (Jozwiak & Wolff, 2007), although the latter is more often used and thus cost-intensive.

Every person that receives *ALG II* benefits also has to sign an integration agreement which contains the duties that people have concerning their integration into the job market.

The provisions about *ALG II* are *lex specialis* so that the benefits are granted after the rules in *SGB II* whenever the conditions are fulfilled and the social assistance scheme of Book XII, *Sozialhilfe* works only as a "*Netz unter dem Netz*" (network under the network). Due to the fact that most of the jobless persons are capable of work and subsequently the regulations of *SGB II* will be applied and not those of *Sozialhilfe* in *SGB XII*, the scheme of *Sozialhilfe* has lost practical importance. However it is still a relevant scheme and especially homeless people can often only receive help through assistance under the *Sozialhilfe* scheme of *SGB XII*. The reason for this is that art 8 para 1 *SGB II* requires the legal, physical and mental ability to work, which sometimes cannot be found for homeless persons. Generally, it is not possible to receive benefits under both schemes at the same time, but exceptions to this rule do exist (Bundessozialgericht, 2007, p.383).

For complex cases the legislator created art 67 – 69 *SGB XII* which give space for individual measures specifically intended for persons with special social problems. Homelessness and similar disadvantageous circumstances are according to art 1 para 2 of the implementing regulation to art. 69 *SGB XII*<sup>256</sup> categorized as special social problems.

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<sup>256</sup> *Verordnung zur Durchführung der Hilfe zur Überwindung besonderer sozialer Schwierigkeiten/DVO § 69 SGB XII v 27.12.2003; BGBl I 3060, § 69 SGB XII.*

These special regulations form a legal basis for (and a legal claim to) the provision of advice and help. This separate scheme of *Sozialhilfe* can be applied where *ALG II* and other schemes of *Sozialhilfe* are not sufficiently able to improve the situation for the persons in need. The aim is to enable these vulnerable people to help themselves and participate in society and live a dignified life.

The text is intentionally indefinite so that almost any aid can be provided within this framework without regard to whether it is preventive or reactive. The aid only must be necessary and able to solve the problematic situation. But the actual need and the current social difficulties are decisive. Hence, the aid provided is intended to be of a temporary nature and should end as soon as the current problems are solved. The preferred means to help this group of persons is to support them with personal advice and services (art 2 para 2 s 2 DVO art 69 SGB XII) and help them finding work, a new home or reintegrate them into social life.

However, the possible measures regarding homelessness range from giving personal advice to the absorption of costs for rent or rent arrears and beyond.

### 14.3.3 Access to Social Assistance

#### ***Access to social housing***

For EU10 nationals it is of relevance, how easy they can obtain a *Wohnberechtigungsschein* and can subsequently move into a flat from the social housing stock. With this permit the house seeker can turn to the private landlords who are able to select tenants for their houses.

The income of the applicant is decisive. The federal states can depart from the income limit of EUR 12,000 for a single person (two persons EUR 18,000, every child an additional EUR 500) that is stated in the general law<sup>257</sup> and therefore the rules differ significantly.<sup>258</sup>

Immigrants have to face special conditions concerning access to social housing. Although the country of origin is not decisive, the residence status and the length of their stay in Germany can be. As stated above, to be eligible for social housing an application for a so called *Wohnberechtigungsschein* must be filed. The requirements for receiving this document, which are determined by the federal states, often include the condition that the applicant has a right to residence for a certain time (usually one or two years) so that asylum seekers are usually not eligible. However this exclusionary provision will not affect EU citizens who have an unconditional right of residence. But they must also prove they are able and willing to establish themselves in Germany.

A problem that occurs in practice is that civil servants still require a residence permit from EU citizens. EU citizens are sometimes confronted with badly informed civil servants, who still insist on the residence permit even though this condition was not in accordance with the law before the abrogation of the residence permit in January 2013 because EU citizens had a right of residence on the basis of their EU member state nationality and the residence permit was only of declaratory nature. However, this practice should only be evident in individual cases and will be solved if the information about their legal status becomes more widespread.

Another obstacle that can occur during the application procedure is linked to the requirement of a *Meldebescheinigung* (certificate of registration) that can prove the current residence. While this problem might be solvable for most EU citizens, homeless people usually do not possess such a document. Therefore they have to rely on the flexibility of the civil servant who is currently responsible for the case.

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<sup>257</sup> art 9 para 2 Wohnraumförderungsgesetz.

<sup>258</sup> In Stuttgart, for instance, a person with an income up to EUR 21.600 is still eligible for social housing what is in contrast to a maximum of only EUR 14.400 in Schleswig-Holstein.

These bureaucratic barriers should not be underestimated especially if they are combined with language problems. The problems surrounding the official channels might give the impression that the public authorities are unable or even unwilling to help. This experience can discourage immigrants from making a second application for a *Wohnberechtigungsschein*. After having received a *Wohnberechtigungsschein* the person can search for a suitable flat which is not always easy due to the decreasing stock of social housing and the growing demand for affordable housing.

### **Access to housing allowances (*Wohngeld*)**

To be entitled to *Wohngeld* the household must have a limited income and not be excluded from this scheme. For instance, beneficiaries under other assistance schemes (*ALG II*, *Sozialhilfe*, education benefits etc.) are usually not entitled to *Wohngeld*. Thus when a person or household is entitled to *ALG II* or *Sozialhilfe* social assistance [see the section below] they will be usually be excluded from the *Wohngeld*-scheme.

*Wohngeld* is intended to cover all the remaining cases that are not entitled to a certain benefit but still face problems with regard to the costs of housing.

The housing allowance policy supports low-income households as well as families and other households with children, single parents, pregnant women, elderly, homeless and other needy persons.

EU citizens and subsequently EU10 migrants are entitled to *Wohngeld* under the same conditions as German nationals (Art 3 para 5 no 1 *Wohngeldgesetz*) as long as they can rely on their right to free movement as an EU citizen.

### **Access to financial benefits**

The German social assistance schemes, the *Grundsicherung für Arbeitsuchende* as well as *Sozialhilfe*, aim to guarantee a life lived in human dignity for all inhabitants and because of art 1 para 1 GG, this guarantee also applies to persons legally residing in its territory, who are not necessarily German. Because the German government and parts of society fear that the social system could be undermined if too many foreigners gain social benefits, for the social assistance scheme of *ALG II*, one can find an exclusion clause in the relevant code, the *SGB II*.

But before examining these exclusionary provisions, a closer look at the general entitlement requirements will be helpful.

### **General Entitlement Conditions for *ALG II***

The main entitlement conditions a person has to fulfil to be eligible for *ALG II* are listed in art 7 *SGB II*. The person must be of working age, capable of gainful employment (which includes also the employability under a legal aspect), in a situation of need and must have their habitual residence within the state territory of Germany.

The second condition does not only require the physical and mental ability to work, but also the legal possibility to work; foreigners can only can meet this condition if they are allowed to work in Germany. All EU citizens, including those from Bulgaria and Romania, fulfil this entitlement condition (barring restrictions due to special circumstances). Questions concerning employability for the purpose of *ALG II*, are answered in (the new) art 8 para 2 *SGB II* that explicitly states that the theoretical possibility of being legally permitted to work subject to acquiring a working permit, is sufficient.(Bundesagentur für Arbeit, 2013).

Concerning the last requirement, the habitual residence, art 30 para 3 s 2 *SGB I* explains that a person has his or her habitual residence at the place where he or she is living under conditions which lead to the presumption that the stay is not of a temporary nature. A fixed residence is not



required but external circumstances that indicate the will to become permanently resident (house-hunting, close relatives etc.). Therefore it is sufficient that the relevant person stays at a place or within an area until further notice and that he or she has the centre of his or her life at this place (Bundesagentur für Arbeit, 2013) Furthermore the stay must be legal so that the applicants need a right of residence (Bundesagentur für Arbeit, 2013) although courts question this necessity. For Germans with a home this will usually be the place where he or she has his or her registered domicile. Decisive for establishing a habitual residence is the individual will of the person that can find its expression in various ways. Until the abrogation of the declaratory residence permit for EU nationals, this document was usually a valuable means of proving the residence but behaviour such as house hunting, an application for a *Wohnberechtigungsschein*, job seeking or the distance to relatives will be considered as expressions of that individual will, too (Brandmayer, 2013).

Also homeless people can have a habitual residence.<sup>259</sup> A house or flat is not required and although the availability obviously facilitates the work of the *BA*, it is not a positive entitlement condition.<sup>260</sup> It would not be in accordance with the intention of the legislator to restrict the access of persons without permanent domicile to the scheme *ALG II* that is intended to re-integrate people into the labour market for, because in this case they would fall into the general scheme of *Sozialhilfe* which is only intended for those not capable of work.

Therefore only the actual residence of a person within the territory of Germany is of importance.

### ***The right of residence for EU citizens***

For foreigners, including EU citizens, the right of residence plays an important role. As long as an EU citizen does not have a permanent right of residence (which will be the case after 5 years of legal stay in Germany (art 4 a *FreizügG/EU*) the right of residence can be derived from different grounds. Furthermore, a differentiation between the first three months and the period thereafter must be made.

EU citizens have a privileged right of residence, which according to Directive 38/2004, also includes their family members (art 3 *FreizügG/EU*). In general terms, the right of free movement is intrinsic in the status of EU citizenship.

In the *first three months* of the stay, an EU citizen enjoys an unconditional right of residence and so do his or her family members. Only a valid identification card or passport is needed (art 2 para 5 *FreizügG/EU*). This unconditional right will resurge after leaving and re-entering the host member state.

Only one exception to this right of residence is laid down during the first three months. Art 14 para 1 Dir 38/2004 states that Union citizens and their family can only rely on their right “*as long as they do not become an unreasonable burden on the social assistance system of the host Member State*” (art 14 para 1 Dir 38/2004).

*After three months* when the unconditional right of residence ends, certain conditions must be fulfilled to stay in the host country. According to art 2 *FreizügG/EU* every EU citizen has the right of residence as long as he or she is a member of one of the following groups:

- workers or people in education;
- jobseekers, that are searching work with sufficient seriousness and within reasonable time and prospects of success;
- EU citizens who have a remaining right of residence after previous work;

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<sup>259</sup> *Bayerischer Verwaltungsgerichtshof*, f. 25 January 2001, 12 B 99.512; *Spellbrink W. & Becker*, G.i 'Eicher - SGB II - Grundsicherung für Arbeitsuchende- Kommentar', , § 7 SGB II Rn 20.

<sup>260</sup> *Ibid.*

- unemployed persons and their relatives if they have sufficient means for subsistence and health insurance;
- self-employed (establishment and services);
- Union Citizens as receivers of services.

Until 29 January 2013 EU citizens with the right to free movement received a residence permit (art 5 *FreizügG/EU* old version) ex officio at the moment of registration with a local authority. As the right of residence was and is derived directly from their status as an EU citizen, this residence permit was only of declaratory nature and was consequently abolished this year.

Despite very strong residence rights for EU citizens, this nevertheless does not always imply automatic access to social assistance as will be discussed in the following section.

#### **Bulgarians and Romanians in Harz IV**

In 2012, the Institut für Arbeitsmarkt- und Berufsforschung (IAB) helped 120,000 Bulgarians or Romanians to work. Around 28,000 Bulgarians or Romanians received ALG II. The workers from these countries can only work in Germany as highly skilled workers, seasonal workers or as artists. Many of them therefore register as self-employed. In that case, if one earns too little, an additional benefit can be received (Aufstockendes ALG) (Engler & Grote 2013).

### **Exclusionary provisions of social assistance and the accordance with European and International law**

According to art 7 para 1 s 2 the following groups are excluded from social assistance:

1. foreigners, who are neither workers or self-employed nor have a right to free movement on basis of art 2 para 3 FreizügG/EU and their family members for the first three months of their stay,
2. foreigners whose right of residence results only from the purpose of **job-seeking** and their family members,
3. beneficiaries on basis of art 1 of the Asylbewerberleistungsgesetzes<sup>261</sup>

A very similar provision can be found in SGB XII, where the assistance scheme of the accessory Sozialhilfe can be found.<sup>262</sup>

#### *Legal debate*

This exclusionary provision in art 7 SGB II has been subject to legal debate in Germany and there are still several open legal questions concerning this regulation.

#### *Art 24 para 2 and the categorization as “social assistance”*

The first severe problems occurred when the Vatsouras/Koupatantze case of the ECJ<sup>263</sup> gave rise to the question as to whether the exclusion of ALG II is legitimate, because art 24 para 2 of the Citizens' Rights Directive 2004/38/EC on which the exclusionary article is based<sup>264</sup> only allows the exclusion of “social assistance”. Due to the fact that ALG II aims in particular to reintegrate jobless persons, it could be classified as a benefit of a financial nature intended to facilitate access to the labour market and therefore cannot be an object of exclusion. However, the general character of the scheme of ALG II might lead to a different assumption. Only new legislation or a judgment of the highest court will eventually clarify the character of ALG II. But even after a final classification the situation would not be sufficiently certain. If ALG II is not “social assistance” in the meaning of art 24 para 2 Dir 38/2004 the exclusion based on this ground would be void but if it is categorized as “social assistance” and the legal ground of art 24 para 2 can be applied, there are still other questions that raise doubt about the validity of the exclusionary regulations.

#### *The European Convention on Social and Medical Assistance 1953*

Germany was among the 17 signatories of the European Convention on Social and Medical Assistance in 1953<sup>265</sup>. This treaty established equal treatment for nationals of all countries that signed the Convention and thus access to social and medical assistance. In 2006 Germany changed its law and included the above mentioned exclusionary provision. The next step in this debate was the decision of the Bundessozialgericht (Federal Social Court ()) in 2010 that all citizens of the signatories of the Convention are entitled to social assistance, including “Harz IV”<sup>266</sup>. The German government reacted promptly in 2011 by adding a caveat to the convention,

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<sup>261</sup> art 7 para 1 s 2 in German: „Ausgenommen sind 1. Ausländerinnen und Ausländer, die weder in der Bundesrepublik Deutschland Arbeitnehmerinnen, Arbeitnehmer oder Selbständige noch aufgrund des § 2 Absatz 3 des Freizügigkeitsgesetzes/EU freizügigkeitsberechtigt sind, und ihre Familienangehörigen für die ersten drei Monate ihres Aufenthalts, 2. Ausländerinnen und Ausländer, deren Aufenthaltsrecht sich allein aus dem Zweck der Arbeitsuche ergibt, und ihre Familienangehörigen, 3. Leistungsberechtigte nach § 1 des Asylbewerberleistungsgesetzes.“

<sup>262</sup> See art 23 para 3 SGB XII.

<sup>263</sup> ECJ 4 June 2009, C-22/08, C-23/08 (Vatsouras/Koupatantze).

<sup>264</sup> Bundestagdrucksache, No.16/5065, 234.

<sup>265</sup> Entered into force in Germany in 1956.

<sup>266</sup> Bundessozialgericht, f. 19 October 2010, B14 AS 23/10 R.

making *ALG II* an exception to the rule and in the following gave the order to apply the exclusionary provision again.<sup>267</sup>

This unilateral amendment of the (multilateral) Convention was justified with the argument that it would not be fair to exclude nationals from current members of the EU that were not signatories to the Convention in 1953. Therefore it was decided to exclude the nationals of all the EU member states from *ALG II*. There are good reasons to presume that the declaration of the German government is contrary to international law. Firstly, the scope of application of the ECSMA would be limited to such an extent that the conclusion could be drawn that this limitation conflicts with the general purpose of the treaty. Secondly, the wording of art 16 under b ECSMA is a “new law or regulation” and it could be questioned, whether *ALG II*, which was introduced in 2005, can be considered as a “new law or regulation” in terms of the ECSMA, which was adopted 1956.<sup>268</sup>

Nonetheless, as long as there is no case-law of the *Bundessozialgericht* or from the ECJ, there cannot be a guarantee for nationals of the contracting states that public authorities will grant them social assistance benefits on basis of the ECSMA provisions, albeit that some courts of appeal have decided that nationals from the contracting states are entitled to receive these benefits.

#### *Regulation 883/2004 on the coordination of social security systems*

In addition to these two legal questions, a third, maybe more relevant one must be mentioned. Since 2010 the Regulation 883/2004 on the coordination of social security systems is directly applicable. Art 4 of this regulation states:

*“Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.”*

This can be seen as *lex specialis* with regard to the antidiscrimination articles of the Treaty on the Functioning of the European Union (art 18 in conjunction with art 21 TFEU) and this time *ALG II* is explicitly included in the scope of the regulation. Art 8 Reg 883/2004 states its superiority to “any social security convention applicable between Member States falling under its scope” so that the relation to the ECSMA should be clear. But a conflict arose between the above mentioned possible justification of discrimination in art 24 Dir 38/2004 and the prohibition of different treatment in this Reg 883/2004. Although there is no direct hierarchical order, there are good reasons to claim that the regulation prevails (Frings, 2012) because of its higher degree of commitment in comparison to the directive and more and more courts in Germany grant *ALG II* to EU citizens in proceedings on grounds of the Reg 883/2004.

However, again only a final judgment of the highest court or new legislation will give a finite answer to this question, but it seems that nationality will no longer be an adequate criterion to refuse *ALG II* for job seekers.

#### *Consequences*

A practicable solution relating to current cases involving EU citizens claiming *ALG II* is to seek another reason for their stay in Germany rather than job seeking, such as for example, family reunion.<sup>269</sup>

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<sup>267</sup> The instruction of the *Bundesagentur für Arbeit* is available in the World Wide Web:

[www.arbeitsagentur.de/nr\\_166486/zentraler-Content/HEGA-Internet/A07-Geldleistung/Dokument/GA-SGB-2-NR-08-2012-02-23.html](http://www.arbeitsagentur.de/nr_166486/zentraler-Content/HEGA-Internet/A07-Geldleistung/Dokument/GA-SGB-2-NR-08-2012-02-23.html).

<sup>268</sup> *Bundesgesetzblatt* (German Federal Law Gazette) II, 1956, p. 563.

<sup>269</sup> *Bundessozialgericht* f. 30 January 2013, B 4 AS 54/12 R, Rn. 34.

The above mentioned uncertainties regarding the exclusionary provisions also have an impact on the legal structure governing the relationship between *ALG II (SGB II)* and *Sozialhilfe (SGB XII)*. Art 21 *SGB XII* states that nobody should be entitled to *Sozialhilfe* if he or she is entitled to *ALG II* on the merits. Although *Sozialhilfe* is not constructed to provide benefits for able-bodied persons, some appeal courts entitled EU citizens to benefits under this scheme because they were denied *ALG II*.

