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BARRIERS TOWARDS EU CITIZENSHIP

Citizenship and Work:
Case Studies of Differential Inclusion/Exclusion

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I. INTRODUCTION

In its previous research, Work Package 10 of bEUcitizen examined the rise of the worker-citizen and found that work can shape differential inclusion into the community. However, people may also be differentially included and excluded from the world of work. Deliverable D10.3 explores these processes with regard to specific groups of people or individuals that engage in specific types of labour. Five case studies of different social groups (both citizens and migrants) serve to examine the relationship between work, citizenship and inclusion/exclusion. The case studies are a mixture of a single state focus, or a comparative focus of particular groups in select countries involved in WP10: Croatia, Ireland, Israel, the Netherlands and the UK.[1]

Deliverable D10.1 analysed the ways in which the 'worker citizen' underpins national and EU citizenship with respect to policies regarding entry to and residence in a nation state, naturalisation, and access to social security provisions, policies which cut across citizens and migrants. We examined how citizenship is increasingly cast as being deserved by hard-working, self-reliant individuals prepared to take responsibility for themselves and demonstrated that citizenship requires having the status of a worker (Anderson, Shutes, Walker 2015). For the purposes of this report, we refer to 'worker' as both a legal and social status. Under EU Law, to attain worker status, work has to be deemed to be "genuine and effective" and not on such a small scale as to be "marginal and ancillary" (See Anderson, Shutes, Walker, 2015: 52 for further discussion). Thus understanding the relation between inclusion and exclusion and the spaces in between (which we described as 'differential inclusion) requires us to analyse how people are differentially included in labour markets and in the world of work.

Analyses of the relationship between citizenship and the labour market have tended to examine the exclusions of migrants and the exclusions of those who have the legal status of citizenship separately. For example, the literature on the impact of immigration policies on the labour market participation of migrants has tended to sit apart from the literature on the impact of welfare-to-work policies on the labour market participation of citizens. In keeping with the theme of this work package, we are interested in examining citizens and migrants together, taking as our starting point inclusion/exclusion from the labour market, rather than the migrant/citizen binary. This deliverable (D10.3) examines how the labour of different groups is differentially included – how different groups are differentially included as 'workers' – and discusses the implications for understanding the relationship between citizenship and work, and the barriers to citizenship, for both citizens and migrants.

We have five case studies which focus on different social groups and the ways in which they are differentially included in the labour market (in different national contexts). They comprise: (1) people with disabilities as participants in the adjusted wage programme in Israel; (2) EU migrant women in the UK; (3) refugees in Croatia and Ireland; (4) domestic workers in the Netherlands. The fifth case study, beggars/begging in the UK and Croatia, was chosen to explore exclusion from the world of work and the delineation of the boundaries of labour itself, as well as its relation to honour and to community.

The case studies were selected on the basis of previous deliverables. Each partner identified a 'hidden population' whose relation to the labour market troubled the worker citizen ideal. We also wanted to include in our analysis groups who were differentiated by their formal citizenship status (national citizens, EU citizens and Third Country Nationals), in line with our concerns to examine citizens and migrants together. With respect to 'work' and the conceptual focus on differential inclusion, these groups enabled us to examine a) groups included/excluded from the status of worker (as a legal and/or social status), b) groups included/excluded from the formal labour market. The selection of these cases was also intended to allow for more in-depth, qualitative analysis of the differential inclusion of groups who may be 'hidden' within (and indeed potentially

[1] Spain is not included in this deliverable.

excluded from) national data sets (see D10.2 for further discussion on data issues). Partners were sent guiding questions established for all case studies contributing to this report (see Appendix 1). There are many other groups that could have been selected. We considered for example interns, prison work, and volunteers all of whom perform work but are excluded/differentially included in labour markets. The mechanisms of inclusion/exclusion also vary by national legislation. We hope that the guiding questions may help form the basis for further comparative work in this field, both between different European states and across different typologies of work.

In this summary report we summarise the five case studies and then consider what they reveal about the relationship between work and citizenship. In D10.1 we discussed the importance of moving away from dichotomous understandings of insiders and outsiders, and towards an analysis of differential inclusion. Across the cases, we emphasise the importance of understanding the social construction of work/the worker, and the social relations in which work takes place, and how these relations are not fixed. First, we examine the relation between work and welfare with respect to the cases where people can be excluded from the status of 'worker' and access to social benefits (with reference to EU migrant women and to refugees/asylum seekers). Second, we examine how people are excluded from the labour market because, while they are economically active, what they are doing is not considered to be work, which leads to an engagement with 'worker' as social status (with reference to begging and to au pairs). Third, we examine how people are included in the labour market but, while their activity is considered to be work, they are treated as a different 'kind' of worker, reflected in their exemption from minimum wage or other employment protections (with reference to people with disabilities and to domestic workers). Finally we argue that the flipside of the worker citizen is the 'economy of makeshifts'. This is an historical concept that describes "the patchy, desperate and sometimes failing strategies of the poor for material survival" and their use of numerous resources to do so (King and Tomkins 2010). For women this was often entwined with their domestic work and responsibilities.

The five case studies are summarised below.

II. CASE STUDIES SUMMARIES

1. People with disabilities and the adjusted wage programme (in Israel)

This case study examines the adjusted wage policy for people with disabilities in Israel. It begins by surveying the origins and critiques of such policies. Survey data is then utilised to compare labour market outcomes of disabled people in Israel. The study draws upon data collected from participants in the programme and an analysis of the relation between sub-minimum wages and the benefit system. Whilst people with disabilities may be formally 'insiders' in the sense that they have the legal status of citizenship, they can be socially excluded from what we described in D10.1 as 'the community of value' due to the centrality of participation in the labour market for social inclusion. People with disabilities are often unable to find employment or are employed in sheltered work, and thus spatially separated and structurally excluded from the labour market and from society more generally. The adjusted wage policy seeks to facilitate inclusion in the labour market through a policy that exempts employers from the requirement to pay the minimum wage for people with disabilities on the understanding that this will improve disabled people's employment rates. People receive a wage in line with their work productivity, which is assessed on an individual basis and translated into wage terms. Findings from the case study suggest that, whilst the numbers are very low and better data is needed, those who participate in this programme do have higher employment rates and wages. Thus, despite some criticisms of sub minimum wage policies, in Israel the case study illustrates that for those who are able to participate in this programme it has led to enhanced labour market participation and therefore greater inclusion.

2. EU citizen-women (in the UK)

This case study explores the differential inclusion of mobile EU-citizen women in terms of their access to rights of residence and social benefits. As discussed in D10.1, EU citizens' rights to residence across the member states are premised on work and we consider the implications of this from a gender perspective. Focusing on the UK, the case study draws on interviews with a) organisations providing advice services to EU migrant women regarding their access to social benefits in the UK and b) EU migrant women regarding their experiences of access to social benefits. EU migrant women may be included as 'EU citizen-workers' – and there are high rates of employment of EU citizen-women in some member states, including the UK, compared both to EU citizen-men and national citizens overall (Eurostat, 2013). However, the findings point to the ways in which the gendered inclusion of EU migrant women in work – in so-called atypical, low-paid work – restricts them from claiming the status of 'worker', with implications for their exclusion from access to social benefits. At the same time, the exclusion of unpaid care as a basis for claiming rights of residence reinforces EU migrant women's dependence on maintaining their status as workers, while excluding women with young children from access to social benefits for failing to do so. Where EU migrant women are reliant on the status of family member of the EU citizen-worker, this constructs dependence on male partners for access to rights of residence and social benefits, including relationships involving domestic violence. These gendered processes, it is argued, point to the limitations of a snapshot picture of the status of 'worker', obscuring the temporality of labour market inclusion and how differential inclusion over time is shaped by the interrelations between work, care and family.

3. Refugees/asylum seekers (in Croatia and Ireland)

This case study focuses on asylum seekers and refugees in Ireland and Croatia. Both these states have been emigration states and have patterns of nation building based around ethno-nationalistic concepts of community. The case study is based upon a literature review of academic and grey literature as well as empirical data drawn from interviews and consultations with refugees and other stakeholders. As D10.1 highlighted, asylum seekers gain preferential access to territory but not the labour market, from which they are formally excluded via legislation which prevents them from working until they have obtained some kind of protection status and accompanying right to remain in the country. In Croatia, this restriction is limited to 9 months; in contrast, in Ireland asylum seekers cannot work at all until they have obtained status. Asylum

seekers are also excluded from mainstream welfare systems. In Ireland, they are supported via a separate system with very minimal provisions, which leads to social exclusion and marginalisation. In Croatia, asylum seekers are accommodated in reception centres and receive limited financial assistance. In both countries, once protection status is secured, they can access the mainstream welfare system but a series of exclusionary mechanisms continue to create barriers to accessing the labour market which can result in problems in obtaining secure residency rights. Initial exclusion from labour market participation as asylum seekers triggers a trajectory characterised by continuous and cyclical exclusion from the labour market after they are granted some form of protection, which in turn triggers exclusion from social and formal citizenship. In both countries, this cycle of exclusion is facilitated by an ethnicized and/or racialized notion of national identity that places individuals from the case study group at the lower end of a hierarchy of deservingness and belonging. These outcomes then contribute to their being denied formal citizenship through naturalisation, and long-term exclusion from social citizenship. The exception is the ethnic Croat refugee in Croatia, where, in line with ethnocentric notions of belonging in Croatia, this group is not considered an outsider and has access to citizenship.

4. Domestic workers (in the Netherlands)

This case study explores the profile of the domestic worker in the Netherlands, focusing in particular on their legal position, their formal (citizenship) status, and the mechanisms of exclusion that affect them. It draws upon academic and grey literature to explore the relationship between domestic workers and the labour market. Little is known about this population owing to the largely informal nature of their employment. Domestic work is regulated under Dutch employment law, and domestic workers do enjoy some partial protection. However, they are not treated as regular employees, except where they work a minimum of four days a week for single employers or are employed by external service providers, such as care providers. The (historical) normative assumption underpinning this lack of protection is that (female) domestic workers occupy a dependent position to a male breadwinner and thus do not require such protection. Au pairs also perform domestic work, yet this is legislated for differently as it is not considered 'work'. The role constitutes a particular form of live-in migrant domestic help, most often related to care of young children. Whilst 'au pairs' may perform de facto domestic work, the social relations under which it is performed, including the immigration requirement that it is 'cultural exchange', mean that it is excluded from the labour market. The case study thus highlights how different forms of labour, particularly in the domestic sphere, may or may not be considered work depending on the context and the implications this has for social rights and citizenship. The differential inclusion of domestic workers in the labour market impacts upon their residency rights. There are significant differences between the legal position of EEA and Third Country national (TCN) migrant domestic workers, with the former having (potentially) more rights. However, for all migrants, work in the informal sector can enhance vulnerability as residence rights can be lost through applying for non-insurance based welfare.

5. Beggars and begging (in the UK and Croatia)

This case study explores beggars and the relation between begging, work and citizenship in the UK and Croatia. It draws upon a literature review on begging, a review of the law in four European countries and a brief analysis of media coverage of begging and citizenship in the UK using one national newspaper. Additionally, in the UK empirical data was drawn from a small, separately funded project in which interviews were conducted with 11 professional groups and organisations based in London who deal with issues of begging on a daily basis.

For centuries begging has been associated with escaping labour, that is as the opposite of work, and for centuries begging has been treated by ruling authorities as acceptable only for those who cannot earn their living in other ways and are thus 'deserving' of alms. Begging continues to be characterised by some as purposefully choosing not to work, that is, as idleness or doing nothing. Begging must be distinguished from 'ordinary' economic activity since that is precisely what beggars must not be doing in order to be deserving.

The case study builds upon historical literature on begging and vagrancy to draw parallels with today's control of the mobile poor. While begging may be directly criminalised, the control of mobility may also be used ostensibly as a means of controlling begging. Across the EU, mobile EU citizens who are not engaged in the labour market and who are a 'burden' on the host state, may lose their right of residence and become subject to removal after the initial three months. While the free movement of labour is encouraged under the EU framework, there is little regulation in place to address the free movement of poverty, save through the framework of crime reduction. Thus the beggar represents a troubling symbol of the limitations of citizenship. The case study evidences how if we replace 'economy of makeshifts' with 'precarious working', there are uncommon parallels with some of today's movements by EU nationals. For example, there is some evidence that Roma (Romanians particularly) are travelling to wealthier EU member states to engage in begging and other forms of informal economic activities. Viewed within the perspective of the 'economy of makeshifts' this can be seen as a form of labour movement for those who are excluded from the formal labour market due to discriminatory practices.

III. Differential inclusion: work, residence and access to social benefits

For citizens social benefits can be a safety net if they cannot work, but Third Country Nationals often cannot access benefits unless they have worked and they may also be excluded from the labour market. This is the most extreme form of exclusion and, as discussed in D10.1, is imposed on particular groups of non-EU citizens. However, certain groups must be accommodated, particularly if they are legally resident. Asylum seekers, for example, may be permitted temporary residence while their claim for asylum is assessed. They may be excluded from work and (mainstream) welfare but nevertheless their basic needs must be met while their case is in process. In Croatia and in Ireland, asylum seekers are not eligible to work (in Croatia this is limited to nine months, but in Ireland this applies until the person has attained refugee status, which may be many years). They are ineligible for mainstream social benefits and are supported through living in reception centres on a minimal stipend. These restrictions are lifted should they obtain subsidiary protection or refugee status, but they have long-term implications in terms of integration in the labour market. In Ireland 'exclusion from work and the living conditions associated with direct provision[2] are the cornerstones of the formal and social exclusion of refugees from citizenship in the long term' (Murphy and Baričević 2016: 11). In Croatia, the overwhelming majority of recognised refugees are unemployed and this has negative consequences for their integration: 'Remaining jobless and destitute, refugees fail to comply with the requirements needed for their long-term residency and naturalization, which leads to vast insecurity over their future life and status' (Murphy and Baričević 2016: 18). Furthermore, even though in both states those with refugee/subsidiary protection status are eligible for mainstream social welfare provisions, they are subject to stigmatisation and discrimination in accessing such provisions. That is, they may have acquired a place in the redistributive space of the state, but are denied social recognition in terms of the enactment of their rights.

The situation of EU citizens is more complex. In the same way that citizenship is both a formal legal status and a social relation, so too is being a worker, and while we have emphasised the importance of work to citizenship, those with formal citizenship can retain the social status of worker even when they are not working: 'These are [sic] the mainstays of social insurance, the involuntarily unemployed and the deserving retiree' (Zatz and Boris 2014). That is, 'worker' does not simply designate participation in certain kinds of activity but signifies that one is a 'working kind of person' (Zatz and Boris 2014 cited in Murphy and Baričević 2016). So for example the call 'British jobs for British workers' was a demand for British unemployed people to be given preferential access to jobs, including over EU nationals, that gave the British unemployed the honorific 'worker' even though they were not working. At the same time, citizens who are accessing social benefits must demonstrate that they are a 'working kind of person' by engaging in job-seeking activities, improving their employability through work-related programmes. They must increasingly demonstrate work-related 'behaviours' in order to be able to claim benefits when not in work. In some jurisdictions if they fail to comply with those behaviours (e.g. by not attending a job interview), then they can be subject to sanctions and have their benefits withdrawn. The status of 'worker' becomes exposed in the case of mobile EU citizens. Should they work in another member state and then become unemployed, like citizens of that member state they may retain the status of worker, but their retained worker status may be temporally limited. That is, unlike citizens who may claim unemployment benefit for as long as they can demonstrate they are a working kind of person, EU citizens will stop being considered as a working kind of person after a certain length of time (see D10.1 and the D10.3 case study on EU migrant women for further discussion).

Work/self-sufficiency – not being an 'unreasonable burden on the social assistance system of the host member state' – is required of the EU citizen as the basis for rights of residence after three months in a member state of which they are not a national citizen. EU migrant women may, in principle, be included in terms of their formal status as EU citizens with rights to free movement. However, the gendered inclusion of EU migrant women in

[2] The system of support and accommodation in a reception centre offered asylum applicants.

work can mean that they are excluded from access to rights of residence and social benefits (Shutes and Walker 2016). As the case study reveals, claiming and retaining the status of worker in order to have a 'right to reside' and entitlement to apply for social benefits requires the EU citizen to provide evidence of their engagement in 'genuine and effective work'. In the UK ‘genuine and effective’ is signified by a minimum earnings threshold of gross earnings of £153 a week for three months. Women whose work does not meet the minimum earnings threshold or whose hours are irregular (e.g. agency workers) are potentially excluded from the status of worker, and excluded from access to social benefits. Furthermore, the exclusion of non-commodified care as a basis for rights of residence and access to social benefits has particular implications for mobile EU women. Should they exit the labour market in order to care for young children they risk exclusion from rights to residence in the UK, access to social benefits and access to permanent residence over the long term. Where their rights are derived from their relationship to an EU citizen worker, as their family member, their rights may be dependent on maintaining abusive relationships with EU-citizen men.

These case studies highlight the importance of taking a long-term perspective on the relationship between work and citizenship. While EU migrant women may, in principle, have formal rights both to work and to social benefits in a member state, analysing these rights as a snapshot rather than over time masks the gender divisions in relation to paid/unpaid work that over time (and at different stages in the life course) impact on the inclusion of the EU citizen as worker, with implications for access to social benefits and access to permanent residence (Shutes and Walker 2016). Similarly, the exclusion of asylum seekers from formal rights to work and to social benefits seems to have serious long-term impacts on inclusion in the labour market of a member state even after formal rights to work and to social benefits have been granted. The case of domestic work in the Netherlands also supports this concern as the informal nature of this work means that women can find it difficult to access permanent residency rights, as for example, applying for social assistance may result in problems with renewing residence permits and/or permanent residence rights being refused (see D10.1 for further information).

IV. Differential exclusion: economic activity as 'excluded work'

Not all work is conducted in the (formal or informal) labour market. This has been much discussed in relation to the reproductive labour performed by women for their families and in their neighbourhoods. A housewife washing the windows in her family home may be working, but she is not a worker. Even though she is not paid she is not imagined as taking jobs from window cleaners because she is not in the labour market. If she pays her child to perform the same task she will not be prosecuted for making use of child labour – that is, it is not only payment that makes work part of the labour market. There are also other types of activity recognised as economic, but whose inclusion as 'work' is very contested, even if they enable livelihood: sex work/prostitution, certain types of selling, domestic labour not performed by kin and begging are all cases in point (Anderson and Walker 2016). What is included as 'work' - and who is included as a 'worker' – requires attention to the social relations of work. That is, for something to be called work we must consider: 'not only what is being done but also by whom, for whom, and why' (Zatz and Boris 2014: 96).

The case studies suggest that certain types of work/workers can be excluded from the labour market in two overlapping ways. Firstly, types of work can be excluded because even though the activity may be economic, it is not considered work meaning that those who perform the activity are not workers (e.g. those begging are not 'working' even if the activity is necessary for them to obtain their livelihood). Secondly, even if an activity is acknowledged as work, types of work can be excluded by being considered not a 'job' (e.g. au pairing). These are differences in emphasis rather than in kind, and can be differently reflected in national legislation. There are multiple forms of exclusions generated in these ways, from interning to prison labour to welfare-to-work (see Anderson 2013). The two forms of excluded economic activity mentioned in our case studies are begging (UK and Croatia) and au pairing (Netherlands). Both might be characterised as 'excluded work' but they are differentially excluded.

Begging is an economic activity, but there is clearly tremendous resistance to calling it 'work' and this is in part because 'worker' is an honorific. It might be seen as akin to describing a person who earns their income through petty theft as 'working'. When begging is labelled as work it is dishonourable work – thus in contrast to mainstream jobs, prefacing beggar with 'professional' is derogatory (Anderson and Walker 2016). However, in practice it can be difficult to distinguish between begging and certain other kinds of livelihood activity such as performance and selling. Regulation and law can be important ways of solidifying these distinctions: the case study gives the example of the registration of buskers which distinguishes between 'good performers' and beggars.

The case of domestic labour performed for money in private households is of particular interest in terms of 'excluded work' because of its relation to the gendered exclusion of household labour. The connections between the oppression of the 'housewife'/working mother and the domestic worker are often eschewed because the former is often the person responsible for managing the latter. Exploitation and abuse of household workers by female employers have unsurprisingly resulted in a reluctance to seek out connections, particularly since emotional connections and recognition can result in more demands being made of workers. 'Wife and servant are the same, only differ in the name' as Lady Chudleigh put it, was a plea for the recognition of wives rather than servants, and would surely have been unlikely to have been written by many servants (who would not have the time to write poetry!).

In contrast to the labour of the wife and mother some forms of paid domestic work are recognised as a job and given the 'worker' honorific, however, au pairs continue to be considered as 'part of the family' and therefore as not workers. Despite the fact that many au pairs are performing the same tasks as domestic workers and working similar hours in the Netherlands they do not have access to even the restricted protections and rights

available to domestic workers (Lepianka and Ramos Martin 2016)[3]. The social relations under which their work is performed, including the immigration requirement that it is 'cultural exchange', mean that au pairs are not included in the labour market. Research suggests that in practice some groups of au pairs (those who regard it as a temporary position associated with youth) actively distance themselves from claims to be workers, unlike most other migrants working in private households (Anderson 2009). This means that the people for whom they perform the tasks are not 'employers' but 'host families' and points to an ambivalence about the status of the users of services of au pairs, Domestic labour, including au pairing, can be important in the construction of (female) employers as a 'working kind of person' in the same way that when conducted by wives it contributes to the construction of the husband as a 'working kind of person'. The person doing this work, whether wife, au pair or domestic worker, reproduces another's status as a worker, but doing so does not give them that status.

[3] In 2015 the Cantonal judge decided that additional activities outside the au-pair contract (e.g. help in housekeeping, hoovering, mopping, cleaning) for which a fixed price per hour was paid, had to be regarded as performed in a labour agreement. The au-pair had the status of employee and the corresponding social protection, e.g. right to minimum wage and sick pay (ECLI:NL:RBMNE:2015:196.http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2015:196 (in Dutch)).

V. Differential inclusion in labour markets

While the cases above illustrate the ways in which economic activity can be taken out of the labour market, there are also forms of activity that are included in labour markets but subject to discriminatory provision, that is, they are differentially included. Unlike au pairs and people who beg, those whose activities are differentially included in labour markets are recognised as 'workers' but they are legitimately discriminated against in some way. Not being a citizen may be a reason for differential inclusion, often on the grounds that this prioritises citizens' access to labour markets. Thus Third Country Nationals entering EU states as 'migrant workers' are subject to visa restrictions that make it difficult to change employer and/or sector. 'Migrants' more generally are often depicted as 'working kind of people' by themselves, by employers and also in the academic literature which has often described migrants as doing the '3D (dirty, dangerous, and demeaning) jobs' that nationals allegedly do not want to do. In our case studies differential inclusion in labour markets is illustrated through the examples of disabled workers paid the sub-minimum wage in Israel, and domestic workers who are working less than four days a week for single employers.

The case of disabled workers being paid the sub-minimum wage in order to facilitate their integration into the mainstream work force demonstrates that national citizenship is no guarantee of full inclusion in the labour market. This approach to the employment of disabled people is not unique to Israel and the principles behind it are highly disputed (Gal et al. 2016). In Israel the measure was adopted to increase employment and to protect the social rights of disabled people who were caught in a poverty trap because of the conditions of their receipt of disability benefit. It was anticipated that payment of the sub-minimum wage would act as a stronger guarantee of social rights, and offer better arrangements than those available in sheltered enterprises. Those working under 80% of 'normal' productivity are paid a reduced wage rate tied to the (reduced) productivity of the worker. The social citizenship of the person is recognised explicitly despite their limited productivity, and effectively their wage equality is traded off against equality in terms of social benefits: 'These programmes are informed, to a large degree, by the medical model of disability, which focusses upon individual capacities rather than social construction of obstacles to full inclusion of people with disabilities in society' (Gal et al. 2016: 19). They may be a working kind of person despite reduced productivity, and it is this that is rewarded by social benefits and labour rights.

While disabled people in Israel are paid below the minimum wage but are given full protection as workers, domestic workers in the Netherlands are paid at the minimum wage but enjoy limited social rights and labour protection, although those employed directly by private households are usually paid (much) more; and au pairs, much less (Lepianka and Ramos Martin 2016). Under the Regulation on Household Services domestic workers, citizens and non-citizens, who are working for an employer for less than four days a week are excluded from social security, have limited paid sickness leave and limited protection against dismissal (Lepianka and Martin, 2016). This is the case even if they are effectively full time domestic workers working for several employers. While these domestic workers are recognised as workers, their differential inclusion is socially reflected in the ambivalent status of their employers, often referred to as 'working families' rather than 'employers'. This differential inclusion means that both legal regulations and policy debates can 'focus explicitly on the rights and needs of the employers…. and the economic and financial interests of the state' (Lepianka and Ramos Martin 2016: 12).

Differential inclusion in both of these cases is related, albeit in different ways, to ideas of dependence. Both groups are given the honorific of 'workers' in contrast to e.g. sex workers or beggars, but they are not imagined as self-sufficient. The subordinate position of domestic workers in Netherlands and their exclusion from standard rights associated with workers was historically justified by their being imagined as a woman working a few hours a week to supplement the income of her husband and therefore without the need for protection against loss of income as a result of dismissal or illness. Their alternative was to be a dependent of their husband. Similarly one of the common issues raised by the disabled is the pathologising of their dependence –

as if the able bodied were not themselves also dependent on others. Notably 80% of those participating in the programme were living either with relatives or in sheltered accommodation, and one half of them had previously worked in a sheltered workshop.

VI. TEMPORALITIES AND BARRIERS TO EU CITIZENSHIP

These case studies illustrate both the non-dichotomous nature of insider and outsider – EU nationals may be working, but they are not workers – and the non-dichotomous nature of the formal and informal economies – domestic workers and au pairs, buskers and beggars, are not independent categories. Furthermore it is not only the nature of the economic activity, but the characteristics of the economic actors that can give rise to informality. Asylum seekers who work in contravention of their status, may find the only work available to them is in the informal economy, and they are often considered informal workers par excellence. In the UK there is some evidence of cross over between those working (illegally) in receipt of benefits and undocumented migrants, both groups working in highly precarious circumstances for cash and in contravention of state regulations.

In recent years a considerable literature on 'precarious work' and the 'precariat' has developed. The begging case study suggests there is a value in putting this work on contemporary workers and economies into conversation with the historical. It cites Olwen Hufton's 1974 work The Poor of Eighteenth Century France where she coined the phrase 'economy of makeshifts' to describe "the patchy, desperate and sometimes failing strategies of the poor for material survival" (King and Tomkins 2010). This generated a considerable historical literature that attended to the experiences of the poor, rather than focussing solely on administration, policy and literate opinions on poverty in which "paupers made regular appearances… but as illustrations of policy in practice rather than as individual people with an existence outside the framework of parochial relief" (King and Tomkins 2010:2). Hufton's analysis took a temporal approach and made the important distinction between whole life, life cycle and occasional poverty. We have drawn attention to the importance of temporal framing in our discussion of the differential inclusions/exclusions of EU women and asylum seekers but equally this is relevant to the differentiation between au pairs and domestic workers. Au pairs are imagined as being at a certain stage in their life-cycle that fits with the life stage of host families, and as temporary workers.