However, even if all claims for *ALG II* and *Sozialhilfe* are rejected on basis of these controversial provisions, art 23 para 1 s 3 *SGB XII* opens the possibility and duty for public authorities to grant *Sozialhilfe* in situations where it is needed and justified. Subsequently, if a foreigner is strongly dependent on the assistance (for instance where human dignity demands certain benefits), public authorities shall grant *Sozialhilfe* to the person concerned. Thus, foreigners who are obligated to leave the country (EU citizens that lost their right of residence; undocumented immigrants) can rely on supplies for essential humanitarian need.<sup>270</sup>

#### **14.3.4 Child benefit (Kindergeld)**

Nationals from another EU member state or a member state of the European Economic Area are entitled to receive child benefits under the same conditions as German nationals from birth to the age of 18 years, although it is necessary that the child for whom the *Kindergeld* is claimed, is enrolled in education. If the child is still in education after the age of 18, the benefit continues until he or she reaches the age of 25. Times during which a child served as soldier or did civilian service and thus was not entitled for this benefit, will be added to this age limit.

The benefit amounts to a monthly payment of EUR 184 per child for the first two children, EUR 190 for the third child and EUR 215 for every other child.

For working parents with a minimum (and maximum) income level, the child benefit can be supplemented with *Kinderzuschlag* (children allowance). This allowance is maximized to EUR 140 per child.

#### **14.3.5 Other legal obstacles**

Due to the fact that many homeless persons (including homeless persons from EU10 countries) have severe problems concerning the use of drugs, in particular alcohol, also police bye-laws which prohibit the use of alcohol at certain places and/or during certain times, can have an impact. Although infringements of these bye-laws are only regulatory and not criminal offences, homeless people (who are usually not able to pay fines) can be stigmatized by being sent to hidden places and public police interrogation. But the continuous refusal to pay a fine for a regulatory offence could eventually also lead to imprisonment to enforce the payment.

In the last years the number of media reports about aggressive begging from migrants from south-eastern Europe, in particular Romania have increased. Often they include a suspicion that the domestic beggars are organized, use cheating methods and are linked to criminals who are involved in human trafficking or other related offences. Police officials confirm this suspicion and add that it is difficult to collect sufficient evidence to effectively prosecute the responsible parties. To what extent the often female and young beggars profit themselves or whether the revenues are taken by persons behind the scenes remains vague as well.

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<sup>270</sup> *Landessozialgericht Nordrhein Westfalen* f. 27 June 2007, L 9 B 80/07 AS ER.

From a legal perspective it must be mentioned that begging has not been an offence since 1974, but aggressive forms of begging can be prohibited on the basis of police bye-laws in many municipalities.

Hence, whenever people, whether Germans, EU10 mobile citizens or Roma are begging in a manner which can be considered as a threat to public order they risk a fine for committing a regulatory offence.

#### 14.3.6 Access to justice

A refusal to grant social assistance is considered as an administrative act which can be challenged in court. Because of the danger to public safety if homelessness occurs, an individual has a right to be accommodated in an emergency shelter and this right can be enforced in *einstweiligen Rechtsschutzverfahren* (interim legal proceedings).

However, as in almost all other jurisdictions law issues in Germany cost money and can be a problem not only for the homeless without any means but also for persons with low earnings.

In Germany it is possible for a person to apply for legal aid and advice if he or she does not have sufficient financial means to pay for the court costs and legal counselling. This scheme works for civil law, labour law, tax law, constitutional law as well as for administrative law and social law. No aid will be provided in relation to a claim regarding an abuse of a right or a claim with insufficient expectations; the same applies for cases in respect of which other aid schemes (e.g. aid from social assistance offices or employment agencies) can be effectively used.

Homeless persons usually qualify for completely free legal aid.

Because it is not of importance which nationality the claimant has or where he or she lives<sup>271</sup> every EU citizen and EU10 national can apply for this legal aid as long as the case has a link to Germany and will be brought before a German court, which will evidently be the case if the claim is directed towards a German public authority.

Obviously one can find a developed system of legal aid in Germany which should enable people in need to claim unlawfully refused social benefits or help the homeless to enforce their right to emergency shelter. As is often the case, legal remedies are only one part of a functioning system. For migrants in need, often without social contacts in the host society, who may recently have lost their work and who face language barriers in a highly bureaucratic system, it might not be easy to apply for benefits.

With regard to objections against decisions from the *Bundesagentur für Arbeitsuchende* it must be mentioned that a considerable number of objections are sustained in favour of the applicant<sup>272</sup> and that the same applies for lawsuits before social courts.<sup>273</sup>

#### 14.3.7 Expulsion and repatriation

Every foreigner who receives benefits from the subsidiary scheme of *Sozialhilfe* has to be informed about suitable repatriation and resettlement programmes. State authorities are obliged to inform this group of foreigners (art 23 para 4 *SGB XII*) and to work towards a utilization of these programmes in particular cases. However, if the person refuses to accept any of these proposals there shall be neither negative consequences for the granted amount of benefits nor any other disadvantages (Groth, 2013).

<sup>271</sup> *Bundesverfassungsgericht*, f. 20 August 1992, 2 BvR 1712/89.

<sup>272</sup> In October 2012, 35.2% of objections were sustained in: *Brader, et al.* (2012), p. 20.

<sup>273</sup> in 2010, 43.7% of the 177.343 lawsuits before social courts (that are 42% of all lawsuits in social courts) are decided in favour with full or partial success for the claimant in: *Statistisches Bundesamt*, 'Klageverfahren bei den Sozialgerichten'.

The general programmes which come into question are the so called REAG-programme and the GARP-programme (*REAG* - Reintegration and Emigrations Programmes for Asylum-Seekers in Germany and *GARP* - Government Assisted Repatriation Programmes) but these programmes and several specific country programmes of Germany, do not target EU nationals. Only third country nationals can apply for a return travel subsidy. Further assistance is granted to victims of forced prostitution and human trafficking. They can receive return assistance and financial aid for a new start in their home country.

#### **14.4 Social causes for destitution and homelessness**

Mobile citizens from the EU10 countries experience few legal barriers when searching for housing. Nevertheless, they are likely to encounter several other difficulties on the housing market in their search for adequate housing. First of all there is the language deficit. This can create problems reading housing announcements or housing sites. Often the migrant is less aware of how local housing markets function. Another problem can be the costs of real estate agents or the dependency on other brokers on the housing market. In the position paper composed by the Association of German cities, this problem was stipulated in particular in relation to the group of Bulgarian and Romanian migrants in the cities. This group with often a low level of education, language problems and a very weak labour market position is prone to exploitation by mala fide landlords. The German cities clearly observe a growth in the number of precarious housing situations for this group; low quality housing for high rents, which in turn lead to a need for extra income, not through illegal activities.

A possible barrier for migrants seeking to enter the housing market may also be insufficient knowledge of the system of housing allowances.

A common form of discrimination is the practice of letting poor quality flats for high rents. For instance, seasonal workers from Eastern Europe are often housed in mass accommodation close to their working place in sometimes very bad conditions and the disproportionate high rent is deducted from their already low earnings. As migrants are told that this would be standard accommodation for this price in Germany, not too many complaints are lodged.

The fact that in most cases migrants have less knowledge not only about their legal rights but also about the situation on the housing market or about living standards contributes to their vulnerability to discrimination.

Although the German system of social housing is officially “ethnic blind”, the above mentioned problems and certain forms of discrimination on the housing market lead to inequalities on the German housing market. Seveker states:

*“These population groups (migrants) are often disadvantaged in housing markets compared to the autochthonous population. Migrants often live in worse dwellings and pay higher rents than the autochthonous population. People with a migratory background pay Bruttokaltmieten (higher gross base rents) on average (EUR 6.24 per square meter) than the whole population (EUR 6.01). The highest rents are paid by foreigners (EUR 6.38), in particular foreigners of the first generation (EUR 6.42).”* (Seveker, 2010).

This leads to concentrations of migrant families in parts of the cities that often have a lower quality of housing and a lower quality of housing environment. This means fewer facilities such as schools, health care or welfare services or fewer parks in the area or no public transport facilities.

As indicated above, an increasing number of EU10 nationals are appealing to the institutions for help because of homelessness. Particularly noteworthy are those seeking help from the acceding countries Bulgaria and Romania. Especially due to the transitional arrangements for the free movement of workers, they had only limited access to the German labour market. They offered their services as self-employed workers and thus missed out on the protection provided under legislation relating to employees. There are reports in which reference is made to modern slavery (Witte 2012). This group is thus particularly exposed to a high risk of poverty and they number highly in many low-threshold facilities for the homeless.

Many Roma who come to Germany have been exposed to strong discrimination in their countries of origin (in particular Bulgaria and Romania). Although open persecution is rare nowadays, also in Germany anti gypsy prejudice and discrimination (antiziganism) still occurs (see Popp 2012; Decker et al 2012). This leads in turn to extra disadvantages and additional barriers for these groups when seeking to enter the labour and housing market, resulting in special needs for assistance. It is also a motive for municipal policy makers to turn to extreme measures such as denying EU nationals access to homeless facilities referring to alleged housing in their countries of origin. And last but not least, this group seems very prone to exploitation through mala fide house brokers and even human trafficking.

#### **From Plovdiv to Dortmund.**

In recent years, thousands of Roma from the overcrowded Plovdiv neighbourhood Stoliponovo came to the city of Dortmund. Discrimination in Plovdiv is pushing them, semi legal immigration networks are pulling. The networks are dominated by German-Turks. They arrange for work, housing. According to press sources, the work is often undeclared and many women are forced to work in prostitution.

(source: Dortmund bleibt laut Plovdiv Experte Ziel für Bulgaren. (2011, November 19). [Der Westen \(online\)](#)

Regardless of the origin of the concerned person, rent arrears are one of the most frequent reasons for the loss of housing. Rent arrears may be due to the excessive demands of bureaucratic requirements and deadlines for applications concerning assistance schemes such as *Wohngeld*, *ALG I*, *ALG II*, *Kindergeld* (child benefit) etc.

This circumstance will be aggravated by language deficiencies that could lead to misunderstandings and incorrectly completed application forms, which result in lower or even the refusal of benefits. Cultural differences or unfamiliar bureaucracy often accompany the language barrier and contribute to a whole set of obstacles. Financial mismanagement, deferred payment and loans can cause rent arrears as well.

## **14.5 Services for the homeless**

### **14.5.1 State obligation**

All police and safety laws of the federal states in Germany consider homelessness, also among migrants, as a "threat to public safety and order". Municipalities, in the form of the local police authority, are responsible for accommodating homeless persons in their district because the fundamental rights of the homeless are at risk and the ensuing potential threat to public safety



and order must be removed. Public safety includes the concept of the unhampered execution of fundamental rights of every individual including the rights of migrants (Ruder, 2012). Thus, the legal status of the homeless person is not of importance. However, this only applies for involuntary homelessness. Those who are voluntarily homeless are not covered.<sup>274</sup> The factual residence of the homeless person is decisive for the local authority's competence and the local municipality cannot refuse the claim to accommodation. Factual Residence means the physical presence of a person within the competence area of a municipality. The period of the residence is not of importance and neither is the person required to remain permanently within the district. Even if another habitual residence exists or if the individual is registered at another place, the responsibility lies with the municipality in which the state of homelessness occurs. It is not important whether the stay at this place is voluntary or involuntary or legal or illegal.

It is important that any measures taken are aimed at merely eliminating a temporary threat to public safety and not at creating a long term solution. This is the reason why homeless people are only offered emergency accommodation and not accommodation that would be more appropriate for establishing a new home and a stable basis.

The social assistance authorities and not the local police are responsible for providing a permanent home.

This competence structure often results in a situation in which a homeless person qualifies for emergency accommodation but never acquires adequate housing with the result that the temporary solution in the form of emergency shelters often becomes a permanent solution.

#### 14.5.2 Policy and services

Although there is no national policy or scheme that aims at cushioning the problems of homelessness, a net of municipal service providers and non-governmental initiatives is in place. Many of the aid services have a specific target group and so a great variety of them can be found. From special institutions for women, old persons, and people with health problems to victims of domestic violence and many more, one can find very different offers that are used frequently by homeless persons and naturally every initiative has its own means and methods to solve the problems that occur. Depending on the city, the service providers are more or less well interconnected and organised. Usually good coordination between the initiatives makes it possible to effectively target the variety of problems the different groups of homeless people are confronted with. However, it remains problematic that employees in the job centres of the *Bundesagentur für Arbeit* are in many cases not adequately prepared for the special and complex circumstances that accompany homelessness (Droste et al, 2010, p.78).

Besides institutions that aim to prevent evictions and homelessness<sup>275</sup> the structure of the services is characterized by two different types of aid.

First, the municipal emergency shelters, equipped in the most cases with a food supply and sanitary facilities and with various types of accommodation and secondly the advice centres, day stays (sometimes also night accommodation), street work and connected services. The latter is to a great extent provided by the catholic and protestant church (*Katholische Bundesarbeitsgemeinschaft Wohnunglosenhilfe*; *Caritas* and *Evangelischer Fachverband Obdachlosenhilfe e.V*; *Diakonisches Werk*) albeit initiatives from labour organisations or the Red Cross play a role too. It is estimated that around 1,400 of these service providers exist in Germany and they provide their help mostly ambulant (80%) and not stationary

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<sup>274</sup> Voluntary homelessness or vagrancy is not a criminal offence in Germany since 1974 and is considered as acceptable form of appearance of the general freedom of action (guaranteed in art 2 para 1 GG).

<sup>275</sup> According to the *BAG W* there are around 120 of these institutions.

(Bundesministerium für Arbeit und Soziales, 2013, p.394). The biggest financial support for the service providers in the most cases comes from the public authorities such as the local municipalities but also churches as well as donations from companies/restaurants or private persons often hold a significant share of the contributions.

Due to the great number of different services and the, to some extent, very different approaches, it would go beyond the scope of this research to state and explain the diverse offers of the initiatives but every initiative is very ambitious with regard to developing suitable and adequate aid relating to actual needs and often not only covers classical needs such as food, health, clothing, and accommodation (in particular in the winter) or personal advice but also special services for exceptional circumstances.

## 14.6 Practices aimed at homeless EU10

In principle all services provided for homeless people are open to EU10 nationals too. However, the specific problems of this growing group demands tailored solutions for their actual needs. Unfortunately the pool of services aimed at the homeless originating from the new EU member states is very limited. Nevertheless some initiatives can be described that are targeted at this group.

### *Project Plata, Hamburg*

The aim of this project is to establish low-threshold services for the homeless originating from Eastern Europe and especially to integrate them into the existing local aid system. Polish people will be given advice and support with a view to a possible repatriation.

The administration of Hamburg considered it necessary to establish a special aid service because the number of homeless persons originating from Eastern European was increasing steadily. For instance, in the winter, two thirds of the 230 places to sleep in the biggest emergency shelter of the *Spaldingstraße* were occupied by citizens from Eastern European countries and only 18% of the homeless originated from Hamburg.<sup>276</sup>

For the evaluation of this project that ran between 2010 and May 2012, almost 1,100 homeless persons were contacted by the project. A total of 476 were repatriated. The employees of this project can speak the relevant languages and therefore are able to optimally support homeless people from these countries with social work, translations and administrative tasks. Furthermore, the consulates of the involved countries try to support the project with administrative issues.

The group of 476 that was send back to their home country can be characterized as follows:

- 74% was unemployed in their country of origin; (6 % homeless).
- 24% was seriously ill, many alcohol related.
- 48% was doing undeclared work.
- None had a sufficient insurance for sickness.
- All of them had severe language deficiencies.
- Most of them were between 30 en 49 years old (which means relatively young).

From the 476 repatriations, 37% went back to Poland, 30% to Romania and 25% to Bulgaria and 8% to other countries.

The project concluded that for 90% of the homeless in the project there was no future for successful integration in Hamburg. Their health situation and their poor German stood in the way

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<sup>276</sup> *Pressestelle der Behörde für Arbeit, Soziales, Familie und Integration Hamburg* (2013), 'Vermeintliche Obdachlose - Winternotprogramm: Zoll deckt Missbrauch auf'.

of such integration. They were earning too little in the formal market to meet expenses and often they were fictitiously self-employed. Often they were surviving through work in the undeclared economy. Alcohol abuse was a serious problem amongst the Polish homeless.

The project aimed in particular at homeless people from Poland and for many of them successful repatriation could be conducted thanks to a good cooperation with Polish help organisations first and foremost with *Barka* foundation. For Romanian and Bulgarian citizens these structures were still in the phase of establishment so that citizens from these countries were dependent on their families and friends in their countries of origin if they decided to go back.

According to the project team, repatriation is the best solution for by far the biggest part of the homeless people from Eastern European Countries because their chances for successful integration in Germany were too few and due to the language barriers and insufficient health insurance appropriate help can only be provided in their home countries.

#### *Other city responses to EU10 homelessness*

As in many other cities, the municipality of *Munich* experienced a growth of the number of persons who claim emergency accommodation, in particular during the cold period in the winter. It is estimated that the number of homeless people increased by 25% between 2011 and October 2012. Roughly 3,000 people are homeless, of whom 550 are living on the streets. The reasons for this increase can be seen in the tight housing market in the economically growing city of Munich and in the strong growth of immigrants without income.

But this new demand has overburdened the local authorities in Munich which led to a new policy towards homeless EU nationals. Since July 2011 accommodation is only provided to persons that have been registered in Munich for at least 6 months and it is assumed that homeless EU nationals still possess a living space in their country of origin as long as they cannot prove otherwise. Hundreds of homeless EU nationals were therefore denied access to homeless facilities (Loerzer, 2012).

On the other hand, a project from *Caritas* called "*Bildung statt Betteln*" (Education instead of begging) provides open consultation-hours especially for Bulgarian and Romanian citizens as well as mediation and companionship in all administrative measures. Similar to the concept of *Plata* in Hamburg contact with help organisations in the countries of origin will also be established and possibly a repatriation will take place. Through this initiative Bulgarian and Romanian nationals can acquire temporary emergency accommodation.

This refusal by cities and private service providers such as the church to grant access to emergency accommodation to immigrants originating from the new member states, in particular Romania and Bulgaria, also takes place in other cities (Schayani & Mogut, 2013; Schmid & Ulrich, 2013).

In the past years, a competition for the available accommodation places has taken place resulting in a concurrent situation between local homeless people and mobile citizens from the new EU member states that was not seldom accompanied by increased racism (Kuhrt, 2013).

## 14.7 Concluding remarks

Since the accession of the new Central and Eastern European member states, Germany has witnessed a steady influx of EU10 mobile citizens. Until May 2011 labour market restrictions were in place for the EU8 mobile citizens. As a consequence many migrants were initially registered as self-employed. For Romanian and Bulgarian citizens labour market restrictions were in 2014.

In 2011 approximately 690,000 EU8 migrants and 250,000 EU2 mobile citizens were living in Germany. An unknown but - according to some sources - significant, share of EU2 mobile citizens consists of Roma.

Generally EU10 workers in Germany have a good labour market position. Unemployment levels among this group are low and resemble the rate for the total German population. Educational levels of EU8 mobile citizens are (well) above the average German population. There is however some cause for concern regarding recent immigration from Bulgaria and Romania as a substantial share of these immigrants (40 percent) have no professional qualification, which is likely to reduce their chances on the German labour market.