In D10.1 we examined how time and temporal restrictions can effectively limit migrants' access to citizenship. We believe it could be useful to further explore the temporalities of citizenship more explicitly. It is tempting to imagine these temporalities as offering security, but in practice they can be far more contested, as the case study of EU national women reveals, while temporal disjuncture between individuals and their perception of the rest of society has been linked with homeless people and the unemployed or precarious workers as well as with migrants (Anderson et al. 2005; Reiter 2003; Ÿian 2004; Rowe and Wolch 1990). Thus attention to disjunctures and to shared temporalities can provide new insights into differentiated inclusions.

While we believe that exploring these continuities with the past through the framework of the 'economy of makeshifts' could be potentially very fruitful, we also think that any engagement with barriers to citizenship must work towards the 'not yet' (Adam 2009) of imagined futures. Imagined collective futures engender a sense of shared purpose and as such are envisaged as countering diversity or uncertainty and encourage shared citizenship. Deborah Golden for example has shown that in the face of immigration from the former Soviet Union, Israeli nation-building has employed the concept of a shared collective future as part of a 'temporal reordering' to transform outsiders into Israelis (Golden 2002b). Cwerner's concept of 'chronopolitanism' as a replacement for cosmopolitanism might be useful here in recognising the temporal (rather than spatial) dimensions of cultural diversity (Cwerner 2000). Chronopolitanism temporalises the political community, it attempts to conceive of a global belonging that is sensitive to time as well as space[4].

[4] In her project In Pursuit of the Future, Adam writes about the democratic deficit and the future – pointing out that decision-making increasingly has huge ramifications for future generations (discussed with reference to technology and environment), but that modern democracies are typically elected for just four or five

VII. Conclusion

The five case studies reveal how work and its relationship with citizenship critically shapes the experiences of both citizens and migrants, so-called insiders and outsiders. Work can be the basis for the inclusion of EU and non-EU citizens – for access to the formal rights of residence/citizenship. The mobile EU citizen has rights to reside in another member state as a worker; the non-EU citizen may also be able to enter and reside within a member state if they are a worker, or at least a highly-skilled worker. Work can also be a means of inclusion for those who, in principle, have formal rights as citizens but are among those groups who are more disadvantaged in the labour market, including people with disabilities. But work is a rather tenuous basis for inclusion.

Being in work – included in the labour market – may position some as 'second class' citizen-workers (e.g. domestic workers excluded from social security and employment protection, and disabled people excluded from the minimum wage, while being included as 'workers'). And being in work and being a worker is not a static state of affairs. Mobility within work – for example agency workers whose employer(s), hours of work and earnings may be fluid and unstable – has implications for exclusion from the status of worker, and from access to rights of residence and social benefits in a member state (as we examined in relation to EU migrant women). Mobility out of work (e.g. in order to care) or out of a relationship to a 'worker' may also result in exclusion from the rights of EU citizenship.

At the same time, access to rights of residence may be contingent on being excluded from the labour market: asylum seekers are not permitted to work (as discussed in the context of Croatia and Ireland) and may have their claim refused if they engage in work. Indeed, they may be seen to be undeserving if they are deemed to be 'economic migrants' rather than 'genuine' refugees. The formal exclusion from the labour market, and from mainstream social provisions, of asylum seekers may have significant effects on long-term exclusion (e.g. in terms of unemployment) after stable legal status/citizenship formal inclusion has been granted to refugees.

Being engaged in economic activity does not make someone a worker, or their activities work. Begging, au pairing and other forms of domestic labour are not constructed as work, and those who perform those activities are not constructed as workers, both in terms of their legal and social status. While the beggar may be attempting to achieve a livelihood – irrespective of whether or not he/she has formal rights to the labour market and to social provisions – begging is not a means to inclusion as the self-sufficient citizen.

As the cases referred to in this report highlight, inclusion within the labour market – being a worker – does not confer 'full citizenship', despite the ideal of the citizen as worker. It does not necessarily ensure access to rights of residence, to social security provisions, and employment protections. Nor does it necessarily enable economic independence. And not all economic activities make someone a worker. Nor do the strategies of those excluded from the status of worker, such as begging, in order to achieve an income, make them 'self-sufficient' citizens. Experiences of poverty and relative exclusion, and risk of poverty and exclusion, cut across those in and out of work, while exclusion from access to rights of residence, to social security provisions and employment protections (both those in work and out of work) places particular groups at greater risk of poverty, with implications for long term outcomes over the life course.

It is generally accepted that not being a citizen is a legitimate barrier to accessing the labour market, and that nationals should have priority access to jobs. In D10.1 Work Package 10 has demonstrated that not being a worker is also a barrier to citizenship and that this is the case for EU citizenship, but also for national citizens. This deliverable has gone further and explored how not being the right kind of worker is a barrier to citizenship rights, and that this can be both about the kind of work that is done and the characteristics of the worker.

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years. That means that governments take decisions that have significant consequences for future generations, but that there is no mechanism for building this into policy decisions.

There is a key contradiction between the requirement to be mobile for work and the requirement to 'belong' for access to social benefits. While attempts have been made to encourage an ideal of shared membership through EU citizenship, this imagined belonging in practice gives way to an emphasis on belonging as evidenced by stasis, by staying in one place i.e. belonging as being not mobile. The worker citizen must also belong in order to be able to have full access to rights

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APPENDIX 1: CASE STUDIES – FRAMEWORK

Overview:

D10.3. Report on research and data on hidden populations.

This report will examine the ways in which the labour of specific groups (e.g. prisoners), or specific types of labour (e.g. interning), are excluded from labour markets in the various member states.

We have five case studies to focus on: asylum seekers/refugees; people with disabilities; domestic/care workers; beggars; EU women. It is clear that their labour is excluded from labour market regulation and protection differently both between case studies and between states. As the co-ordinators we will attempt to draw the comparisons and contrasts between the case studies, but we would ask case study leaders to pay particular attention to the differences between states within their own case study.

Building on D10.1 where we explored the centrality of work to 'good citizenship', case studies may also examine the ways in which the labour of specific groups, or specific types of labour, contribute to processes of differential inclusion/exclusion from citizenship/permanent residence/legal status and welfare provisions. Similarly, the case studies will examine how those processes of differential inclusion/exclusion are underpinned by hierarchies of deservingness and belonging. E.g. the 'work' of the domestic worker may not be counted as 'work' by immigration policy, or as the sort of work that is deserving of access to permanent residence and rights to welfare provisions under immigration controls, yet it may be very much included within and indeed contribute to the functioning of labour markets.

Case study reports:

When writing up the analysis of each case study, all reports should reflect on the contribution of that case study to the overarching questions of WP10.

Please consider how the case study contributes to an understanding of:

- What is 'work' and how are types of work, types of workers, and employment relations underpinned by processes of differential inclusion/exclusion?
- How (formal) citizenship does not necessarily define inclusion (e.g. inclusion of the EU citizen in terms of rights of residence and access to social benefits in another member state is contingent on work, and continual work).
- The ways in which forms of inclusion within the labour market can be the basis for exclusion (e.g. temporary work); and the ways in which forms of exclusion can be the basis for inclusion (e.g. asylum seekers may be included, admitted temporary leave to remain, but not permitted to work; disabled people may be included in the labour market but excluded from minimum wage).
- How hierarchies of deservingness and belonging underpin processes of differential inclusion/exclusion (e.g. the 'undeserving beggar' vs the 'productive worker') in relation to citizenship.
- How these processes and hierarchies reflect divisions of gender, race/ethnicity, class etc.

APPENDIX 2: CASE STUDY 1 - FROM OUTSIDERS TO INSIDERS- ADJUSTED WAGE POLICY IN ISRAEL

JOHN GAL, MICHAL ALFASI-HANLEY AND EFRAT KEIDAR

The case study discussed here is that of the adjusted wage policy for people with disabilities in Israel. It focusses on a policy that seeks to facilitate the inclusion of people with disabilities into the open labour market. In some cases, these are individuals, who had previously been unable to enter the labour market due to the unwillingness of potential employers to employ them or due to their own reluctance to compete for positions in this market. In other cases, the participants in this programme had been employed in sheltered workshops before joining the programme. Finally, often the individuals receiving the sub-minimum wages offered in this programme had previously been employed in the open labour market but received extremely low wages or lacked basic labour rights.

The conceptual framework adopted here will be that of "outsiders" and "insiders" (Rueda, 2006). It assumes that individuals in a given society will be outsiders if they are excluded from the main avenues of social life in that society or if they are deemed as lacking the characteristics that are perceived as required of members of the community (Anderson, 2013). While people with disabilities are ostensibly "insiders" in the societies in which they live in the sense that they have full formal rights and are not perceived as lacking the moral requirements of a community of value, this is clearly often not the case. As much of the "social model" literature within disability studies underscores, disability is primarily a socially conceived construct that prevents full integration of people with disabilities into society due to the way in which disability is perceived and structured (Abberley, 1998; Barnes, 1991). Given the centrality of work and the labour market in advanced capitalist societies, non-integration into the labour market is a major impediment that perpetuates the social exclusion of people with disabilities. This occurs when people with disabilities are unable to find employment in the labour market or when they are employed in sheltered work, that is spatially separated (Holler, 2014).

Diverse policies have been adopted in order to overcome this lack of labour market integration on the part of people with disabilities (OECD, 2003). These efforts have met with varying degrees of success. Sub-minimum wage policies are one such policy. While sub-minimum wage policies have been the subject of much criticism and opposition (see the discussion below), they can be also seen as an effort to move "outsiders" inside. Targeted on a social group that is often excluded from society because of disability and an inability to integrate into the labour market alongside people without disabilities, these policies seek to address one of the major obstacles to better labour market integration of people with disabilities. This is the gap between the perceived productivity of individuals with physical or mental disabilities and statutory minimum wage requirements. The assumption underlying sub-minimum wage policies is that if employees are not required to pay full minimum wages for people with disabilities with productivity levels, that are lower than those of other employees, the chances for employment (and hence social inclusion) will grow. By gaining access to the labour market, people with disabilities will not only achieve higher income levels than when they were not in the labour market but they will also integrate into public spheres previously denied them.

This paper will try to assess the degree to which a sub-minimum wage policy does indeed facilitate movement from "outside" to "inside". It will do by drawing upon data collected during the implementation of this policy in the Israeli welfare state. The sub-minimum wage policy in Israel, termed "Adjusted Wage Policy" was adopted in the mid-2000s, and has led to the integration of approximately 4,600 people with disabilities into the open labour market. Initially, the paper will briefly present the link between disability, exclusion and work in Israel. It will then move on to a more detailed depiction of sub-minimum wage policies and, in

particular, the emergence of this policy. An analysis of data on the participants in this program will follow. In order to better understand the impact of sub-minimum wages on people with disabilities, we will draw on data collected from participants in the program and an analysis of the nexus between sub-minimum wages and the benefit system. Hopefully the paper will describe the policy and seek to better understand if it indeed led to better social integration of people with disabilities into Israeli society.

People with Disabilities in the Israeli Welfare State: An Overview

There are 723,000 people with disabilities in Israel and they comprise 17% of the working age population. Survey data provides data on the level of social exclusion of people with disabilities in Israel (Alfasi-Hanley, 2015). As is the case in other welfare states, the employment levels of people with disabilities in Israel are much lower than those of the general population. Only 53% of working age people with disabilities are employed in the open labour market as compared to 74% of the general population. Among the more severely disabled, employment levels are significantly lower – only a third are employed. The employment levels of recipients of disability benefits is even lower and stands at 18%. Moreover, people with disabilities tend to work less hours and in less-qualified jobs than others. Not surprisingly, the wage levels of people with disabilities were 20% lower than that of people without disabilities in Israel. Among people with more severe disabilities, the gaps are much wider.

Low levels of participation in the labour market and lower-paying jobs for people with disabilities in employment inevitably lead to lower income levels among people with disabilities in Israel. Existing data indicates that in 2012 the income levels of households of people with disabilities were 73% of those of households of people without disabilities. Indeed, 57.6% of people with disabilities reported that they had difficulties funding their regular household needs (Alfasi-Hanley, 2015).

Additional indices show that people with disabilities suffer from greater levels of social exclusion than others in society. Thus, 87% reported that they met regularly with other people as compared to 94% in the general population. Three times the proportion of people with disabilities (15.6%) reported that they often felt lonely than the proportion in the general population. Finally, 20% of all disabled people and 34% of the severely disabled expressed dissatisfaction with life as compared to only 9% of non-disabled people.

Sub-minimum wage policies for people with disabilities

Sub-minimum wages were first adopted as a policy to deal with disability in the United States in 1938 and it targeted individuals engaged in manufacturing and repetitious jobs (Soffer, Tal-Katz and Rimmerman, 2011). In practice, in the United States this policy is intended primarily for disabled individuals employed in sheltered workshops. In the years since its introduction, versions of this policy have been adopted in various countries (Zohar, 2012). A prominent example is Australia, in which there exist two special national minimum wages for employees with a disability – one that applies to people with a disability that does not affect their productive capacity and a second, in which the disability does affect this capacity and that is assessed under the supported wage system (Sloan, 2010).

In the years since its initial adoption, sub minimum wages have been the source of fierce debate between proponents and opponents. Supporters of sub minimum wage policy argue that, due to the relaxation of existing minimum wage regulations, this policy creates incentives for employers to employ people with disabilities. As such, the policy has the capacity to enhance the employment opportunities opens for people with disabilities, particularly those with severe disabilities (Morris et al., 2002), thus leading to an increase in the employment rate of people with disabilities. As such, proponents describe it as a program that can enhance the wage level of people with disabilities, lead to their integration into the open labour market and ensure sufficient wages for them (Soffer et al., 2011).

In addition, sub minimum wage programs offer people with disabilities opportunities to acquire training and skills that will facilitate entry into the labour market, regardless of their productivity and disability level (Morris et al., 2002). In other words, these programs enable people with disabilities lacking occupational skills to gain a foothold in the open labour market by securing their full labour rights and offering them the opportunity to advance themselves on the occupational continuum.

By contrast, critics claim that the underlying assumption of sub minimum wage programs is that disability is abnormal and manifests itself in an inability to work (Soffer at al., 2011). Sub minimum wage policies adopt a medical approach to disability that emphasizes the weaknesses and disadvantages of the disabled person, instead of focusing on physical and social barriers in society (Soffer et. al, 2011; Bickenbach, Chatterji, Badley and Uston, 1999; Oliver, 1990; Butterworth et al., 2007). As such, the argument is that the policy emphasizes reduced productivity, rather than the quality of work.

Sub minimum wage programs are often described as being exploitive, discriminating and stigmatic, and that they undermines the principle of equality that is central to the notion of minimum wages. The programs, it is claimed, marginalize people with disabilities as a group of workers, by allowing them to receive wages lower than those of non-disabled workers **(**Morris et. al, 2002; Blanck et. al., 2003). These policies are difficult to enforce, which leads to exploitation of people with disabilities participating in them (GAO, 2001). Moreover, opponents of the policy claim that it has failed to have any major impact on the employment status of disabled people (GAO, 2003, Morris et al., 2002; Blanck et al., 2003). Indeed, it has not even been effective in moving people with disabilities from segregated sheltered employment into the open labour market (Morris et al, 2000; Butterworth et. al, 2007).

The Emergence of Adjusted Wage Policy

The Israeli sub-minimum wage program - *Adjusted Wages for People with Disabilities* - was introduced in 2006 (Soffer & Rimmerman, 2013) The statutory basis for the adjusted minimum wage policy in Israel is the 1987 Minimum Wage Law. A decade after the law was legislated, an amendment passed by the Knesset, the Israeli Parliament, changed some of the principles and the foundations of the law.

In response to calls by Members of Parliament of various political stripes, the proposed bill contained eight articles. Among them was a clause, Article 17b, granting the Minister of Labour and Welfare the authority to adopt regulations concerning a reduced minimum wage for people with disabilities with lower work capabilities. The initiators of this clause were primarily the Manufacturers' Association of Israel and officials from the Ministry of Labour and Welfare. The claim made was that employers were unwilling to employ people with disabilities due to their low productivity, thus leading to low rates of employment among members of this group.

The proposal also sought to overcome the poverty trap that existed at the time that prevented recipients of disability benefits from entering the labour market.[5] An anomaly that resulted from the benefit structure was that employers paid workers with disabilities a reduced wage so that their disability benefit would not be cut. The amendment sought to address this by legitimizing reduced wages for people with disabilities while protecting their social rights, such as vacation pay and sick pay. The adoption of the clause was intended to distinguish between people with disabilities employed in the regular labour market and those working in

[5] This changed, to a certain degree, with the adoption of a change in the structure of the disability benefit in 2009 which partially weakened the poverty trap by offering higher disregard income to benefit recipients entering the labour market.

sheltered enterprises[6], who were covered by Article 17a, and which already excluded them from coverage of the minimum wage legislation. Following adoption of the amendment to the existing law, the passage of secondary legislation was required in order for implementation to begin. This was a long drawn-out process that was finally approved by the Knesset in 2002.

The ministry charged with dealing with requests for adjusted minimum wage and determining the wage was the Ministry of Labour and Welfare. While the ministry did publish regulations for implementing the policy soon afterwards, a lack of sufficient personnel delayed the actual implementation. [7]

The delays in this process led to pressure on the part of advocacy organizations and demands that the policy be implemented in order to put an end to the illegal and informal employment of people with disabilities. In 2005, a coalition of rehabilitation advocacy organizations created in order to promote employment arrangements for people with disabilities, undertook to push for the implementation of the regulations.

The regulations were eventually enacted following the separation of the Ministry of Labour from the Ministry of Welfare and the establishment in 2005 of an administration for the integration of people with disabilities in the workforce. In 2006, implementation of the adjusted wage program in Israel began.

Early on in the program, changes in the regulations were made. In 2009, for example, an amendment expanded the ranking of work capacity levels to six. Initially, a pilot period of four years was designated, during the course of which two different methods of diagnosis were adopted. An expert committee was created to assess the methods (Soffer & Rimmerman, 2013). After comparing methods regarding sub minimum wage in Israel, the United States and Australia, it submitted recommendations to the ministry.

The Implementation of Adjusted Wage Policy

The formal goals of the adjusted wage policy in Israel are:

1. To increase the probability of disabled people with a lower productivity level, being employed in the open (and not sheltered) labour market.
2. To allow employers to pay disabled people with a lower productivity level, a salary that reflects their productivity level.
3. To regulate the employment of people with disabilities. As the sub- minimum wage regulations derives from the minimum wage law, they are a form of protective legislation. Therefore, an individual with a disability employed in the open labour market is entitled to the full additional rights that an employer must grant employees, under the protective legislation.

The adjusted minimum wage regulations determine that people with disabilities employed in the open labour market can request that their wages be adjusted to reflect their work productivity. The rate of the adjusted wage is determined by a comprehensive assessment, conducted at the workplace, which determines work productivity, in comparison to a non-disabled employee performing a similar job. The evaluation of the work productivity is then translated into wage terms.

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[6] Article 17 a of the Minimum Wage Law determines that "the provisions of this law will apply to workers who have physical, emotional or mental disabilities who are employed in sheltered enterprises in which the Ministry of Finance participates in its budget, whether they are 18 years old or not, if the Minister of Labour and Welfare has decided this, subject to the approval of the Knesset's Committee on Labour and Welfare, in general or by types; regulations may fix a minimum wage lower than that stated in the law"

[7] From a document supplied by the Rehabilitation Department of the Ministry of Labour and Welfare on May 10, 2004. Archive of the Ministry of Industry, Trade and Labour.

Adjusted wage levels

The Adjusted Wage regulations include six levels of sub minimum wage, according to the level of work productivity of the disabled worker, in comparison to a non – disabled worker preforming a similar task. In addition, "employment grants" are paid to persons whose work capacity is particularly low. An employee with a disability, whose work productivity is higher than 80%, is entitled to the full minimum wage. Table 1 shows the Adjusted Wage levels.

Table 1: Adjusted Wage Levels

The rate of the adjusted wage as part of the minimum wage	Work ability/productivity
10%	from1% to 10%
19%	From 10.01% to 19%
30%	From 19.01% to 30%
40%	From 30.01% to 40%
50%	From 40.01% to 50%
60%	From 50.01% to 60%
70%	From 60.01% to 70%
80%	From 70.01% to 80%
Full minimum wage	Work ability higher than 80%

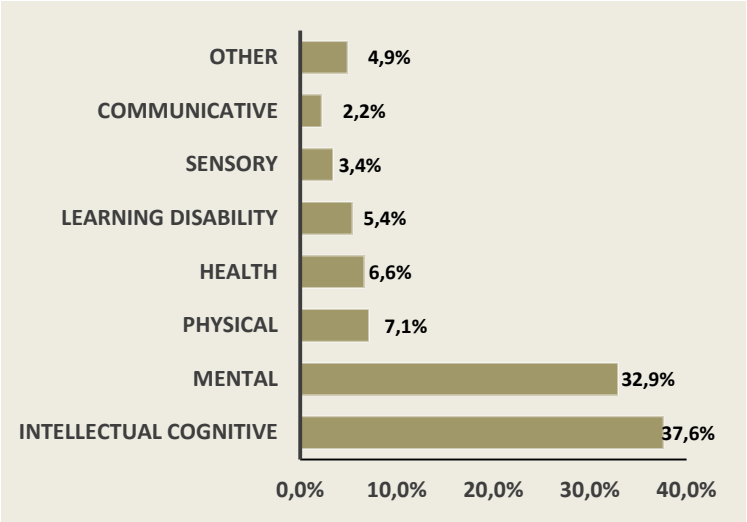
The assessment

The assessment of work ability to determine eligibility for an adjusted wage evaluates the performance of the disabled employee at his or her workstation. The information gathered during the assessment facilitates determining the work ability, upon which the level of the adjusted wage is based. The results of the assessment are valid only in relation to the specific workstation that was tested. The assessment includes discussions with the employer regarding the tasks required by the employee, an assessment of the employee's functioning at work, and with the employee regarding job satisfaction and the treatment he or she receives at the work place. In addition, the assessment includes observation of the employee performing most of the tasks that are required in the job. The regulations also include an appeal process by which an employee can contest the adjusted wage set by the assessor. This includes the right to a new assessment conducted by a different assessment company.

Adjusted Minimum Wage Participants in Israel (Based on Alfasi-Hanley, 2015)

In all, 4,600 people with disabilities were assessed for work ability between 2006 and 2015. As can be seen from Figure 1, most of the participants in the Adjusted Minimum Wage program in Israel have an intellectual (37.6%) or mental disability (32.9%). Seven percent have a physical disability and 6.6% have another health-related disability. The percent of persons with learning disabilities (5.4%) and sensory disability (3.4%) is low. Only a small proportion are people with a communicative disability (2.2%).

Figure 1: The Distribution of Participants by Disability Type



This distribution by type of disability differs significantly from the distribution of the general population with disabilities, in which the percentage of people with an intellectual cognitive disability is 4% and the percentage of people with a mental disability is 9%. Members of these two groups, people with an intellectual cognitive disability and people with a mental disability, experience severe difficulties trying to participate in employment. The first group due to cognitive difficulties and low occupational abilities and the second due to stigma on the part of employers.

Among the participants in the program, there is an over-representation of men among recipients of an adjusted minimum wage – 61.5% in comparison to 38.5% women. The average age is 35 (40% are 25-34 years old and 25% are 35-44 years old). While a fifth of the Israeli population are Arabs, only six percent of the participants in the program are Arabs. This under- representation probably derives from a lack of awareness to policy programs for people with disabilities, such as adjusted minimum wage among the Arab population. Secondly, in the Arab population, there is still a tendency to rely on sheltered employment and therefore less usage of programs in the open labour market.

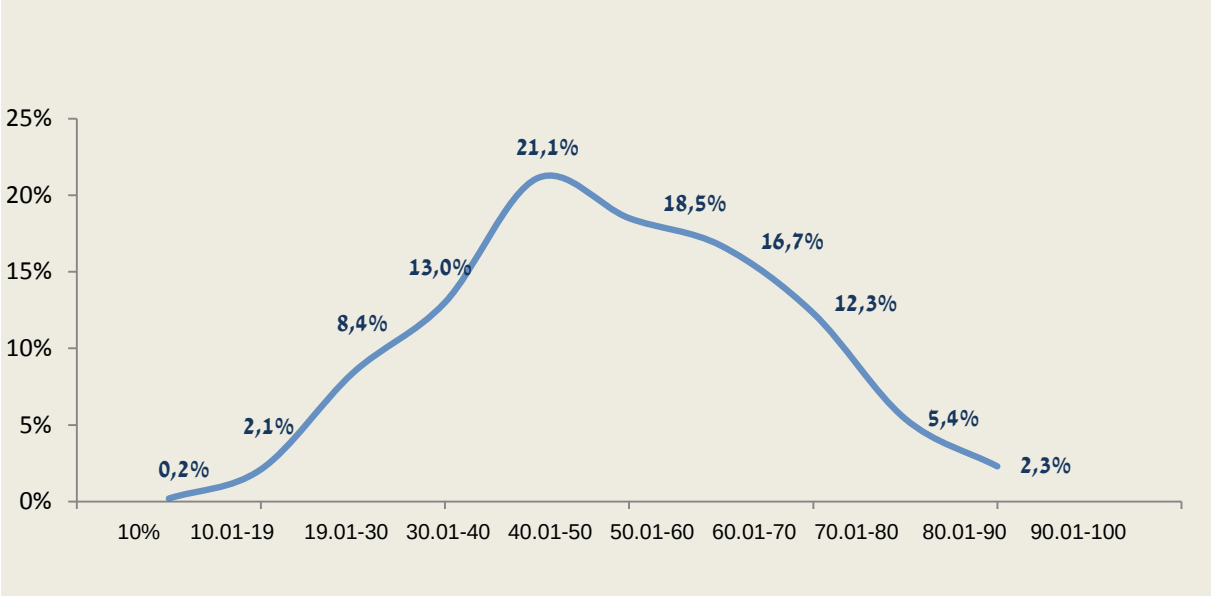
Of the participants, 40% live with their parents and 24% live in a protected housing or hostels. Only 20% live independently on their own. Most of the participants studied in the special education system (33.5%) and 14% studied in a special classroom[8] in the regular education system. About 18% attended a non-theoretical course of studies within the regular education system. Only 5% reported having attend an academic institution. Most of the special education graduates are participants with an intellectual cognitive disability (63.1%), in comparison to participants with a mental disability (8.2%). Similarly, 20% of the participants with an intellectual cognitive disability graduated a special classroom at the normative education system, in comparison to only 4% among participants with a mental disability.

About 72% of the participants had worked in the past (before working at the workplace where the assessment was held), while 50% of them reported that this workplace was a sheltered workshop.

An examination of the work ability of the participants in the programme at the onset of their participation (Figure 2) indicates that the work ability of 56% of the participants was between 40% to 70%. Only a small minority of the participants (2.3%) were assessed as having a work capacity of less than 19%, which enables them to receive an employment grant, but not a salary. For 8% of the participants, the work ability was 80% and above, which meant they are entitled to a full minimum wage.

[8] A classroom for pupils with special needs, within the regular education system.

Figure 2: The Work Ability of the Participants



An examination of the distribution of work ability between types of disability reveals that there is an over-representation of participants with an intellectual cognitive disability at the lower margins of the work ability (up to 30%). Only 2% percent of participants with this disability have work ability above 80% in comparison to 13% among participants with a mental disability and 11% among people with a physical, health or sensory disability.

Participants in the adjusted wage program tended to find work in industry (31.5%) and in commerce (22.5%). A fifth were employed in the government sector and another 12% in food and hospitality. Not surprisingly, given the wage levels of the participants, two-thirds engaged in relatively menial jobs, such as clearing tables at restaurants, stacking goods in storage, and packing. Another 20% had clerical positions, such as typing, filing and reception.

Most of the participants (61%) had worked in their current workplace up to one year, while 18% had been there up to three years and 16% up to five years. The participants in the program tended to work five days per week and the vast majority (88%) worked up to six hours per day. In total, the participants worked 4.9 days on average per week, for 5.9 hours on average per day.

From Outsiders to Insiders?

An assessment of the impact of the adjusted wage program upon the social inclusion of people with disabilities and their movement from an "outsiders" status to that of "insiders" is obviously difficult. Nevertheless, in lieu of in-depth qualitative subjective data, the data on the employment status of the participants and estimates as to their level of income do offer some indications of this impact.

If sub-minimum wage programmes seek to move outsiders inside, then they need to lead to the integration of people with disabilities, who had previously been unemployed or employed in sheltered workshops, into workplaces in the open labour market alongside non-disabled people. The data from the adjusted wage program in Israel reveals that 51.5% of the participants employed in the open labour market had previously worked in a sheltered workplace, and were earning a higher wages and had access

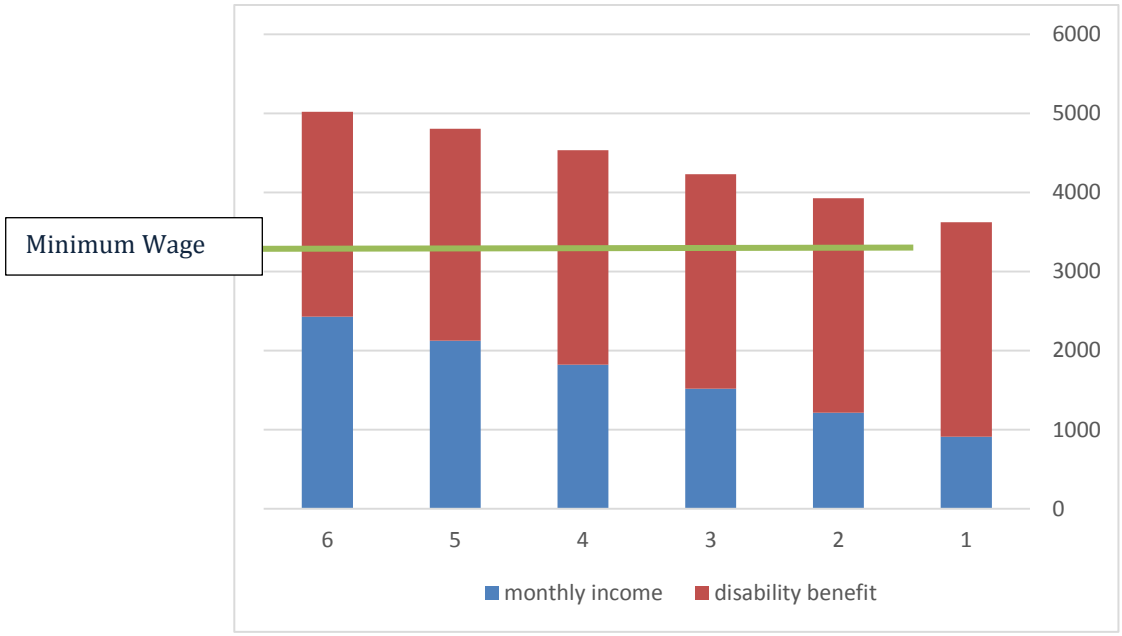
to labour rights at the workplace. In addition, 60% of the participants who worked in a sheltered workplace were people with an intellectual cognitive disability.

For those participants previously employed in sheltered workplaces, receiving an adjusted minimum wage through employment in the open labour market undoubtedly led to an increase in wages. Wage levels in sheltered workshops are not covered by the minimum wage legislation and are set less than 20% of the statutory minimum wage. By contrast, the average wage of the participants in the programme was just above 50% of the regular minimum wage.

Clearly, at least in the cases of those participants who moved from sheltered employment to the adjusted wage programme, this led to an increase in income. Indeed, 40% of the participants in the programme reported a rise in their income compared to their previous employment. However, wage levels remained significantly lower than the set minimum wage. In order to better understand the overall income levels of the participants in the programme, we undertook a simulation that took into account the wage levels of the participants at different levels of the adjusted minimum wage (based on the average hourly employment levels reported by the programme participants). In addition, it included disability benefits to which the participants were indeed eligible under existing income disregard rules. As 90% of the participants reported that they were known to the social security administration during their work assessment, we assumed that most were eligible for disability benefits.

Figure 3 shows the estimated income of participants in the adjusted wage programme at the six wage levels (excluding participants with less than 30% work capacity who receive employment grants rather than wages) up until 80% work capacity. As noted above, employees with disabilities who are assessed to have a work capacity of above 80% are eligible for regular minimum wages.

Figure 3: An Assessment of Overall Income Levels



The findings in the simulation indicate that recipients of adjusted minimum wages have overall monthly incomes ranging from IS 3624 to IS 5020. As can be seen in Figure 3, the combination of wages and benefits leads to this result. As the minimum wage is set at IS 3035, the income of all the recipients (assuming they do indeed receive disability benefits) is higher than the minimum wage. In the case of

those recipients with higher work capacity levels, the gap between there income and the minimum wage is nearly 50% higher than the minimum wage level.

A final issue regarding the impact of the Adjusted Minimum Wage programme upon the participants relates to abuse of the programme by employers. Abuse could take the form of dismissals due to the wage requirements of the programme, refusals by employers to respect employees' rights. However, the frequency of employer abuse appears to be low. This is perhaps a consequence of the stringent regulation of this program or of the self-selection of participants and workplaces. The data shows that less than 5% of the participants were dismissed from their positions due to the assessment. A follow-up survey conducted six months after the assessment revealed that 9% of the participants reported that their employer paid them less than the wage that was determined at the assessment.

Conclusion

Sub-minimum wage programmes are one component in social policies aimed at better integrating people with disabilities in the labour market. This specific policy has been the subject of much criticism in that it enables governments and employers to renege on existing minimum wage legislation and grant people with disabilities lower wages. These programmes are informed, to a large degree, by the medical model of disability, which focusses upon individual capacities rather than social construction of obstacles to full inclusion of people with disabilities in society.

The findings presented in this study focus on the results of a sub-minimum wage policy adopted a decade ago in Israel. In all, 4,600 people with disabilities took part in the programme. This is obviously a very small proportion of the entire population of working age people with disabilities in Israel. If the goals of the program were to have a major impact upon the employment levels of disabled people, the relatively small number of participants in the programme does not indicate that this goal has been achieved.

The goal of this case study was to examine the impact of the policy on the social inclusion of people with disabilities. Clearly, in-depth quantitative data is required in order to ascertain conclusive evidence of this impact. Lacking direct indications of this, we have looked at the more limited impact of the program on the types of employment of the participants and their remuneration as proxies for social inclusion. The findings appear to indicate that the policy has indeed contributed to the movement from "outside" to "inside" society, particularly with regard to people with severe intellectual and mental disabilities. The move from isolated sheltered workplace to employment in the open labour market, and the increase in wage levels and access to full labour rights of those already employed in the open labour market are indicate of this. The very limited evidence of abuse of the rights of these employees provides additional support for this conclusion. Finally, the findings of a simulation which found that the overall income of participants exceed minimum wage levels (due to the combination of their wage and benefits) strengthens this conclusion.

People with disabilities, and particularly those with severe intellectual and mental disabilities, are clearly outsiders in contemporary society despite the fact that they have full formal citizenship. Welfare states are obliged to adopt policies that lead to greater inclusion of members of this group. The labour market is a crucial avenue for inclusion. The findings of this study appear to indicate that, despite its limitations, a sub-minimum wage policy may offer just such an inclusion avenue for social people with disabilities.

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APPENDIX 3: CASE STUDY 2- EU CITIZENSHIP AND WORK: THE DIFFERENTIAL INCLUSION OF EU MIGRANT WOMEN

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1. Introduction

This case study examines the gendered effects of a model of EU citizenship, with respect to the rights to residence and to social benefits of mobile EU citizens, premised on work. Building on the analysis of Deliverable 10.1 of the differential inclusion of national citizens, EU and non-EU citizens in relation to work, the case study addresses the ways in which the seemingly gender-neutral status of the EU citizen as worker/self-sufficient, or the family member of the EU citizen worker/self-sufficient individual, constructs highly gendered forms of differential inclusion in terms of access to rights of residence and to social benefits.

In the case of the UK, where work-related conditions have increasingly been implemented to restrict access to social benefits more generally (Dwyer and Wright, 2014), EU citizens are required to demonstrate a 'right to reside' as workers or as the family members of workers to be eligible to claim means-tested social benefits. The case study explores the gendered implications of those restrictions for EU migrant women. Empirically, it draws on the findings of qualitative interviews with providers of advice services to EU migrant women and interviews with EU migrant women regarding their access to rights of residence and social benefits in the UK. The findings point to the ways in which the gendered inclusion of EU migrant women in work – in so-called atypical, low-paid work – restricts them from claiming the status of 'worker', with implications for their exclusion from access to social benefits. At the same time, the exclusion of unpaid care as a basis for claiming rights of residence reinforces EU migrant women's dependence on maintaining their status as workers, while excluding women with young children from access to social benefits for failing to do so. Where EU migrant women are reliant on the status of family member of the EU citizen-worker, this constructs dependence on male partners for access to rights of residence and social benefits, including relationships involving domestic violence.

The following section discusses the conceptual and empirical concerns of this case study regarding the gender dimensions of social citizenship and specifically of an 'adult worker' model, in which both women and men are assumed/obligated to be citizen-workers. Section three then refers to the ways in which EU citizens' rights to residence across the member states are premised on the status of the EU citizen as worker, the family member of the EU citizen-worker, or self-sufficiency, and the ways in which those rights have been implemented in the UK policy context in determining EU citizens' entitlement to social benefits. Section four examines the findings of the interviews with EU migrant women in the UK and with organisations providing advice services as regards EU migrant women's access to rights to residence and social benefits in the UK. The report concludes by highlighting the implications of the differential inclusion of mobile EU citizens in relation to work for gender inequalities. In particular, it highlights the importance of an understanding of the gendered interrelations of work, care and family over time in shaping differential access to the rights of EU citizenship.

2. Gender and the social rights of citizenship

According to Marshall's conception of citizenship, with the expansion of welfare states during the twentieth century, citizens acquired social in addition to political and civil rights (Marshall, 1950). Those rights included the role of the state in the provision of social security, among other social provisions, allowing for decommodification – the ability of individuals to achieve a living standard independent of the market i.e. independent of their commodified labour (Esping-Andersen, 1990). Underpinning this conception of social citizenship were the assumptions, first, that social rights should be granted on the basis of citizen status, and second, that citizenship denotes equality of status and equality of rights among citizens. Feminist scholarship,

by contrast, emphasised the ways in which the social rights of citizens were fundamentally shaped by gender-based inequalities in relation to paid and unpaid work (Lewis, 1992; Lister, 2003). The 'male breadwinner' model of households, which underpinned the development of social policies to a varying extent across European countries in the post-war period, treated men primarily as workers and women as carers. While men were granted social rights on the basis of their contributions through paid work, women's unequal relationship with the labour market formed the basis for their exclusion from social rights as workers (Lewis, 1992). Indeed, it was argued that for women, commodification – inclusion in the labour market – was a pre-requisite for decommodification (Lister, 2003). At the same time, the unpaid work of women in caring for children and other family members formed the basis for entitlement to some forms of social assistance, including family allowances. Women's access to social rights was thus shaped as much by their family status, as the dependants of men, as their market status as workers (Lewis, 1992; Lister, 2003).

With the restructuring of welfare states, there has been a broad shift in social policies towards an 'adult worker' or 'universal breadwinner' model (Fraser, 1994; Lewis, 2002). All citizens of working-age, men and women, are treated as citizen-workers, with policies promoting and obligating some form of labour market participation (Orloff, 2006). This shift is seen as marking the decline of the 'male breadwinner' model, notwithstanding the ways in which assumptions about the family, and women's status in relation to the family, continue to shape social policies (Daly, 2011). However, In spite of the increase in female employment rates across European countries, women's participation in the labour market is not equal to men's, with gender differences in hours of work and earnings resulting more often in a 'one-and-a-half breadwinner' rather than 'dual-worker' households (Lewis, 2002). In addition to gender inequalities at a given point in time, gender is strongly associated with labour market disadvantage over time in terms of women's greater risk of both unemployment and so-called atypical employment, such as part-time and temporary work (Schwander and Häusermann, 2013). Those patterns of employment are strongly shaped by care: women leave the labour market not simply as a result of 'involuntary' unemployment but in order to care (Lewis, 2001). Women with children are less likely to be in work, or to work fewer hours, than women without children in most member states – with greater employment gaps in the case of women with children aged five and younger – while the reverse is true for men (European Commission, 2015).

At the same time, the provision of childcare services across many European countries has continued to assume a traditional gender division of labour (Ciccia and Bleijenbergh, 2014). Only a minority of countries (Denmark, Iceland, Sweden) are found to promote a 'supported universal breadwinner' model, with the state taking responsibility for childcare through high levels of high-quality, publicly financed services (ibid). The 'unsupported male breadwinner' model remains more prevalent, with limited provisions, perpetuating class as well as gender-based inequalities in terms of private childcare arrangements (ibid). Women are more likely to be involved in childcare activities, which is affected by availability and access to childcare provisions. At the same time, availability and access to childcare support provided by other female family members shapes the employment of women: married women with young children living close to their mothers or their mothers-in-law are more likely to be in work compared with those living further away (Compton and Pollak, 2011).

Debates with respect to the interrelations between work, care and family have thus pointed to the fundamental limits of a citizenship model in which care continues to be subordinated to paid work as a valued social activity and as the basis for claiming rights (Ackers, 2004; Knijn and Kremer, 1997). An alternative 'universal carer' model has been emphasised as one which would support not only the inclusion of women alongside men in work, but the inclusion of both men and women in care, reframing citizenship to include a right to care, including time to care, as the basis for a more 'inclusive' citizenship (Fraser, 1994; Knijn and Kremer, 1997; Lewis, 2009).

3. The rights of EU citizens to free movement, residence and social benefits

This section refers to the dimensions of EU citizenship that are the focus of this case study: the rights of EU citizens under EU law to residence in another member state, and to social benefits in that member state; and the implementation of those rights in the UK context.

The rights of EU citizenship, including social rights, have been fundamentally shaped by the overriding objective of the development of the EU as a market: to promote the free movement of labour alongside goods, services and capital (Hantrais, 2007). The 'freedom of movement' of EU citizens within the EU is a fundamental right, irrespective of the economic status of the individual (Article 21(1), TFEU; Article 45, EU Charter of Fundamental Rights). EU citizens who are exercising rights of free movement are entitled to social benefits in another member state (Article 34(2), EU Charter of Fundamental Rights). This includes non-contributory social benefits on the basis of residence in a member state (Regulation 883/2004/EC).

While there are no restrictions on EU citizens' entry to another member state and residence for up to three months (Article 6, Directive 2004/38/EC), work-related conditions determine which EU citizens have extended rights to residence in another member state beyond this three-month period. Extended rights of residence are conferred on those who are workers, self-employed or are self-sufficient, those who "have sufficient resources for themselves not to become a burden on the social assistance system of the host Member State" and have comprehensive sickness insurance in the member state (Article 7, 1 (b), Directive 2004/38/EC). The family members of these categories also have rights of residence. Work/self-sufficiency – or dependence on a worker/self-sufficient individual – are, therefore, the main criteria for inclusion.

The definition of a 'worker' rests on EU case law, including any person who pursues activities that are 'genuine and effective', excluding those activities which are "on such a small scale as to be purely marginal and ancillary" (Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] ECR 1035), and is based on a paid employment relationship (Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121). The status of worker can be retained under certain circumstances if an EU citizen is no longer in work, including if the individual is made 'involuntarily unemployed' and registers as a job-seeker (Article 7, 3, Directive 2004/38). EU citizens who have been employed for less than 12 months retain worker status for six months (minimum) if made unemployed. EU citizens who are workers/self-employed or family members cannot be expelled from a member state; jobseekers cannot be expelled as long as they can provide evidence that they are continuing to seek employment and have a 'genuine chance of being engaged' (Article 14, 4, Directive 2004/38). After five years of continuous legal residence in another member state, EU citizens automatically have a right to permanent residence (Article 16, Directive 2004/38/EC). However, this requires the EU citizen to have been able to reside (beyond three months) in the country as a worker, self-employed or self-sufficient person (or family member), thus requiring them to adhere to work-related conditions of residence for this duration.

In contrast to paid work, care forms a subordinate and limited basis for the inclusion of EU citizens (Ackers, 2004). The status of carer is not included among the categories of EU citizens who have rights to residence in a member state. Care is also excluded from the definition of 'work' – the labour of those engaged in unpaid care activities is not recognised as 'genuine and effective work' – excluding unpaid carers from the status of worker. While the recent ruling in the case of Saint Prix v Secretary of State for Work and Pensions (C-507/12) recognised the rights of EU citizens to retain their status as 'worker' during (gendered) periods of time not in work due to childbirth, this was on the basis of returning to work within a 'reasonable period'. This period of time is defined in relation to national legislation on the duration of maternity leave (paragraph 42, C-507/12), and allows for a maximum of 12 months out of work without affecting the five years of residence in a member state that is a requirement for permanent residence (paragraph 45, C-507/12). Where caring for children is, in itself, recognised in terms of rights of residence, this is derived from the rights of the children of EU migrant workers to education in a member state (Article 10, Regulation 495/2011). The primary carer of a child in

education has derivative rights to residence in order to facilitate the child's right to education and to residence (Case C-413/99 *Baumbast and R v SSHD* [2002] ECR I-07091; Case C-310/08 *London Borough of Harrow v Ibrahim and SSHD* [2010] ECR I-01065; *Teixeira v London Borough of Lambeth and SSHD* ECR I-01107). Furthermore, the primary carer does not have a right to permanent residence. Care thus has limited recognition as a basis for rights to residence, with implications for the differential inclusion of women – both at a given point in time and over the longer term.

UK policy context

Since EU enlargement in 2004, and in particular since the lifting of transitional restrictions on the migration of A8 nationals (in 2011) and A2 nationals (in 2014), work-related conditions have increasingly been applied in the UK in assessing the eligibility of EU citizens to social benefits. As part of the habitual residence test[9], an additional 'right to reside' test was introduced in the UK in 2004, which applies only to EU nationals, who are required to demonstrate that they have a legal 'right to reside' in the UK under EU law in order to be eligible to claim social benefits (SI 2006/1026). In order to claim a right to reside in the UK under EU law, the EU citizen must demonstrate the status of worker/self-employed or be the family member of an EU citizen with this status (SI 2006/1003; SI 2013/3032)[10]. The 'right to reside test' applies to means-tested benefits (Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Housing Benefit, Pension Credit, Council Tax Reduction, Universal Credit, Child Benefit and Child Tax Credit). EU citizens in work also have access to in-work benefits (Working Tax Credit).

With the lifting of transitional restrictions on Bulgarian and Romanian nationals in 2014, the conditions for determining a 'right to reside' in claims for social benefits have become increasingly restrictive. A new 'minimum earnings threshold' has been introduced in assessing if an EU citizen has worker/self-employed status and thus a right to reside (Department for Work and Pensions, 2015; HM Revenue and Customs, 2014). This requires those out of work (who retain worker status if they are made involuntarily unemployed and register as a jobseeker) to have been earning for the past three months at the level at which national insurance contributions are paid (£153 a week in 2014-15, equivalent to ***working*** 24 hours a week at the national ***minimum wage).*** Those who do not meet this earnings threshold are subject to an additional assessment as to whether their work can be considered 'genuine and effective' under EU law (Department for Work and Pensions, 2015; HM Revenue and Customs, 2014; see O'Brien, 2015, on the extent to which these measures are compatible with EU law). Data are not available on the proportion of benefits claims of EU nationals that are refused on the basis of failing the right to reside test. However, there have been a number of cases in the UK and European Courts concerning EU citizens residing in the UK, including those who have been working in the UK, whose benefits claims have been refused on grounds that they do not have a 'right to reside' as a worker (see Widmann, 2013).

[9] The test applies to individuals who have come/returned to the UK (within the last two years), including UK nationals, to assess if they are habitually resident as a condition for claiming a range of social benefits (SI 2014/902).

[10] The European Commission concluded that the right to reside test in the UK is discriminatory against EU citizens from other member states (as it does not apply to UK citizens) and referred the UK to the Court of Justice of the European Union in June 2014 (the case is ongoing).

More restrictive conditions have also been implemented with respect to EU citizens who are jobseekers. With the introduction of legislative changes in 2014, EU citizens claiming unemployment benefit (non-contributory Jobseekers Allowance) as jobseekers lose their entitlement after six months unless they can provide 'compelling evidence' that they are continuing to seek employment and have 'a genuine chance of being engaged' (SI 2013/3032, Regulation 6). This timeframe was subsequently reduced to three months (Memo DMG 2/15)[11]. This restriction has entailed the introduction of a 'genuine prospect of work' assessment after three months of claiming benefits. Guidance on what constitutes 'compelling evidence' of finding work, requires stricter work-related conditions than those that would apply to UK citizens claiming benefits as jobseekers, including either an offer of a job that is 'genuine and effective work' and due to start in three months (in which case benefits entitlement can be extended until the job commences), or a change of circumstances, such as re-location to improve employment prospects, that has resulted in job interviews (in which case entitlement may be extended for up to two months) (Memo DMG 2/15). With the introduction of the new Universal Credit benefits system (which will replace Jobseekers Allowance and other means-tested benefits), more restrictive conditions will apply, as a result of which jobseekers will be excluded from entitlement to Universal Credit.

4. Gendered differential inclusion: EU migrant women's access to rights to residence and social benefits in the UK

This section examines the gender implications of work-related conditions of EU citizens' rights of residence. Specifically, it examines the gendered differential inclusion of EU migrant women in the UK as EU citizen-workers or the family member of an EU citizen-worker, and the implications for their access to social benefits. As discussed above, EU citizens' access to means-tested social benefits in the UK depends on whether, in principle, they have a 'right to reside' in the UK under EU law (as a worker/self-employed, family member or permanent resident) and, in practice, how their status is interpreted at the street-level through the administrative processes involved in assessing the rights of residence and benefits eligibility of EU citizens.

Data and methods

This section draws on interviews with a) organisations providing advice services to EU migrants regarding their access to social benefits in the UK and b) EU migrant women regarding their experiences of access to social benefits. The interviews were carried out by Sarah Walker and Isabel Shutes (author of this report) in May to September 2015 with additional funds from LSE to supplement the empirical research for this case study. All interviews were carried out in London.

The interviews with providers comprised 10 members of staff from 10 voluntary sector/statutory organisations whose services included advice and assistance with claiming social benefits. Their services were either targeted at migrants more generally; EU migrants specifically; or particular user groups that included EU migrants (homeless people, parents of pre-school children).

The interviews with EU migrant women comprised 12 service users of these organisations. Interviewees were nationals of other EU member states who had predominantly migrated to the UK over the past five years. This timeframe was targeted in order to include interviewees who would not yet have met the criteria of five years

[11] EU citizens with a right to reside on the basis of seeking work are also, since 2014, no longer entitled to claim Housing Benefit (SI 2014/539)

residence in the UK to be able, in principle, to claim rights to permanent residence. Two interviewees had been resident in the UK for more than five years but had experienced difficulties in accessing rights to permanent residence (for reasons examined below).

Interviews with staff examined their experiences of the barriers faced by EU migrant women (the users of their services) to accessing rights of residence and social benefits in the UK; interviews with EU migrant women examined their experiences of access to those rights and how their experiences of work/care/family interrelate in shaping access as EU-citizen-workers/family members of EU-citizen-workers. Some of the interviews with EU migrant women were carried out with an interpreter where this was needed; all interviews were recorded and transcribed. The names of interviewees quoted/cited below have been changed and details omitted (e.g. nationality) to ensure anonymity.

The discussion of the findings below focuses on the following dimensions of the differential inclusion of EU migrant women as EU-citizen-workers/the family members of EU-citizen-workers: first, the implications of the gendered inclusion of EU migrant women in work for their access to rights of residence and social benefits as workers; second, the implications of the gendered relationship between care and work for women's access to rights of residence and social benefits as workers; and third, the implications of a reliance on the status of family member of the EU-citizen-worker in constructing relations of dependence on men for access to rights of residence and social benefits.

Work and the differential inclusion of EU migrant women as 'workers'

In terms of participation in the labour market, EU migrant women appear to conform to the ideal of the citizen-worker. There are relatively high rates of employment of EU citizen-women in EU member states that have experienced relatively high levels of intra-EU migration. In the UK, 72 per cent of EU citizen-women are in work (and 87 per cent of EU citizen-men). This compares with 70 per cent of British women (and 81 per cent of British men) (Eurostat, 2013). However, the employment of citizens of the member states that have joined the EU since 2004 has disproportionately been in lower paid work, despite some having relatively high levels of education: A8 nationals are among the lowest income groups in terms of average hourly earnings compared to other EU citizens and to UK citizens (Drinkwater *et al.*, 2009; Rienzo, 2016).

Despite inclusion in the labour market, work is not necessarily sufficient for EU migrant women to access rights of residence as 'workers'. EU migrant women who had been working in the UK and had subsequently applied for social benefits after becoming unemployed were in some cases excluded from claiming the status of 'worker' on which their right to reside and benefits entitlement depended. The gendered inclusion of EU migrant women within the labour market – in so-called 'atypical' work (e.g. work involving zero-hours contracts, part-time work involving a limited number of weekly hours, working without a written contract) in low-paid jobs such as care and cleaning work – potentially excluded them from the status of 'worker' as applied at the street-level in assessing their right to reside. Work that did not involve sufficient or regular hours of work and/or earnings, for example, with respect to the experiences of women working as cleaners for agencies on zero-hours contracts, limited their ability to meet the earnings-related criteria for assessing their status as a 'worker'. Changes in hours of work from week to week, and in work with low hourly pay, in some cases excluded them from meeting the minimum earnings threshold, which required evidence of earning £153 per week over a three-month period (approximately 24 hours of work at the minimum wage).