In terms of their socio-economic position EU10 mobile citizens are not subject to elevated risks of poverty. Generally, their poverty rates are comparable to that of the total German population. Yet, there are reports on specific vulnerable groups, more specifically poorly educated recent immigrants from Romania and Bulgaria and some Polish immigrants with problems concerning substance abuse, who are experiencing destitution and homelessness.

When looking at the legal causes for destitution and homelessness, we can conclude that there are neither legal barriers for EU citizens in general nor for A10 mobile citizens in particular that can hamper their access to the housing schemes. However bureaucratic obstacles concerning the application for the required *Wohnberechtigungsschein* can cause problems in individual cases.

Concerning financial benefits from the schemes of *ALG II* and *Sozialhilfe* the situation is less straightforward. Art 7 para 1 s 2 *SGB II* imposes entitlement barriers to job-seekers, as well as to EU citizens within the first three month of their stay. Because *ALG II* remains unclassified within the system of social benefits and thus the accordance with EU law is still unclear, the exclusionary provisions for job-seekers are applied by public authorities. Nevertheless, there are reasonable chances, based on different legal grounds, that a court will grant those benefits in temporary injunction proceedings.

The general social assistance scheme *Sozialhilfe* contains exclusionary rules as well. Consequently, the public authorities have to decide whether they will grant *Sozialhilfe* on a case by case basis. Current developments in case law reveal the tendency for such applications to be sustained in cases where EU citizens were previously excluded from *ALG II*.

Due to a change in art 8 para 2 *SGB II*, the scope of application of the *SGB II* has clearly been extended and consequently Bulgarian and Romanian nationals do not face problems that differ considerably from those that other EU citizens have to cope with.

The number of legal debates about the conformity of the exclusionary rules of the German social code with higher-ranking law reveals a deep conflict.

The relationship between homelessness and the behaviour of public authorities is ambivalent. Homeless people can be targets of police intervention because of their use of alcohol or because of begging with the consequence of regulatory fines or police bans. On the other hand homeless people can rely on a state obligation to eliminate threats to public order and safety. This leads to a

legal claim to emergency accommodation from the responsible local authority in case of involuntary homelessness.

Besides the help provided by local public services a diverse infrastructure of alternative aid organisations can be found in Germany. The initiatives are financed by public funds and private donations. However, available accommodation is in high demand in particular during the winter, which leads to shortages and competition between homeless people. Cities claim that the situation regarding Eastern European nationals has deteriorated in recent years and some even seem to be unable to cope with the problem to such an extent that the access to services was restricted for migrants from these new member states.

Until now there are only a limited number of initiatives aimed at vulnerable homeless persons from EU10 countries. The answer to the problems is often sought in reconnection or repatriation to the countries of origins.

## ANNEX I

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## **PART III**

# **CONCLUSIONS AND RECOMMENDATIONS**

## **15 CONCLUSIONS**

### **15.1 Structure**

Below are the conclusions of the research conducted into four categories of migrants in eight EU member states.

First of all, in section 15.2, we round up the eight country studies with a summary of the similarities and differences we found between the different groups of destitute migrants. These summaries include general references to the country studies which guide the way to specific information included in the studies. The summaries are structured in a similar fashion which roughly reflects the structure of the general questionnaire, i.e.

- The extent of homelessness and destitution
- Legal barriers
- Social barriers
- Local best practices

On the basis of the short overviews we present a number of recommendations/points of concern for each of the countries concerned.

Secondly, in section 15.3, we discuss how the outcome of the country studies reflects the theoretical framework presented in Part I. This is referred to in section 6.4 (without turning a blind eye to the greater picture). To avoid any repetition we only concentrate on insights from the country studies which can enrich the theoretical framework.

Finally, in 15.4 we discuss a number of trends that have emerged but that may not have been analysed in the theoretical framework. We refer to these trends as the 'policy dynamics relating to homelessness and destitution'. Three policy dynamics will be dealt with: a) 'local dumping' (shifting responsibility from the national to the local level and civil society), b) repressive policy responses and c) human rights responses.

### **15.2 Analyses of the eight country group studies**

#### **15.2.1 Undocumented migrants in Greece and the Netherlands**

From a quantitative point of view the situation in Greece and the Netherlands is very different. In the Netherlands the problem of irregular stay is relatively small, with a more or less stable group of approximately 100,000 persons (for more detail see chapter 8, section 8.2.1). Greece faces a steady influx of migrants who enter the country in a clandestine manner. In 2011 the number of undocumented migrants in Greece was estimated at between 350,000 and 390,000. Moreover, approximately 100,000 migrants per year are detained by the Greek border police for illegally entering the country (chapter 7, section 7.2.1). The formal social support structure is also very different. While the Netherlands has a nationwide scheme of social assistance, housing support and services for the homeless, such an infrastructure is basically missing in Greece.

Because of the absence of reliable statistics, it is impossible to present any definite conclusions about the impoverished situation among these migrants. This is true for both Greece and the Netherlands. On the basis of qualitative research in both countries, patterns of severe material deprivation, including high risks of homelessness, may however be observed. In the Netherlands, survey data found that two out of three failed asylum seekers have insufficient means of subsistence (chapter 8, section 8.2.2). In Greece, thousands of non-Greek citizens are estimated to rotate between refugee camps, living on the streets and extremely marginal accommodation (chapter 7, section 7.2.3). Moreover, data from day centres in a few large cities in this country reveal that two out of three users of the emergency services were undocumented migrants (*ibid.*). The national reports of both Greece and the Netherlands claim that among undocumented migrants a few categories are most likely to be extremely marginalised. These are: irregular migrants with an asylum history (including unaccompanied minors), as well as victims of human trafficking.

A comparison between Greece and the Netherlands demonstrates that the number of undocumented migrants may fluctuate substantially. This is however not to say that the underlying mechanisms which cause patterns of destitution and homelessness also differ significantly. In both countries undocumented migrants are legally excluded from state social welfare support, including specialised local services for the homeless. Neither Greece nor the Netherlands provides official public assistance to undocumented migrants, with a possible exception in the form of medical emergency services and primary education (chapter 7, section 7.3.2; chapter 8, section 8.4.1). Neither have these migrants access to the social housing and the regulated private rental sector. These legal and institutional barriers leave this group with very limited options.

But the very nature of their irregular status also means that the migrants concerned are cut off from the official and regulated labour market. As a result of this situation undocumented migrants mainly resort to informal and clandestine work. Economic sectors attracting substantial numbers of irregular workers are usually associated with short-term contracts, routine work and activities that could be labelled dirty, dangerous and degrading. The national reports of both Greece and the Netherlands clearly reveal such patterns; undocumented migrants prove to be strongly dependent on all kinds of substandard employment. Moreover, employment conditions seem to have further deteriorated due to both the current economic crisis and the increased competition between different groups of vulnerable migrants. This is most clearly visible in Greece, a country that has been severely hit by the latest economic downturn (chapter 7, section 7.2.2). Also notice should be taken of the proliferation of fraudulent and sometimes criminal employment organizations, as plainly reported for the Netherlands (chapter 8, section 8.5.1). These intermediaries are responsible for all kinds of exploitative and abusive practices, also victimizing many undocumented migrants.

It is important to emphasize that many undocumented migrants prove to be incapable of finding any paid employment at all. These migrant categories – which include many women and youngsters – have no income since they are not eligible to any benefits under the national welfare state schemes. In the Netherlands research discloses that a significant share of undocumented migrants does not manage to get paid employment, mainly due to fear of being caught, poor health conditions or the simple fact that they cannot find a job at all (chapter 8, section 8.5.1). These migrants may only resort to informal networks of support, but then again not all have proved to be able to make use of informal solidarity. Qualitative research reveals that about half of the undocumented migrants resort to informal social networks (chapter 8, section 8.5.2). Also in Greece are various survival strategies reported, including forced and overcrowded cohabitation,

the occupation of abandoned dwellings, and sleeping places which are used in shifts (chapter 7, section 7.2.3). More severely, a great number of undocumented migrants live in the streets as alternative patterns of sustainable support are no longer available.

In addition to the absence of formal financial support, undocumented migrants are usually excluded from shelter and assistance provided by national and local governments. There are some exceptions for well-defined groups of undocumented migrants as a result of the protection offered by EU directives, for example for victims of human trafficking, unaccompanied minor children and undocumented migrants who co-operate with their return. In addition to this, the Netherlands operates a scheme for the reception of undocumented migrants with minor children (chapter 8, section 8.4.1). Also in Greece well defined groups – mainly children and victims of human trafficking – may benefit from public emergency services (chapter 7, section 7.3.2). All other categories of undocumented migrants merely rely on civil society support services, but these are limited in capacity and often not meant to improve the social situation of the migrants involved. The reports of the countries under study further demonstrate that unofficial circles of support play a vital part in the survival strategies of undocumented migrants. Similarly we learn however from these country studies that a large proportion of undocumented migrants are even deprived of these informal sources of help.

#### *Recommendations on undocumented migrants in Greece*

The Greek country study shows that the homeless and undocumented migrants are ‘invisible’ in statistics, in policies and in legislation. In order to address this the following recommendations can be considered:

1. The development of a national strategy for homeless migrants is required. Aim of this strategy should be the softening of the current repressive responses towards undocumented migrants in order to give room for a more social response which includes a humane treatment of vulnerable people in need. Furthermore, the strategy should clarify the division of responsibilities and resources between the national and the local level.
2. In order to allow for a more evidence based planning of interventions (as a precondition for achieving better results) various data on undocumented homeless migrants should be gathered and analysed on a systematic basis.
3. In view of the dire financial situation in Greece and the large influx of immigrants in this country, EU support should be given to fund support initiatives for the protection of the homeless. The availability of resources through the Strategic Reference Framework is a positive factor in this respect. However, improvements can be made in terms of flexibility, ownership and sustainability.
4. Undocumented migrants often face severe hostility and aggression and are victims of xenophobia, which is not effectively prevented by public authorities. Safety and security of homeless migrants should be recognized as a major priority of the Greek public authorities.

#### *Recommendations on undocumented migrants in the Netherlands*

Due to strict legal exclusion and a marginal position on the labour and housing market, undocumented migrants in the Netherlands are often unable to meet basic needs and are therefore at risk of becoming destitute. In particular the position of failed asylum claimants is a point of concern. In order to curb this trend, the following recommendations are made.

1. The Dutch government has set up family support locations for homeless failed asylum claimants with minor children pending their return after an ECSR ruling (ECSR October 20, 2009, nr. 47/2008, JV2010, 150). The government should now take steps to implement measures to ensure basic support (food, clothing, shelter) for homeless and destitute migrants in accordance with the ECSR decision on immediate measures of 25 October 2013 in the Collective Complaint by the



Conference of European Churches v. The Netherlands (Decision on immediate measures, Complaint No. 90/2013).

2. Large cities are confronted with large inflows of undocumented migrants from other parts of the country. In order to provide basic services to these groups, national support should be given to the *Centrumgemeenten* in order to facilitate care for these homeless migrants in need.
3. Alien detention should not be a solution for the care for undocumented migrants, in particular not for those who are unable to return.
4. In order to guarantee a humane treatment of vulnerable migrants, the continuous monitoring of reception standards in alien detention and family support locations is necessary.
5. The Repatriation and Departure Service (DT&V) of the Ministry of Justice is responsible for facilitating independent return of undocumented migrants. This service should have sufficient means to foster a decent and dignified return. In addition, returnees should be monitored after return to provide information on the effectiveness of the return policies, above all in terms of safety and livelihood chances of the individual returnee.
6. The Dutch government have stepped up the fight against the exploitation of undocumented migrants by malafide employers. It is important to keep this momentum to combat forms of exploitation of vulnerable migrants.

### **15.2.2 Third country workers in Poland and Spain**

The formal national systems of employment permit only restricted numbers of foreign workers to enter the national labour markets of EU member states. The consequence of these controlled policies is that many immigrant workers seek alternative ways to find paid employment in the EU. Employers sometimes also have an interest in circumventing the immigration rules applying to employing third country workers. These mechanisms are clearly visible in Spain which has attracted a large number of undocumented workers doing undeclared work in the informal sector. The number of undocumented migrants in this country is now estimated to be one million (chapter 9, section 9.2.1). The situation in Poland is different in the sense that this country has very much relaxed the work permit rules for third country nationals as from 2006 (chapter 10, section 10.2.1). As a result, much seasonal work carried out mostly by Ukrainians – more than 220,000 people in 2012 – is no longer undeclared. Nonetheless, the Polish report simultaneously indicates that most of the work carried out on a temporary basis, particularly in the agricultural sector, is informal, i.e. not registered for the purposes of tax and social insurance liability. Furthermore, the new work permit rules have not fully eradicated the practice of undeclared work. As a result, despite reported improvements following from the new labour immigration rules, the position of third country workers in Poland remains a weak one.

It is not easy to get a detailed and reliable picture of third country workers in the European Union in terms of poverty. In-depth research shows however that these migrants easily run the risk of becoming destitute and homeless. This is particularly true for those who are involved in undeclared employment and those who, as a result of the current economic downturn, have lost their job altogether. In Spain, during only the first two years of the economic crisis more than one million foreign nationals lost their jobs, homes or small businesses (chapter 9, section 9.2.3). What is more, thirty percent of non-European migrants in this country earn less than sixty percent – i.e. the poverty threshold – of the median income of the population as a whole. Poland exhibits a similar situation with many destitute migrants, although exact numbers are unknown. According to the OECD, the latter country ranks worst in terms of the incomes earned by the immigrant population, most of them coming from non-EU countries (chapter 10, section 10.2.3). Generally, the income levels of these migrants are only half of those earned by the Polish work force.

The social safety net has proven not to be able to reduce the risk of becoming destitute among certain categories of third country workers in the European Union. This is clearly the case when the workers are working and residing on an irregular basis. But even if this is not the case, there are plenty of obstacles blocking access to the social safety net. In Poland and Spain migrant workers do not generally qualify for social assistance since they are supposed to leave the country upon the expiry of their employment contract. The Spanish case also reveals that the emphasis of the social system on contributory arrangements and its poor social assistance development implies that a great deal of third country workers hardly benefit from the available welfare provisions (chapter 9, sections 9.4.3 and 9.5). Similarly, the Polish case demonstrates that third country workers may only benefit from social assistance if they reside on a permanent base in this country, but then again overall social spending is rather limited (chapter 10, section 10.4.2). Last but not least, it should be emphasized that a great number of third-country nationals in these countries are working in the informal sector, which as a consequence prevents them from making use of work-related social security schemes altogether.

The country studies regarding Poland and Spain point out a number of additional causes for homelessness and destitution among third country workers. To start with, inferior terms of employment make them highly vulnerable to patterns of severe destitution, also including homelessness. In Spain, poor working conditions related to extreme poverty are clearly the case for migrants involved in different economic sectors. The situation in the agricultural sector appears to be the most distressing, where migrants are sometimes badly exploited (chapter 9, section 9.6.1). The Polish case exhibits similar practices of poor employment conditions, including severe exploitation (chapter 10, sections 10.3.2. and 10.3.3). In addition, the reports of both countries reveal that the functioning of the housing market has proved to further deteriorate the social position of third country workers. The supply of inexpensive housing in Poland and Spain simply falls short of providing sufficient accommodation for migrants as both countries lack a significant social housing sector. Alongside these shortages, there is sufficient evidence of prejudice and unfairness directed against migrant groups in the rental market (chapter 9, section 9.6.1; chapter 10, section 10.2.3). Discriminative practices by landlords have proved no exception in these countries.

A great number of migrants who have become prone to destitution have found their way to various sources of formal and informal support. In Spain there has been a significant increase in migrants resorting to local and civil society support and home centres, particularly amongst those coming from Eastern Europe and Northern Africa (chapter 9, section 9.2.4). This trend can be explained by the economic crisis and increased competition for work at the lower scales of the labour market. Generally, these migrants have no job and do not receive any financial compensation from the state. However, the Spanish case clearly demonstrates that the present infrastructure of emergency help is not capable of providing sufficient help for an increasing number of destitute and homeless migrants. This is, among other reasons, due to a lack of capacity and the very fact that most of these centres of support are located in a few principal cities in this country.

In Poland, no tendency towards increased reliance on homeless services by third country nationals (if any at all) is reported. The reasons for this are not fully clear. It could be that informal mutual solidarity rather than emergency shelters functions as a last resort for these migrants. Another possible explanation is that third country workers simply return to their home countries once their employment agreement has expired. Temporary workers who do so, do not face the

risk of not being allowed to re-enter Poland on the next occasion by reason of the relaxed labour immigration rules introduced in 2006. Leaving the country does not adversely affect the future chances to re-enter. It would be very interesting to find out whether there would be such a positive corollary between labour immigration rules and a low incidence of homelessness in the host countries. If there is – as it has been suggested elsewhere in migration literature – this would be a factor to take into account when devising policies combatting homelessness and destitution amongst migrants.<sup>277</sup> This is clearly a subject for further research, though the lessons to be learned from the quite specific situation of Poland and Ukraine (for instance in terms of proximity) may not be transferable to other situations (where the destination and origin countries are further away in terms of geographical, economic and cultural proximity) .

#### *Recommendations on third-country workers in Poland*

While severe poverty among third country workers in Poland does not seem to be a widespread phenomenon - as many migrants have proved to be capable of finding paid employment - third country workers nonetheless suffer from a weak position in both the labour and housing market. To improve their position we propose the following recommendations:

1. Immigrants appear to have limited knowledge about terms of employment and employment conditions in Poland and therefore hardly ask for professional help in case of problems at work. The government is responsible for adequate information to immigrants on public regulations. Polish unions could also assume responsibility in this respect.
2. The implementation of the standards set by the UN Convention on the Protection of the Rights of all Migrants Workers and Members of their Families in regard to social security and social protection policy should be promoted in Poland as an aim to ensure the protection of all groups of migrants from labour market exploitation.
3. Discrimination in the housing market is persistent in Poland. As a result, a great number of migrants face problems accessing affordable housing in Poland. Effective remedies by the Polish government should be introduced to address this problem.
4. Although the situation is constantly improving, migrants still face several problems (e.g. language problems, lack of cultural understanding, prejudices) while dealing with Polish institutions. Measures should be undertaken to equip these authorities and professionals with knowledge and competences to cope with the multicultural and multilingual aspects of their work.
5. The lack of cooperation and exchange of information on the position of third country nationals between the institutions as well as between Polish authorities and NGO's can be a problem. We recommend the Polish government to facilitate the establishment of a platform to increase cooperation and exchange between these institutions.
6. As it appears that homelessness among third country workers (from Ukraine) is not widespread, it would be interesting to investigate to what extent this is related to the liberal migration regime for temporary third country workers which allows for easy re-entry into the country.