"I had notice from the DWP [Department for Work and Pensions] last week [regarding a client's benefits claim] that just said 'zero-hours contract is not genuine and effective work'. There was no consideration of how many

hours [of work] she was doing – it was a blanket assertion that zero hours is not 'genuine and effective work'. Typically I see people in a situation where they are earning under the minimum earnings threshold, and there doesn't tend to be, you can't really see a decision-maker looking at personal circumstances to see if they might be 'genuine and effective workers'." (provider S03)

"What you often find is that somebody is told that the work that you do is 'marginal and ancillary', based around the fact that for instance somebody is either in part-time work or is not doing sufficient hours or is not earning sufficient income." (provider S05)

Working in informal types of work, including cleaning/domestic work, where they did not have a written contract and were paid 'cash-in-hand', also meant that EU migrant women were not able to provide evidence of being engaged in 'genuine and effective work'. For example, they did not have a contract, pay slips or a bank account to be able to prove their work or earnings over a three-month period, thus excluding them from the status of 'worker'. At the same time, the irregular earnings of those who had been self-employed excluded them from claiming this status.

"They tell me I can't register [apply for Jobseekers Allowance] because they don't believe I'm self-employed as I don't have enough salary from my account. I have three months when I don't sell anything and don't have anything so I have to find another way". (service user C07)

Providers considered there to be a more restrictive interpretation of 'genuine and effective work' by administrators processing social benefits claims, in the rationing of access to social provisions such as housing benefit, which excluded those women whose inclusion in the labour market – in low-paid, insecure types of work – was interrelated with their need for those provisions.

"I think what's happened is there are differing interpretations of 'genuine and effective' [work]… housing departments are using a more rigorous interpretation, and the purpose of restrictions is to limit people accessing housing benefit, and people are using a narrower definition. So the type of things that are more difficult are things around if [the work] is cash-in-hand, if it's irregular, if it's zero hours. Now all these things actually, when we get advice on it, a council can view it as 'genuine and effective'… so if a client is doing it and English isn't their first language it's even harder, so quite a lot of the work we do with EEA nationals is supporting them into work and then supporting their evidence of work so we get their 3 months of pay slips and gather it together." (provider S02)

The difficulties of providing three months of evidence of 'genuine and effective work' to claim the status of 'worker' were compounded where this evidence was required over a period of five years in order to claim the status of permanent resident.

"A lot of the time when we look for people that have gained permanent residence we are going quite far back so we don't have the pay slips as they wouldn't think they would need them from 5/6/7 years ago, and I know a lot of people that would be working under the minimum earnings threshold so there is no national insurance contribution, they won't have permanent residence so it's hard" (provider S03)

Victoria had been living in the UK for over five years, studying English, doing domestic work and working as a nanny for periods during this time. Having lost her most recent job, as a result of which she lost her accommodation, she had recently had difficulties in applying for Jobseekers Allowance. These difficulties included the length of time it had been taking in processing her right to reside and benefits claim in terms of the evidence requested to document her history in work. *"They ask me for a [previous] bank statement, I move house and I don't know where my statements are any more. Then they ask for my contract and why I was*

travelling [while working as a nanny]". While her benefits claim was eventually approved, as a result of the difficulties in providing evidence to claim the status of 'worker' she had been street homeless for a period of time. She subsequently accessed the support of a voluntary organisation with her benefits claim, and, after it was approved, had moved into a homeless shelter.

The circumstances of EU migrant women in relation to trafficking and sex work also pointed to the ways in which, by being excluded from the status of 'worker', they were rendered invisible as EU citizens without rights of residence or access to social provisions. By being unable to provide evidence that had been exercising their rights of residence in the UK as workers, and being unable to be 'actively seeking work' for an extended period due to their specific needs (e.g. mental health), they risked exclusion from rights to residence and access to social benefits and housing provisions.

Care and the differential inclusion of EU migrant women as 'workers'

The exclusion of care as a basis for claiming rights of residence also has implications in terms of the differential inclusion of EU migrant women as 'workers'. As noted previously, the status of carer is excluded from the categories of EU citizens who have residence rights, except in the case of the primary carer of a child in education. Care is also excluded from the definition of 'work'. However, women's relationship to the labour market is inextricably tied to their relationship to care, with implications for their access to rights of residence and social benefits as 'workers'.

The interrelations of work and care in the lives of EU migrant women impacted on their ability to maintain their status as a 'worker', and thus their rights of residence and entitlement to social benefits. With respect to women who had migrated to the UK to work, had been working and had then had children in the UK, caring for very young children affected their subsequent participation in work. Difficulties in returning to work included the conflicting demands of the hours of work and caring for children, in circumstances where childcare provisions were insufficient for women to conform to being citizen-workers and where access to the informal support of other family members was limited.

"It's very difficult if they don't have childcare and they have to look for a job. [One of our clients] she had a job but she lost it after her maternity leave, but because she couldn't offer full-time hours and shift hours, late afternoon, night shifts, she was basically dismissed, she couldn't go back she couldn't find anything else. So I think women in these agency jobs, jobs that aren't exactly 9-5 hours, are going to struggle to go back to work because of childcare. And if we don't have families for the single mums that is one of the biggest problems because the nursery stops at 6 o clock and if the job is night shift how is she going to cope." (provider S01)

As carers of very young children (aged 0-4 years), not yet in school, EU migrant women were not able to claim rights to residence as the primary carers of their children. Women who had previously been in work but had stopped work due to pregnancy/caring for their child were thus obligated to seek work in order to maintain their status as a worker, on which their rights of residence/access to benefits depended. Interviewees referred to the practical difficulties of finding work and childcare as well as the emotional difficulties of being forced to consider options for alternative care arrangements for very young children. Those difficulties intensified with the introduction of restrictions on the time in which they were required, as jobseekers, to find work (six months, which was subsequently reduced to three months) before losing their benefits entitlement.

Lilia, who developed a relationship with a British man while in the UK and subsequently had a baby, referred to her reliance on her partner for financial support while she was pregnant. Having previously been working on a zero-hours contract, she referred to not being able to take maternity leave after having her baby (she had not claimed maternity allowance either). Lilia emphasised the difficulties of trying to go back to work, which were

compounded when her relationship ended. *"It was heart breaking to be honest because my son was only 5 months when I went to work but you know you can't do nothing about it so I went to do a job full-time for 4 weeks and then I couldn't make it anymore so I was doing that for about 3 weeks part-time and then I just stopped it because it wasn't possible because [of the relationship with her partner ending]"* (C01).

Anna had done a series of different jobs since coming to the UK in agricultural and factory work. While finding work initially had not been difficult, although she had been restricted by limited spoken English, she emphasised the difficulties of earning an adequate income from the jobs she had done due to irregular and insufficient hours from week to week. While she had been able to access in-work benefits (Working Tax Credits), she relied on the support of a sibling during short periods out of work in between different temporary jobs. After becoming pregnant and having her baby, Anna stopped work and received maternity allowance. She then tried to claim Income Support after her maternity allowance ended, but her claim was refused as she was told she was only entitled to benefits as a jobseeker[12]. With the assistance of an advice organisation, she successfully made a claim for Jobseekers Allowance. Payment of Jobseekers Allowance ended after a short period (due to the introduction of the time limits on claiming benefits as a jobseeker). Anna had participated in English language classes, which had childcare provision, but had received no other support in accessing childcare and found it very difficult to find work during this period of time. Moreover, she found the pressures to find work very stressful, and wanted to be able to focus on caring for her son. She continued to rely on the support of her sibling and a friend after her claim ended, sleeping in the living room of a friend with her child (now aged 4). Anna had taken up a cleaning job, but this was a temporary job that ended after three months. She is hoping it will be easier for her to find another job once her child starts school. (C04)

Thus, for women claiming unemployment benefit (Jobseekers Allowance) on the basis of retaining the status of 'worker' (i.e. having previously been employed), the requirement to return to work within a limited timeframe (see above for further discussion) placed those caring for young children at risk of exclusion from rights of residence and from access to social benefits. At the same time, women who sought recognition as carers by claiming Income Support as lone parents with young children – benefits which did not require the claimant to be looking for work – risked non-recognition of their rights to residence. By not claiming a benefit as a jobseeker (e.g. Jobseekers Allowance), they risked not meeting the residence criteria of continuing to be seeking work.

"You lose your worker status when you go on income support as you aren't a worker [or jobseeker]… There are five categories [of EU citizens with rights of residence] and a lot of stuff behind them but being a mum of small children is not an exercising of Treaty rights so you need to get into a category" (provider S06)

The obligation to conform to the status of 'worker', in order to retain rights of residence on which their access to social benefits depended, placed EU migrant women and their children in circumstances that were considered by some of the providers interviewed to be of risk to their safety and well-being. Those circumstances included a reliance on precarious care arrangements for very young children.

"It is very difficult because obviously you need to be actively seeking work but what it means is that lots of these women are taking dreadful jobs, they are doing shift work, relying on friends it's not really adequate childcare,… so you know we have concerns as an organisation about that, the safety of the child as they are very informal

[12] Eligibility for Income Support includes parents with young children (under five years), who are not required to be actively seeking work as is the case for other benefits e.g. Jobseeker Allowance (https://www.gov.uk/income-support/eligibility).

agreements, and leaving your child with someone you don't know very well, overnight, while you do care work is pretty dreadful, a lot of these people are support workers or care workers and fitting those kind of hours around childcare is very problematic, zero hours etc, it's very stressful." (S06)

Dependence on the EU-citizen-worker for inclusion

In the case of EU migrant women who were reliant on their status as the family member of an EU-citizen-worker (who were not able to claim rights as 'workers' themselves), their access to rights of residence and social benefits on this basis made them dependent on their spouse/partner – placing them in relations of dependence on the 'male breadwinner' for their rights. That dependence included the requirement to provide evidence of their partner's status as a worker. This affected women's ability to access rights of residence and social benefits after leaving a relationship and, as a result, their ability to exit a relationship. In cases where relationships had ended and women with children had made a claim for social benefits, interviewees referred to difficulties in providing evidence of a former partner's status as a worker, where that evidence depended not simply on the work-related circumstances of their former partner but his cooperation in supplying that evidence. This evidence included, for example, payment of national insurance contributions and income tax or employer details.

"The main problem that we have is in evidencing that the partner is exercising Treaty rights and quite often it's the case that the relationship has broken down, they are still married but not together, and so often you do have to try hard to be able to get them to provide evidence,"
(provider S02)

While some providers indicated that, in principle, EU migrant women should be able to request assistance from relevant administrative authorities (e.g. tax authorities) in obtaining this evidence (e.g. the national insurance contributions/tax payments of their partner), in practice this assistance was not forthcoming.

"The UK authorities don't readily highlight this obligation that they have and it is often surprising to second tier advice agencies and individuals that actually the UK authorities have these obligations. The UK authorities are not bending over backwards when they are confronted with somebody who is claiming a right to reside as a family member through separation by identifying ways in which they may be able to assist that EU family member." (provider S05)

Moreover, the work history of partners was potentially more difficult to evidence where work involved irregular hours and earnings.

In relationships that involved domestic violence, a reliance on the status of family member of a worker in effect constructed dependence on abusive partners to access rights of residence and social benefits. As emphasised by providers, this placed women in circumstances where they needed to document the work history of partners with whom no contact was in the interests of their safety.

"Domestic violence is clearly a situation in which the person has had to flee a potentially life threatening situation and wants confidentiality and anonymity and has not left forwarding addresses to the abuser and well, because of the type of situation they are in, will be very unaware of what their EU national partner may or may not have been up to in terms of work" (provider S05)

In the case of EU migrant women who were in relationships with men who were UK citizens, those who were not 'workers' were reliant on demonstrating that they were 'self-sufficient' EU citizens to be able to access rights to residence. In the case of women with young children, who had been out of work caring for their

children, the requirement to demonstrate self-sufficiency over a five-year period in effect excluded them from access to permanent residence, thus excluding them from access to social benefits. Moreover, it affected their ability to exit a relationship, including relationships involving domestic violence.

Matilda had come to the UK with her husband (a UK national). She worked for a period of time in the UK before having her children, having received Maternity Allowance and subsequently Child Benefit. While she wanted to claim permanent residence in the UK, having lived there for just over five years, she had been unable to do so as she had been advised by the Home Office that she would have to demonstrate that she had been 'self-sufficient' during the periods when she had not been working (while caring for her children). As she had not had private health insurance during this period (a requirement as evidence of 'self-sufficiency'), she indicated that she would have to 'start over' again in order to get five years of *"continuously working, applying for a job or supporting myself"*. While Matilda had been thinking about the possibility of ending her relationship with her husband, she felt unable to do so as she would be unable to financially support herself as a 'self-sufficient' individual, without access social benefits, although in the long-term she was hoping to get back into the work that she had previously been doing. She feared that by leaving her husband she would not have a right to reside in the UK and, until her children were in school, was worried that she risked being sent back to her country of origin and losing her children. *"If I don't work I won't be able to get residence. On the one hand you have everything the same in a way [as an EU citizen], but you're not citizens so it's like being a lower class because I can't do many things, including getting benefits…anytime I feel like they could send me home, if something happens with my marriage then I could be sent home. It makes me feel trapped."*

5. Conclusion: EU citizenship and the gendered interrelations of work, care and family over time

EU migrant women may conform to a model of EU citizenship premised on work, in so far as there are relatively high rates of employment of female EU nationals in some member states such as the UK. However, gender inequalities in relation to work and care structure their differential inclusion as EU citizen-workers in terms of access to rights of residence, and to social benefits on the basis of those rights of residence. The findings point to the ways in which the gendered inclusion of EU migrant women in work – in atypical, low-paid work – restricts them from claiming the status of 'worker', with implications for their exclusion from access to social benefits. At the same time, the exclusion of unpaid care as a basis for claiming rights of residence reinforces EU migrant women's dependence on maintaining their status as workers, while excluding women with young children from access to social benefits for failing to do so. Where EU migrant women caring for children are reliant on the status of family member of the EU citizen-worker, this constructs dependence on male partners for access to rights of residence and social benefits, including relationships involving domestic violence.

The construction of EU citizens as workers, self-sufficient individuals, and their family members results in highly gendered forms of differential inclusion in terms of the rights to residence of EU citizens, and the access to social benefits of EU citizens resident in another member state. The lives of EU migrant women and their experiences of work, care and family highlight the limitations of a static snapshot of the rights of mobile EU citizens and, by contrast, the importance of a dynamic picture of the complexities of people's lives over time, in the short term and longer term. A more dynamic picture of mobile EU citizens is central to understanding the gendered interrelations of work, care and family and how those interrelations impact on access to rights of EU citizenship. A more dynamic picture over time also points to the mobilities of EU citizens, and of particular groups, not simply across member states but in and out of work, within work from week to week and month to month in terms of hours and earnings, in terms of changes in family relationships, and the ways in which care fundamentally shapes those mobilities for women across the life course. More fundamentally, the findings echo those of wider research on the limitations of a model of citizenship which privileges paid work to the exclusion of care, and the implications for extending gender inequalities and disadvantage among those *in work* as well as between so-called labour market insiders and outsiders.

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APPENDIX 4: CASE STUDY 3 - WORK AND ITS IMPLICATIONS FOR CITIZENSHIP AND INCLUSION: THE CASE OF THE REFUGEE POPULATION IN CROATIA & IRELAND

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1. Introduction

Deliverable 10.3 is concerned with 'hidden populations' and the ways in which specific groups of people or persons that engage in specific types of labour are excluded from labour markets in individual states. It is concerned with the ways in which their differential inclusion in and/or exclusion from labour markets contributes to processes of inclusion or exclusion from formal and social citizenship.

To explore this topic with reference to one such 'hidden population', this case study focuses on 'refugees, asylum seekers and people with leave to remain & subsidiary protection' as a distinct group that is subject to differential exclusion from formal and social citizenship, the labour market, and equal social protection in Ireland and Croatia (our research sites). The case study explores how these processes of differential exclusion are underpinned by hierarchies of deservingness and belonging.

In Croatia and Ireland, the mechanism of exclusion does not hinge on the *type of labour* that individuals in these groups typically engage in (and/or the consequential access to benefits and other forms of social protection and inclusion). Rather, it is their *exclusion from labour market* participation that triggers a trajectory characterised by continuous and cyclical exclusion from the labour market after they attain refugee status or other alternative models of protection such as leave to remain or subsidiary protection, which in turn triggers exclusion from social and formal citizenship. This cycle of exclusion is facilitated by an ethnicized and/or racialized notion of national identity that places individuals from the case study group at the lower end of a hierarchy of deservingness and belonging. In other words, a cycle of exclusion based on racialized/ethnicized exclusionary notions of belonging and citizenship in the first instance contributes to practices which structurally exclude asylum seekers, and later refugees and protected persons, from legal participation in the labour market and consequently from social inclusion. These outcomes then contribute to their being denied formal citizenship through naturalisation, and long term exclusion from the social citizenship.

Section 1 provides a conceptual context for this analysis, describing how 'work' can determine inclusion and exclusion, citizenship, belonging and integration (section 1.1), and why/how this research was conducted in Croatia and Ireland (section 1.2). Section 2 describes the policies and politics that shape economic integration pathways and barriers by exploring the historical context upon which the legal structures that formalise exclusion are based. Section 3 describes the structural barriers that combine to make labour market access and participation a challenge even when it is legally permissible. Section 4 explains the hierarchies of belonging that enable and result in these barriers and suggests that the combination of these structures and factors limit access to citizenship in the formal sense and in social sense of belonging and inclusion. It suggests that notions of deservingness and belonging are not related only to how the case study group members do or do not participate in the labour market, but also to pre-established ideas of belonging/deservingness associated with conceptions of national identity and belonging that *underpin* labour market integration.

1.1 'Labour': A mechanism for inclusion in/exclusion from formal & social citizenship

As earlier work in this project has asserted, there are multiple axes of in/exclusion with regard to citizenship as a normative and formal status, and these hinge on notions of deservingness and the 'good citizen'. "Work and welfare benefits … shape access to naturalisation indirectly through a combination of immigration controls and

the temporal requirements of eligibility." More holistically, "hierarchies of deservingness centre on the market and the ideal of the citizen worker" (Anderson, Shutes & Walker, 2014: 5, 31, 37). Thus, while refugees get preferential access to state territory by virtue of their asylum seeking status in ways that other migrants do not, preferential access does not equate to preferential conditions for inclusion and integration.

Commentators have increasingly interrogated work and employment as constructed categories, categories whose legal definition incorporates a host of culturally and historically specific assumptions which underpin an individual's claim to protection by labour law, to social protections in the event of their being unable to work or reaching retirement age, and to a less tangible extent, to social integration and belonging. To gain the title of 'worker' is to attain a position of belonging and access to 'social citizenship' – "the right to a modicum of economic welfare and security . . . the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in society" (Zatz & Boris, 2014: 95-96).[13]

Zatz and Boris present four features that seem significant to definitions of "work" and "worker": a livelihood derived from the efforts; production of a good or service for monetary gain; discipline of the worker that is subjected to employer's control; and status of the worker as someone that works for a living, and is therefore granted access to social citizenship. The authors rightly critique these features as being flawed: working for a livelihood could include individuals that 'work' for a criminal enterprise but exclude volunteers and interns. People whose 'produce' is entertainment do not derive monetary gain for anyone but the entertainer, thus the 'worker' is not producing a good that will derive monetary gain in itself; the notion of discipline excludes workers that work in relative autonomy, such as tenured academics or performers. Finally the notion of status does not derive from the work itself, but from being a 'worker' according to social norms. Thus, the 'worker' status might persist after a person is no longer actively working, for example for the retired. "Their retained worker status relies upon a certain narrative about why they no longer work, a narrative that establishes that, despite not working, they still are the working kind of person" (2014: 96, 102). Zatz and Boris suggest that the linkages between status and work can also strip worker status from those who, on the face of it, are employed: "The interplay between work and status makes plain the politics of designating people as workers…. Work, in other words, provides for social and economic inclusion" (Zatz & Boris, 2014: 103-104).

The notion of the 'working kind of person' as a means to exclude has resonance in our case study. Because asylum seekers and refugees are structurally excluded from work, they become de facto what we might call the 'welfare kind of person' regardless of their desire and attempts to actively work, which in turn further marginalises their chances of formal and normative citizenship. Not only is there no expectation that they would be autonomous actors within the state; they are precluded from autonomy.

While the marketization of citizenship has gained relevance in Croatia and Ireland, citizenship (normatively and practically) remains anchored in traditional notions of belonging, which are primarily tied to ethnicized understanding of membership. Such understanding of belonging and deservingness shape the politics and policies of immigration, asylum and citizenship, leaving limited space for inclusion for immigrants, including refugees. This remaining space for membership is then subject to market-orientated logic, where it is one's working status, financial self-dependence and independence from the national welfare that determine his/her access to citizenship. In turn, lack of formal citizenship and identity issues act as a barrier to economic and social integration, creating a vicious circle of cyclic exclusion among migrants. In Croatia and Ireland, this consistently applies to the refugee population, thus leading to overall exclusion from legal, social and economic citizenship for these groups.

[13] The authors cite T.H. Marshall's "Citizenship and Social Class and Other Essays 11 (1950).

1.2 Case study selection & methodology

Refugees (comprising for definitional purposes asylum seekers and persons under international protection)[14] are an interesting case study group by virtue of their privileged status on the one hand and their vulnerability on the other. Their status – during their application process and after they attain recognition – confers a degree of protection under international and national law that is not granted to any other category of migrant, with the exception of EU citizens.[15] Unlike other categories of migrants, their access to territory and residence is not conditioned by socioeconomic characteristics and participation in the domestic labour market. At the same time, refugees are particularly vulnerable by virtue of the situations and experiences that have led them to claim asylum in the first instance, and may have endured trauma, uncertain family circumstances, and loss of connection with what has been 'home'. In light of this, refugees are sometimes granted special access to integration support. Despite a growing discourse around externalization of refugee protection and return policies, a great number of refugees will never be able to return to what was once a *home*. Therefore, it is most often held that refugees need to be offered long-term integration in the host society, with naturalization being one of the key instrument of long-term integration process (underlined also in the Refugee Convention 1951; see UN General Assembly, 1951).

This research seeks to understand what determines economic integration of refugees in Croatia and Ireland, as a precondition to, but also a result of the general integration process and how the strikingly low level of economic integration of refugees affects refugee's participation in the most critical benefits of citizenship: its economic, social and legal dimensions. Refugees are also interesting because, as discovered in the delivery of earlier analysis for this project, they are absent – as a coherent group - from all state data regarding labour activity and social protection (Anderson, Shutes & Walker, 2015).

The similarities in the experiences of Croatia and Ireland with regard to migration and nation building, combined with their differences with regard to economy and EU membership makes these countries interesting as case studies. Both countries achieved independence within the past century (more recently in Croatia) and the implications of nation building have had significant implications for immigration and citizenship policies. In both cases, national identity has strong ethic undertones, as contrasted for example with states such as France or the USA where cultural and political norms underpin the notion of the citizen (see, for example, Thomas, 2002). In both cases, inward migration is a relatively recent phenomenon (again, more so in Croatia) in comparison to many other European states.

The varied pace and scale of economic development in Croatia and Ireland is also interesting as it might be expected to play a role in the processes and policies around economic integration of refugees. Croatia has a high unemployment rate (16.6 % in 2015) and one of the lowest living standards in the EU (Eurostat 2015a; 2015b). In contrast, Ireland has a strong economy, which in some sectors relies on migrant labour to fill some positions (O' Connell & Joyce, 2015: 19). While both states have depended on emigration of its citizens to address internal unemployment rates, Croatia – unlike Ireland – has not required inward migration to meet labour force needs. This prompts the question as to whether immigrants generally are perceived differently –

[14] Hereinafter, the term 'refugee' is used in a substantial way, denoting to the population who is in a need of protection, and not solely in its narrow legalistic meaning that presumes a person who has been recognized as meeting the legal criteria for protection. Nonetheless, where it is important, the report will distinguish between the category of asylum seekers and other persons under international protection (i.e. full asylum status/subsidiary protection/leave to remain). They are denoted to as "recognized refugees" or as "persons under protection".

[15] UN General Assembly, "Convention Relating to the Status of Refugees," United Nations, Treaty Series, vol. 189 (28 July 1951).

as a drain on a saturated labour market in Croatia and as a tool for economic prosperity in Ireland (at least during times of economic prosperity when external labour has been required and utilised).

The findings and analysis below are based on (i) a literature survey using academic material, state sponsored information and reports of non-profit and interest groups and (ii) interviews and consultations with refugees and other stakeholders. In Croatia, collecting information through secondary sources was a challenge due to the dearth of literature and data. Therefore, research on Croatia also utilised data collected for previous research (the author's doctoral dissertation). In Croatia, interviews were conducted with 28 persons (10 asylum seekers and 18 persons under protection refugees).[16] Due to time and financial constraints, the research was undertaken in Zagreb where majority of the refugee population live, limiting the representation of asylum seekers in the sample.[17] Due to under-representation of female asylum seekers/recognized refugees residing in Croatia, the researcher found it difficult to have balanced gender representation (only one of the respondents was female).[18] Besides that, due to structure of the asylum seekers/refugees in Croatia, but also due to limitations of the snow-balling technique, in the interviews, there is some over-representation of respondents coming from specific geographical regions (e.g. North and Central African countries) and under-representation of other regions. In Ireland, collecting primary data through interviews was challenging. Initial consultation with organisations that interact with refugees revealed that many of the refugees they have contact with have participated in other studies, and thus their views and experiences are represented in available reports (included in the literature surveyed). As respecting the time and well-being of participants was the primary priority, a decision was taken by the researchers not to target individuals whose perspectives had been captured by other research and therefore their participation would potentially be a burden on their time and energy without contributing new data. A partner NGO that was engaging in a pilot study of its own agreed to include questions relevant to this study and to share the findings with the researcher.[19]

2. The Politics and Policies of Asylum: Discourses & Narratives on Immigration & Refugee Protection

In Croatia and Ireland, the early onset of inward migration led to a political and public discourse concerned with implications for national identity. In both cases, this discourse informed policies regarding naturalisation and citizenship, and members of the diaspora were broadly welcomed to attain national citizenship, in regulation and in rhetoric. It also led to concern regarding the economic cost to the state. In Croatia, this manifested itself as concern for a "burdened" domestic labour market and the cost of providing social welfare to refugees in particular. In Ireland, immigration was positioned as a tool for economic prosperity, and this meant during an economic downturn, migrants would no longer add value and would be expected to return

[16] Several planned interviews with refugees are pending and the author is waiting to conduct them once the respondents should be available.

[17] The majority of asylum seekers used to reside in Zagreb, but due to present refugee crisis in Europe and the use of Croatia as a transit route, the majority have been moved to the town Kutina. Due to the fact that the majority of asylum seekers do not obtain working rights as their case is decided in short time frame (see section 3.1.), for the purpose of this study, it was more important to focus on the refugee population. The asylum seekers interviewed were those staying in Zagreb or those who came in Zagreb for a visit.