#### *Recommendations on third-country workers in Spain*

The country study of Spain reveals that a substantial - and due to the crisis even increasing - number of third country nationals suffer from labour exploitation. It is also observed that government policies have not achieved optimal results to combat these practices. In order to improve this situation, the following recommendations are made:

1. As it appears malafide employers are insufficiently confronted with state controls. A more effective enforcement policy, including inspections and sanctions in line with the EU Sanctions Directive

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<sup>277</sup>Vonk, G. and S. van Walsum (2013) Access denied, towards a new approach to social protection for formally excluded migrants. In: *Cross-Border Welfare State*, G.J.Vonk (ed.), Antwerpen, Intersentia.

(2009-52/EC) is considered as a vital strategy in order to reduce informal employment and unjust practices.

2. As is the case in Poland, due to various reasons, migrants in Spain often fail to make use of available social security services. More could be done in order to increase the awareness among migrants with regard to their social rights.
3. Spain has introduced programs of voluntary return, also including financial compensation for a certain period of time. In order to further enhance the effectiveness, it is suggested that these policies should have a stronger focus on labour market integration into the national labour markets in the countries of return.
4. Discriminatory practices in the private housing sector are serious point of concern. A more stringent public intervention is needed in order to fight these unfair practices.

### **15.2.3 Mobile EU citizens of Roma origin in France and Italy**

Poverty, discrimination and social exclusion have forced Roma communities from former Communist countries to pursue opportunities for employment and better living conditions in old EU Member States such as Italy and France. The migration of Roma started prior to the accession of Central and Eastern European countries to the EU and continued after EU integration. Regarding their social position in France and Italy, we must conclude that these mobile EU Roma have not achieved much progress upon migration. Although reliable information at a national level is lacking, in-depth and small-scale information delineates patterns of severe poverty and very unstable living conditions among these mobile EU Roma. In France, a survey reveals that the housing conditions of a great majority of EU Roma are extremely poor (chapter 12, section 12.2.2). In Italy, survey data disclose that almost all EU Roma in this country are at risk of poverty. Also a great deal of EU Roma in this country live in very unstable conditions (chapter 11, section 11.2.2).

Individual factors – such as low levels of education, lack of language proficiency and poor work experience – explain these patterns in a significant way. In addition, however, both legal and social factors have further affected the marginalized position of EU Roma. The case studies of EU Roma in Italy and France reveal that EU citizenship does not decrease the vulnerability to destitution and homelessness of EU Roma. This may partly be related to the fact that most of them come from Bulgaria and Romania for which both countries applied restrictions to free movement of workers during the largest part of the 7 year transitional arrangements period (5 years for Italy, 7 years for France). As a matter of fact, EU Roma are often in very unfavourable positions when it comes to entitlements to various social services in the countries under study. This outcome should be primarily understood by their weak legal status as many are unable to fulfil the conditions for a rightful stay. In addition, however, various social mechanisms have further reduced the position of EU Roma.

In both countries, access to housing and social assistance is tied to the right to rightfully remain on the territory. In line with the 2004 Freedom of Movement Directive and respective national immigration law, mobile EU citizens have the right to stay on the territory of Italy and France for three months. Beyond this period, mobile EU citizens and their families need to prove that they have work or have sufficient recourses not to become a burden on the national systems of social assistance. Meeting these requirements for rightful stay is however not always easy, as EU member states may have introduced restrictions for mobile citizens from Romania and Bulgaria – i.e. those countries from which most EU Roma originate – to enter the national labour markets. Italy lifted the labour market restrictions for Bulgarian and Romanian nationals at the end of 2011

(chapter 11, section 11.1). France extended the restrictions to the end of 2013, while liberalizing a list of professions (chapter 12, section 12.4.2).

While the requirements for a rightful stay equally apply to all EU mobile citizens, the country studies of France and Italy clearly demonstrate that it proves to be very difficult for EU Roma to meet these conditions. Apart from the impact of transitional restriction measures on entry to national labour markets, other practices prevent successful integration among EU Roma. The French and Italian national reports reveal that heavy bureaucratic procedures, lack of cooperation on the part of officials and open discriminatory behaviour have acted as barriers to enter the national labour market. As the French case illustrates, lack of support from local authorities dissuaded most local employers from employing EU Roma in any of the liberalized sectors of the labour market. The refusal of some departments to accept applications which do not meet the strict qualification of the profession (even for unskilled work) constituted another barrier to obtaining work for EU Roma (chapter 12, section 12.4.2). Without work and sufficient resources, EU Roma cannot regularize their stay.

In Italy, similar practices have been reported, especially in the labour market and housing sector. The country study shows that EU Roma are victims of direct and indirect discrimination both by public authorities and the general population (chapter 11, section 11.4.2). Municipalities, which by law are responsible for the construction and management of the Roma camps and halting sites, tend not to use the funds made available at a regional level to build authorised settlements. The decreased supply inevitably leads to the construction of unauthorised camps which are then subject to eviction. In addition, there is evidence that employers refuse to employ EU Roma candidates and that local landlords are disinclined to rent out apartments to this migrant group. In brief, Roma migrants in this country suffer severely from negative stereotyping, which has had a serious impact on their access to employment, housing and social support.

Access to services for the homeless provides some temporary lodging solutions for homeless EU Roma. However, in the context of insufficient places for emergency accommodation and the overall political doctrine of return of the migrants, homeless EU Roma are often last on the list for the provision of emergency lodging. The two country studies demonstrate that, despite a few good practices in this field, EU Roma hardly benefit from public and private reception facilities (chapter 11, section 11.5.1; chapter 12, section 12.5). The overall impossibilities for EU Roma to integrate into mainstream society have been accompanied with alternative strategies to survive, including the acceptance of many forms of marginalised employment and patterns of illegal settlements. The situation of the Roma in the French 'bidonvilles' and the nomad camps in Italy reveal these processes in an unambiguous way.

These Roma camps, however, have not been left untouched. This is notably true in France where EU Roma have been subject to forceful policies of eviction for many years. These evictions are not only criticised from a human rights perspective, but are also considered to have limited effect, as Roma families after being evicted tend to return to the same camping sites (chapter 12, section 12.4.1). In 2010, following a formal notice by the EC that infringement proceedings would be launched if France would fail to transpose correctly the Freedom of Movement Directive (BBC 2010), changes were made to national legislation specifying the conditions under which authorities may order an EU citizen to leave the country. An important aspect being that expulsion orders should be subject to an *individual assessment* of the EU citizen's personal circumstances. Additionally, since 2012 by adoption of an interministerial ordinance, more stringent conditions have been attached to eviction policies (ibid.) This having been said, the different prefectures

have not always followed the ordinance in the same way. As it emerges, the diagnosis of the individual needs and finding of alternative solutions is often not conducted, and when re-lodging solutions are offered, they are regularly limited to emergency accommodation for a limited duration (chapter 12, section 12.4.1). The country study reveals that in 2013 alone, more than 20,000 Roma in France have been affected by these evictions.

#### *Recommendations on mobile EU citizens of Roma origin in France*

Roma people who are mobile EU citizens in France live on the verge of society. In order to reduce the impoverished and isolated position of this group, the following recommendations are made:

1. Ensure data collection mechanisms to generate data on the socio-economic status, including homelessness, of vulnerable minorities, such as Roma.
2. Translate national strategies for Roma integration into local programmes for Roma inclusion – in line with the local specificities and the socio-economic situation of the Roma.
3. Conduct awareness raising initiatives and information campaigns in order to reduce discrimination against Roma groups and providing positive examples (role models) of Roma who have successfully integrated in France.
4. Establish robust mechanisms for monitoring of hate speech in public speaking and media. Enforce legislation which penalizes use of hate speech in public speaking and media.
5. Ensure basic services with regard to housing quality, drinking water and sanitation in all Roma settlements.
6. Cease collective, forceful evictions of Roma settlements where no alternative housing is available.
7. Remove all administrative obstacles to the right to participate in education and employment and social housing for Roma from settlement camps.
8. Ensure equal access to social services for homeless and destitute Roma.
9. Establish networks of mediators (in cooperation with NGO's) to work on improving health, access to social services, and access to the labour market of Roma.

#### *Recommendations on mobile EU citizens of Roma origin in Italy*

The vulnerable position of EU Roma in Italy could be improved by taking into account the recommendations formulated for the situation of the EU Roma in France. In addition, the following recommendations for Italy are made:

1. While improvements can be made to the quality of living in the camps (sanitation, drinking water etcetera) the camp system is ill-suited for sustainable integration of Roma. It is suggested that in the long run the full participation of the Roma in society not based on spatial segregation is a more viable solution. This implies integration into the labour market, participation in the regular education system and inclusion in the formal housing sector.
2. Promising initiatives to support destitute EU Roma have been discontinued due to withdrawal of funding by local authorities. The financing of good practices aimed at ameliorating the plight of destitute and homeless EU Roma should also be a national responsibility and not solely be dependent on the political priorities of local authorities. The results and effects of these initiatives should be monitored and evaluated to allow for dissemination of viable strategies.

#### **15.2.4 EU10 mobile citizens in Germany and the UK**

There are many EU mobile citizens from the new member states – the EU10 countries – living in Germany and the UK. In both countries the number is just over one million (chapter 13, section 13.2.1; chapter 14, section 14.2.1). There is no evidence that this migrant group faces serious risks in terms of destitution and homelessness. Many EU mobile citizens from the recently acceded Central and Eastern European Member States have found gainful employment in the

older Member States. However, within this broad category of mobile EU citizens some are prone to severe poverty indeed. This is particularly the case for those who overstay the initial period of three months to look for employment without a credible economic perspective. Often these EU mobile citizens are referred to as poverty migrants, i.e. those with poor chances at home who unsuccessfully try their luck abroad.

Unfortunately, there are no hard figures of the numbers involved. In Germany in 2010, the total number of homeless persons with a migration background was roughly estimated at 62,000 (chapter 14, section 14.2.3). From available data in different German cities we learn however that EU mobile citizens from Central and Eastern European countries are fairly and increasingly represented in the homeless population. This is particularly true for EU mobile citizens originating from Poland, Bulgaria and Romania (ibid.), unsurprisingly as they are the largest CEE MS in terms of population and also the poorest. Similarly, in the UK indicative figures about the origin of homeless people are only known at the local level. For instance, in London a private information network provides detailed information on rough sleepers in this city. From this data base it appears that out of a total estimated number of 4,000 rough sleepers in this city almost 1,000 came from EU10 countries, particularly Poland and Romania (chapter 13, section 13.2.3).

EU mobile citizens seeking to stay in another member state for a period of more than three months must provide evidence that they are able to support themselves. In other words, those who migrate for a longer period of time in the EU without having sufficient resources, i.e. paid employment, may not qualify (anymore) for a residence permit and, as a consequence, are not entitled to social assistance and social housing. There are also restrictions for persons who after a period of employment become unemployed. As reported in Part I of this study the state of EU law in this field is somewhat ambiguous. Both the UK and Germany have chosen to interpret the EU grey zone in such a way that access to the social safety net is denied. In the UK this is the result of a test establishing, first the right to reside and subsequently habitual residency (chapter 13, section 13.3.4). Vulnerable jobseekers with social problems are not likely to pass this test. In Germany this particularly follows from a provision in the *Sozialgesetzbuch*, excluding foreigners from *Arbeitslosengeld II* whose right of residence follows solely for the purpose of seeking employment (chapter 14, sections 14.3.2 and 14.3.3).

From a social perspective the adverse situation of stranded EU10 nationals should also be considered against the background of strongly decreased possibilities to (re-)enter the national labour markets. It is likely that the economic and financial crisis has decreased the chances of these vulnerable EU mobile citizens, as they often have a rather weak occupational status. More severely, as both country studies reveal, EU mobile citizens who overstay the initial period of three months to look for employment find themselves easily caught up in poverty since they lack any resources to make a living.

The risk of poverty amongst EU10 nationals can however not be fully understood without taking the on average limited capabilities of the destitute EU mobile citizens into consideration. It emerges that many of these EU mobile citizens lack language skills, have insufficient knowledge of various relevant issues and, most importantly, have made an unrealistic estimation of their chances and living conditions abroad. In the UK and Germany EU10 nationals who end up sleeping rough often come from poor backgrounds and areas of high unemployment in their home countries. However, the lack of any economic perspective in their countries of origin discourage these EU mobile citizens from returning home.

As a last resort, overstaying EU10 nationals may benefit from a diverse infrastructure of local public and private initiatives. Shelters are to be found in the large cities of both Germany and the United Kingdom. Evidence proves that an increasing number of destitute EU10 nationals are appealing to these institutions for help (chapter 13, section 13.5; chapter 14, section 14.6). It emerges that many among these destitute EU mobile citizens suffer from mental problems and are often addicted to drugs and alcohol. All the same, available accommodation is in high demand, which leads to shortages and competition between homeless people. Reception centres in both countries claim that they are not always able to meet the social and medical needs of destitute Eastern European nationals.

#### *Recommendations on EU10 mobile citizens in Germany*

The position of EU10 mobile citizens in Germany is an ambiguous one. Many have good economic perspectives and integrate well. There is, however, a small number of mobile citizens who face severe problems, destitution and homelessness. In order to address these problems we propose the following:

1. In order to prevent EU10 nationals from having an unrealistic vision of the employment opportunities and social services to be obtained in Germany, the government could provide targeted information and raise awareness campaigns in the countries of origin, Romania and Bulgaria in particular.
2. It appears that professionals of job centres are not always adequately prepared to deal with the needs of migrants from Central-Eastern Europe. This applies particularly in relation to vulnerable groups. More could be done in the form of training of staff in order to be able to better meet the needs of this groups.
3. The infrastructure for providing shelter to the homeless is not always adequate, particularly not in case of a sudden influx of new groups of migrants. In order to avoid unnecessary hardship or inhumane conditions for homeless EU10 nationals, municipalities should be better prepared to deal with these fluctuations.
4. As it appears bureaucratic procedures can sometimes operate as obstacles in obtaining housing rights (e.g. barriers in obtaining a *Wohnberechtigungsschein* or *Meldebescheinigung*). It is suggested that the authorities take a pragmatic approach when applying these requirements in order to ensure access to housing.

#### *Recommendations on EU10 mobile citizens in United Kingdom*

The large majority of EU10 workers in the UK have fared reasonably well, but also here a small but growing segment of the EU10 population ends up in a situation of homelessness and destitution. In order to address the issue of destitution among EU10 mobile citizens in the UK, the following recommendations are made:

1. Some homeless EU10 nationals have become stranded in the UK after becoming unemployed. They often lack information and relevant social networks for successful re-integration into the labour market. Targeted support to homeless EU10 workers who are able and willing to work in the UK with practical assistance in securing employment and housing have proven to be effective and should be further encouraged.
2. Some EU10 nationals in the UK experience extreme hardship due to malafide employers. A stringent enforcement policy against employers who exploit EU10 workers should be an integral part of a strategy combating homelessness and destitution among migrants.
3. In some of the large cities, various initiatives have been developed to house stranded EU10 nationals. Such schemes should be encouraged further.



4. Local councils enjoy wide competences in administering and distributing the social housing stock. The introduction of local connection tests may negatively affect access for immigrants to the social housing stock. It is suggested that such effects are monitored and if necessary addressed.

## 15.3 Comparing the findings with the theoretical framework

### 15.3.1 Homelessness and destitution among migrants and mobile EU citizens: what do we know?

Before we discuss the findings of the country case studies, let us first recap some of the information on the extent of homelessness and destitution as presented in Chapter 3. An important survey to measure the extent of material deprivation and social exclusion is the European Union Statistics on Income and Living Conditions (EU-SILC).<sup>278</sup> Of particular relevance for the purpose of this study is the established indicator ‘at risk of poverty or social exclusion’. This indicator reflects information on both insufficient income, severe material deprivation and low work intensity (see also Section 3.1). Table 15.1 reveals this information for both the native population and a few migrant categories in the EU and the countries which have been included in this study on destitution.

The information presented demonstrates the weak position of the foreign born, indicating that one in three foreign born in the EU is at risk of poverty or social exclusion. When looking at the position of non-EU born migrants, their vulnerable position – in terms of poverty risk or social exclusion – is also quite visible. In fact, differences in poverty between the native population and those foreign born should be entirely ascribed to the vulnerable position of non-EU born migrants. Furthermore, the highest rate of poverty are to be found in Southern Europe, particularly Greece, Italy and Spain.

**Table 15.1 Poverty risk or social exclusion among nationals and immigrants in the EU-27 and some member states, 2012**

	Native born	Foreign born	Foreign born EU	Foreign born non-EU
EU-27	23.1	32.9	23.8	38.4
France	16.5	30.1	18.6	35.6
Germany	19.9	19.8	16.7	25.4
Greece	32.7	54.8	35.1	60.7
Italy	27.7	43.1	40.4	44.4
Netherlands	12.5	27.3	15.6	30.1
Poland	26.2	27.5	24.2	29.7
Spain	24.2	44.9	32.5	50.1
United Kingdom	21.1	29.5	20.6	33.4

Source: Eurostat. EU-SILC (2013)

The EU-SILC survey is very helpful for obtaining an initial picture of poverty risks among migrants. However, as explained before, we can not only rely on these data in order to fully understand the marginalized position of destitute migrants in the European Union. The reason for this being that these figures deal with people who may find themselves in critical positions, rather than identifying

<sup>278</sup> The EU-SILC is an instrument aiming at collecting timely and comparable cross-sectional and longitudinal multidimensional microdata on income, poverty, social exclusion and living conditions.

those in unmistakably destitute or even homeless situations. As we have seen in the separate country studies, a vital characteristic of many destitute migrants is their weak legal status, which also keeps them from registration in local population registers. In most EU Member States several groups are indeed under-reported in EU-SILC, such as recent immigrants, those not registered and those living in collective households. In addition, (destitute) migrants are more likely not to reply to the survey, and thus remain under-reported. Last but not least, statistical facts do not help us to really understand which factors actually cause destitution and homelessness. Neither do they tell us what extreme poverty really means in the everyday lives of the migrants involved.

In order to get a more encompassing picture of the risk of destitution and homelessness among the immigrant population in the EU, we have made use of a great number of information sources, including both statistics, survey data, as well as in-depth and anecdotic information gathered by various interest groups and research institutes. The main findings are summarized in 15.1. Yet, it must always be borne in mind that as many migrants under study are not included in the official national registration systems, there are no hard data. All the country studies confirm this. The question now is how to deal with such apparent lack of information.

In our eyes it would be wrong to simply fall back upon official 'hard' statistics on social welfare benefit dependency as an indication of the extent of homelessness and destitution. There are various studies which indicate that in fact this dependency is quite low, at least where it concerns EU mobile citizens. A recent example is the Analysis on the impact of the entitlements of non-active intra-EU mobile citizens on the Member States' social security systems, published in 2013 by the European Commission.<sup>279</sup> This study deals in particular with the reliance on special non-contributory benefits falling under social security Regulation No. 883/2004, in other words excluding general social assistance. For our groups we have to take into account the fact that newly arrived migrants with insufficient resources of their own very often simply do not qualify for such benefits, let alone for general social assistance, for reasons extensively described in Chapter 5 and the various country studies. This is how we came to speak of legal causes of destitution and homelessness. Such causes exist, also for EU nationals invoking the freedom of movement of persons, as was most recently confirmed by the ECJ in the Brey-case (C-140/12).

Conversely, the difficulty of relying on official welfare dependency statistics should not be used as an alibi for making wild allegations as to the extent of homelessness and destitution. In fact, despite the lack of hard data, there is plenty of secondary evidence which provides a good indication of the extent of homelessness and destitution amongst migrants. Such evidence might be provided by cities, by emergency health care institutions, by NGOs running night shelters, by independent research institutions, etc. Recent research has provided good overviews and come up with many recommendations as to how to measure homelessness.<sup>280</sup> This report also highlights a variety of secondary sources that can produce a lot of data on the basis of which best estimates can be made.

The country reports show a picture of relatively small, amorphous migrant groups that literally remain outside the society and that survive under extreme conditions. Such situations can only become visible with the help of in-depth research, carried out at the level of separate countries,

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<sup>279</sup> A fact finding analysis of the Member states' social security systems of the entitlements of non-active EU migrants to special non contributory cash benefits and health care granted on the basis of residence, 14 October 2013 (revised 16 December 2013)

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1980&furtherNews=yes>

<sup>280</sup> For an overview cf. Volker Busch-Geertsema, 'Defining and measuring homelessness' in: *Homelessness research in Europe, Festschrift for Bill Edgar and Joe Doherty*, Feantsa, 2010, pp. 19-40.

using a variety of data. This method must simply be accepted as a given fact of life and should indeed be used to the best avail. It can also be coordinated at a European level as witnessed by the ETHOS-typology and the activities of the European Observatory of homelessness. Such initiatives deserve continuous support from the European Commission.

### **15.3.2 Social causes of homeless and destitution among migrants**

When analyzing the *social causes* of destitution among the different migrant groups in the eight case study countries, five key elements come to the fore which cause exclusion of certain groups from mainstream sectors of society and which can ultimately lead to destitution and homelessness. These factors – which are often interlinked – include experiences of racism and xenophobia, a very vulnerable labour market position, limited access to the (social) housing market, restricted access to the public support structure and lacking human capital to integrate successfully into the host society. Naturally, there is variation as to the extent certain migrant groups are confronted with these factors, nevertheless these factors appear to be a common thread in the studied countries. The outcomes of the cases studies confirm the conclusions of the general report.

Racism, xenophobia and negative stereotyping of foreigners and ethnic minorities can be witnessed in several of the country case studies, leading to a general climate of distrust and discrimination of migrants which impacts migrants' opportunities in accessing employment, housing and services.

What appears most clearly from the case studies is that a vulnerable labour market position is an important factor behind destitution and homelessness of migrants. This is specifically the case for those migrants with an insecure migration status. These groups increasingly rely on informal labour market jobs characterized by poor working conditions, insecurity and low wages. The current financial crisis further exacerbates this trend of increasing occupational segregation, pushing the most vulnerable migrants in even more marginal employment (see e.g. Spain). Lack of financial means and limited access to the social safety net are thus major causes of destitution (and ultimately homelessness) and lead to alternative survival strategies (selling gadgets, recuperation of metals).

For those with limited financial means the availability of affordable housing is crucial for meeting basic housing needs. The case studies have shown several problems related to the availability of affordable housing. In some of the case study countries the size of the social housing stock is simply too small to cover demand. This is the case in e.g. Poland, Spain, Italy and Greece. Available social housing is almost specifically catering towards national residents in these countries. Besides, a resident permit is a minimum requirement to be eligible for social housing. A requirement which is not easily fulfilled by many migrants. Even in countries with a larger social housing stock (e.g. the Netherlands and France) migrants often do not qualify due to formal requirements. With social housing blocked, many migrants depend on the private rental market or informal arrangements through employers. Several of the case study countries report practices of discrimination and abuse by landlords or exploitation by malafide employers.

In several of the case studies countries specific references are also made to the role of public authorities. From France come examples of local authorities refusing applications for a residence permit by EU Roma which hampers their eligibility for support. In Italy, also regarding the Roma, there is evidence of municipalities demanding supplementary requisites for access to social housing and withdrawing social housing entitlements. In Poland civil servants are often ill-prepared to deal with foreigners which affects access to support.

Last but not least, the case studies show that in addition to factors relating to the labour and housing market, human capital is an important factor in explaining destitution and homelessness. This becomes particularly clear in the case of EU10 workers. The majority of workers from the new Member States is in fact doing quite well in the UK and Germany, with the exception of specific vulnerable groups. These vulnerable groups often lack essential human capital, such as language skills, access to information, specific work skills and social networks to make migration a successful endeavour. In addition some of these vulnerable migrants suffer from socio-psychological problems. These individual factors enhance the risk on destitution and homelessness.

### **15.3.3 Legal causes of homelessness and destitution among migrants**

The most common characteristic which emerges from our eight country group studies is that homeless migrants are excluded from the formal public domain of work, education, housing and social security. Homeless migrants are outsiders. They live in a parallel world of undeclared labour, alternative social support services, sheltered accommodation, make shift camps spatially separated from the rest of the society or even in caves. In this way they form sub strata of society, situated at the very bottom of the social order.

The exclusion from the formal public domain is expressed in the legal status of migrants. As this research has consistently pointed out, migrants with insufficient resources have a weak migration status and vice versa. This is the case when migrants have not yet acquired permanent residence status, a status which is in most cases unattainable for the homeless anyway. The weak legal status negatively effects access to the regular social security system and to social housing. It threatens the migrant with forced removal from the country and hinders the acceptance of a policy geared towards emancipation and integration into the society. The result is that homeless migrants live a life in limbo. They neither leave the country nor will they be fully accepted as regular citizens.

An insight from the country studies concerns the persistence of additional national and local requirements excluding destitute migrants from state social welfare. Even when the immigration status is as such not an obstacle for claiming support, access to benefit and support may be made impossible by national residence or local residence requirements.

Our research has pointed out that from a legal perspective the EU-status of homeless migrants does not always make as much difference as could be expected. This is because EU secondary law simply has not fully accepted equal rights for EU nationals with insufficient resources (cf. 5.2.4 and 5.2.5). While for the majority of mobile citizens this limitation is not confronted with this limitation, obviously it does affect the destitute and homeless. In a sense, EU-law even strengthens the limbo status of homeless migrants, by not strictly forbidding any exclusions from social benefit on the one hand, but imposing restrictions on the member states on forced removal on the other hand. The result of this state of the law is illustrated quite poignantly in this report by the description of the plight of the Roma in France who cannot be easily expelled, but who are often de facto excluded from re-integration services for the homeless. Having said this, it would be wrong to conclude that the EU in itself is of no importance to marginalised migrant groups. Thus, for example, during our Round Table Meeting on Roma migrants, held in Sofia in October 2013, it was repeatedly stressed by the Bulgarian Roma representatives how much they feel encouraged and supported by the EU-reaction to the French Roma policies by the then Sarkozy government and the EU Roma strategy which followed from that.

#### **15.3.4 Multiplicity of causes, singularity of effects**

So far our treatise of social and legal causes very much confirms the theoretical framework developed in part I of this study. There is, however, also an element which throws a new light on this framework and that is the singularity of the situation that the homeless find themselves in, notwithstanding the reasons and backgrounds explaining why a person became homeless. As we have seen in the general report, the causes of homelessness are manifold, ranging from certain group characteristics to socio-economic position, labour market conditions, country specificity, legal status etc. This makes homelessness a multifaceted phenomenon. What these groups often have in common once they have become homeless or destitute is their weak immigration status, lack of integration in the host state and problems with accessing the social safety net. These characteristics are most obvious for undocumented migrants. But also for third country workers the risk of homelessness and destitution is particularly strong in case of irregular work/residence.

### **15.4 Policy dynamics relating to homelessness and destitution among migrants**

#### **15.4.1 Local dumping: shifting responsibility to the local level and civil society**

A common feature which appears in all our country studies is that the responsibility for social care for the homeless (shelter, housing, livelihood support) rests very much with the local authorities. We are now not referring to the regular national social assistance and housing schemes which are administered at a local level. Very often homeless migrants do not qualify for benefits under these schemes by reason of their weak migration status. What we are talking about are separate schemes and initiatives which specifically target the homeless and the destitute, organised and financed by the local authorities. Homeless migrants rely heavily on these kinds of services. National authorities may not be interested in or even opposed to providing aid to destitute migrants, but local authorities cannot ignore their presence and must offer support, if not for the reason of charity then for the reason of maintaining public order. Incidentally, the same phenomenon applies to health care services. Irregular immigrants often depend on the goodwill of general practitioners and local hospitals for medical aid in urgent cases, as they do not qualify for regular services under the national health (insurance) schemes.

This study has also revealed that some groups of migrants, notably irregular migrants (Greece and the Netherlands) and migrant Roma (France and Italy), are not only excluded from formal national social housing and social assistance schemes, but also from the separate local initiatives aimed at protecting the homeless. Access may be refused for legal reasons but there are other explanatory factors as well (habitual residence or local connection test, the duty to register, prejudice, mutual distrust, etc.). Now, only civil society remains to offer a helping hand. Indeed, all the country studies include references to civil society initiatives, organised by the Salvation Army, churches, voluntary citizen's initiatives, charities and political parties. An interesting new phenomenon is the emergence of organisations which try to persuade stranded compatriots to "reconnect" with the country of origin (e.g. the Polish charity Barka).

In practice, at the local level civil society support and public welfare are much intertwined. For example cities channel their support through civil society agencies or simply provide financial support to such agencies. Homeless support can only be arranged at this level as the interventions must be adjusted to the needs and requirements of each individual and the local

circumstances. Yet our research has shown that the local welfare model has some shortcomings when they evolve in isolation, i.e. outside a national policy and regulatory framework and without national financial support. This is what we refer to as the isolated local welfare model.

In the first place there is the risk that local authorities may be inclined to raise barriers to prevent outsiders from receiving support due to the fear of “social tourism”, now between local communities. The same fear may hinder the municipalities in further developing the quality and the scope of their services. The raising of barriers for outsiders has been reported as a new phenomenon in the Netherlands (in the form of a *regionaal bindingsvereiste* for *daklozenopvang* under the Social Support Act) and in the UK (where cities are allowed to apply a local connection test for housing support). Such requirements hit migrant homeless persons particularly hard. National subjects who are rejected, have the opportunity to go to another place with which they have a stronger bond, but for new groups of immigrants such places simply do not exist. Sometimes barriers are put into place not in reaction to a real influx of destitute foreigners, but simple in fear thereof. Thus for example, the spectre of Roma coming from new EU member states haunts many local communities in Europe. Whether applying a local connection test as a requirement for homeless services is in line with international human rights standards is debated. FEANTSA has initiated a complaints procedure about this against the Netherlands at the European Committee of social rights.

In the second place, local welfare structures are strongly fragmented, limited in scope and vulnerable to economic adversity. Hence they are not always capable of providing support at an adequate level on a structural basis. Thus, for example, the Italian report mentions that as a result of the economic crisis financial support for local welfare has been decreased. This has led to the closing of many private/public projects which were previously branded by the international observers as good practices. Similarly, the Greek study mentions that the economic crisis has dismantled the social networks that filled in the gaps of the rudimentary state social welfare system. Another weakness related to this is that local welfare support structures are subject to populist and xenophobic pressures. Thus, the Italian report related how the resentment against the Roma boosted by the media following EU enlargement, has undermined the frail civil society support for this group. For instance, the project *Città Sottili*, an initiative aimed at the closing of makeshift camps around Pisa and substituting these with houses, was ended by the municipality of Pisa. Also the social secretariat for Roma managed by the NGO *Opera Nomadi* ended because the Municipality of Rome failed to renew its financing. These examples show that civil society initiatives which are not backed by a national strategy and a national infra-structure, can easily fade away and not always for proper reasons. Having said this, even when a national strategy does exist, this is not necessarily a guarantee that local welfare state initiatives manage to offer services to homeless migrants on a continued basis. Thus, the French report points out that the National Homeless or Poorly Housed People Strategy of 2009-2012 not always managed to reach the Roma who fell victim of evictions of illicit camps and settlements. Solutions which are envisaged for such situations, such as the setting up of ‘integration villages’, reportedly do not get off the ground as a result of lack of political will and funding at the local level.

#### **15.4.2 Repressive responses**

Providing social welfare support is not the only way for states and local authorities to solve the problem of homelessness among migrants. Another policy is to respond with repressive measures, ranging from local bylaws which prohibit begging to national policies aimed at the criminalisation of illegal stay.

Homelessness and repression are no strangers to each other. The nineteenth century poor laws made a clear cut distinction between the deserving poor and the undeserving. Those who were

not incapacitated as a result of sickness, handicap or old age (the so called able bodied) were forced to participate in publicly organized employment. Work houses were set up in which men, women and children had to perform manual activities in miserable conditions for long hours a day. There was no easy escape from the work house. Dealing with poverty was considered to be part of the policing function of the state. Vagrancy was a criminal offence. In some countries vagabonds were literally rounded up and kept in confinement in forced labour camps. Especially during the 19<sup>th</sup> century, a period during which the state had largely withdrawn from society and many traditional forms of care had eroded under the influence of the industrial revolution, homelessness and poor law dependency were a terrible ordeal for the people involved.

During the course of the 20<sup>th</sup> century the conditions improved. Work houses were abolished and new measures were increasingly aimed at protection, supporting and integrating the homeless in the society. Poverty became a subject of social policies. Yet a repressive response to homelessness is always looming in the background. While vagrancy has been abolished as a criminal offence, it is still possible for towns to enact bylaws, prohibiting loitering in the public spaces, public drinking, begging etc. Such bylaws are enforced in the name of public order by the arm of the police which can impose fines and arrest people. This has a direct impact on the position of the homeless.

In some countries repressive responses are making a comeback, most notoriously in Hungary which in October 2013 introduced a new act enabling local authorities to make it a criminal offence for the homeless to live in public spaces, despite earlier criticism from the European and international human rights institutions and the Hungarian Constitutional Court.<sup>281</sup> For our subject of homeless migrants, there is another trend to be taken into account as well, i.e. the criminalisation of illegal stay of non-nationals. The trend has been commented upon elsewhere, amongst others in 2009 in a report prepared by Elspeth Guild for the Commission for Human Rights of the Council of Europe.<sup>282</sup> The report shows that an increasing number of countries are making illegal entry an offence under criminal law, punishable by fines, imprisonment and expulsion. According to Guild the trend to criminalize irregular immigrants bears a number of common characteristics. First there is the pervasive way in which the measures (a) separate foreigners from citizens through an elision of administrative and criminal law language and (b) subject the foreigner to measures which cannot be applied to citizens, such as detention without charge, trial or conviction. Secondly, there is the criminalisation of persons, whether citizens or foreigners who engage with foreigners. The message which is sent is that contact with foreigners can be risky as it may result in criminal charges. This is particularly true for transport companies (which have difficulty avoiding carrying foreigners) and employers (who may be better able to avoid employing foreigners at all). Other people, going about their daily life, also become targets of this criminalisation such as landlords, doctors, friends etc. Contact with illegally staying foreigners increasingly becomes associated with criminal law. The result may, according to Guild, include rising levels of discrimination against persons suspected of being foreigners (often on the basis of race, ethnic origin or religion), xenophobia and/or hate crime.

This study includes ample evidence of these trends. The reports about Greece and Italy include references to xenophobia and racists practices which affect irregular migrants and the Roma. Such attitudes are not reported in countries such as the Netherlands and the UK, but here the

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<sup>281</sup> The Court rejected an earlier Hungarian law criminalising homelessness on 12 November 2012, case I/01477/2012

<sup>282</sup> E. Guild, 'Criminalisation of Migration in Europa: Human Rights implications', Issue Paper Commissioner for Human Rights, Council of Europe Publishing 2010.

central government is pursuing a very strict legal exclusion of social services for irregular migrants, while at the same time exercising strict control over undeclared work and the employment of irregular workers. However different these national approaches may be, the effect of both type of policies for the migrants concerned is the same, namely that they are banished from the formal public sphere into the shadows of the society where the chances of becoming destitute are high, without having any perspective of improving their personal situation.

It is not clear, or at least no research has been conducted into the extent to which repressive policy responses are successful. When dealing with public order measures to keep the homeless away from certain public places, perhaps the measures are having the desired effect, at least from the short term perspective of the general public. But none of the reports include any evidence of successful return policies for homeless migrants. When countries resort to forced expulsion measures, the measures prove to be ineffective or to run against basic European human rights standards (e.g. the France Roma policy in the second half of the last decade). When such measures are not taken and life is made simply very hard for homeless migrants, this does not seem to have any effect on the actual numbers of migrants returning either. If there is any result to be expected from return programmes, apparently such programmes must be framed in terms of voluntary social rehabilitation, such as the Barka-initiative to “reconnect” stranded homeless migrants with their countries of origin. But even these initiatives are not free of criticism. Return policies remain a sensitive terrain.

### **15.4.3 Human rights responses**

The story told in this study is one of exclusion and repression. Yet it is not the full story yet. The EU countries operate under the rule of law. This means that the balance of rights and obligations of migrants is be subject to healthy interplay between legislature, the administration and judiciary. If the legislator is focussing too strongly on the exclusion of social rights and repression, thereby ignoring basic human rights of the beneficiaries, it is up to the courts to restore the balance. The more uncompromising the policies are the more robust and constitutional the courts will be, addressing the needs of the individual and formulating clear legal boundaries. Indeed, each of our country reports includes examples of court cases which have had a major impact upon the rights of homeless migrants. Sometimes remarkable practical changes are the result of this. There are many good practices to report about and they are very different in nature. For example in Ireland where under pressure of a decision of the High Court employments rights have to be recognized for those without a work permit<sup>283</sup>, in France where which had to step up protective standards for exploited domestic personnel in response to a ECtHR-case<sup>284</sup>, in the Netherlands where, under pressure of the Social Rights Committee<sup>285</sup> and subsequent domestic case law, government had to agree to set up special family locations for irregular migrants, in order to avoid vulnerable young children being sent out onto the streets to fight for themselves, etc. The list is seemingly endless

Many individual migrants rely on court proceedings to avoid becoming officially illegal and facing forced removals.

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<sup>283</sup> Hussein v The Labour Court & Anor [2012] IEHC 364.

<sup>284</sup> ECtHR 26 July 2005, Siliadin v. France, appl. No.73316/01.

<sup>285</sup> ECSR 20 October 2009, complaint No. 47/2008 (Defence for Children v. the Netherlands).