[18] Four more contacts with female refugees have been established but interviews are pending.

[19] The Irish Refugee Council – in partnership with the Institute for Global Health and Development, Queen Margaret University, Edinburgh - conducted interviews with recognised refugees to review the 'Connect Ireland' Pilot Programme, a programme developed by NLN (National Learning Network) at the same time as research for this report was being conducted. A number of questions regarding labour market access and participation were added to the survey and the results shared with the researchers. We are grateful to the Irish Refugee Council, and in particular to their lead researcher, Mr Rory O' Neill, for their partnership. To date, the IRC has shared the transcripts of 4 interviews and a summary note documenting their wider research findings.

'home'. This rhetoric is further problematized for refugees given the conflation in some public discourse between asylum seekers and economic migrants, given that a large cohort of the former presumably cannot return 'home'. In both states, little or no effort was made – historically or recently – to support economic integration of migrants, including refugees.

2.1. Croatia

Despite historical migration recording both immigration and emigration movements associated with territorial changes and conflict, since the 19th Century Croatia has become primarily a country of (predominantly economic and family-based) emigration (Župarić-Iljić and Bara, 2014: 197). After the Second World War and during the time of the socialist Yugoslav Federation (hereinafter, SFRY), Croatia experienced both emigration and immigration, with the latter pertaining mostly to movements of workers/families from other republics of the SFRY (Župarić-Iljić & Bara, 2014: 199), who enjoyed all key (quasi)citizenship rights based on the inclusive policy of Yugoslav federal citizenship (Štiks, 2010). With the dissolution of the SFRY in 1990 and the subsequent war in the states of the former Federation the majority of migratory trends in Croatia pertained to refugee movements, with the state being both a receiving and a sending country (Mrđen Friganović, 1998: 44). Simultaneously, during the 1990s, Croatia faced unremitting emigration of working and family migrants (Vidak, 1998). Inward migration, with the exception of the refugee movements, was low and immigration was not a political issue.[20]

The crucial instrument for inclusion/exclusion in the 1990s was the policy of citizenship which aimed to include the entire ethnic population[21] in the body of the membership and to exclude others who were labelled and treated as 'aliens'. These also included refugees who were differentiated and had their status acknowledged based on their origin: the ethnic Croats (mainly from Bosnia and Herzegovina) were offered Croatian citizenship; while other refugees were given temporary protection, with a view to their eventual resettlement or return (Sopf, 2002: 5). In addition, since the beginning of the 1990s, the state sought to encourage the return of ethnic Croats living abroad (Ragazzi, Štiks & Koska, 2013), which was officially treated as a key goal of immigration policy in Croatia (see Barbić, 2008 & Vidak, 1998). Design of the given policies stemmed from the accepted conception of nation and identity prevalent since the early 1990s that nurtures the ethnocentric principle of belonging (see Ragazzi, Štiks & Koska, 2013; Štiks, 2010). These principles remained unchanged until the present day and thus continue to shape domestic politics and policies of membership.

Political and public interest in immigration and asylum issues gained traction after the signing of the Stabilization and Association Agreement (SAA) in 2001 that provided for the adoption of a range of the EU legislative instruments on immigration and refugee protection. However, while these policies were implemented in response to external (EU) pressure, discourse on immigration and asylum issues (quite exclusively) focused on protecting national values/resources from the 'aliens'. In the debates on immigration and refugee protection, several dominant concerns were regularly raised. First is the effect of immigration movements (including refugee movements) on domestic population and identity. The fear that immigration

[20] The main population of immigrants in the 1990s and today are former Yugoslav citizens and Croatian residents (mainly from Serbia and Bosnia and Herzegovina) who could not satisfy tough demands posed by new citizenship policies which privileged the ethnic Croats (including Croats living abroad). Due to external pressure, since 2011, facilitated naturalization is also provided to the persons who held long-term residents at the time of creation of the new citizenship regime (October 1991) – i.e. formerly excluded Croatian residents from the former Yugoslav republics.

[21] This included ethnic Croats who were one of the constituent nations in other states, such as Bosnia and Herzegovina, thus extending the term "diaspora" also to those persons who never lived in Croatia (Štiks, 2010).

could presume "replacement of population", where the population in Croatia "will remain the same or will rise … but with decrease in the number of ethnic Croats" (Committee for Immigration of the Croatian Parliament, 2006) presumed that domestic identity ought to be protected by restrictive immigration policies and preservation of the ethnocentric citizenship regime.[22] Secondly, refugee issues in particular create anxiety among decision makers due to presumed implication of refugee protection for weak domestic welfare. The discourse on the adoption of the new asylum system (established after 2000) was thus dominated by fears that the state was (externally) pushed to undertake responsibility it cannot realistically sustain (Croatian Parliament, 2002b; 2003b; 2007b). At the same time, this did not trigger political engagement to create and induce integration policies which would assist refugees becoming independent from the welfare provisions, including their inclusion in the labour market. On the contrary, the idea of rising immigration trends (including asylum seeking) results in concerns related to the weak labour market and high rates of unemployment in the country. This discourse was occasionally linked to assumptions about widespread "abuse of the asylum system" (by economic migrants), a notion imported from the European states/EU discourse, along with the EU-led reforms (see Baričević, 2013a). Perception that the EU membership could result in liberalized conditions for importing foreign labour created unease among the majority of political options during the pre-accession period and the time of adjustment to the EU legislation (Croatian Parliament, 2002a; 2002c; 2003a; 2006; 2007a). Despite recorded shortage in domestic labour force in some sectors, domestic elites are still averse to importing foreign labour.[23]

This cannot be disentangled from the conception of belonging, where the desired form of community is the one of ethnic homogeneity. Indeed, while high unemployment and a weak welfare state might be expected to contribute to anxiety regarding immigration and refugees, this happened in parallel to the desired return of the Croatian Diaspora, many of whose members do not share cultural or language proximity to the domestic population. The difference thus lies in the definition of an 'insider' and an 'outsider', where an ethnic Croat coming from abroad is not considered an outsider "stealing jobs" or "living at our expense" but a non-ethic member is – in most cases, despite his/her reasons for settlement and his/her contribution to domestic society[24]. Indeed, there is a preserving tendency to regard other ethnic members – regardless of their status and their links with the state/society – as a permanent 'other'.[25]

2.2. Ireland

Until the late 1990s and early 2000s, Ireland was predominately a country of emigration, with limited numbers of inward migration, and thus, limited discourse and policy making regarding immigration. Historic examples of immigration suggest that it was considered from the perspective of economic activity only, and that where immigrants did settle, restrictions were placed on their ability to participate in the labour market. Examples

[22] Attraction with the preservation of ethnic homogeneity in Croatia dominantly resides in the right-wing parties. However, left-wing parties do not challenge established concepts of belonging. In addition, the leading right wing-party (Croatian Democratic Union, CDU) has had the longest period in government since the independence in the 1990 (1990-2000; 2003-2011, again in power as of December 2015).

[23] Research of the labour market demonstrates deficits in some sectors, but domestic governments (left and right) maintain restrictive working quotas (and other mechanism) (see Mamić, 2012; Skupnjak Kapić, 2014: 244).

[24] Immigration/citizenship policy still welcomes some "aliens" whose settlement is considered of particular interest for the state (see Citizenship Law, 2011: Art. 12). However, one has to be aware that this logic is rarely practiced (and in rather discretionary fashion).

[25] For example, an ethnic Serb with Croatian citizenship (regardless of time spent in Croatia) will regularly be denoted as a 'Croatian Serb'. This also applies to other minority groups which are simply referred to by their ethnic identity.

include the citation of unemployment levels by the state as a justification for preventing Jewish refugees to enter Ireland in the 1930s, and an earlier "1904 Limerick "pogrom" which succeeded because of an economic boycott against Jewish traders" (Fanning, 2010: 398). Similarly, during the 1950s, Hungarian refugees that were encouraged to settle in Ireland to mark Irish membership of the United Nations were met with considerable efforts by the State to prevent them from seeking employment, including insistence that trade unions should be consulted before allowing the Hungarians to work. They were confined to a former army barracks and police were instructed to restrict their movements illegally (Fanning, 2010: 398).[26] While immigration was discouraged for economic reasons, "outward migration became accepted as a means to preserve economic stability," allowing for employment security and high wages for those that remained without the necessity of economic growth.

This all coincided with a period of 'Irish-Ireland' nation-building, where an increasingly isolationist Irish Free State "was preoccupied with cultural (Irish language) and religious (Catholicism) reproduction. Cultural nationalism generated essentialist claims about Irish identity. The post-colonial Ireland it influenced was protectionist and isolationist" (Fanning, 2010: 398-400). After the establishment of the Irish Free State, Irish people and their roles were constructed around the notion of family as the primary and fundamental unit within society. By positioning women as reproducing the state and the national through childbearing, 'Irishness' was essentially racialized and came to mean white, Catholic and settled. In keeping with this notion, Irish legislation provided that anyone born on the island of Ireland (including children of immigrants) was entitled to Irish citizenship. Thus, the challenges that refugees and others face in accessing Irish citizenship contrasts to the extremely easy route to citizenship for a descendent of an Irish person from the diaspora, again showcasing the racialized notion of 'Irishness'.

As the decades passed, "the 'Irish-Ireland' nation-building project became contested by a developmental modernising one, which came to emphasise economic and human capital reproduction as utilitarian nation-building goals" (Fanning, 2010: 400). 'Irish-Ireland' began to give way to the notion of the individual and to economic progress, and by the early 2000s, inward migration was again linked to the economy, but this time to sustaining economic growth. The National Economic and Social Council (NESC) advocated ongoing immigration as a means of sustaining economic growth, stating that "immigration did not create the Irish economic miracle but, properly managed, migration can sustain Ireland's economic growth and generate many other benefits" (Fanning, 2010: 405, citing NESC, 2006). As recently as in 2013, the Minister for Justice and Equality "reiterated his priority to 'harness the previously untapped potential of the immigration system to aid economic activity' in Ireland," including through inward investment and enterprise, and increased tourist and business visas (O' Connell & Joyce, 2015: 12). The expectation was that if there was an economic downturn, these migrants would return home, a belief that hinged on the notion that they never really belonged. Politically, where negative public attention arose, it was often related to the impact that the rise in migrants had on displacing Irish workers from their jobs by working for lower wages. Less attention was put on the exploitative nature of these economic arrangements.

This notion was challenged decades later as rising numbers of migrants entered Ireland, bore children and claimed citizenship for the child and residency for themselves as parent(s), which was provided by the Irish citizen child's right to family life. Politicians and some media outlets began to assert that these individuals should not have a claim to Irish residency, and that in reality many were exploiting the asylum system to gain entry into the country, and using the period of application for asylum to bear a child on the island of Ireland. It is important to note that some commentators contest the notion of a historical racialisation of 'Irishness' – as

[26] Notably, this took place despite that fact that Article 17 of the UN Convention Relating to the Status of Refugees (1951), which Ireland had just ratified, conferred a right to work.

referred to above – and instead suggest that the 2004 Referendum marked a turning point in that regard (see Lentin, 2007). In either case, the rhetoric eventually led to a Constitutional Referendum to ask the citizens whether or not automatic birth right citizenship should be abolished. The government issued an 'information note' in advance of the referendum, which included a question asking "What effect has the strategy had in reducing the attraction for illegal migration?" This inaccurately linked asylum seeking to 'illegal migration'. The note linked the arrival of pregnant migrants to pressures on the maternity and wider health system and on medium and long-term patterns of social provision and expenditure. During the run up to the referendum the main political party in government employed the slogan of 'commonsense citizenship' "that tapped into existing distinctions between the still-predominantly mono-ethnic 'nationals' and 'non-nationals'," while their junior partner party in government– a party that had previously emphasized the economic benefits of immigration – "centred on racialized claims about asylum-seekers and 'baby tourists' exploiting health services. It portrayed 'non-nationals' as disposable economic actors with no claim on the nation-state" (Fanning & Mutwarasibo, 2007: 441). The referendum passed by a wide margin. Notably, children and grandchildren of Irish citizens in the diaspora continue to enjoy the right to claim Irish citizenship without any requirement to have any other tangible link with the country, further racializing 'Irishness'.[27]

Aside from rhetoric about pressures on the health system and linkages between asylum seeking and claims to citizenship, negative rhetoric about immigrants from the 2000s (when large numbers began to arrive on the island of Ireland) centred on displacement of workers, "when general perceptions of immigrants as asylum-seekers had yet to be displaced by perceptions that most asylum-seekers were labour migrants" (Fanning & Mutwarasibo, 2007: 449). The characteristic 'non-national' term used to describe asylum seekers and other migrants also served to confer an 'absence of identity' (Fanning & Mutwarasibo, 2007: 450).

3. Labour Market Access & Participation as a Mechanism for Inclusion/Exclusion

In Croatia and Ireland, a set of intertwined factors contribute to a low level of economic participation among refugees, and for those that are working, a trend of employment in positions that do not match their skills and qualifications. These factors include an asylum process that places restrictions on the right to work (to a greater extent in Ireland); limited support for economic integration contributing to a cohort of people that have challenges accessing the workforce (including because of lack of information, being unable to have their qualifications recognised, lack of social networks); limited social protection contributing to a high level of poverty and insecurity; and, limited engagement with the wider citizenry to prevent discrimination and to ensure that employers take account of the special circumstances of refugees (for example, an understanding that they are not entitled to work while asylum seekers, thus explaining their period outside of the work-force).

3.1 Formal access to the labour market

Prior to the initiation of negotiations with the EU, Croatia did not have a system of refugee protection.[28] With the signing of the SAA, the state commenced building the asylum system, now considered to be functional

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[27] For further information, see Luibhéid, Eithne. "Sexualities, Intimacies, and the Citizen/Migrant Distinction," in Anderson, Bridget & Hughes, Vanessa (Eds.) Citizenship and its Others, (2015); Garner, Steve. "Ireland and immigration: explaining the absence of the far right," (2007) 41 Patterns of Prejudice 2; Department of Justice, Equality and Law Reform, "Information note Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents," (2004) <http://www.inis.gov.ie/en/inis/information%20note.pdf/files/information%20note.pdf>; Fanning, Bryan. & Mutwarasibo, Fidele. "Nationals/non-nationals: immigration, citizenship and politics in the Republic of Ireland," (2007) 30 Ethnic and Racial Studies 3, 449.

[28] In the 1990s, the issue was solved on an *ad hoc* basis and a day-to-day practice (see Sopf, 2002: 5).

(European Commission, 2012). Immigration movements experienced a limited rise after the 1990s.[29] However, Croatia remains primarily a transit route for refugees and migrants who seek to cross to the other states of the EU. Nonetheless, strict migration controls and the implementation of the Dublin Regulation (II and III) presume that some asylum seekers opt to claim protection in Croatia (Baričević, 2013b). Under the Law on International and Temporary Protection 2015 (hereinafter, Law on International Protection or LoIP), the state recognizes two main types of protection: full asylum status (granted for period of 5 years, renewable; in Croatia labelled as *asylees*) and subsidiary protection (granted for the period of 3 years, renewable). As in the past (Sopf, 2002), the majority of the asylum seekers claims protection after being intercepted by police at the Slovenian or Serbian border (information until 2014, Barberić: 3) and the majority continue their journey further to the EU after having lodged their asylum claim (around 80%; Barberić: 2).[30] Also, persons granted protection (full asylum status and subsidiary protection) often opt to move once they loose the right to state funded accommodation or even before.[31] The key reason for secondary movements seems to lie in the lack of economic integration which (in combination with weak welfare protection) leads to impoverishment and exclusion.

Under the LoIP (Art. 61), asylum seekers are not allowed to work for nine months after an application has been lodged. However, there is a unified procedure for granting asylum/subsidiary protection and the majority of asylum applications are decided within the period of approximately one year and thus this limitation does not typically take effect. In Croatia asylum seekers enjoy the basic reception conditions (accommodation in reception centres and basic material needs) (LoIP, 2015). Key problems in the reception conditions relate to insufficient health insurance and limited financial assistance which amount to about €14 per month (in Baričević 2013b; Interviews, 2016).

Unlike asylum seekers, recognized refugees (including those with subsidiary protection) enjoy the right to work and can be employed without first acquiring a working and business permit (LoIP, 2015: Art. 68). In practice this means that these persons are legally equated with the Croatian nationals, except where national laws require citizenship as a condition for employment (for example in medicine or primary education (Goldner Lang & Vukorepa M 2010: 7).

In Ireland, a recent change in legislation governing the asylum process has led to the establishment of a single application process whereby applicants can apply for refugee status or other forms of protection in parallel.

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[29] Several factors appear to have contributed to this. Firstly, with the economic recovery following the end of war in Croatia, Croatia again became an attractive destination for work and family migrants from the states of the former Yugoslavia. Secondly, there is limited but rising trend in the immigration of the EU citizens (mainly Germans and Slovenians) who (dominantly) come for family reasons (Župarić-Iljić and Bara, 2014: 203–207. Finally, there is a rising trend in refugee migration in Croatia, although the numbers are small.

[30] While the rate of asylum applications and recognition rates have been on rise for several years until Croatian entry to the EU (e.g. 2008-2014, there were 4136 persons who claimed asylum; see Ministry of Interior, 2016b). After the entry, the rate of application began to decrease (e.g. 152 applicants in 2015). Recognition practices commenced as of 2006 and the rate of recognition varied from 5 to 15% in the past 10 years. Since 2006 until the end of 2015, 162 persons have been granted protection (full asylum/subsidiary protection) (Ministry of Interior, 2016a).

[31] There is no publicly available number of recognized refugees who are residing in Croatia, which can partly also be explained by the fact that these persons do not always report their residence in another country. Branko Orišković from the Croatian Red Cross estimates that about 90 persons still reside in Croatia (information provided at the meeting of stakeholders – Coordination for Asylum, Red Cross Office, Zagreb, February 26, 2016).

This is a change from the previous system which required applicants to exhaust the asylum process before proceeding to apply for subsidiary protection or leave to remain, resulting in an asylum process lasting several years for applicants.[32] Then, and now, when a person has applied for refugee status in Ireland with the Office of the Refugee Applications Commissioner, they can then apply for support and accommodation which is provided in a 'reception centre'. This system is widely known as 'direct provision', and individuals remain in direct provision until they are granted permission to stay in the country, leave voluntarily or until they are deported. In addition to very basic accommodation and meals, residents receive a stipend of €19.10 per adult and €9.60 per child per week. This system has never been set out in law; it is "a purely administrative system, outside any legal framework which would allow for proper parliamentary or judicial scrutiny" (Conlon, 2014: 14). It has been repeatedly criticised and there is broad recognition among jurists, human rights defenders, service providers, and the media in Ireland and internationally that the system of direct provision is inadequate and falls below minimum standards. Asylum seekers spend on average 3 years, 8 months living in direct provision.

In Ireland, an asylum seeker cannot seek or enter employment, conduct a business or claim social welfare payments. Ireland has opted out of the EU Reception Directive (2003/9/EC) which provides for minimum conditions for asylum seekers, including the right to work after waiting for a year for a decision. Thus, asylum seekers are prohibited by law from working until they have been granted refugee status, leave to remain or subsidiary protection, and many spend several years awaiting their final status decisions. This leads to three potential consequences: "exclusion from one of the key ways in which people can maintain and build skills, confidence and a sense of identity; unregulated work which exploits the person working (although it gives them a small financial benefit as well); and undermining the protections available for other workers or people seeking employment" (Conlon, 2014: 20). Their exclusion from work and the living conditions associated with direct provision are the cornerstones of the formal and social exclusion of refugees from citizenship in the long term. Some applicants live independently of the direct provision system; those individuals are generally thought to live with friends/family and to work in undocumented positions when they can. However, little is known of their circumstances, including by support and advocacy groups. A 2009 legislative enactment[33] stipulates that asylum seekers will receive public assistance only where they avail of the direct provision. This has ramifications even if they do secure refugee status: to secure social protections and to join housing lists, the individual must to show evidence that they are in need, but their status as someone that supported themselves outside of direct provision in the intervening period often leads to a negative decision. The prohibition on work for asylum seekers has been cited by the state as a deterrent to rising asylum seeking applicants. In a recent legal challenge to the state by an asylum seeker who wished to work, the counsel of the State – speaking for the Minister of Justice - said there was a "clear policy rationale" behind the regulation, in response to the pull factor evidence by a threefold rise in asylum applications when a right to work was permitted (Carolan, 2016).

3.2 Structural barrier to economic integration

3.2.1 Croatia:

In Croatia, high level of unemployment (increasing from 8% to over 16% in the last 10 years) creates limited opportunities for employment for the entire population. In addition, the majority of employers seek skilled workers (secondary or higher education/certified profession), often despite the real needs of the working

[32] For an overview of the problems associated with the asylum process, see Graham Finlay, "Overview of Principles of Eligibility for access to welfare, the territory of the state and citizenship in Ireland," Work Package 10: Deliverable 10.1 bEUcitizen (2014).

[33] Social Welfare and Pensions (No. 2) Act 2009 http://www.irishstatutebook.ie/eli/2009/act/43/enacted/en/pdf>.

position or working conditions. This particularly affects refugees since many do not have sufficient educational level or do not have adequate proof of qualifications (certificates). The majority of interviewees that participated in this study had previous working experience and professional skills but did not have access to official certificates. In addition, inadequate Croatian language skills acts as a great barrier to entry to the labour market for refugees, since attaining job in Croatia without the language is near to "impossible" (Pike, UNHCR 2014, in: European Parliament 2015; respondents confirmed). In addition, language barriers, insufficient computer/job seeking skills and financial status prevent refugees from using multiple strategies in job seeking. Only a minority of refugees uses online services/classified advertisements, while others wait to be linked to employers through the Employment Bureau (Interviews, 2016). Still, even those who pursue more all of these strategies (online services/classified adds/Employment Bureau services) find them ineffective, and point to importance of the social contacts.

Indeed, insufficient social capital among refugees in Croatia appears to contribute to poor economic integration (Interviews, 2016). Most establish limited relationships, usually limited to friendships and contacts with NGOs/non-state organizations. Exclusion from the labour market, education, training and other resources limits their opportunity to establish social networks which would assist them in finding work. In addition, their asylum seeking/refugee status can carry negative social connotations. Despite the existence of racism and discrimination based on one's origin, respondent found their status to be the key source of the social prejudices. Indeed, a recent study on public perceptions (Centre for Peace Studies, 2013) demonstrated that the label *asylum seeker* and *asylee* triggers negative perceptions in the society and positions this population as second to one of the most unwelcomed groups (comparable to the Serbian and Roma minorities). In addition, the evidence suggests that the majority of citizens support restrictive immigration, refugee and citizenship policies (Centre for Peace Studies, 2013). Whilst there are no studies analysing perceptions of domestic employers' on refugee employment, there is reason to assume that similar prejudices exist among potential employers. Besides social prejudices, it is not clear whether employers are aware of the working rights provided to the refugees and the fact that their employment does not carry any administrative and/or financial difficulty (different from the national). Some refugees reported they still find employers puzzled with their status and legal rights. In addition, economic deprivation among asylum seekers and refugees seems to strengthen negative stereotypes on this population, impeding their wider social integration (respondents' perception).

Besides the language training which has been offered again since the end of 2015 (after being stopped for four years),[34] other integration policies in Croatia are still in the nascent phase and in reality often exclude (adult) refugees from participation in the activities necessary for acquiring competences for inclusion in the labour market. Refugees are inconsistently informed about their rights to integration/employment programs that they are legally entitled to (including education, vocational training, private business support and special conditions in employment). In addition, while domestic legislation stipulates that refugees shall have equal rights to education, vocational (and other) training and job seeking assistance as the Croatian nationals (and offer some additional rights to refugee population),[35] state institutions have not secured the necessary by-laws and/or other pre-conditions needed for their (effective) implementation which means that the refugees are often

[34] Still, language classes are offered only to recognized refugees and for limited time.

[35] Provisions include benefits offered to employers who hire refugees (among other targeted groups (Baričević, 2013a). However, refugees lack informaiton on these provisions and some of them that have sought to practice these rights (after being informed about their existence by NGOs' vloluteers) have not managed to acquire them in practice (Interviews, 2016).

effectively unable to access these rights (see Baričević, 2013b).[36] While the economic and overall integration of refugees is envisaged in legislation, the lack of its implementation (as well as the lack of more adequate solutions for specific circumstances occurring in the case of refugee population) points to the lack of political will in ensuring conditions for their long term (economic and general) integration.

Refugees who cannot secure their living enjoy state-funded accommodation (private apartment rentals and utilities covered) and welfare provisions similar to Croatian citizens (and, in some aspects, more generous provisions, i.e. accommodation) (LoIP, 2015; Law on Social Welfare, 2015). These rights are quite consistently implemented in practice (Interviews, 2016). However, restrictive criteria guiding welfare services (related to marketization of welfare; see section 4) and general weakness of the domestic welfare system presume that welfare recipients (both the nationals and the refugees) remain short of secure living conditions (Aksentijević and Ježić, 2014; Puljiz, 2008). The single financial mechanisms which assists unemployed refugee is the minimal guaranteed income which amounts to about 100 EUR per month (for a single).[37] The majority of refugees interviewed reported struggling to satisfy for the most basic material needs (including nutrition) (in Baričević, 2013a; Interviews, 2016).

3.1.2 Ireland:[38]

In Ireland, the prohibition of work for asylum seekers contributes to labour market exclusion even after refugee/protected status is attained. "Despite having the necessary qualifications, some employers find it

[36] For example, refuges are legally entitled to the same higher education access as nationals, but the system does not provide special conditions for them to enrol in such institutions. Since a refugee cannot fulfil criteria for enrolment the way a national does (like having passed matriculation exams), he/she cannot enrol under the conditions demanded of nationals. Enrolling as a 'foreigner' presumes investing substantial financial resources that the majority of beneficiaries cannot secure. Therefore, enrolment is typically secured only when a voluntary organization provides financial/administrative and other support. In some cases, higher education institutions were prepared to waive the education fees for refugees, but were unable to do so because the Ministry of Science and Education did not envisage a category of "refugee" in the administrative system (although it has committed to doing so for several years). As regards vocational training, refugees are again legally allowed to access these programs on the same basis as nationals. However, in reality, the Employment Bureau (which is in charge for these services) refuses to include refugees in such programs, stating that refugees cannot be "quickly employed" since they lack language proficiency. At the same time, note that (as stated above), language training was not provided to refugees for the last four years (until end 2015). There are numerous other examples where the system effectively denies refugee integration rights offered under domestic laws (for details, see Baričević, 2013b).

[37] Refugees have the right to use utilities of meal centres but many do not as the centres are insensitive to the needs of different religious groups. In addition, many refugees find such experiences humiliating especially in the circumstances of high social prejudices and high visibility in the society (Interviews, 2016). It is not clear whether assistance in providing refugees with (modest) food packages that existed in the past were withdrawn or whether refugees today are simply unaware of its existence: the majority of respondents (Interviews, 2016) do not use this option and were not aware of it.

[38] This analysis below is based predominantly on the experience of Convention refugees who apply as asylum seekers and are provided with state support for the duration of their asylum process. Resettled refugees and programme refugees do not go through the same process and might encounter challenges or supports different to those outlined below. While there is a lack of data on the subject, anecdotal evidence suggests that programme refugees – what undergo an orientation programme with support from UNHCR- do not endure the same degree of challenges as Convention Refugees. This is not surprising, given that they do not endure the system of direct provision.

difficult to comprehend work experience gained outside of Ireland or Europe; they do know how to extrapolate it into an Irish context." Given that refugees are precluded from the workforce during their years in direct provision, many cannot point to recent or in-country experience as evidence of their skills (RISE, 2013: 26-29). In addition, their treatment as being a non-resident and the consequent exclusion from public services and supports leads to challenges.

Children in direct provision are provided with publicly funded primary and secondary education, but not publicly funded third level education, which in practice eliminates the possibility for many. In 2013, a high profile case of a young woman living in direct provision that had earned exceptionally high points in the Irish leaving certificate exam, but that could not take up her coveted university place due to her inability to meet the costs of fees (as a third country national) led the Minister for Education and Skills to announce a policy to allow children who have been in the educational system for five years to qualify for state support for college, although the justification for the 5-year cut off was not made clear. The only education provided to adults living in direct provision is low level courses in English language and computer skills and IT. High-skills training is broadly unavailable, regardless of the individual's education and qualification level. Refugees also report that the ability to study is impacted by "inactivity, cramped living conditions and the uncertainty and fear of the decision that is to come on any outstanding applications" (Conlon, 2014: 16). Age can be a barrier to accessing vocational training and education, as some schemes require participants to be 21 years of age (O' Grady, 2008: 33).[39] Refugees (with recognised status) and those with humanitarian leave to remain are entitled to free third-level (university or college) education if they have been living in Ireland for 3 years or more. Crucially though, time spent in direct provision does not count towards residency years. Education participation levels suggest that refugees place high value on educational attainment. Studies document refugees' belief that education is a mechanism to overcome long term welfare dependency or employment in low skilled, low paid sectors (O' Grady, 2008: 39-40; Ní Raghallaigh & Foreman, 2015: 7-8).

Administrative challenges also contribute to labour market exclusion. Refugees receive little or no oral or written information to support their transition from direct provision to living in the Irish community, except to register with the Garda National Immigration Bureau (GNIB). They are generally not provided with information regarding application for social welfare or housing, and generally access this information through social networks, from the occasional supportive hostel manager, support organisations or Citizens Information Centres. These methods are problematic for individuals who are not well networked, those who are experiencing mental health problems, or who have not been in the country for long (Ní Raghallaigh & Foreman, 2015: 2-3). Many struggle with administrative processes due to their low levels of English, and this is compounded by the limited training available to them (O' Grady, 2008: 7). Many refugees do not have documentary evidence of their educational attainment and therefore encounter difficulties in proving prior learning. While the National Qualifications Authority Ireland offers some assistance, many refugees have no information or understanding of how to access this support. During times of economic prosperity, it was generally assumed that "if a person was willing to put aside their previous education and experience, they could get employment in factories [and that] … "difficulties only arose when a person tries to enter the labour market at a particular level...The general feeling was that only doctors and nurses are employed at their own levels and that all other qualified people work in industry" (O' Grady, 2008: 46-47). It is worth noting that this issue is not specific to refugees, but applied also to migrants from within the EU. However, the latter category in the long term has a stronger chance of securing work corresponding to their educational levels (Gilmartin & Migge, 2013: 9).

[39] This includes the Vocational Training and Opportunities Scheme (***VTOS***) and the Back to Education Allowance (BTEA).

Accessing social protection is also challenged by administrative hurdles. Many refugees cannot secure private housing after leaving direct provision as they cannot raise the monetary amount required to pay a deposit; many are not informed about the 'exceptional needs payment' for rent deposits; landlords refuse to accept rent supplement and prefer actively employed tenants; and refugees do not have references from previous landlords (Ní Raghallaigh & Foreman, 2015: 5). It is not a surprise then that in 2015, that more than 600 recognised refugees were unable to leave direct provision accommodation across the State due to the current housing crisis and the aforementioned barriers (Siggins, 2015). In order to register with the Department of Social Protection to claim jobseekers allowance or other forms of social protection, proof of address is required. In a cohort of 22 individuals interviewed for one study, the majority had been informed that the direct provision hostel was not acceptable as an address. Similarly, proof of address is required in order to set up a bank account and to access other services Ní Raghallaigh & Foreman, 2015: 4). Access to childcare is a serious barrier for refugee women: "not only does it create a dependency on welfare but also means that many immigrant women, in particular those parenting alone, lack opportunities to improve their language skills or integrate with the host community through education or employment" (O' Grady, 2008: 56-47).

Research suggests that direct provision has a profoundly negative impact on individual's well-being and motivation. This is coupled with a history that might include trauma which can seriously hamper a person's ability to study, work or otherwise focus on moving forward with work (Conlon, 2014: 24-27). In addition, some studies cite refugees' perceptions of racism and discrimination as a barrier to employment. While hard to quantify, refugees cite their accent, their country or origin, as contributing to an employer's decision not to employ them (O' Grady, 2008: 42-43). All of this is coupled with a general failure of the state to provide integration support, and asylum seekers have never been included in any national programme of integration (Ní Raghallaigh & Foreman, 2015: 7). Responsibility for 'integration' with the Office for the Promotion of Migrant Integration (OPMI) includes integration and management of 'legal immigrants' and programme refugees respectively, but does not include asylum seekers. "People in the asylum system therefore fall outside of national integration policies and programmes for two reasons: firstly, they are not considered to be legally resident in the state, and, secondly, they are not considered to be refugees unless and until the Irish authorities issue a declaration to that effect (Conlon, 2014: 35-36).

3.3 Outcomes for economic integration

In general, asylum seekers in Croatia remain out of work during the period of asylum procedure (interviews with refugees and stakeholders in 2012; 2013; 2016).[40] Considering legal restrictions and average length of procedure in Croatia, this is not surprising. However, the overwhelming majority of recognized refugees in Croatia also remain out of work.[41] Most of those who do/did work are/were employed in occupations where

[40] Interviews in 2012 and 2013 (beneficiaries and stakeholders) were conducted for the pursposes of the doctoral dissertation (Baričević, 2013a).

[41] Out of the total number of the refugees who were granted protection in Croatia since 2006 until today (162 up to the end of 2015, see Ministry of Interior, 2016a), only a handful of persons has been in some kind of work (Stakeholder interviews, 2012 & 2013; in Baričević 2013a). Whilst there are no statistics that show the rate of refugee employment in Croatia, the stakeholders stressed that only a few of them have ever worked (in Baričević, 2013a). This information was confirmed in interviews conducted for the purpose of this research. Only 1 out of 18 interviewed refugees worked at the time when interview was held (Interview # 1) and one more person (Interview # 2) had occasional jobs (temporary) in Croatia. Four interviewees had experience of volunteering at private employer (Interview # 7, # 11, # 13, # 14), hoping to obtain a job after unpaid practice and/or to be provided with certificate on working experience in Croatia. None of these persons have been employed by the given employer for now (informal information,

they had some particularly scarce skills, such as a foreign language. The remainder regularly found work through private links (friendships/contact with non-state organizations or NGOs), but could use them only to attain work on a temporary basis and in poor working conditions (with regard to salary, working hours and/or feeling discriminated). According to information collected from asylum seekers and refugees (Interviews, 2016), in Croatia, illegal work and informal economic activities are uncommon among these groups, with one of the reasons being their fear for the status and high visibility in the (ethnically) homogeneous society.

The low employment level is explained by a number of factors. First, it is important to note that poor implementation of legal conditions (as well as inconsistent/troubled legislation) in Croatia is not limited only to the case of refugee integration, but occurs in various policy areas. However, it is also quite evident that issues relating to refugee protection are widely neglected in the domain of politics/policies and state administration. While refugees are especially vulnerable by virtue of their limited political rights and the small size of their population in the country, there appears to be no political interest in providing them with conditions for integration and (economic and other) autonomy, which is especially interesting given the discourse and reality of the weak welfare system. Whilst again one must note that such state of affairs may be in part explained by lack of efficient governance, it is also evident that decision making on asylum was (among other things) fuelled with the logic of remaining an unattractive country for the refugees (see Baričević, 2013a: 190–206). Indeed, keeping a *status quo* – that is, remaining a transit country – was one of the key strategies in the establishment of the new asylum system, induced by external agents (EU). The motivation for such policy choice is tied to the notions discussed earlier – identity, belonging and fear of (security, economic and social) consequences of (refugee and general) immigration.

Similarly, in Ireland, a 2008 study found that only 33% of refugees/people with leave to remain surveyed were engaged in the labour force.[42] However, as in Croatia, most were working in positions that did not complement their skills and qualifications (O' Grady, 2008: 41). The majority of participants had expected to engage in work upon obtaining their refugee status, and most were determined to become self-supporting and to contribute to the economy after years of being denied the opportunity to do so while in direct provision. However, for most, this was not attainable. This reflects interviews with refugees and stakeholders conducted in the course of this research. The stories are common, and are repeated still, as they were before and during the onset of the economic crash. In fact, recent research suggests that naturalised Irish citizens suffered a higher rise in unemployment during the period of the economic recession, relative to native Irish workers, and this is attributed to the "weak labour attachment" of refugees among the naturalised population (Kelly et al, 2015).

4. Denial of Inclusion & Citizenship as a Product of Labour Market Exclusion

The factors described in section 3, and the resulting exclusion of refugees from the labour market, contribute to their reliance on welfare, their exclusion from work, and in consequence, their inability to meet the conditions required for naturalisation (and social inclusions). The policies and politics that underpin the regulation and lack of economic integration are themselves motivated by constructs of deservingness and belonging. In Croatia and Ireland, as this section describes, acquiring long-term residence and citizenship depends in part of socio-economic status and economic independence, which is difficult to achieve for many refugees precluded from work.

4.1 Croatia

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respondent under Interview #11, provided on February 22). None of the interviewed asylum seekers had any kind of work in Croatia so far.

[42] More recent data is not available, as available data does not disaggregate by refugee/other categories.

Whereas the conception of belonging in Croatia presumes that confines of community are primarily drawn on the principles of ethnic identification, widespread *marketization* occurring with political and economic transition in Croatia strengthened socioeconomic divisions which cross-cut the boundaries of citizenship. Whilst ethnicity (on a symbolical and very practical level) remains the crucial instrument of in/exclusion, novel hierarchies of deservingness that advocate the logic of the market stratify the body of citizens and add a new dimension to the policies and practices of in/exclusion.[43] In particular, while ethnicity dominantly determines who shall be the citizen (and a *good* citizen) in the first place, one's ability to enjoy fully fledged citizenship rights – including socioeconomic rights – also depends on one's capacity to adjust to the needs of the labour market. In concrete terms, the welfare system includes contribution-based and non-contribution based benefits. However, some of them (such as minimal guaranteed income) are conditioned by the beneficiary's active job seeking (Law on Child Allowance, 2015; Law on Employment Services and Rights during Unemployment, 2013; Law on Pension Insurance, 2015; Law on Social Welfare, 2015). Currently, (compulsory) health insurance in Croatia is based on solidarity and equal access to the nationals (Law on Compulsory Health Insurance, 2013), although the new government announced reforms towards contribution-based health system (see for example Martinović Bratina, 2016).

Partly due to the logic of the EU enlargement, this ideal of a *citizen worker* penetrated the norms that are guiding the reform of the immigration regime. In consequence, the policies of migrants' inclusion (among other things) follow the logic of marketization, tying immigration rules with the needs of domestic (labour) market and national economy.[44] Temporary residence can be issued or prolonged if very tight economic conditions are met,[45] while the long-term residence requirements add another criterion (time spent in the country – interruptedly 5 years). Once the foreigner has been granted long-term residency, he/she is entitled to enjoy the majority of socioeconomic benefits offered to citizens including the equal right to work and most welfare benefits and health care. Therefore, both for the citizens and the foreigners, their *social citizenship* is largely conditioned by the *economic citizenship*. However, for a foreigner, these same rules not only govern social dimension of citizenship, but also the legal status since the acquisition of citizenship will depend on it.

There are several important differences in the case of the refugee population. Besides the fact that refugees do not fall under the regular entry conditions, they are endowed socio-economic rights. As previously stated, recognized refugees (but not the asylum seekers) enjoy the right to work on the similar grounds as the Croatian nationals and qualify largely for the same welfare benefits as the citizens (and health care). This presumes that a refugee is in many respects subject to the same market logic as the citizens themselves, but is not subject to the limitation regulating temporary residency for a foreigner, that is, to obtain temporary residence the refugee does not need to fulfil the above outlined (economic) conditions. However, criteria regulating

[43] Identity constructed in the socialist Yugoslavia was built before all on the ideal of *worker self-manager* (see for example Riddell 1968) and thus, symbolically, such conception of deservingness is not novel in Croatia. Nonetheless, one must keep in mind that that the notion of *workers' citizenship* (ideally and to some extent practically) was built on the presumption of full employment (Šućur, 2002). In that sense, this concept was (ideally) integrative rather than divisive.

[44] Due to reasons explained under the section 2, there are very limited chances for foreign workers to legally enter and reside in Croatia. In concrete, entry and residence is in most cases conditioned on the very specific labour needs and domestic labour force is actively protected by very restrictive policy of *working quotas* and the policy of working permits.

[45] To acquire (temporary and long-term residence), a person must actively work, have considerable financial means and remain independent from domestic welfare. Along with this, a foreigner must be able to provide for his/her health insurance and not become a "burden" to domestic heath care (Law on Foreigners, 2015).

acquisition of the long-term residency apply to refugees on equal ground as to other foreigners meaning that a refugee's long-term settlement primarily depends on his/her working status and economic/financial independence.

Furthermore, for a foreigner, naturalization – as a final step in one's integration – is dependant on the mixture of two dominant criteria: ethnicity and socioeconomic status. Citizenship in Croatia may be granted in two main ways: through facilitated or regular naturalization. Whereas facilitated naturalization procedure is mainly reserved for ethnic Croats; the majority of foreigners are deemed to apply under the regular naturalization procedure. In effect, this again presumes marketization, since citizenship is available only to those who have previously obtained the long-term residency status. Given that refugees can apply only under the regular procedure, the same criteria apply in their case.

It is in the domain of *ethnic citizenship* where the differences between diverse ethnic members become the most striking. Whilst the long-term settlement of a foreigner (non-Croat) and a refugee (non-Croat) is subject to market-led understanding of deservingness, the (desired aim of) settlement of the ethnic Croats follows an entirely different logic. In particular, an ethnic Croat with a foreign nationality who seeks to pursue residency can obtain this status and a variety of critical citizenship rights without fulfilling most of the requirements applied to foreigners, including the outlined market-oriented criteria of membership (Law on Relations of the Republic of Croatia with the Croats outside the Republic of Croatia, 2011). In the same fashion, facilitated naturalization offered to ethnic Croats implies rather mild conditions which are dominantly focused on the verification of one's ethnic belonging (see Ragazzi, Štiks & Koska, 2013), while his/her contribution to the society or domestic economy remains entirely irrelevant. It is here where the regime demonstrates that marketization has penetrated the logic of citizenship; yet, it is the ethnicity that opens or closes the door to membership, while the market-oriented logic serves mainly to exclude those who are utterly undeserving – i.e. the "others" who represent a "burden" to "our" "self-fulfilment" (ethnic homogeneity) and "our" (material) resources.

Due to the fact that the majority of refugees in Croatia fail to obtain work and employment, they remain short of the widest array of the welfare provisions and live at the edge of subsistence, in poverty and isolation. For those refugees who work or have worked, the key barrier to enjoy these provisions is time spent in work, where the limited time in work that the refugees usually experience through temporary employment limits their admission to the social citizenship. Exclusion from economic and social citizenship deepens the gap between refugee and local population and leads to further cycles of social and economic exclusion. Remaining jobless and destitute, the refugees fail to comply with the requirements needed for their long-term residency and naturalization, which leads to vast insecurity over their future life and status (i.e. the risk of loosing the refugee status). Furthermore, exclusion from citizenship status aggravates (cyclic) exclusion from the society and the labour market (where remaining in the publicly negatively perceived asylum status works on behalf of social and thus economic exclusion).[46] Seeking to escape poverty and isolation in Croatia (often combined with homelessness after first two years) many refugees opt to migrate to other states within the EU. While obtaining work in another country might ease the consequences of previous economic and social exclusion

[46] According to MIPEX, approximately 75% of aliens who apply for permanent resiency obtain the status. However, we do not know how many of these persons pertain to the former Yugoslav citizens/other applicants who fall under facilitated procedures and who are much better integrated and included in the labour market. Also, there is no record here on socio-economic characteristics of applicants. Even though statistics on naturalization are not publicly available, reports witness that the most of the persons acquiring citizenship are still the ethnic Croats (MIPEX, 2015).

experienced in Croatia, this strategy presumes the loss of welfare rights in Croatia,[47] as well as a risk of permanent loss of the prospect for the long-term settlement (long-term residency and citizenship) in Croatia – the country that despite all remains the country of their status and thus the country where these persons ought to claim (right to) residency and citizenship. In consequence, the majority of refugees who are not denied access to permanent settlement in Croatia due to their economic status are again denied this privilege due to the failure to comply with residence conditions (i.e. residing interruptedly in the country).

4.2. Ireland

As in Croatia, there is evidence that in Ireland acquiring citizenship and social inclusion are linked to either (or both) economic value or ethnic belonging. In fact, the marketization of citizenship in Ireland was particularly evident in a pre-1998 policy that granted citizenship to individuals that made significant financial investments in the state, on the basis of what was termed their 'Irish association'. When the system was disbanded in 1998, the Minister for Justice noted that the option to re-open it should be available should there be a change in economic or employment situation nationally (Handoll, 2012: 7-8).

The formal and structural barriers to work result in the extreme difficulty that refugees face in moving away from welfare dependency and/or a poverty trap. As with others in the lower socioeconomic demographics, low paid work (for those than can get it) for refugees does not compensate for loss of benefits such as rent allowance and a medical card. There appears to be a real fear of loss of entitlements on taking up employment (O' Grady, 2008: 10-11). The prohibition on work for refugees during their asylum process, and their inability to secure it after attaining status, is a barrier to meeting the 'Habitual Residence Condition' (HRC), required to secure a place on the publicly funded educational course or to secure forms of social protection. "One of the consequences of a policy that does not treat people as legally resident in the country is that the time spent waiting does not count towards the residency condition for educational fees or indeed towards citizenship" (Conlon, 2014: 34). Thus, newly recognised refugees are classed as new residents. The HRC is decided on five grounds: length and continuity of residence in Ireland; length and purpose of any absence from Ireland; nature and pattern of employment; applicant's main centre of interest; future intention of applicant concerned as they appear from all the circumstances. "Non-EEA nationals can be deemed habitually resident if they have been employed in Ireland for two years but this two year period is waived in some cases, especially for 'returned Irish' persons." The Department of Social Protection has argued that "that the entire class of asylum seekers cannot meet the Condition," although "Social Welfare Appeals officers have decided that some individuals who have been waiting for a decision for a long period of time do meet the Habitual Residence Condition." This results in a highly arbitrary notion of 'habitual residence, "granted to some who have recently arrived, while excluding individuals who have lived in Ireland for years and possibly their entire lives in the case of asylum seeker children. This is because of the construction of the condition in terms of a nationalist and potentially ethnic understanding of what it is to have Ireland as your main centre of interest (Finlay, 2014, as cited in Anderson, Shutes, & Walker, 2014:40-41).

The barriers ultimately result in welfare dependency for many. This hinders their likelihood of being granted naturalisation, as an arbitrary system of 'ministerial discretion' allows state officials to consider their (almost inevitable) long term welfare-recipient status in deciding whether they will be granted citizenship.

> "*In administrative practice, there is a general requirement that applicants demonstrate that they have been supporting themselves (as well as any dependants) without recourse to public funds and are in a position to continue to do so into the future. Applicants are required to submit proof of economic resources and must provide documentation regarding their employment history in the state during the*

[47] Note that the status of active job seeker implies regular contact with the Employment Bureau.

> *required residence period, as well as evidence of tax compliance from the previous financial year, information regarding their current employment status, payslips and recent bank statements. Additionally, details of any state assistance received in the three years prior to the making of the application must be provided. Applications are determined on a discretionary basis and there is no formal provision for exemptions from the financial requirements on humanitarian or particular vulnerability grounds*" (Becker & Cosgrave, 2013: 5).

While there are no statutory requirements regarding financial resources as a precondition for the granting of naturalisation, in many cases, their welfare dependency is cited as the reason why they cannot be granted citizenship through naturalisation. In fact, since 2011, the application form for naturalisation includes questions in relation to the receipt and the reasons for obtaining social assistance or other state support in the three years prior to application. Even if a refugee satisfies the HRC, the 2008 Integration Strategy makes clear that citizenship should be contingent on proficiency of skills in the spoken language (English or Irish), which for reasons outlined earlier in this report, is inaccessible for many refugees. "The 'absolute discretion' of the Minister for Justice is at the heart of the naturalisation process. Indeed, the explicit message given to would-be applicants is that 'the granting of Irish Citizenship through naturalisation is a privilege and honour and not an entitlement'" (Handoll, 2012: 13, 17, 21).

The Irish government's working group on integration of refugees has recognised the importance of work for citizenship and inclusion, as it is one of the primary ways in which people are integrated into a community and it offers the possibility of independence from the state and an opportunity to achieve a degree of self-sufficiency (Conlon, 2014: 8).

> "*… integration must be seen as a two way process which places certain duties and obligations on refugees and on the host society… The emphasis of integration policy should be on supporting initiatives which enable the preservation of the ethnic, cultural and religious identity of the individual and at the same time remove barriers which affect refugees' ability to access mainstream services. The following definition of integration was adopted: "Integration means the ability to participate to the extent that a person needs and wishes in all of the major components of society, without having to relinquish his or her own cultural identity*"" (Department for Justice, Equality and Law Reform, 2000: 9).

However, it is clear from the review of barriers to refugees seeking access to work in Ireland that pathways are not provided. On the contrary, the system which structurally and socially precludes refugees from economic integration is a deliberate construct informed by identity politics and to a lesser extent the construction of migration as a tool for economic prosperity. Refugees (as 'asylum seekers' or 'non-nationals') are presented as having no automatic *right* to be in Ireland, regardless of their protected status under international law, and are not considered to be important for economic progress (regardless of their diverse skills, qualifications and potential). These assumptions have facilitated the development of a system – through direct provision – that prohibits them from working in paid employment, and *de facto* excludes them from social protection and education even after they attain refugee status by virtue of the habitual residence condition, which does not count years in direct provision/as an asylum seeker when calculating reckonable residence in the state. A question remains as to whether racialization of 'Irishness' or economic prosperity (or a combination of both) is the primary motivator of these systems of structural exclusion (see Mancini & Finlay, 2008). If the latter, the notion of ethnicity has in any case been instrumentalised to achieve economic prosperity.

5. Conclusion

Looking forward, disaggregated data would tell us more about the real outcomes for refugees, as distinct from the wider population or from migrants in general. This is entirely lacking at present. The lack of data was

apparent in the course of conducting this research. In Ireland, voluntary and state run organisations whose mandate is to support economic integration of migrants were unable to supply any data disaggregating refugee from the rest of the population. Official data was not available, and in general was not conducted. Due to low numbers of refugees, in Croatia it is not statistical information that creates the greatest difficulty to the researchers, but rather the lack of publicly available data on integration and particularly economic integration. Thus, conducting research requires time-consuming process of collecting information from stakeholders and beneficiaries. In addition, as refugees are almost entirely excluded from the labour market, one can hardly make generalization on working conditions or experiences of those refugees who do participate in labour market. Instead, experiences here are mostly individualized.

Despite these obstacles, some suggestive conclusion can still be made. Across Croatia and Ireland, there appears to be little difference in the motivations underpinning economic integration (or lack thereof) and in the outcomes for refugees. The only significant difference is that during times of strong economic prosperity in Ireland, refugees stood a better chance of attaining work, albeit in a low-skilled position and often not in line with the individual's skills and qualifications. Interestingly, Ireland's long membership in the EU makes little difference to economic integration for refugees either. While more research is required to conclusively comment on the motivations for this exclusion, it is safe to assume that its objectives include ensuring a refugees stay does not become permanent (as was illustrated by the Irish case - the hope that they will leave in times of economic hardship or that they will remain and work temporarily in irregular and undocumented work) and exclusion from the welfare system, so that they do not gain from the national economic resources. In Croatia, decision makers made it clear that the dominant frame and benefits of membership will be defended within the realms of the citizenship regime. Indeed, citizenship policies became more restricted once Croatia adopted immigration/asylum policies required by the EU.[48]

The economic requirements to acquire citizenship critically affect refugees in Croatia and Ireland. As evident from the discussion in the section 2 and 3, the exclusion of the refugee from the labour market is of structural and political (rather than incidental) character and leads to the cyclic exclusion from the majority of (social, economic, political and symbolic) benefits afforded to citizenship. Not having work for refugees in both states implies exclusion from the social benefits of citizenship in many cases and eventually leads many of these persons to destitution which entrenches economic and social exclusion. Remaining jobless (especially in conditions of generally poor integration policies for refugees) strengthens structural barriers that causes exclusion in the first instance (due to eroded social networks, skills, confidence and increased social prejudices). In such conditions, refugees become dependent on state assistance and remain on the receiving end (Ireland) or often opt to leave the state once the state support is (largely) withdrawn (Croatia). In both cases, exclusion from work, mixed with restrictive provisions on attaining citizenship, in many cases prevents naturalization and long-term integration refugees, forcing a person to live in a cycle of permanent insecurity and exclusion.

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APPENDIX 5: CASE STUDY 4 - HIDDEN POPULATIONS – THE CASE OF DOMESTIC WORKERS IN THE NETHERLANDS

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1. Domestic work in the Netherlands

Developments in Dutch society and governmental policy are expected to have a great impact on the expansion of the market for domestic services (Commissie Diensverlening aan huis 2014). The growing labour market participation of women, for example, and the rise in the number of single and dual-earner households is likely to result in an increased demand for cleaners, house-keepers and child minders; the growing number of older people is likely to increase the demand for carers, just like the welfare state retrenchment and growing focus on self-reliance in care provision. While in general the market for domestic work is in the Netherlands still relatively limited, research by SCP shows a clear trend towards "outsourcing" of household tasks by – among others – hiring domestic workers (SCP 2013).