The present study also includes an abundance of case law of the European Court of Justice. Destitute migrants are similar to soldiers in trench warfare between the EU member state fighting for their autonomy to determine which foreigners qualify for social welfare and EU law which imposes certain minimum standards for migrant protection. In this war every inch dealing with the conditions under which destitute migrants can claim social support is contested. In the meantime the courts play a crucial role in ameliorating the fate of destitute and homeless migrants. For PICUM, a non-governmental organisation that aims to promote respect for the human rights of undocumented migrants in Europe, this was enough reason to publish a brochure full of practical tips on how to use legal strategies to enforce undocumented migrants' human rights.<sup>286</sup> The state of affairs illustrates the inner tensions which operate within the legal system as a whole. The same system which is responsible for exclusion (in terms of national positive social welfare law) calls for the protection for those who are excluded (in terms of national and international human rights law and European Union law).

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<sup>286</sup> PICUM, legal strategies to enforce undocumented migrants human rights, March, 2013.

## **16 RECOMMENDATIONS**

### **16.1 Introduction**

Destitute and homeless migrants are like pawns in a chess game being played simultaneously between a variety of players: member states, local authorities, NGOs, popular public opinion, courts and research institutes. The issue is highly politically sensitive. The danger of formulating policy recommendations in this field is that one enters into the political arena and simply becomes one more player in the multiple chess game. In a sense this is unavoidable, but it helps if we take the present state of European law and the existing division of power between member states and the European Union as our basis. In other words, our recommendations are not aimed at calling for changes in European law. Instead we concentrate on services for the homeless at a local level and see how these can be improved. Thereby our recommendations are guided by one overall ambition, namely how these services and underlying policies can contribute to the human dignity of those 'outsiders in limbo' identified in this study. Below, we present these recommendations in an analytical manner.

### **16.2 Services for the homeless: shortcomings for migrants**

Persons who are not able to be self-supportive and who fall through the maze of social safety nets, often have to rely on services for the homeless to meet their basic needs. The eight country case studies have shown that the available infrastructure for homeless persons differs greatly between the countries. These differences relate to the scope (number of beds, number of service providers), type of provision and the role of the state versus the third sector. In countries such as the UK, the Netherlands and Germany there is a well-developed infrastructure for homeless people, characterized by a high level of government involvement. In other countries such as Italy and Greece, such nationwide infrastructure is absent. In spite of large intra-country variation in the homeless support infrastructure, the case studies also show some important similarities. For those with a weak immigration status, state sponsored support services have limited accessibility. This was found in all countries. In addition, in all countries NGOs step into the protection gap and provide services to those which are not covered by government services and initiatives. Also in most countries the demand for support from destitute migrants exceeds available supply. Finally in our conclusions we observed that member states are increasingly inclined to shift responsibility for the care of homeless and destitute migrants to the local level and to civil society. We referred to this process as a form of local dumping, as the process has a number of negative effects in terms of: a) vulnerability and adequateness of social infrastructure, b) fear for national and local social tourism and the raising of strict eligibility conditions for those who are deemed to be outsiders and c) susceptibility to populist pressures.

How can services for the homeless do a better job in order to guarantee the human dignity of our target group? Before we start answering this question, first a word about best practices. The case studies show that good or promising practices to ameliorate the plight of homeless migrants are largely local level initiatives, often initiated by the third sector sometimes in cooperation with local authorities. A variety of initiatives have been identified, such as efforts aimed at relieving immediate needs (e.g. food, shelter), efforts geared towards integration and (re-)integration in the labour market (e.g. by providing information, training, bilingual consultation hours) and

programmes aimed at assisted voluntary return for those with no real opportunities to successfully integrate into the host society. However, what also becomes apparent from the case studies is that there are no good criteria by which to assess what makes a practice a good practice. There is limited information about achieved results and the sustainability of the results of these initiatives. Furthermore it should be mentioned that many of the identified practices in the case studies are in fact the result of the absence of any sustainable and more structural solutions to the plight of destitute and homeless migrants. So instead of just pointing at a number of isolated best practices, we will make a number of more fundamental recommendations.

### **16.3 Towards better policies and services for destitute and homeless migrants**

*Policies and services for the homeless should at least take on board the most basic human rights requirements as interpreted by courts and European human rights institutions, irrespective of the status of the homeless and destitute migrant under immigration law.*

- a. Human rights case law tends to flow towards some form of *recognition of minimum social care responsibility for irregular immigrants*. This minimum care responsibility does not express itself in some general rights to social and medical assistance, but rather in the recognition of a duty to provide medical support, shelter or aid in individual situations of exceptional vulnerability and need, for example when young children are involved, in cases of medical emergency or in cases where persons are left stranded and exposed. States are responsible for ensuring that there is a system of services for the homeless in operation that guarantees these basic requirements. To put it bluntly, North European states must open their homeless facilities to all stranded migrants (instead of raising legal/administrative obstacles), South and East European states must improve the infrastructure for all homeless persons, regardless of their immigration status. Such infrastructure should at least entail access to food, clothing, shelter, basic medical care and education for children at a level which satisfies the generally accepted European standard. In case of doubt about what this standard is: Directive 2013/33/EU on the reception of applicants of international protection provides a perfect point of reference.
- b. As a matter of fact, respecting human rights is not only a matter of providing support in cases of extreme vulnerability, it is also a question of *respecting informal social security*. As reported, government policies may impact negatively upon these forms of protection outside the social security system. Providing care, shelter or housing to irregular immigrants is increasingly branded as a criminal offence. In our view private and charitable initiatives must be respected and even protected. Respecting informal social support means that providing support and shelter to migrants should not be criminalized and that migrants must be secured access to general facilities needed to effectuate their self-help, in particular the banking system, communication services and public transport facilities.
- c. We should further point out that there are also *some basic labour rights* to be respected, even when the work relationship is not in conformity with the law. Although this issue does not directly affect the quality of services for the homeless, it is nevertheless important for our target group because so many of them are involved in informal and clandestine employment, where they run the risk of being exploited. Basic social rights apply for example to fair working conditions, unjustified dismissal and freedom of association. Some of these rights have actually been confirmed by EU Directives. Article 6 of the Employers Sanctions Directive

2009/52/EC for example stresses the employer's responsibility to pay any outstanding remuneration and requires Member States to provide mechanisms to ensure that irregular migrants may either introduce a claim against their employer or may call on a competent authority of the Member State concerned to start procedures to recover outstanding remuneration. Obviously, it is important to monitor the proper implementation of these sort of rights. There should be some effective remedies. Thus, irregular migrant workers must at least be free to join trade unions and take part in union activities. They should also at least be able to walk the streets and use public transport without having to fear apprehension, detention and deportation. Effective mechanisms should allow migrant workers to lodge complaints against abusive employers, again without having to run the risk of being subjected to restrictive measures of migration control. Given the role that trade unions, equality bodies and NGOs play in making justice mechanisms more accessible to irregular migrants, these should be facilitated in initiating legal proceedings on behalf of migrants. In other words the effective protection of migrants' fundamental rights implies facilitating and not undermining those social relations that provide alternative forms of social protection to those offered by national state regulated institutions.

- d. Respecting human rights furthermore means that the states should *refrain from inhuman practices of immigration control*. The EU Fundamental Rights Agency of the European Union (FRA) has reported that while states have a right to control immigration, certain enforcement measures, such as, data sharing or arresting migrants in front of schools, have a negative and often disproportionate impact on the effective exercise of the fundamental rights of irregular migrants, and has subsequently developed guidelines for immigration enforcement officials.<sup>287</sup> In our view the European Commission should play a role in the effective implementation of these guidelines at national, regional and local level. Furthermore, it is recommended that awareness of the FRA guidelines should be promoted among the police, as well as immigration and labour authorities within EU Member States.
- e. Finally, we should point out that a human rights approach sets certain *limits to repressive measures* against the homeless in general. Homelessness gives rise to public order problems (begging in city centres, public drunkenness, illegal activities etc.) and public authorities are justified in responding to these problems. Yet the very fact that the persons who cause these problems are mostly very vulnerable means that the measures taken cannot only be repressive (fining, imprisoning) but should also take into account social needs (rehabilitation, treatment of addictions, psychological aid, etc.). The prison house is not an alternative for the streets.

*Policies and services for the homeless migrants should not only provide emergency relief but should also be aimed at the societal integration of migrants in or outside the host country*

- f. An observation in this study is that homeless and destitute migrants are excluded from the regular public domain without any prospect of integration in the host states. The weak immigration status often stands in the way of such integration. This is what we referred to as the limbo-status. In our view keeping migrants in limbo may not be accepted as a form of collateral damage resulting from immigration policies. Such an approach is not constructive and contrary to the human dignity. The only alternative is for *policies and services for the homeless and destitute migrants to aim at the long term integration in the society*. It seems

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<sup>287</sup> European Agency for Fundamental Rights, "Apprehension of irregular migrants – fundamental rights considerations", available at: [http://fra.europa.eu/sites/default/files/document-on-apprehensions\\_1.pdf](http://fra.europa.eu/sites/default/files/document-on-apprehensions_1.pdf).

contradictory to speak of integration when dealing with persons with a weak or no immigration status but bearing in mind the fact that integration may also take place in the country of origin this is not necessarily the case. This brings us to the highly sensitive issue of return policies, about which we will make number of further recommendations.

- g. While it is theoretically feasible to return EU nationals to their home countries when they lose their EU residence status, EU law imposes so many restrictions on this, that it can be doubted whether structural policy solutions depend upon forced return. On grounds of article 14 (3) of Directive 2004/38/EC an expulsion order shall not be the automatic consequence of the recourse of a European Union citizen or his or her family member to the social assistance system of the host Member State. Member states must examine whether the loss of income is the result of merely temporary difficulties. They should also take into account the duration of the residence and the amount of state benefits a person is receiving. Furthermore the ECJ requires that the proportionality principle should be adhered to: national measures must not go beyond what is necessary to achieve the objective of protecting the public finances of the host state. As a result of these strict conditions, in our view it is *no longer realistic for Member States to aspire to any forced return of EU nationals*.
- h. Having said this, there is all the more reason to focus on long term reintegration of EU nationals in the host states, in terms of rehabilitation programmes, job training and education. Perhaps, the conclusion of 'participation contracts' with newly arriving immigrants on a local level may be considered as a way to improve the integration of vulnerable migrants, provided that this is voluntary and not a mere bureaucratic obligation for obtaining social advantages. However, in some cases stranded migrants have better chances to reintegrate in their country of origin, in particular when they have developed no ties with the state of residence and do not speak the language. *Voluntary return programmes*, such as the ones organised by the Polish charity Barka are also feasible. What is important when speaking of such programmes is that:
- the organisations involved are fully transparent;
  - the measures are based upon a consensus amongst all the local stakeholders including the sending and receiving Member States;
  - return is in the best interest of the individual migrant; and
  - the long term success of the return policies is properly evaluated.
- i. Voluntary return should, however, not be seen as a panacea for all the problems of destitute and homeless migrants. Integration in the host states should have equal priority, all depending on what is in the best interest of the individual concerned, i.e. in what country he or she has the best chances of reintegrating through education and/or labour. It is submitted that the *EU funding of re-integration services* in the host state, through the various European structural funds such as the ESF and possibly the newly introduced Fund for European Aid for the Most Deprived, is an important way of releasing some pressure from the receiving states who feel that they must bear the brunt of providing support to other destitute EU nationals. By providing grants from these funds, the bill for integration services provided to EU nationals from other countries is shared amongst all the European countries, which can be seen as an important symbol of intra-European solidarity.
- j. Finally, there is nothing against using the above '*best interest principle*' as a starting point for *voluntary return policies for stranded third country nationals* as well. In doing so these policies should be given a more human face and a more social objective than is the presently the case. Already a plethora of services and facilities have come into being to financially support

irregular migrants who voluntarily return to their home countries. Such forms of support include the costs of transport and sometimes also micro credits for setting up an occupational activity in the country of origin. The services are channelled through international organisations such as IOM, government agencies and NGOs. The sources of finance for such schemes are very diverse. The reasons for this financial support on return vary. It promotes voluntary return while also helping the individual concerned to start a new life in a new country thus contributing to the social protection of irregular migrants.<sup>288</sup> In our view financial return facilities should be actively encouraged, extended and given standard recognition in the return packages that immigrant and emigrant countries negotiate with each other. In this way the return of irregular immigrants will not only be a matter for readmission policies but also part of development strategy and social policy. In the EU in particular these domains appear not to be connected. The EU concludes readmission agreements with third countries to make sure that these countries allow their nationals back into their territories without raising bureaucratic or legal obstacles. These agreements constitute the framework for forced expulsions. The aid for returnees is however an issue within the EU Regional Protection Programmes. In line with recommendations made by the European Commission in its Communication to the European Parliament and the Council Com(11) 73 def. (evaluation of the EU readmission agreements), these two forms of co-operation could be merged into one by creating standard return agreements favouring voluntary return that not only tackle bureaucratic or legal obstacles to this return but that also address the question of social protection and the re-integration of irregular immigrants.<sup>289</sup>

*The localised responsibility for the reception of homeless and destitute migrants should be located at national level to be co-ordinated at EU-level by the European Commission.*

- k. In order to bring the process of local dumping to a halt, member states should recognize that the *national government* (or where the constitutions of devolved states so dictate: regional government) *should be held responsible for the broad regulatory framework of services for the homeless*, guaranteeing a national wide coverage of care and support facilities. National government must equally be held responsible for financial shortages which local authorities may incur in this field. Of course, national responsibility does not rule out the involvement of local administration and civil society. On the contrary, it is at this level that the care and support services should be administered. But such heavy local involvement should not act as an excuse for the national governments to let go of final responsibility.
- l. The national government's final responsibility for services for the homeless does not rule out the involvement of EU institutions in policies regarding these services. In order to avoid any Baron-von-Munchhausen-effect, it is necessary for Member States to keep each other informed about how they live up to this responsibility and that progress is monitored. The European Commission must (continue to) play a co-ordinatory role in this respect, using its powers under art. 153(1)(j) TFEU. In our view the *EU-Commission should develop a comprehensive thematic policy for the co-ordination of policies of destitution and homelessness among migrants*, addressing both up to date policy questions and structural

<sup>288</sup> Cf. Daan Beltman, 'Voluntary return facilities for aliens without residence permits in comparative perspective' in: Cross-Border Welfare State: Immigration, Social Security and Integrations. G.J. Vonk (ed.), Intersentia, 2012.

<sup>289</sup> Actually, a preference for voluntary return has actually also been expressed by the European Commission in the evaluation of the EU readmission agreements (COM(2011) 76 def.). It is furthermore underlined in the study by Sergio Carrera and Massimo Merlino on EU policies on undocumented immigrants, presented in 2009 by the Centre of European Policy Studies (CEPS). The paper refers to research findings, *inter alia* that forceful removal has negative implications for the reintegration of returnees, while a security approach to return makes southern Mediterranean countries unwilling to cooperate in this issue.

forms of services for the homeless. Such thematic policy fits well in a number of contemporary ambitions and programmes developed by the Commission, such as the European 2020 strategy, the European Platform against poverty and social exclusion (EPAP), the Social Investment Package (SIP) and the Area of Freedom, Security and Justice Multi-annual Programme for the period of 2015-2020. Some of the issues to be dealt with are:

- Exchanging information as to the extent to which national or regional governments give sufficient backing to local support mechanisms, both in terms of the regulatory framework and financing;
  - Developing a framework that defines minimum standards for support services targeted at destitute migrants, including eligibility criteria;
  - Strengthening the monitoring mechanism aimed at ensuring the implementation of non-discrimination legislation, the EU Social Charter, Freedom of Movement Directive 38/2004;
  - Conditioning and evaluating reintegration measures in the host state or in the country of origin through voluntary return;
  - Discussing the way EU funds can be made conducive to improving services for the homeless, particularly with an eye to: sharing the burden of providing support to homeless persons, conducting research and supporting civil society initiatives.
- m. The co-ordination of policies on services for the homeless should not only include the member states but also *other stakeholders*, in particular NGOs with a well established reputation in this field, such as FEANTSA, PICUM and Defence for Children. It is also important that local government is properly represented in the consultations.

## 17 FUTURE PROSPECTS

### 17.1 Introduction

While the recommendations formulated in the previous chapter are based upon the premise that the present state of the law (and division of power between the member states and the European Union) should be taken as it is, this final chapter will unchain itself from this restriction. The purpose is to address the question of what can be done at EU level to ameliorate the plight of homeless migrants. Answers to this question do not come in the form of specific recommendations based on the research carried out within the framework of this study (chapter 16) but rather as explorative policy options for the future. Thereby we have refrained from touching upon the discussion about the legal basis of various policy alternatives. This is an issue to be addressed in another forum.

One particular strand of thought is developed further. It addresses the possibilities for destitute homeless migrants to access the social safety net and rely on social protection measures. In particular we are interested in standards that reflect the minimum human rights responsibility member state have towards the protection of vulnerable persons who are in a situation of extreme need who reside in their territories, regardless of nationality and immigration status. Would it be a possibility to introduce common standards for such protection in an EU instrument?

### 17.2 Towards common EU standards for the protection of vulnerable persons in extreme need

A proposal for common EU standards for the protection of the homeless brings us close to the debate of the EU harmonisation of minimum income schemes. As early as 1981 the Commission issued a communication which addressed the problem of poverty in Europe and the need for common minimum income standards. It was suggested by the Commission that a minimum income should be introduced in the member states which should take into account the minimum requirements of the individual or the family, be universally available to all non-active persons and be granted as a right.<sup>290</sup> The Commission continued to pursue this idea, which led to the Council Recommendation 92/441/EEC of 25 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems.<sup>291</sup> Obviously the recommendation was not binding and almost two decades later, in 2009 a report commissioned by the European Commission to the European Network of National Independent Experts on Social Inclusion on Minimum Income Schemes across EU Member States made apparent that while most member states have some form of minimum income scheme, the criteria of this recommendation are often not met.<sup>292</sup> In an attempt to address this problem, in 2010, the European Anti-Poverty Network launched a working document containing an elaborate and detailed proposal for a minimum

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<sup>290</sup> Com (81) 410 def.

<sup>291</sup> [1992] OJ L245/46

<sup>292</sup> H. Frazer and E. Marlier, *Minimum Income schemes across EU Member States, EU Network of National Independent Experts on Social Inclusion*, 2009 <http://www.peer-review-social-inclusion.eu/network-of-independent-experts>.



income framework directive, prepared by former MEP Anne van Lancker.<sup>293</sup> The same year a proposal for a resolution for such a directive was tabled in the European Parliament, but failed to get a majority. The Commission itself has not taken any further steps in this direction either.

It is likely that the idea of harmonised minimum income standards for the EU will remain on the table, be it as an instrument within itself or as part of a strategy on the active inclusion of people who are excluded from the labour market. However, below, we shall steer away from the minimum income debate and concentrate solely on the idea of introducing common standards for the protection of vulnerable persons in extreme need.