In the most recent report, commissioned by the Dutch government, and based on internet survey administered among 15.000 Dutch households, Panteia (2014) estimates that ca. 13% (1 mln) households in the Netherlands employ a domestic worker (defined as a non-self-employed person hired directly by a household, other than au-pair) on a regular basis. SEOR (2013) estimates that in total ca. 1.3 million Dutch households employ a domestic worker other than au pair – either formally (500 thousands) or informally (800 thousands).
The Panteia report focusing on the demand side of the market, does not mention any estimates regarding the number of providers of domestic services. An earlier estimate by CNV Labour Union (Trouw, 2006a, 2006b) suggested the presence of 1.2 million domestic workers in the Netherlands. More recently, SEOR (2013) estimated that there are ca. 435 thousand persons working in private households, 60% of which (265 thousands) is employed informally (others estimate the value of undeclared domestic work at 50% – see SEOR 2004).

Indeed, due to the informal nature of employment in domestic service sector, limited obligations with respect to the registration of domestic employee's on the part of their employers and the composition of this category of workers (including, among others, irregular migrants not willing to reveal their very existence as well as persons in receipt of benefits not willing to reveal their additional sources of income), little is known about the actual size and profile of the domestic workers population.

This report will sketch the profile of the domestic worker in the Netherlands, focusing in particular on their legal position (sections 1.2 – 1.3), their formal (citizenship) status (section 2) and the mechanisms of exclusions that affect them (sections 3 and 4). The implications of gender and ethnicity will be briefly discussed in section 6.

1.1 What is (domestic) work?

"Domestic work" as defined by the policymaker comprises all **house-keeping services** for the private household, such as housecleaning, cooking, doing and ironing the laundry, letting the dog out, shopping and collection of medicines, small repair and maintenance jobs in and around the house, car driving and gardening, but also childcare and homecare for elderly and/or chronically sick persons. While provision of domestic services usually takes place in or around the house of the employer, it may also comprise work performed (occasionally) outside, such as childcare which can take place also in the house of the carer (Kamerstukken II 2006/07, 30 804, nr. 3).

Since 2007 reforms in **homecare provision**, "domestic work" encompasses as well the state subsidised household assistance provided under Social Support Act (WMO; now WMO 2015) and healthcare at home financed under the Exceptional Medical Expenses Act (AWBZ), either in the form of care in-kind (*zorg in natura*) provided by certified professional homecare institutions (*thuiszorginstelling*) or care provided by a person chosen by the client and paid for from their personal care budget (*persoonsgebonden budget* - PGB). Both types of care can be offered to clients on the basis of medical indication issued by a certifying institution. The actual homecare workers (so-called *Alpha- helpers*) can be employed directly by private service users (individuals, households), by the private service users via the intermediation of professional care institutions or by the professional care institutions themselves.

"Domestic work" includes as well **childcare** provided at home by so-called host parents (*gastouders*) – employed either directly by the household or via an intermediary host-parents organisation. In both cases, the cost of childcare – if declared – can be tax-deductible and thus indirectly subsidised by the state (cf. van Walsum 2013).

Finally, **"au pair"** constitutes a particular form of live-in and – per definition migrant, domestic help, most often related to care of young children. Still, it is officially defined in terms of "cultural exchange" and not (domestic) work.

1.2 How is domestic work regulated?

In the Netherlands, domestic work is implicitly assumed to be part time and as such regulated predominantly by ***Regulation on Household Services* (*Regeling Dienstverleging aan huis*).** [49] Introduced in 2007, the *Regulation* applies to the provision of personal and household services for *no more* than three days a week per household. Thus it defines the "part-time" from the point of view of the service user and not the service provider, who might be working for more than one household and constitute in fact a "full-time" domestic worker. According to the *Regulation*, a domestic worker is entitled to a limited range of social rights and limited labour protection.

Differences encompass:

- **exclusion from participation in social security schemes**: since their employer is under no obligation to withdraw income tax or pay employee's insurance premiums, domestic workers are not entitled to disability or unemployment benefits and do not participate in private old-age pension schemes unless they have insured themselves voluntarily (as all inhabitants of the Netherlands, they would be still entitled to a flat-rate state pension);
- **limited length of paid sickness leave** (wage paid for up to 6 consecutive weeks as compared to 104 regular employees are entitles to);
- limited right to written contract and job description; still to acquire the rights of a domestic worker, one does not need to have (signed) a written contract – legally, any agreement between the partners to deliver work/services in exchange for money is a "work contract";
- limited protection against dismissal; for example, their employers may terminate contracts

[49] ***Regulation on Household Services* (*Regeling Dienstverleging aan huis*)** was not the first to regulate the market for personal and household services. It replaced regulations which were deemed ineffective. Its primary objective was to help expand the market for private cleaning services and thus enable/stimulate the labour market participation of low educated groups. Other goals included: the formalisation of undeclared work and boosting the labour market participation of those who hire private domestic workers. For a detailed history of domestic work regulation see Bijleveld and Hartman (2010); for a brief English language summary see Eurofound (2009).

without applying for a permission of Dutch labour authorities.

The *Regulation on Household Services* applies to domestic workers (Alpha-helpers, host parents) employed directly by individual households as well as those who are employed via an intermediary institution and actually linked to it administratively and fiscally. This counterintuitive and ambiguous construction was introduced following the 2007 reforms in homecare provision, which pushed huge numbers of Alpha-helpers out of salaried employment at homecare providing institutions (*thuiszorginstelling*) into the precarious position of part-time domestic workers. Despite the intermediation and administrative involvement of the homecare institutions[50], Alpha-helpers were considered the employees of private care users and as such subjected to *Regulation on Household Services* (*Regeling Dienstverleging aan huis*) even if the care user was actually unaware of his/her role as an employer and/or unable to perform it (cf. Bijleveld and Cremers-Hartman 2010; van Walsum 2013). The construction allowed dumping the prices of care provision at the expense of Alpha-helpers.

Only recently the jurisprudence which repeatedly pointed to the existence of a de facto employment relation between the intermediating institutions (cf. Bijleveld 2015) employees of the care sector led to an official agreement[51] that is bound to (partly) improve the situation of Alpha-helpers. As from 2017 care users can choose either for care-in-kind provided by external institutions or personal budged (PGB) to buy the care they need themselves. While care-in-kind can be provided only by workers officially employed by a professional homecare providing institution (*thuiszorgintelling*), the PGB-financed carers are the employees of the care user him/herself and – if employed for no more than three days a week and regardless of whether or not they are employed via/with mediation of an intermediary care providing organisation – subjected to *Regulation on Household Services* (*Regeling Dienstverleging aan huis*) or self-employed. It is unclear how the agreement will affect the host-parents working under very similar legal framework (yet much more limited in number).

Regular labour law provisions apply to domestic workers who are employed for more than three days a week in the same private households and those officially employed by external service providing organisations, such as care institutions. As employees of intermediary organisations, domestic workers are considered regular employees and as such entitled to a whole range of social rights and labour protection. The employer is obliged to withdraw income tax on their behalf and to pay employee's insurance premiums. This guarantees being insured against incapacity to work and unemployment as well as participation in a private old-age pension scheme. This also means protection from unjustified dismissal, right to paid holiday rest, paid sickness leave, paid maternity leave, paid overtime, etc. In practice, however, this relates to a very limited number of domestic workers and virtually no Alpha-helpers or host-parents.

***Au-pair* regulations** apply to live-in migrant domestic workers who enter the country within the framework of 'cultural exchange' to live with and work for a Dutch family for a limited period of time (maximum of one year). Of relevance here are regulations stipulated in Modern Migration Act (*Wet Modern migratiebeleid*) and Foreign Workers Act (*Wet arbeid vremdelingen – Wav*). Even though they live and work in private households, *au pairs*

[50] The intermediaries often perform multiplicity of roles; they: (1) act as brokers between employees and employers, (2) administer all the payments and income-tax of the domestic workers, (3) set the rates and standards, (4) monitor the quality of provided services and (5) mediate in case of conflicts (cf. van Walsum 2013).

[51] Agreement between the government, municipalities and social partners was achieved on December, 4th, 2015.

are employed via certified agencies obliged to protect their rights.[52] The work of *au pairs* is strictly regulated: they are allowed to carry out only light household tasks that do not require specialists skills (in particular, they are not allowed to care for people with special care needs), for a maximum of 8 hours a day and 30 hours a week and in exchange of bed and board and pocket money that cannot exceed the administrative limit.

1.3 Types of domestic workers in the Netherlands and their social rights

In general, several types of domestic workers can be distinguished depending on (1) who their employer is (external intermediary organisation vs. actual user of their services - private household), (2) legal basis of their employment: formal vs. informal and/or (3) source of financing (i.e. co-financed by the state or paid solely by the private employer). While all domestic workers perform similar type of work, their wage as well as social and labour protection depend very much on those three elements which define their employment status. SEOR (2013) distinguishes four types of domestic workers in the Netherlands:

Employees of an institution providing (care) services: these are predominantly the so-called Alpha-helpers (*Alphahulp*) that provide personal and household assistance to persons with health-related limitations and elderly on the basis of medical indication issued by a certifying institution. Their wages are subsidised by the state either via personal care budget (PGB) or alphacheques[53] transferred by the municipality to the entitled individual/household or the institution providing the beneficiary with care-in-kind. Even though they provide their services in private households, the Alpha-helpers remain the employees of the intermediating institution and as such are regarded regular workers, subjected to regulations of the labour law and entitled to the same social rights as all the other regular employees.

This category comprises as well cleaning-staff employed in individual households by intermediating companies. According to Da Roit and van Bochove (2014), there is evidence of the increasing importance of cleaning companies contracted by municipalities to provide support to people in need of care.

Also a limited number of host-parents employed in intermediating institutions fall into this category. While their work is not subsidised in the form of direct money transfers or service cheques, households employing host-parents may request tax-deductions (SZW 2015; van Walsum 2013).

Individual household employees subsidized by the state: these are Alpha-helpers hired by elderly or disabled people to perform household care for a maximum of three days per week. Their wage is (co-)financed through

[52] WODC (2014) research shows that agencies financed de facto by the host families, tend to represent their interests and not necessarily protect the au pairs. Also, the vulnerable (migrant) position of au pairs and fear of being expelled from the country often prevents them from filing a(n official) complain.

[53] Personal care budget (PGB) is a sum of money awarded to eligible individuals to purchase the care/ assistance they need. It was introduced to shift the balance of control from care providing agencies to the actual users/end beneficiaries of those services. The money transferred to the beneficiary's/client's bank account; the client is free to purchase the care services from a health care provider but also from any person willing to provide the service. Since the beginning of 2010, voucher systems – "*Alfachèque*s" – have been also introduced in several Dutch municipalities to replace "care-in-kind" (provided by the municipalities via external professional homecare institutions). Municipalities distribute these vouchers to people entitled to WMO benefits. The amount of care (hours) and number of vouchers the beneficiary is entitled to is determined by the municipality and depends on their personal circumstances. With the vouchers, beneficiaries can hire an Alfa worker of their choice. One voucher of €12.80 can be exchanged against one hour of domestic work. This amount includes the holiday allowance and the paid holiday leave. The beneficiaries may need to pay a contribution per voucher according to their level of income. Alfa vouchers provide better control for the municipalities by guaranteeing the vouchers can only be used to pay for services of Alfa workers.

personal care budget (PGB) or alphacheques. According to the estimates of Panteia (2014), 100.000 households employ Alpha-helpers.

Also host-parents employed directly by individual households fall into this category. While their work is not subsidised in the form of direct money transfers or service cheques, households employing host-parents may request tax-deductions (SZW 2015; van Walsum 2013). According to estimates, this groups consists of 8.000 workers (Commissie Dienstverlening aan huis 2014).
Both the Alpha-helpers and host-parents (*gastouders*) employed directly in households are considered domestic workers and subject to the *Regulation on Houshold Services* (*Regeling Dienstverleging aan huis*). Persons employing them are exempt from any social contributions and taxation, layoff authorization or any other administrative obligations. As a consequence, Alfa-helpers and host-parents are excluded from a number of social benefits and deprived of labour rights granted to regular workers (for details see section 1.2), even though the services they provide are subsidised by the state. In 2014, the parliamentary commission on domestic work (commissie Dienstvelening aan huis) concluded that this is unacceptable: workers employed from public funds should not have a lower status and fewer rights than other employees. So far, however, no changes in the legislation have taken place.
Individual household employees financed privately: this category encompass all kinds of domestic personnel employed directly by private households and financed entirely from private means providing they do not work more than three days a week. It may include persons **employed formally** on the basis of a formal (albeit not necessarily) written contract (NB an example of such a contract has recently been published on the site of the Dutch government). Their employment is then regulated by *Regulation on Household Services* (*Regeling Dienstverleging aan huis*) (for details see section 1.2). Majority of workers in this category is, however, **employed informally** (ca. 60%) and deprived of any social protection. See Table 1 for a summary of the various forms of employment and categories of workers.

Table 1. Types of domestic workers

	Formal market		**Informal market**
	Via agency/institution	**Directly by household**	**Directly by household**
Fully protected	Regular salaried workers of the intermediating institution	Domestic workers employed for more than three days a week	
Partially protected by Regulation on Household Services	Domestic workers employed by individual households via intermediating institution (income taxes declared by the intermediary)	Domestic workers employed by households (income taxes declared by the workers themselves)	
Unprotected			Domestic workers employed by households (income taxes undeclared)

Exceptional here is the category of **au-pairs:** these are foreigners, usually young females, willing to become live-in workers in a Dutch household for a period of maximum one year. They enter the country within the

framework of 'cultural exchange' and, if applicable (for TCN), need to be in possession of a regular provisional residence permit (*mvv*) issued upon the request and application of their authorized sponsor – a recognized au pair agency. In order to be granted the entry and/or residence rights the au pairs and their host families have to meet a number of conditions, most of which are related to the character of the (labour) relationship between them. A (long-term) labour relationship between the au pair *in spe* and the host family is in principle out of question. For example, the host family of the au pair cannot arrange for the au pair without the intervention of an authorized agency; the au pair may not have worked for the host family earlier (e.g. abroad) and cannot enter the country for the same purpose (i.e. within the framework of 'cultural exchange') again; and the stay of the au pair in the Netherlands cannot exceed one year. A recent report on au pairs in the Netherlands concluded that, considering the actual conditions of their stay and term of work, close to 1/3 of all au pairs could be considered as de factor domestic workers (WODC 2014; see also CFMW Research Report on Migrant Domestic Workers (MDWs) in the Netherlands, December 2005, quoted in Gallotti, 2009).

2. (Formal) status of domestic workers

Who does domestic work?

Official research reports (SEOR 2013, Panteia 2014) are very careful in sketching the profile of the domestic worker in the Netherlands. Still, most researchers seem to agree that domestic work is predominantly performed by low educated females between 35 and 64. For half of them domestic work is a side job to supplement the income of her breadwinning partner, the other half is depended on their income from domestic work. The latter is particularly true of (undocumented) migrants.

It is not clear how much of domestic work is performed by migrants, TCNs in particular. The strict migration law requirements make the regular employment of non-EU workers as domestic workers in the Netherlands *de facto* impossible (Lepianka, 2014; Gallotti, 2009:29-30).[54] Most of TCN employed in domestic sector are therefore hired informally. The informal employment coupled with the often unregulated status of the migrants domestic workers make the estimates particularly difficult to make. Alleged abuses of au-pair schemes and the practice of [ab]using au pairs to obtain low cost domestic services further blur the picture.

[54] (Potential) workers who are third country nationals, can enter the country only once they have been granted a regular provisional residence permit (*mvv*) that is issued upon the request of their prospective employers, who remain their (un)authorized sponsors. Moreover, to actually obtain the regular provisional residence permit, the 'regular salaried worker', 'seasonal worker' and a trainee has to be in possession of a *work permit in their name.* The application for a work permit has to be submitted by their prospective employer. However, such a work permit is issued under the condition of the 'essential interest of the Netherlands'. This means that in order to obtain the work permit for a specific employee, the employer has to demonstrate that – upon having advertised the opening for at least five weeks (of longer, in case of some jobs) – they have been unable to find suitable personnel in the Netherlands or elsewhere in Europe. Moreover, with respect to specific categories of foreign workers or jobs, a limit (quota) of work permits might be imposed. Since provision of household services does not require skills that would be deemed difficult to find in the Netherlands and/or other EU member states (domestic work is considered unskilled work that can be performed by any unemployed unskilled worker), it is currently impossible under Dutch immigration legislation to obtain a work permit to perform household services. Since obtaining a residence permit is often contingent upon employment, migrant domestic workers find themselves in a vicious circle. Not able to receive a work permit, they are unable to work legally and thus effectively execute the social and labour rights they are entitled to on the basis of existing legislation (in principle, the same rules apply to domestic workers working in staying in the Netherlands legally and those who are not in possession of a residence and/or work permit). Moreover, while working without a permit is not punishable in itself, there is a risk of being expelled to the home country when caught. Furthermore, not working legally, migrant domestic workers are unable to obtain a residence permit that would allow them to regulate their stay in the Netherlands and to enter labour market as regular employees in the future.

Nevertheless, in 2006, the CNV Labour Union (Trouw 2006a, 2006b) estimated that 20% of the 1.2 million domestic workers are of foreign origin and that 60-70% of them is undocumented. While Panteia (2014) does not provide any specific figures, the researchers do recognize that migrants, some of whom are irregular/undocumented, constitute one of the three main groups of providers of domestic services in the Netherlands. In her research on undocumented migrant and informal labour, van Meerten (2013) reports that out of 209 irregular migrants interviewed for her study , 90 (43%) perform some form of domestic work (e.g. as domestic assistance, cleaner or babysitter). Also Botman (2011) concludes that most of domestic work in Amsterdam is actually performed by (undocumented) migrants (cf. Bijleveld 2015). While most of the studies are conducted on non-representative samples, the consistency of the results seem to indicate that the amount of domestic work performed by migrants might considerably exceed official estimates (cf. van Walsum 2013). It is suggested that there might be differences in the ethnic composition of domestic workers between the big cities and the countryside, with the latter relying more on native Dutch workers.
Da Roit and van Bochove (2014) draw attention to a potentially growing (albeit still very limited, at least in comparison with other European states) number of migrants employed in home care provided via intermediating agencies, such as cleaning companies contracted by municipalities. As observed by van Walsum (2013), these companies typically have a higher incidence of migrant workers even though these might be more often second-generation rather than foreign-born migrants (cf. Da Roit and van Bochove 2014). Da Roit and van Bochove (2014) also highlight the first signs of the emergence of a market for live-in migrant care workers as reflected in the growing media interest in this supposedly "growing phenomenon"[55] and expert studies/scenario's on the future of Dutch elder care. Interesting here is an idea of Zaupair (an au pair with the "Z" for "zorg" –*care*) as an important component of future Dutch (elderly) care provision. Considering the current au pair regulations, such a scenario, implicitly, assumes temporariness of the employment relation and thus treats the (future) migrant carers as guest workers not necessarily welcome to settle.

It is important to know that there are significant differences between the legal position of migrant domestic workers with and without an EU/EEA or Swiss passport. As reported in Lepianka (2014), the citizens of EU/EEA countries and Switzerland are allowed to reside in the Netherlands for up to three months without any employment (or an official sponsor) and are permitted to take-up any employment available. Still, not being formally employed puts them in a vulnerable position. For example, when an EU/EEA or Swiss subject without permanent residence rights claims welfare, i.e. non-insurance based provisions, their legal residence in the Netherlands may be terminated. Only after having obtained a long-term residence right (after ca. 5 years of uninterrupted residence), they can lay a claim on public funds without the danger of losing their residence rights.

Lack of hard data on migrant domestic workers might reflect not only the wish of the migrants to remain unnoticed[56] but also the wish of the authorities to downgrade the problem and/or do not enter the migration/illegality debate (see e.g. Advies Commissie Dienstverlening aan huis 2014:11). Some researchers and migrant organizations do raise the issue of the invisibility of migrant domestic workers in the Netherlands (see Bijleveld and Cremers, 2010; CFMW Research Report on Migrant Domestic Workers (MDWs) December 2005, quoted in Gallotti, 2009). Indeed, the current policy debate regarding a reform of current domestic work

[55] Da Roit and van Bochove provide an example of the TV-program 3Onderzoekt (January 2014), in which various care assistants from Hungary were interviewed. "The journalists concluded," report the authors, "that migrant care workers – or "care Hungarians" (zorg-Hongaren) [sic!], as they called them – might be the best solution for the future of Dutch elderly care" (2014:8). Tellingly, the interviewed live-in care workers and the future of the care system were European.

[56] Bijleveld (2015) reports on the increased policing of undocumented domestic workers between 2010 and 2015 (see pages 42-43).

legislation and possible policy options (incl. mini-jobs or service checks), by focusing on the formalization (and taxation!) of the current domestic employment_arrangements, which is only possible if the employee has a right to reside and work as domestic help in the Netherlands, excludes from the possible beneficiaries of the improved legislation the migrant domestic workers with no residence and/or employment rights.[57]
Still, as noted by van Walsum (2011; 2013), migrant domestic workers have become increasingly vocal in the Netherlands. Supported by the trade unions (Abva Kabo and FNV-Bondgenoten), they campaign for a better legal position with respect to labour law, social security benefits and residence rights.

3. Inclusion/exclusion from the formal labour market (protection)
As shown above, within the Dutch legal system, domestic workers are not treated as regular employees and thus enjoy only partial social and labour protection, if any. The inattention to their rights as employees has long been justified by the "official" (assumed?) profile of the domestic worker – a woman working a few hours a week to supplement the income of their breadwinning husband – and the assumption that – as a wife – she had no need for protection against loss of income as a result of dismissal or illness (cf. van Walsum 2013). In fact then, the exclusion of predominantly female domestic workers from employment-related social protection was justified by their dependent position.

Exclusionary mechanism were deepened by the already mentioned reforms in home care provisions that occurred in 2007 (under the Social Support Act – WMO, and the Exceptional Medical Expenses Act - AWBZ) coupled by the introduction of (new) Regulation on Household Services, which pushed home care workers (Alpha-helpers) out of regular employment in care institutions into the precarious domestic workers' status. Due to the economically motivated reforms (i.e. the need to lower the costs of institutional homecare provisions), many homecare employees lost their jobs, others continued performing exactly the same duties, for the same end service users, yet under very different terms of employment and limited social and labour protection offered by the *Regulation on Household services* (CEDAW 2009; Bijleveld and Cremers-Hartman 2010). Remarkably, as noted by the advocacy organisations, changes which affected thousands of female home care workers had never been discussed in term of their gender impacts (CEDAW 2009; see also section 5 of this report). In fact, then, the needs and interests of the service providers were not only ignored but effectively kept out of the agenda (Bijleveld and Cremers-Hartman 2010).

A very different example of the inclusion-exclusion paradox is supplied by the practice of "placing" undocumented migrants as informal domestic workers in private households in order to facilitate their participation and integration in the Dutch society. Practiced by some NGO's involved in providing assistance to undocumented migrants (van Meulen 2015), such "placement" is considered the best – if not the only way – to realise the state's policy goals of facilitating activation, participation and self-determination of a vulnerable population group (ibid.).

Finally, the abuse of au pair system, in which ca. 30% of au pairs work de facto as domestic workers (work more than expected under the au pair regulation and do not live on equal terms with the rest of the family as intended by the scheme) and further 12% work more than expected while still meeting the basic objectives of the scheme (i.e. to get to know Dutch society and culture), clearly shows the ambiguous position of au pairs.

[57] In principle, the Regulation on Home Services applies to undocumented migrants as well – working without a work permit is not in itself punishable and it is the employer and not the employee who has to pay a fine, if caught. Still, the threat of being expelled from the country stops undocumented migrants from executing their rights (see Bijleveld and Cremers-Hartman 2010; Bijleveld 2015).

Indeed, as asked (rhetorically) by the authors of the WODC report, why is "cultural exchange" linked to 30 hours of work rather than an (obligatory) language training? (WODC 2014:91).

4. (Implicit) hierarchies of deservingness

The implicit hierarchies of deservingness can be deducted from the imbalance between the interests of the "demand" and the "supply" parts of the domestic services market as revealed not only in the legal regulations which privilege the employers over employees but also in debates surrounding the very design and implementation of current policies. In general, political arguments justifying the limited (social) protection offered to domestic workers or the under-regulation of domestic service market focus explicitly on the **rights and needs of the employers**, on the one hand, and **the economic and financial interests of the state** on the other. It was argued, for example, that obligatory social insurance of domestic workers would be constitute too much of a burden for the employer and the state administration and that the increasing costs of the domestic work would push it out of formal economy (and out of the rich of the tax system) (cf. Bijleveld and Cremers-Hartman 2010).

Regulation on Household Services in its current shape (i.e. exempting domestic workers from the status of regular workers and thus depriving them of a number of social and labour rights) was originally seen by policy makers as a means to stimulate the market for home services (Kamerstukken II 2006/07, 30 804, nr 3) and – by increasing the demand for such services – to boost the labour market participation of both: the unemployed and their (female) employers. The absence of administrative burdens and law costs was supposed to increase the attractiveness of hiring a domestic worker to the better-off members of the society (usually women), who could then freely engage in labour market (implicitly: as regular, i.e. fully protected employees). Paradoxically, then, the dis-privileging of some (the already worse-off) was considered necessary to boost the economy, but eventually and – indirectly – led as well to the increase in the well-being of the already better-off.

As observed by van Walsum (2013), interesting in the debates is also the emerging discourse of entrepreneurship, in which the figure of a dependent housewife supplementing the family income with some odd jobs (implicitly: of little substance) has been replaced by a figure a quasi-self-employed domestic worker daring to grab his/her chance on the growing market of household services (p.164).

The market logic continues to inform many of the current policy debates. In May 2013 a Commission Domestic Service Provision (*Commissie dienstverlening aan huis*) was established for a period of 10 months in order to – among others – develop different policy models that could – if needed – improve the position of domestic workers in the Netherlands and enable the ratification of the ILO Domestic Workers Convention (189) aiming to improve the working conditions of domestic workers. Eventually, in 2014, the Commission recommend the non-ratification of the ILO Convention because of its high costs. Also other initiatives to improve the legal position of the domestic workers in the Netherlands were rejected by the government as bringing too high costs to either the state, or the employers (the private households) and/or the employees (domestic workers themselves) and as such posing the danger of further informalisation of the domestic service market. A governmental proposal to improve the position of domestic workers contained instead a tax reform ensuring the lowering of labour costs and envisaging tax rebates and premiums to the employers of domestic workers (Ramos Martin 2015).

5. Ethnicity and gender

As observed by van Walsum (2011; 2013), while in the Netherlands home-based care and household services have traditionally been organized along the gendered fault line between paid and unpaid labour, recently other fault lines that distinguish citizens from aliens, and the dominant ethnic group from ethnic minorities, have become more significant.

In 2009, Dutch NGO's estimated that the total number of female domestic workers not entitled to the same social rights as other workers varied between 200.000 and 300.000, of which at least 150.000 were in jobs indirectly funded by public social and health schemes (CEDAW 2009). Yet, as noted by Dutch NGO's, neither the fact that domestic work is predominantly women's work nor the popularity of domestic work among (undocumented) migrants in the Netherlands has been properly reflected in political debates (cf. Vereniging Vrouw en Recht 2008; CEDAW 2009; Bijleveld and Cremers-Hartman 2010; van Walsum 2013). As already noted, in the past, changes in the rules of home care provision (e.g. AWBZ law and WMO) – even though particularly relevant for women, were brought about without an assessment of the gender impacts. Currently, the issues of gender and ethnicity – and in particular – the unregulated migrant status of many domestic workers are raised by social partners: NGOs (Vereniging Vrouw en Recht) and labour Unions (incl. ABVAKABO FNV) (cf. debate reported by Vereniging Vrouw en Recht 2008) (cf. van Walsum 2013).