The background, purpose and rationale of introducing such standards are different to proposals for a European minimum income. While the latter are aimed at the development of an adequate nationwide minimum benefit level which adheres to European standards, the former address the sub strata of the social system which includes more primary forms of support, shelter and aid for the destitute and the homeless. It stipulates the final responsibility of each member state for making sure that help is actually provided when this is needed, most likely at local level. Protective standards for vulnerable people in extreme need are not about an objective right to a certain level of social assistance. Neither are they rooted in anti-poverty policies, at least not exclusively. The primary goal is to adhere to the basic human rights responsibility ensuing from both UN and Council of Europe human rights treaties and the EU Charter of fundamental rights. It follows from these human rights that states have an obligation to provide medical support, shelter or aid in situations of extreme need or vulnerability, for example when young children are left unprotected or in cases of medical emergency (cf. Chapter 5, section 5.3 of this report). This human rights obligation is highly individualised but member states could nonetheless -at least- accept a duty based upon the discretionary powers of the local authorities. With this duty corresponds a reflexive right for the individuals concerned. As the human rights responsibility extends to all human beings regardless of migration status or nationality, they apply vis-à-vis all vulnerable people, be it local or stranger, regular or irregular.

While the primary rationale of an EU protection instrument for vulnerable persons in extreme need is to create an objective standard for the positive obligations that member states have under human rights obligations, such an instrument further helps to curb some of the negative effects resulting from the policy dynamics discussed in section 15.4. It stops the process of “local dumping” by reaffirming a final responsibility of the member states for care for the homeless (15.4.1). It also prevents member states from slipping further into a merely repressive response to the problem of homelessness (15.4.2). In our view the instrument should include a provision stipulating that criminal detention and surveillance does not serve as a form of protection within the meaning of this instrument.

The human rights rationale of an EU protection instrument for vulnerable people in extreme need is also interesting from the point of view of the discussion about the legal basis of such instrument. It is submitted that when such basis does not exist in the TFEU, an alternative route can be explored ensuing from the EU membership to the European Convention of human rights. It would be an innovative approach to search for a legal basis in this Convention, in particular in art. 3 and art. 8 ECHR.

An EU protection instrument for vulnerable people in need does not conflict with the subsidiarity principle. On the contrary, the purpose is rather to emphasize and pinpoint the national

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<sup>293</sup> A. van Lancker, Working Document on a Framework Directive on Minimum Income, EAPN, Brussels, 2010.

responsibilities that member states have in this area. In fact the provision of protection to vulnerable people in need will eventually be a matter for the local authorities or even third parties, such as charities and NGOs. What matters is that member states commit themselves to creating and maintaining a financial and regulatory framework which buttresses an adequate and continuous local support infrastructure.

Interestingly, an instrument for the protection of vulnerable people in extreme need is also part of joint motion for a Resolution of the European Parliament on a EU homelessness strategy of 13 January 2014.<sup>294</sup> As part of a wider strategy, under point 18, the Resolution invites the Council: “to consider introducing a recommendation on a guarantee to ensure that nobody in the EU is forced to sleep rough because of a lack of (emergency) services” . Below we will develop some ideas relating to their right to protection. It is important to bear in mind that these ideas can be either the subject of an EU instrument on this right in the narrow sense of the word, or part of a wider instrument dealing with homelessness and destitution, also including more programmatic issues such as housing policies, availability of care and day and night time centres, sheltered work places, opportunities for counselling and the collection of data and best practices, etc.

### *Some elements of the proposed instrument for the protection of vulnerable persons in extreme need*

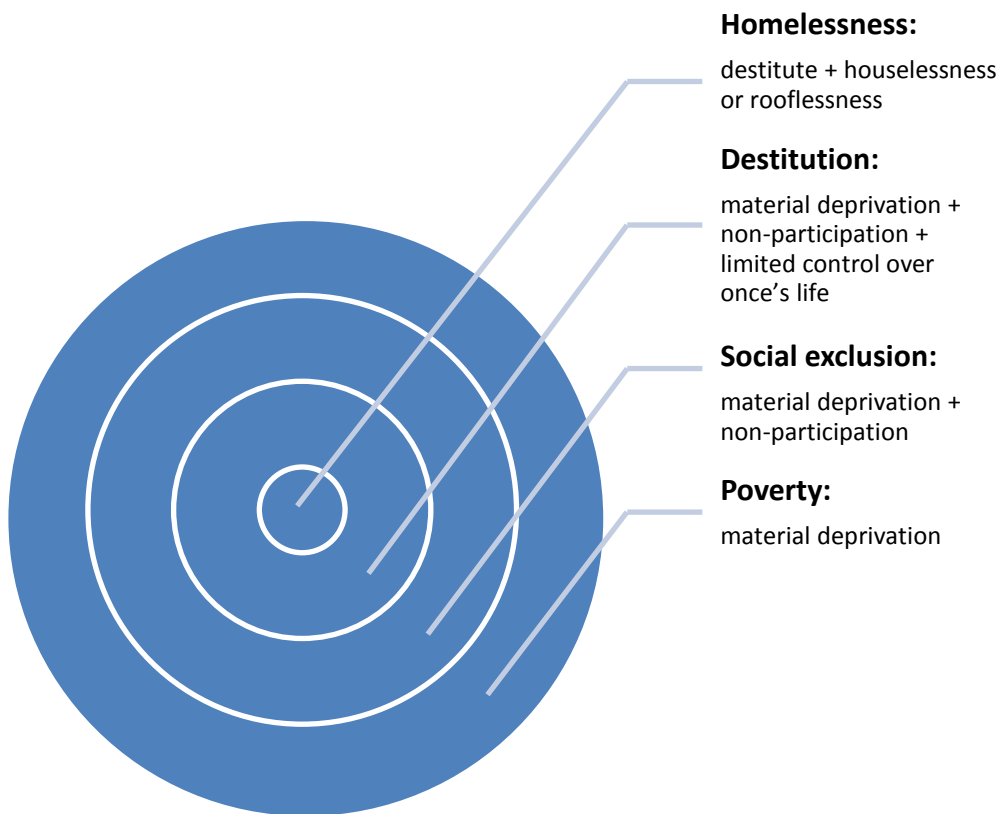
#### 1. Personal scope of application

As mentioned before, the instrument applies to all persons who are present in the member states, regardless of the degree of integration, nationality or immigration status. This very wide personal scope follows from the human rights background of the instrument. The other side of the coin of the wide personal scope of application is that groups deserving protection should indeed be narrowed to those who “vulnerable and in extreme need”. The legal definition of these concepts raises complicated questions. Preferably definitions should be developed on the basis of a careful study of the case law of domestic courts and of course of the ECtHR (with reference to Article 3 and 8 ECHR in particular) and the European Social Rights Committee, as well as the secondary literature and reports on this case law. In our view, such a study would emphasise that an EU standard on the protection of vulnerable people in extreme need, is not necessarily a new legal norm but one which constitutes a codification of existing human rights jurisprudence.

It is possible to say something about the concepts that are likely to emerge from such a study. First of all with regard to the notion of “vulnerability”. As an overall concept we may recall figure 2.1 included in Chapter 2: the circles of deprivation.

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<sup>294</sup> Joint Motion for a Resolution on Resolution on an EU homelessness strategy (2013/2994(RSP)).



For our instrument, we suggest that vulnerability is narrowed down to the inner two circles, i.e. the destitute and the homeless. It is possible to label this condition in qualitative terms, e.g. as Mary Neal has done in an attempt to summarize the relevant literature:

[V]ulnerability speaks to our universal capacity for suffering. First, I am vulnerable, because I depend upon the co-operation of others (including, importantly, the State)... Second I am vulnerable because I am penetrable; I am permanently open and exposed to hurts and harms of various kinds.<sup>295</sup>

It follows from human rights case law that belonging to a certain collective group: young children, the handicapped, Roma, etc. is seen as an important indication for one's vulnerability. This could be reaffirmed in the instrument, with reference to the various protected groups concerned. In particular it is suggested that the homeless are referred to as one of the categories of vulnerable people.

(Group) vulnerability is not enough to invoke the right to protection. There should also be a situation of "extreme need". In order to cut short a lengthy legal analyses dealing with this concept, we propose that such a situation occurs when denying protection seriously aggravates the predicament of an individual and exposes him to an inhuman, degrading or life threatening situation. For example, by not providing proper shelter to a person who suffers ill health and anxiety, the situation of that person may deteriorate even to the extent that it can be said to be inhuman, degrading or life threatening. Denying help is then tantamount to an active interference and harmful action. This latter notion plays an important role in the human rights case law of various courts, see for example: ECtHR 21 January 2011, appl. No. 30696/09 (*M.S.S. v. Belgium*

<sup>295</sup> Mary Neal, "Not Gods but animals": human dignity and vulnerable subjecthood, 33 *Liverpool L. Rev.* 177, 186-187 (2012), quoted by Lourdes Peroni and Alexandra Timmer, "Vulnerable groups: the promise of an emerging concept of European human rights", *ICON* (2013), Vol. 11 No. 4, 1056-1085, 1058.

and Greece) and House of Lords 3 November 2005, [2005] UKHL 66 (*Secretary of State for the Home Department v. Limbuela c.s.*).

## 2. Material scope of application

The material scope of application refers to protection at a level which is necessary for the vulnerable individual not to experience extreme need. But what is the substantive content of this protection? Reference could be made to existing instruments, such as the notion of social assistance and medical assistance as defined in the European Convention on social and medical assistance of the Council of Europe of 1953, but the problem is that combined with the wide personal scope, this would imply that all persons, also irregular immigrants and temporary visitors, would qualify for general minimum subsistence cash benefits. Probably, this is asking too much compared to the present state practice. An alternative point of reference already referred to in the recommendations of the previous chapter 16, is Directive 2013/33/EU laying down standards for the reception of applicants for international protection. This is the latest version of the Directive on the reception of asylum seekers. *Mutatis Mutandis* Article 17(2) of Directive provides an overall credible description of the protective standard involved: “Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health” An attractive aspect for relying on Directive 2013/33/EU by analogy is that the directive actually stipulates further rules as to what is to be understood by this protective standard (Article 17- Article 19) as well as additional guarantees such as the right of the families to stay together (Article 12) and access to housing for minor children (Article 14).

In any case it must be mentioned that it is difficult to accept that lesser conditions should apply for persons who have an equal or stronger status than asylum seekers, which is the main target group of Directive 2013/33/EU. Only for irregular migrants can a legal justification for a lesser standard of treatment be construed, but the current trend in human rights case law rather flows towards the recognition of equivalent protection than away from it.<sup>296</sup>

### **Directive 2013/33/EU laying down standards for the reception of applicants for international protection**

#### Article 17

#### *General rules on material reception conditions and health care*

(...)

Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time. If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when those basic needs were being covered, Member States may ask the applicant for a refund.

<sup>296</sup> Cf. Gijsbert Vonk and Sarah van Walsum ‘Access denied, towards a new approach to social protection for formally excluded migrants’, in *Cross-Border Welfare State*, G.J.Vonk (ed.), Antwerpen, Intersentia, 1-44, 27-33 and the analysis contained in Section 5.3 of this study.

Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

#### Article 18

##### *Modalities for the material reception conditions*

Where housing is provided in kind, it should take one or a combination of the following forms:

- (a) (...);
- (b) accommodation centres which guarantee an adequate standard of living;
- (c) private houses, flats, hotels or other premises adapted for housing applicants.

(...) Member States shall ensure that:

- (a) applicants are guaranteed protection of their family life;
- (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non- governmental organisations and bodies;
- (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).

Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.

Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

- (a) (...)
- (b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.

#### Article 19

##### *Health care*

Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

### *Substantive obligations for the member states*

Apart from the above type of standards dealing with the quality of protection and with ancillary rights (family life, access to schools etc.), the instrument should include an overall obligation for the member states to set up a regulatory and financial framework which enables the local authorities or third parties to provide the required level of protection. This infers that national government cannot define the care for the homeless exclusively as a regional, local or civil society affair. Also it could be stipulated that national governments should provide for additional funding in case a local community is confronted with an influx of homeless and destitute persons.

Simultaneously, the member states should make sure that the protection at local level is actually realised in line with the obligations of the instrument. This infers the setting up of a strict supervisory and reporting mechanism to the national government. Incidentally, such mechanisms might also be used to gather information at an aggregate EU level.

In view of the rise of repressive responses to homelessness in some countries (cf. section 15.4.2) it is furthermore important that it is stipulated that member states cannot adhere to the required standards through detention and criminal surveillance measures.

Another important standard concerns the domicile of protection. Member states are responsible for protecting all vulnerable persons in extreme need who are present in the country. This implies that there is no room for a national habitual residence test. The instrument should further stipulate that when local authorities apply a local connection test, the member states must guarantee that such a test does not stop local authorities from providing temporary relief until the person is handed over to the authorities where the individual is considered to be rooted. For those without any local connection at all, protection must nevertheless be granted by the local community where the individual is present.

Moreover, the instrument should cover the issue of access to the justice system. This could be realised by a provision which obliges member states to make sure that individuals who are refused aid, will receive a decision in writing which is subject to review and appeal.

Lastly, in line with recommendation h. of Chapter 16 it would be relevant to include a clause on the possible return of an individual to his country of origin, a so called reconnection clause. Return must be voluntary and measures should be based upon a consensus amongst all the stakeholders, including the sending and receiving member states and should serve the best interest of the mobile citizen or migrant.

## **ANNEX I**

### **Questionnaire (example undocumented migrants)**

**QUESTIONNAIRE**  
**MIGRATION, DESTITUTION AND HOMELESSNESS IN EUROPE**

**COUNTRY CASE STUDIES**

**Undocumented migrants (Netherlands and Greece)**

PART I: EXPLANATION  
PART II: QUESTIONNAIRE

Version: 1.3, February 18<sup>th</sup>, 2013



## PART I: EXPLANATION

### GENERAL EXPLANATION

The aim of the country case studies is to shed light on the mechanisms which affect homelessness among migrants in general, and more specifically for four categories of migrants (undocumented migrants, third country workers, A10 migrants and migrant Roma) in selected countries.

The questionnaire is made up of four blocks of questions, i.e.:

- I. Questions regarding the **extent of destitution and homelessness** in the case study country. These questions largely serve descriptive purposes and provides background information on the specific situation in the country under study.
- II. Questions regarding the **national policy and legislative context** regarding housing and social assistance.
- III. Questions regarding causes (**legal and non-legal barriers**) for failed access to housing and social assistance
- IV. Questions regarding (**local**) **initiatives** aimed at ameliorating the situation of homeless migrants

The division between the four blocks reflects some underlying assumptions upon which this research is based. First of all there is the assumption that there is a relation between general poverty and the extent of destitution and homelessness. The first block of questions will bring to the fore to what extent this assumption is correct from a quantitative point of view, specifically with reference to destitution and homelessness among migrants. The second assumption is that destitution and homelessness are a consequence of migrants not being able to access the general social safety net (*de facto* or *de jure*), here defined as social assistance and the right to housing. What we want to find out is for what reasons and by what mechanisms migrants are excluded from the general safety net, which forces this group to live in the fringes of the society and on the streets. This theme is the subject of Block II and Block III. Thirdly, the assumption is that the plight of migrants who fall outside the general safety net, can be relieved through public or private measures and initiatives which are specifically designed to help the homeless. This is the theme of Block IV which refers to such measures and initiatives as “best practices”.

### BLOCK I

The aim of this block is to form a general understanding of the extent of destitution and homelessness among migrants in general and more specifically of the migrant group under study in the case study country.

#### A. *Destitution*

Within the framework of this study destitution refers to a situation of *lack of means of resources to meet basic needs* such as shelter, food, health or education. Destitution is a complex concept which encompasses different aspects dealing both with material and immaterial exclusion. As such there is no common indicator for destitution, yet there are various indicators which together

provide a picture of the level/incidence of destitution in a country. The indicators which are used in the questionnaire are predominantly based on the *Laeken indicators*. These indicators form a set of common European statistical indicators on poverty and social exclusion, established at the European Council of December 2001. We have identified 4 indicators which together grasp the concept of destitution, i.e.:

- 1) Material deprivation
- 2) Immaterial deprivation (social exclusion)
- 3) Health situation
- 4) Housing situation

In as much as this is possible, the data should be drawn from EU sources such as EU-SILC. It is however likely that for some data we will have to rely on national studies on poverty and exclusion. This necessarily puts restrictions on comparability between countries. By using the same type of indicators for each country we allow for some general comparison *between countries*, but we will not be able to exactly establish how the level of destitution among migrants in one country compares to the situation in another country.

As we compare the situation of migrants to that of the non-migrant population *within a country*, we will be able to establish to what extent migrants are more prone to destitution than non-migrants in a specific country. This comparison will be given on the basis of available statistical information and small-scale surveys. Within the framework of this study we are not supposed to generate data ourselves.

#### *B. Homelessness*

Homelessness is a complex and dynamic process with different trajectories for different individuals and groups. In order to achieve a common framework for the definition of homelessness the European Typology of Homelessness and Housing Exclusion (ETHOS) was developed by FEANTSA. The ETHOS typology, which takes into account physical, social and legal aspects of a 'home', classifies homeless people according to four main living situations, i.e.:

- 1) Rooflessness
- 2) Houselessness
- 3) Living in insecure housing
- 4) Living in inadequate housing

The first category is the most extreme condition of homelessness. People experiencing rooflessness lack a home both in the physical, social and legal sense; they are sleeping on the rough. Houselessness refers to people in (temporary) shelters and accommodations. These persons do have a physical place to live but experience exclusion in the legal and social domain. People in insecure housing do have a roof over their head but their housing status is insecure as they might be under the threat of eviction or have found temporary accommodation with family or friends. The final category refers to people living in inadequate or substandard housing. People at risk of homelessness often move in and out of different categories of homelessness.

When in this questionnaire we refer to homelessness, we imply only the first two categories i.e. rooflessness and houselessness. The other two categories (insecure and inadequate housing) are dealt with under the general indicators for destitution (see under housing situation i.e. indicators for overcrowding and insecure/substandard housing). In other words, this questionnaire focuses on the two most extreme forms of homelessness.

Data on homelessness can be drawn from various sources such as surveys, street counts, register data, census data. We do, however, not expect to find comprehensive national data on homelessness among migrants. It is more likely that information on homelessness among migrants will have to be assembled from various local studies. We aim at giving an as good as possible description of the incidence of homelessness among migrants in a country, but we depend on available sources as we will not generate data ourselves.

## **BLOCK II**

Block II is entirely devoted to obtaining information about the social safety net infrastructure, from the perspective of national policies and law. What are the main schemes operating in this safety net, what benefits can be obtained, how are they structured and administered, etc.?. These questions should be answered in as much as they are relevant for the migrant group under study.

### *Social assistance*

The social safety net is defined as social assistance and the right to housing. The term social assistance refers to tax financed, benefit arrangements which target at the poor (means test). The term must be interpreted in a wide sense, i.e. not only standards benefits for minimum subsistence, but also special payments for specific needs (medical costs, travel costs, budget support) and benefits in kind (food stamps, shelter, medical services), at least to the extent that such benefits are considered part of the social assistance program. Social assistance schemes can be general or categorical (for the elderly, the handicapped, etc.), national or local.

### *The right to housing*

The right to housing, refers to social support mechanisms and schemes which allow persons to live under a roof, i.e. subsidized housing, rent rebates, free accommodation of homeless persons, etc. Also the notion of the right to shelter is included.

## **BLOCK III**

### *Legal barriers*

There are a couple of fields that must further be scrutinized in order to obtain a comprehensive picture of the legal and administrative barriers for access to social assistance and housing *lato sensu*.

Firstly, we are interested in the qualifying conditions in terms of nationality, residence of legal status. In particular we want to know whether authorities apply a local residence test, i.e. whether immigrants must have established some link with the local authority, by means of formal registration, of proven periods of domicile, etc. Secondly, attention is paid to the link between access to social care and housing and immigration control; are foreigners who rely to public funds reported to the immigration police? Thirdly, we want to know how criminal law impacts up the question of homelessness and destitution amongst migrant groups, in particular in case of irregularity and "vagrancy". Fourthly, we will look into the question to what extent vulnerable groups, such as children, people in extreme adverse circumstances can claim rights to minimum care or shelter by invoking national or international constitutional fundamental rights. Finally, in this context we would like to know whether there is access to justice for groups and

representatives who want to enforce such minimum care obligations through the courts infrastructure.

For the purposes of this questionnaire we will scrutinize both formal legal positions and administrative practices. Thereby we will draw our information from acts, parliamentary papers, case law, official reports and to (validated) secondary literature. Also it is necessary to make references to the existing comparative reports directly or indirectly drawn up under the authority of the EU and the Council of Europe, as contained in the annex of this questionnaire.

#### *Non-legal barriers*

The aim of this block is to gain insight into the non-legal barriers which migrants encounter in accessing housing and social assistance, which in turn can lead to destitution and homelessness.

With regard barriers in access to housing, relevant factors and mechanisms can be found at three levels, i.e.:

- 1) At the macro level the structure of the housing market (i.e. affordability and adequacy of the housing supply in the private and public sector) affects housing opportunities,
- 2) At the meso or institutional level administrative barriers/indirect discrimination (e.g. requirement of documents, proof of registration) and direct discrimination by landlords, municipalities, social housing agencies and financial institutes affect housing opportunities,
- 3) At the micro or individual level certain characteristics of migrants may hamper access to housing (e.g. lack of information, inadequate search strategies, language problems).

Within the framework of this questionnaire we will primarily focus on factors at the institutional and individual level. The structure of the housing market is mainly taken as a given factor (*ceteris paribus*) and does not constitute a central topic for further study in the case study.

With regard to barriers in access to social assistance we also focus on factors at the institutional and individual level. Particular attention will be given to various administrative and discriminatory practices, which – directly or indirectly – harm the position of the immigrant population group. In addition, we ask for a general assessment of the adequacy of the social assistance infrastructure to prevent people of becoming destitute and of the problem of non-take up.

## **BLOCK IV**

The aim of block IV is twofold:

- 1) to provide a general understanding of the infrastructure available for homeless people (migrants and non-migrants) in the case study country;
- 2) to generate more specific data on successful initiatives geared at improving the situation of homeless migrants among the specific migrant group under study in the case study country.

The data collection in part 2 of this block should provide detailed information on (possible) good (and bad) practices. It must offer information on the nature of the initiatives, the impact and sustainable results and the potential for replication.

## PART II: QUESTIONNAIRE

### OUTLINE OF THE QUESTIONNAIRE

As mentioned in the explanation, the questionnaire is made up of four blocks of questions, i.e.:

- V. Questions regarding the **extent of destitution and homelessness** in the case study country. These questions largely serve descriptive purposes and provides background information on the specific situation in the country under study.
- VI. Questions regarding the **national policy and legislative context** regarding housing and social assistance.
- VII. Questions regarding causes (**legal and non-legal barriers**) for failed access to housing and social assistance
- VIII. Questions regarding (**local**) **initiatives** aimed at ameliorating the situation of homeless migrants

## **BLOCK I:**

### **EXTENT OF DESTITUTION AND HOMELESSNESS**

#### **General**

##### **A. Destitution**

I-Q1: What is the extent of destitution among migrants in general? Differentiate between EU nationals and third country nationals. Please describe by using indicators such as:

- a. Income/poverty/material deprivation
  - At risk of poverty-rate and persistency of poverty
  - Dependence of social services/social assistance
  - Level of material deprivation (lack of basic necessities)
- b. Level of immaterial deprivation (in particular: social exclusion)
- c. Extent of poor health
  - Severe health risks
  - Low life expectancy rate
- d. Poor housing
  - Overcrowding
  - Housing deprivation (i.e. substandard and insecure housing)

I-Q2: Please differentiate the experience of homelessness among migrants by gender, age and household composition.

I-Q3: How does the extent of destitution among migrants compare to the non-immigrant population?

##### **B. Homelessness: houselessness and rooflessness**

I-Q4: What is the extent/incidence of houselessness (people living in shelters such as hostels, emergency shelters, reception centers) and rooflessness (sleeping rough) among migrants (EU nationals, third country nationals)?

I-Q5: In which areas/cities/neighbourhoods are homeless migrants concentrated?

I-Q6: Are there vulnerable categories of migrants which are specifically prone to homelessness?

- a. According to demographic characteristics (i.e. gender and age)
- b. According to household composition
- c. According to migration status (e.g. victims of human trafficking and women with dependent resident status)
- d. According to ethnic origin

I-Q7: Please indicate the development of the incidence of homelessness among migrants over the last decade (i.e. after the beginning of this millennium until now)

##### **Undocumented migrants**

I-Q20: What estimates can be given about the number of undocumented migrants in the country?

I-Q21: What is the extent of destitution among undocumented migrants? (using indicators mentioned in section A)

I-Q22: What is the extent/incidence of homelessness among undocumented migrants?

I-Q23: Please indicate from which countries these destitute and homeless undocumented migrants primarily originate?

I-Q24: Can you indicate data shortcomings and possible suggestions for data improvement? (at general level and for specific group)

## **BLOCK II:**

### **NATIONAL POLICIES AND LEGISLATIVE CONTEXT IN THE FIELD OF HOUSING AND SOCIAL ASSISTANCE**

#### **General**

##### **A. Housing**

- II-Q1: Please list the main housing schemes which qualify as social housing schemes for the poor and the benefits that are payable (c.q. services rendered)?
- II-Q2: Are there any separate policies or schemes which particularly target at the homeless and destitute, or otherwise at vulnerable categories, amongst which may be homeless people (children, the handicapped, etc.)?
- II-Q3: Describe the divisions of responsibility between the national government and local government regarding social housing.
- II-Q4: Describe the financial structure regarding social housing: locally financed or through government grants (or both).
- II-Q5: Can you point at any “weaknesses” in the body of housing law (social, private, rental) that may attribute to substandard housing conditions or to homelessness and destitution in general?
- II-Q6: To what extent is there a national policy, c.q practice of helping people who are expelled from their homes in case of repossession due to mortgage default, or failure to pay the rent (or because of other reasons such as anti-social behavior)?
- II-Q7: To what extent do undocumented migrants benefit from such policies or practices?

##### **B. Social assistance (*lato sensu*)**

- II-Q8: Please list the main social assistance schemes and the benefits that are payable (c.q. services rendered).
- II-Q9: Are there any separate national policies or schemes which particularly target at the homeless and destitute, or otherwise at vulnerable categories, amongst which may be homeless people (children, the handicapped, etc.)?
- II-Q10: Describe the divisions of responsibility between the national government and local government regarding social assistance.
- II-Q11: Describe the financial structure regarding social assistance: locally financed or through government grants (or both).
- III-Q12: Is there de facto access to the social safety net for undocumented migrants?

## **BLOCK III:**

### **LEGAL AND NON-LEGAL CAUSES OF DESTITUTION AND HOMELESSNESS**

#### **Legal barriers**

##### **F. Qualifying conditions for migrants for social assistance and housing schemes**

- III-Q1: Indicate the formal qualifying conditions vis a vis foreigners. Is there a nationality test, a legal residence test or a simple residence/presence, or possibly a habitual residence requirement? Is entitlement to housing and social assistance subject to a civic integration test?
- III-Q2: Are undocumented, c.q. unregistered persons entitled to receive assistance? Please make a distinction between regular payments and emergency care.
- III-Q3: Is there a formal local/regional residence requirement?
- III-Q4: Is there a *de facto* local/regional residence practice and by what factors is it caused (financial, bureaucratic, etc.)?

##### **G. Access to public funds and immigration control**

- III-Q5: In case residence status depends on a condition of “no recourse to public funds”, are immigrants who rely on public funds reported to the immigration authorities?
- III-Q6: To what extent can it be said that the former practice operates as a barrier to social assistance and housing?

##### **H. Relation with criminal law**

- III-Q7: Is irregular stay a criminal offence?
- III-Q8: Is vagrancy, public drinking/drunkenness, a criminal offence?
- III-Q9: Is helping and/or assisting irregular immigrants a criminal offence?
- III-Q10: To what extent are these offences actively enforced by the national authorities?
- III-Q11: In your view: to what extent does the criminalization of homeless immigrants contribute to the state of destitution of this group?

##### **I. The right to social assistance and housing**

- III-Q12: Is the right to social assistance and housing enshrined in the constitution and/or legislation of your country? If not, why?
- III-Q13: Can these rights be invoked through legal proceedings?
- III-Q14: Are you aware of any land-mark cases of higher or lower courts related to the right to housing?
- III-Q15: Are there any legal remedies to fight discrimination in access to social assistance and housing (social/private/rental)?

##### **J. Access to Justice**

- III-Q16: Is there any real possibility for homeless persons or their representatives to access courts, in terms of:
- a. free legal aid schemes; and
  - b. the recognition of class actions?
- III-Q17: Is the refusal to grant social assistance, emergency shelter to immigrants in an individual case a decision which can be challenged through the legal system?



III-Q18: Are there any effective legal remedies against discrimination, xenophobia or policy brutality?

**K. Expulsion and repatriation**

III-Q19: “Are there any voluntary or involuntary repatriation programmes? Do these take into account the individual assessment required on grounds of article 14 (3) of Directive 2004/38/EC”?

III-Q20: Is art. 14 of the EU return directive (cf. general report) adhered to (right to assistance, health care, etc.)?

## **Non-legal barriers (administrative/ bureaucratic barriers, discrimination and individual factors)**

### **C. Housing in public and private sector**

III-Q22: To what extent is homelessness of undocumented migrants influenced/caused by discriminatory daily practices:

- a. Direct discrimination by private landlords
- b. Direct discrimination by municipalities/social housing agencies?
- c. Indirect discrimination/practical barriers (e.g. proof of registration in population records/tax registration, notification obligations of presence of foreigners to authorities, requirement of documents such as social security number or tax identification number, proof of income, waiting lists etcetera)
- d. Direct and indirect discrimination by financial institutes (e.g. providing mortgages and financial loans)

III-Q23: To what extent is homelessness among undocumented migrants caused/influenced by factors at the individual level, in particular factors such as lack of connections, poor information, inadequate search strategies, language problems etc?

III-Q24: Can you indicate whether female undocumented migrants are more severely affected by these barriers than men? What makes them specifically vulnerable to these problems?

### **D. Social assistance**

III-Q26: Is the general social assistance infra-structure sufficient developed to such extent that it prevents people of becoming destitute and homeless?

III-Q27: In case there legal entitlement to such infra-structure, is there any evidence of non-take up amongst undocumented migrants?

III-Q28: What role do practical barriers/indirect discrimination play in the use undocumented migrants make of available social assistance? (e.g. proof of registration in population records/tax registration, notification obligations of presence of foreigners to authorities, requirement of etcetera)

III-Q29: What role does direct discrimination by public officers play in the use undocumented migrants make of available social assistance?

III-Q30: What role do barriers at the individual level play in the use undocumented migrants make of available social assistance? (e.g. inadequate information, language problems)

III-Q31: Can you indicate whether undocumented migrant women are more affected by these barriers than men? What makes them specifically vulnerable in this respect?

III-Q32: Please specify for the following categories of undocumented migrants the specific legal and non-legal barriers they face:

- a. Rejected asylum claimants
- b. Victims of human trafficking
- c. Victims of domestic violence with dependent resident status

## **BLOCK IV:**

### **LOCAL INITIATIVES AND GOOD PRACTICES AIMED AT HOMELESS MIGRANTS**

#### **Services for homeless**

IV-Q1: Please provide a brief sketch of the various types of services available to the homeless in general, e.g.:

- a. Accommodation (shelter, night time accommodation, etc.)
- b. emergency services (health and food)
- c. legal support services
- d. re-integration
- e. etcetera

IV-Q2: Which parties provide these services?/ What is the role of:

- a. municipalities
- b. private charities and ngo's
- c. churches
- d. a combination of these actors (by financing, co-operation, etc.)

IV-Q3: What is the geographic distribution of these services/ geographic availability?

IV-Q4: Is the available capacity sufficient to provide services to the needy?

IV-Q5: Do undocumented migrants make use of these specific services for the homeless?

IV-Q6: What barriers do undocumented migrants encounter in making use of these specific services?

- a. Legal entitlements (local/regional domicile requirement?)
- b. Insufficient supply/capacity of services
- c. Practical/administrative barriers
- d. Discrimination
- e. Other

IV-Q8: Are there specific initiatives which are specifically geared to support homeless undocumented migrants?

IV-Q9: Are there any specific initiatives to support homeless female undocumented migrants?

IV-Q10: Reversely: are there any country of origin initiatives vis a vis expatriates which help to alleviate the situation of destitute and homeless undocumented migrants?

#### **Good practices**

IV-Q11: Are there any good practices aimed at combating homelessness among undocumented migrants?

IV-Q12: Are there any specific initiatives geared at:

- a. Persons willing to resettle in another country/home country
- b. Victims of domestic violence & harassment
- c. Women and children who suffer from aggression
- d. Others, namely:

IV-Q13: Please describe the nature of these initiatives:

- a. Aim
- b. Type of measures (legal/non-legal)
- c. Description of the methodology (way of working)
- d. Involved organization(s)
- e. Financing

IV-Q14: What are the most important results which have been achieved by these initiatives, with regard to:

- a. Legal advice and/or legal aid
- b. Strengthening access to social and emergency services
- c. Providing material support
- d. Assistance in return
- e. Other, namely:

IV-Q15: Which preconditions bring about these results? Think of:

- a. Capacity & know how
- b. Financial resources
- c. External cooperation / networks
- d. Public support
- e. Other, namely:

IV-Q16: Are these initiatives (including the underlying preconditions) easy to introduce in other countries?

Please explain.

IV-Q17: Are there any bad practices relating to homeless undocumented migrants? Please specify.

## **END OF QUESTIONNAIRE**

## **ANNEX II**

### **Soft law of the European Union on the position of Roma people, on homelessness, housing and destitution**

#### ***EU soft law on Roma***

- *European Commission*
  - *Recommendation of the Commission of 3 October 2008 on the active inclusion of people excluded from the labour market (2008/867/EC)*
  - *An EU Framework of 16 December 2010 of the Commission for The European Platform against Poverty and Social Exclusion: A European framework for social and territorial cohesion (COM(2010) 758 final)*
  - *An EU Framework of 5 April 2011 of the Commission for National Roma Integration Strategies up to 2020 (COM(2011) 173 final)*
  
- *Council of the European Union*
  - *Conclusions of 2 September 2011 of the Council on an EU framework for national Roma integration strategies up to 2020 (2011/C258/04)*
  
- *European Parliament*
  - *Resolution of 23 February 2006 of the European Parliament on the situation of the Roma in the European Union*
  - *Resolution of 31 January 2008 of the European Parliament on a European strategy on the Roma (2009/C 68 E/06)*
  - *Resolution of 6 May 2009 of the European Parliament on the active inclusion of people excluded from the labour market (2010/C 212 E/06)*
  - *Resolution of 9 September 2010 of the European Parliament on the situation of Roma and on freedom of movement in the European Union (2011/C 308 E/12)*
  
- *European Economic and Social Committee*
  - *Resolution of 15 February 2011 of the European Economic and Social Committee on 'The situation of the Roma in the European Union' (2011/C 48/01)*
  
- *Committee of the Regions*
  - *Recommendations of 10 February 2011 of the Committee of the Regions on 'The social and economic integration of the Roma in Europe' (2011/C 42/05)*
  - *Recommendations of 23 February 2012 of the Committee of the Regions on 'An EU framework for national Roma integration strategies up to 2020' (2012/C 54/03)*

#### ***EU soft law on the homeless and the destitute in general***

- *European Commission*
  - *Recommendation of 7 July 1965 of the Commission to the Member States on the housing of workers and their families moving within the Community (65/379/EEG)*

- *Council of the European Union*
  - *Recommendation of 24 June 1992 of the Council on common criteria concerning sufficient resources and social assistance in social protection system (92/441/EEC)*
  
- *European Parliament*
  - *Resolution of 16 June 1987 of the European Parliament resolution on shelter for the homeless in the European Community (Doc. A2-246/86)*
  - *Resolution of 12 July 1990 of the European Parliament on the right to decent housing (Doc. B3-1461/90)*
  - *Resolution of 16 June 1997 of the European Parliament on the social aspects of housing(A4-0088/97)*
  - *Resolution of 10 May 2007 of the European Parliament on housing and regional policy (2006/2108(INI))*
  - *Declaration of 22 April 2008 of the European Parliament on ending street homelessness (2009/C 259 E/04)*
  - *Declaration of 16 December 2010 of the European Parliament on an EU homelessness strategy (2012/C 169 E/20)*
  - *Resolution of 6 September 2011 of the European Parliament on an EU homelessness strategy (B7-0475/2011)*
  - *Resolution of 11 June 2013 of the European Parliament on social housing in the European Union (2012/2293(INI))*
  - *Resolution of 16 January 2014 of the European Parliament on an EU homelessness strategy (P7\_TA-PROV(2014)0043)*
  
- *European Economic and Social Committee*
  - *Recommendations of 13 July 2007 of the European Economic and Social Committee on Housing and regional policy (2007/C 161/03)*
  - *Recommendations of 28 January 2012 of the European Economic and Social Committee on 'The problem of homelessness' (2012/C 24/07)*
  
- *Committee of the Regions*
  - *Recommendation of 30 June 2006 of the Committee of the Regions Housing and regional policy (2007/C 146/02)*
  - *Recommendation of 13 October 2009 of the Committee of the Regions on 'Housing and the homeless'(1999/C 293/07)*
  - *Recommendations of 18 January 2011 of the Committee of the Regions on 'Combating homelessness' (2011/C 15/08)*
  - *Recommendation of 11 January 2011 of the Committee of the Regions on 'Towards a European agenda for social housing' (2012/c 9/02)*

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