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APPENDIX 6: CASE STUDY 5 – BEGGARS AND BEGGING (UK & CROATIA)

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Introduction

One of the challenges of WP10, the examination of insiders and outsiders, is that we remake boundaries between the insider and the outsider, the citizen and the migrant, even as we subject these boundaries to analysis. This has long been recognised as a problem of social theory, and the problems associated with taking policy categories as analytic categories are particularly marked with matters of migration and citizenship because of social science's tendency towards 'methodological nationalism' or 'the assumption that the nation/state/society is the natural social and political form of the modern world' (Wimmer and Glick Schiller, 2002: 302). As Wimmer and Glick Schiller have pointed out, nation building, immigration restrictions, and the preoccupation of the social sciences with migration are deeply imbricated. This creates opportunities, but also ethical and intellectual challenges for academic researchers interested in migration who are interested in interrogating policy categories and their consequences without reifying them, particularly if they want to have an impact outside academia.

We have chosen to study beggars as a case study for the purposes of looking at the ways in which labour of specific groups are excluded from labour markets. This is because the beggar crosses the migrant/citizen divide. Beggars are a socially excluded group consisting of both citizens (national and EU) and non-citizens. The beggar can encompass the non-migrant, the vagrant, the outcast the person who formally belongs to or is well known to the 'community', but who does not belong to 'the community of value' (Anderson 2013). Beggars trace the boundaries of belonging both of the nation and of the 'community of value', and looking at the figure of the beggar enables us to examine mechanisms of inclusion, exclusion and differential inclusion without reifying the figure of 'the migrant' or 'the citizen.' It enables us to use the same lens to examine the migrant and the citizen and is particularly important at a time when we may be witnessing the emergence of new typologies and intersections of justice/begging/citizenship as a result of the migrant/refugee crisis, and of the simultaneous retrenchment of the welfare state and the shrinking of income sources for a majority of EU citizens. It also enables us to examine exclusions within a historical context, as there is a rich historical literature on the beggar.

Furthermore, beggars are very much a 'hidden population' albeit one that is 'hidden in plain sight', as there are few European cities which do not have spaces where begging takes place, and indeed it is becoming an observable phenomenon in states such as Norway and Sweden where it has been relatively uncommon for decades (Djuve et al., 2015). Few EU citizens will not have walked past beggars, though many may not have given to them. Nevertheless, data (other than enforcement data) are hard to come by, for while 'begging' is recognised as a daily social phenomenon and is often policed as a potential offence, research and analysis in contrast tend to approach begging as a symptom of other issues: homelessness, culture, substance dependence etc. meaning that contemporary studies of begging per se are very few. What exists is often city specific and not linked to the substantial historical literature (exceptions include Dean 1991, Grah 1983; Hrvatić 2004; Kovačić 2012; Mucko 2009; Vojak 2005). There have also been very few attempts to link begging to labour markets, and these attempts have all been academic rather than policy motivated (Dean, 1999).

For these reasons we believe this topic is a fascinating site for the examination of the nature of citizenship (Anderson, 2013; Dean & Gale, 1999).

Methodology

The liminality and fluidity of what constitutes begging has contributed to the surprising research lacuna in contemporary Europe. What counts as begging and who counts as a beggar is not uncontested. We did not approach the beggar as a unified subject and, unusually for social science research we did not begin by attempting a clear definition, but rather sought to understand different people's understandings of what

constitutes begging. Not all requesting assistance or monies seems to count as begging, indeed sometimes it constitutes putting in a funding application? Often it seems begging is what a beggar does.
The aim of this report is to contribute to WP10's deliverable D10.3 which will describe the ways in which the labour of specific groups (e.g. prisoners), or specific types of labour (e.g. interning), are excluded from labour markets in the various member states. We set out to answer the guiding questions established for all case studies making this contribution viz.:

1. What is 'work' and how are types of work, types of workers, and employment relations underpinned by processes of differential inclusion/exclusion?
2. What are the disjunctures between formal citizenship and inclusion?
3. What is the relationship between differential inclusion, formal citizenship, and the labour market?
4. How do hierarchies of deservingness and belonging underpin processes of differential inclusion/exclusion?
5. How do these processes and hierarchies reflect divisions of gender, race/ethnicity, class etc?

The choice of case study means that we make a particular contribution to 1, 2 and 4.
This report comprises a UK case study, supplemented by a research report produced by the Croatian team following a suggested template by the co-ordinator (see Appendix 1 and Appendix 2). The UK team benefitted from additional resources from a successful grant application on '*Begging, work and citizenship'* to Oxford University's John Fell fund which enabled us to conduct interviews with key policy stakeholders working in the field. A total of 11 interviews were carried out with key actors working at policy level and on the front line with beggars (e.g. outreach workers, a London council, the police), focusing on a London borough with high rates of begging. Interviews were semi-structured and conducted between September to December 2015. Interview data was thematically analysed (details in Appendix 3). We also commissioned a legal review conducted by Nuala Mole at the AIRE Centre. This focussed on the legal framework governing begging in the UK, Netherlands, Ireland and Spain, but also included some information at the EU level (Appendix 4).

Given the interdisciplinary and wide ranging nature of the literature on begging and vagrancy we first conducted a scoping study (Arksey and O'Malley, 2005) guided by the above research questions. This was then developed into a more focused literature review of academic and grey literature examining work on begging in the UK and in Croatia. Additionally, we conducted a brief analysis of media coverage of begging and citizenship in the UK (Appendix 5). Following John et al. (2013) and Soroka (2006) we selected one national newspaper, *The Times* as a measure of media agenda over time to explore media framing of begging. We used Factiva to carry out an analysis of the content and frequency of articles in *The Times* which referred to (begging OR beggar) and related issues[58] for the time period 01/01/2004 – 31/12/2014.

While following the structure set out by the research questions, we have amended the questions somewhat to accommodate the particular insights of our case study. Thus the report explores

1. What does begging tell us about the way that work is imagined?
2. What does begging reveal about inclusion and belonging?
3. How do hierarchies of deservingness and belonging underpin processes of differential inclusion/exclusion?
4. How do these processes and hierarchies reflect divisions of gender, race/ethnicity, class etc?

We have integrated some of our findings from a review of the historical literature on begging into the report as a whole.

[58] Owing to the word beg also being used idiomatically, we had to use a combined word search in order to eliminate as many irrelevant articles as possible.

Begging in the UK: context

In Britain, in England and Wales, but not Scotland, begging is regulated under the Vagrancy Act 1824. Under this Act begging is illegal, and is an arrestable offence. While it is not imprisonable with the maximum penalty upon conviction a fine, those who do not pay the fine may be subject to imprisonment. In 2014 prosecutions for begging under the Vagrancy Act in 2014 increased by 70% across the UK. According to Crown Prosecution Service figures there were 2,771 cases brought before magistrates courts in England and Wales under section 3 of the Vagrancy Act, which deals with begging, in 2013-14, compared with 1,626 the previous year. Some areas showed particular spikes, with Merseyside and Thames Valley increasing by 400% (Waugh and Pidd 2014: http://www.theguardian.com/society/2014/nov/30/begging-prosecutions-increase-england-wales).

This data was available via a Freedom of Information request, as data on begging is not routinely collected and/ or publicly available. Some data on begging is available from the Combined Homelessness and Information Network (CHAIN)[59]. Anyone that is encountered by outreach teams is asked a range of set questions so as to create their CHAIN profile. One of those questions is about whether or not they beg. Pan London CHAIN figures show that 80% of those identified in London as begging also identified as having an alcohol or drug support need. It should be noted that while begging in the UK tends to be dealt with tangentially as related to homelessness, an FOI request from the BBC Breakfast Team found that 20% of people arrested for begging in 2014 were deemed legally homeless at the time of their arrest, meaning the majority were not homeless[60].

What does begging tell us about the nature of work?

For centuries begging has been associated with escaping labour, that is as the opposite of work, and for centuries begging has been treated by ruling authorities as acceptable only for those who cannot earn their living in other ways. This is a field of study in itself, but to give two examples from areas which now are in the territories of our states of interest: Early English Vagrancy Statutes punished the giving of alms to 'valiant beggars' who 'as long as they live of begging, do refuse to labour, giving themselves to idleness and vice, and sometimes to theft and other abominations' (Ordinance of Labourers 1349); while the 1783 Edict of Emperor Joseph II prohibited begging for Roma if they were capable of earning a living in other ways (Hoffmann, 2016). It is important to recognise however that in contrast to feudal lords, emperors and kings, religious teachings typically held that, from the point of view of the *donor* alms giving was a charitable requirement, and to forbid alms giving to a group of people meant challenging deeply socially embedded norms about poverty, charity and obligations of to others. It was for this reason that the English Ordinance mentioned above for instance asked religions 'to exhort and invite their parishioners by salutary admonitions, to labour'.

Begging continues to be characterised by some as purposefully choosing not to work, that is as idleness or doing nothing. Indeed, the majority of respondents expressed the view that begging was not work, but a form of manipulation of the goodwill of the passer-by. It is imagined as a lack of activity:

> Most begging is passive, the person usually sitting with some form of cup or receptacle in front of them and sometimes a sign saying hungry and homeless
> DTLR 2001, cited Crisis 2003

For this reason begging has been described as a 'passive activity' (Crisis 2003), a deeply contradictory phrase that is perhaps designed to counter fears of 'aggressive begging'. Thus to prove that they are deserving of alms

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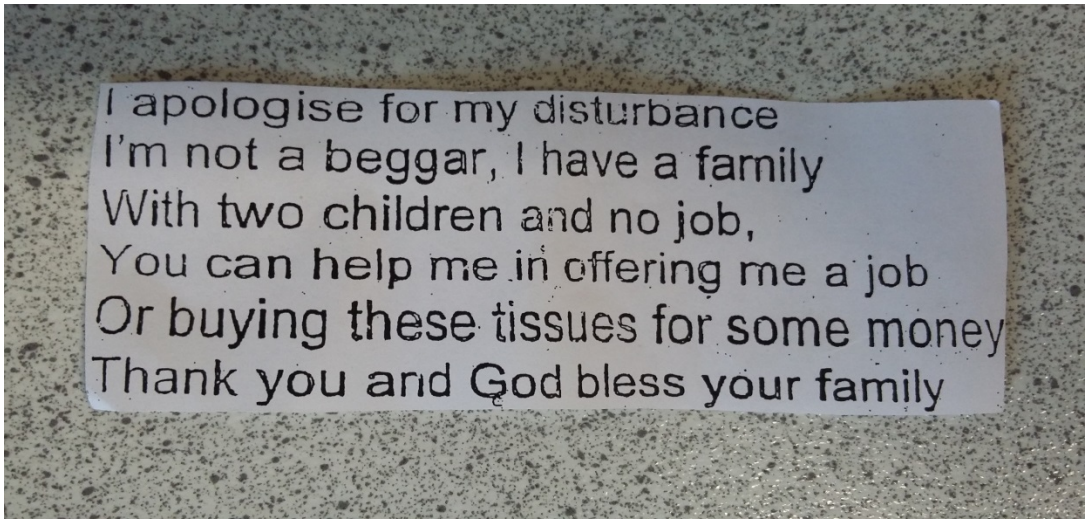
[59] The CHAIN database is a multi-agency database recording information about rough sleepers and the wider street population in London. The system, which is commissioned and funded by the Mayor of London and managed by St Mungo's Broadway, represents the UK's most detailed and comprehensive source of information about rough sleeping. For further information see: http://www.mungos.org/chain

[60] http://www.bbc.co.uk/news/uk-33729766

some people emphasise that they are not purposefully idle, and how this is done depends on what is culturally appropriate. In Croatia for example, men who beg often display their medical diagnoses, carrying crutches, or prominently displaying amputated or prosthetic limbs (Hoffmann 2016). In contemporary UK, it is an offence to obtain alms by the exposure of wounds or deformities. In London it has become increasingly common for young women on tubes and trains to hand out packets of tissues accompanied by notes explicitly stating that they are not begging (and therefore not idle):



Notably, the fact that she has two children is not sufficient to demonstrate deservingness (unlike in Croatia, where women begging with children are 'acceptable' beggars) though it does indicate need, and she must also emphasise that she is prepared to take a job. In our interview with British Transport Police this was held to be a technique to avoid arrest for begging. Such activities are technically not considered begging but rather unauthorised selling, which is a by-law offence and thus non recordable.

The complexity of the relation between begging, economic activity and deservingness is compounded by its relation with performance. Some types of performance are recognised as performance and are therefore constructed as work and not begging. People who paint themselves white and stand motionless for example might be doing nothing, but they are not begging even if they don't move when you put money in their hat. In English law, buskers are not considered to be beggars because they provide an entertainment "service" in return for which they solicit donations thereby giving "value for money".[61] In many places buskers have to be licensed and in the most popular locations often have to pass an "audition", which assesses the quality of their performances before they are granted a licence. In our interviews some respondents distinguished between begging and busking on the basis of the 'quality of the performance'; with a poor performance being equated with begging. Interestingly however, and, in contrast to most other activities, if beggars are perceived to be acting 'professionally' this indicates disapproval not approbation (Dean, 1999). While certain types of performance can be work and not begging, when begging itself is classed as being 'like work', it seems to be viewed as both deceitful and dishonourable.

Related to, but not the same as, begging as a symptom of idleness is the idea that begging is requesting something for nothing. While several definitions of begging offered in the literature agree that it can be distinguished from work because of the absence of goods or services offered in return to the giver (Dean, 1999; Davies and Waite, 2004; Fitzpatrick and Jones, 2005; Johnsen & Fitzpatrick, 2010; Munoz & Potter, 2014), in some cases, such as newspaper sellers or indeed the tissue vendors, goods or services are in fact offered and there is an economic transaction involved. The message above indicates that the bearer is prepared to work,

[61] See Gray v Chief Constable of Greater Manchester Police [1983] Crim LR 45.

but also that she is not requesting something for nothing as she is offering to exchange a packet of tissues. This kind of nominal exchange, like performance, has different degrees of formalisation including people pressing roses on couples in restaurants and the selling of magazines such as the Big Issue and Ulicne svjetiljke[62] ('for a sizeable minority of beggars, selling 'street papers' is interchangeable with begging itself.' Danzuk, 2000). The more formalised end of this makes the idea of begging as 'not work' more difficult to sustain. Indeed in the UK the legal status of Big Issue sellers and whether or not this counted as an economic activity was unclear for a long time till the decision in Bristol City Council v FV (HB) [2011] UKUT 494 (AAC). This case affirmed that the Big Issue seller in question was exercising a genuine and effective economic activity (she was making £100 a week from selling the Big Issue – though the new Minimum Earnings Threshold of £150 a week introduced, as a measure of whether work is "genuine and effective" may have consequences for this).

This ambivalence was reflected in our interviewees many of whom were highly resistant to the idea that begging could constitute work, but who also described 'career beggars' (London council representative; Outreach Manager, homelessness organisation) or felt that 'after a while begging becomes like a job' (Outreach manager, Homelessness organisation), or talking about beggars who 'do shifts' (Outreach manager, Homelessness organisation). The slippage between begging, economic activity and labour is also apparent in legislation as national and European law prohibits the exploitation of begging by others as a form of forced *labour*. Accordingly, in the UK begging itself is an offence but it is also a form of forced *labour* which is then legislated for by the Modern Slavery Act[63]. That is, even if it is not work, begging is an economic activity. Furthermore, research on *why* people beg has found a strong economic rationale: absence or problems with benefits, life on the streets being expensive, a need to sustain substance abuse problems and difficulties making enough selling the Big Issue (Kennedy and Fitzpatrick, 2001). While homelessness is a common route into begging, it is the need to survive economically that keeps people dependent on the activity, with traditional housing solutions inadequate in addressing the *need* to beg (*ibid*.). Moreover, there is evidence that preventing begging leads people to other more risky means of making an income, such as shop lifting or sex work (Fitzpatrick & Johnsen, 2007).

Begging can be a means of supplementing welfare benefits, or a means of income if welfare benefits are not available (because of issues of housing, mental health, immigration, criminality, substance abuse etc.) and can be one of a number of informal activities that assist those on the margins to get by (Dean, 1999; Helleiner, 2003). In this way it is helpful to turn to the idea of the 'economy of makeshifts' as identified and analysed in the historical literature. The 'economy of makeshifts' was a term first deployed by Olwen Hufton to describe what Tomkins and King have characterised as the 'patchy, desperate and sometimes failing strategies of the poor for material survival' (Tomkins and King 2003:1). It was a term that captured the imagination of historians, facilitating a more bottom up approach to the experiences of the poor, their diverse income and survival strategies, the nature of the moral economy (often highly localised) and the history of poor relief and the welfare state. Situating the beggar within this landscape enables us to link begging with studies of the working poor and the literature on precarity, with the work on homelessness and mobility (at both the local and cross border scale), and with the histories of welfare and poor relief. In policy terms, reconceptualising begging as a form of economic activity addresses some of the problems that arise from understanding it as a homelessness problem, for example, that housing-based solutions can resolve it (Kennedy and Fitzpatrick, 2001).

Considering begging alongside other forms of informal street-level activity blurs the boundaries of what might be considered work (Perez Munoz and Potter, 2014). It has practical implications for those who beg given that

[62] Ulicne svjetiljke (Street lamps) was launched in 2008 by the Secular Franciscan Order. It is produced, edited and distributed by homeless persons as street vendors and was designed to substitute for begging.

[63] The Modern Slavery Act came into force in England and Wales in July 2015.

they might well be engaged in other precarious income generating activities[64]. However, begging must be distinguished from 'ordinary' economic activity since that is precisely what beggars must *not* be doing (treating it like a job, being a career beggar etc.) in order to be deserving. There are interesting parallels here with work performed as a requirement for receiving unemployment benefit ('workfare') which must be similarly distinguished. It raises some of the questions explored in D10.1 about the nature of work and the increasing importance of the 'worker citizen'. Begging exposes the relation between the social and the economic, and the limitations of analysing even the most basic exchange between individuals (of cash for goods or services) as asocial.

What does begging tell us about inclusion and belonging?

In medieval and earlier times poverty was a status imposed by the will of god and almsgiving was a Christian duty. To give was considered self-sacrificing, saintly and noble, but it could also benefit the giver, with the material good compensated by a spiritual good. Beggars were a normal element of the social landscape as representations of urban life in art of the times reveal (Geremek, 1997). The Church took responsibility for providing relief to the impoverished and the beggar performed a social role (Munzer 1999; Smith, 2005; Baker, 2009; Geremek, 1997). Almsgiving could reinforce the status of both the giver and the recipient and, as discussed above, part of the begging process can be the explicit performance of deservingness and certain kinds of status relations. Thus begging in the past, and in some contexts in the present, has the potential to generate a certain kind of differential inclusion. The grounds for this inclusion and how status and poverty is represented depends on the context. Certain performances of poverty and desperation may feature better in some states than in others: approaching potential donors on one's knees outside a church may work well in Spain, but it is unlikely to prove lucrative in Northern Europe; babies and dogs may be 'props'; stories written on shreds of paper or cardboard; requesting contributions for the 'night shelter'. The tropes tend to be well worn, and even if 'true' they are likely to be necessarily simplified and tailored to meet the requirements for deservingness of almsgivers. It is easy to see, therefore, why it is that begging has such a long association with fraud, and those who beg must often tread a difficult line between manipulation and emotive appeal.

The fact that the beggar can reaffirm the beneficence and the standing of the giver also means that they can undermine the honour of the giver by making a fool out of them. The almsgiver must guard against manipulation and distinguish, not just the deserving from the undeserving, but the deserving from the fraudster. People interviewed as part of our research pilot were extremely concerned about the potential for manipulation of the goodwill of the passer-by "as far as I'm concerned begging is manipulating someone into giving you money for a reason that isn't true, you're conning people into giving you money" (local council representative) and this has been a concern for centuries. Martin Luther's *Book of Vagabonds and Beggars*, describes twenty eight types of beggars, of whom eight should not be given to under any circumstances[65]. Many of the typologies describe tricks, fake fits, pregnancies and wounds, and the response suggested is "Give them a kick on their hind parts if thou canst" and the people he reserves most wrath for are those who fake illness or wounds.

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[64] It is also potentially interesting to think about in relation to sex work, another form of economic activity that illustrates the contested but strongly imagined boundary between the economic and the social. One might enquire whether one reason that female beggars appear relatively rarely is because they have greater opportunities for sex work, which might also seem preferably to risking sexual assault on the street.

[65] The knaves include kammesierers – "young scholars or young students, who do not obey their fathers and mothers, and do not listen to their masters' teaching and so depart, and fall into the bad company of such as are learned in the arts of strolling and tramping, and who quickly help them to lose all they have by gambling, pawning, or selling it, with drinking and revelry".

Luther held the most deserving to be those 'who are known in the town or village wherein they beg', who therefore cannot deceive almsgivers because their case is known, and who can also be guaranteed to feel 'ashamed before those who knew him formerly when he was better off'. The deserving are almost always those who are known to the giver: 'know them well before thou givest to them; my advice is only give to those thou knowest.' That is, once attention is deflected from the responsibility of the almsgiver to the condition/deservingness of the beggar, belonging and being known become more critical, and indeed belonging can be a condition of deservingness. Those who are mobile are not known (and neither, implicitly, do they feel suitable shame). There continue to be social and legal divisions between true (deserving) and false (undeserving) beggars. In a reflection of this, Nagel (2007) notes the differentiation between 'good' domestic beggars and 'bad' foreign beggars in Hamburg, Germany. Similarly, Djuve et al. (2015) found in their study that migrant beggars in Copenhagen needed to be mobile to avoid the police, and so were unable to sit down. However, this was not the case for native drug users, who seemed to be able to sit and beg in peace, suggesting discriminatory enforcement of the ban on begging in Denmark.

Begging can reaffirm status relations, but it can also be highly disruptive, and throughout Europe's history begging is strongly associated with vagrancy and the mobility of the poor. Hufton (1974) identified two strands to the economy of makeshifts: the practices of localised begging deployed by the 'deserving poor', and the physical mobility of those who were able to work. With a focus on begging, this suggests that the begging of the local was different from the begging of the stranger. Migration/vagrancy was often motivated by the impossibility of making a living 'at home', and this could be recognised and facilitated the giving of alms along the way. Thus, as Tomkins and King (2003) put it 'the economy of makeshifts is shot through with cultural and social-political judgements', and these take on a particular colour when they are concerned with the stranger. Early vagrancy laws across Europe often discouraged the giving of alms to those who were wanderers. The figures of the stranger, the incomer, and later the non-citizen and the citizen have continued to haunt European thought and have provided the concepts through which the constitutive outsides of political participation have been calibrated.

In the past, physical mobility, or 'locomotion' was considered absolutely intrinsic to freedom. In classical liberal political theory (Hobbes, Locke, etc.) being able to move was the definition par excellence of freedom. The person who could not control his (used on purpose) movement was not free. In his commentaries on the law of England 18th century jurist William Blackstone commented:

> the personal liberty of individuals… consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law
> William Blackstone, Commentaries 1:120—41

The centrality of locomotion meant that 'the subject at the core of liberal theory has a corporeal dimension: the capacity of locomotion' (Kotef, 2014). Kotef argues that this corporeal dimension was erased in the nineteenth century abstraction of the subject, and remarks on its non-appearance in Rawls' basic liberties (1971), but that in fact mobility is inherently and centrally a political concept. Controlling unruly mobilities, unleashed by inequality, conflict and hope, channelling, enforcing and preventing them has been a challenge for the wealthy and the powerful for over a millennium. They are not controlled and restricted simply out of cruelty or indifference. They are constrained because it has the potential to be profoundly disruptive. Membership, citizenship and obligations to the poor and the stranger have been central to European political thought, and in practice this has run alongside questions of how to respond to mobility. Mobility has had a chequered history in liberal philosophy. Considered as fundamental to freedom in early liberal thought (Kotef 2015), it was freedom of locomotion that distinguished the free man - and the free worker - from the slave (O'Connell Davidson 2015). Mobility distinguished the free man from the slave but raised questions about what was owed to the stranger. It makes the politics of justice very visible by drawing attention to its boundaries,

and the contradictory role of states in the control and support of populations, the policing of borders and the enforcing of justice (Torpey 2000).

Anxieties about social disorder, distribution, inequality and belonging, pre-date the nation state, and found expression in the social and legal construction of the outcast and the vagrant. The main aim of the Vagrancy Acts was the creation of an additional labour force by making the able-bodied beggar and vagrant enter the labour market (Neocleous, 2000; Baker, 2009; Anderson, 2013).Vagrancy, like migration, became a crime of status, intersecting with other social anxieties including idleness, prostitution and dependency. The stranger who did not belong must not rely on the charity of those who did belong, but must work. Under the Poor Laws, those who looked as if they might make a claim on the parish could be moved outside the parish boundaries.

Thus while begging may contribute to a certain kind of differentiated inclusion, it is also associated with exclusion from the community of value, and also with crime. Whether or not it constitutes a crime in itself varies according to different European states. Begging regulation at national but also at local level determines whether and in what circumstances someone who begs is committing a criminal (or more often a petty or administrative) offence or can just be removed by the police[66]. In England the 1824 Vagrancy Act criminalises both begging and rough sleeping. Section 3 still regulates the summary offence[67] of begging or gathering alms in streets and public places. In Scotland in contrast begging was decriminalised in 1982. In Ireland begging is an offence if it is 'aggressive'. In Croatia begging is an offence under the Act on Disorderly Conducts, punishable by a fine, imprisonment, or expulsion from the local authority. In Spain, begging in itself does not constitute criminal conduct (i.e. conduct prohibited by the Criminal Code) but begging as a misuse of public space is regulated. For example, the Generalitat (Government of Catalonia) approved a *civic* (not criminal) law enforceable by the application of fines for misuses and abuses of public space, namely urinating or defecating in public, begging, juggling, selling goods without permission, vandalism and now skateboarding. Fines can reach an astonishing €3000. Similar provisions apply in other cities and the regulations follow the scheme in Barcelona.[68] In the Netherlands, begging was formerly a criminal offence under the old Dutch Criminal Code (section 432) but this offence was abolished in 2000. However, begging is now regulated at the Municipal level, in relation to public order offences. For example, in Leiden it is an offence to beg whereby begging constitutes a restriction of 'the freedom of movement of the other person'[69].

Thus beggars are associated with crime, in part because to beg *is* a crime. Beggars may be considered strategic and devious actors when they are judged to be too enterprising ('aggressive' begging) (de Coulon et al., 2015: 195) but also as victims of human trafficking. Begging is increasingly framed as an impediment to local businesses, obstacle to tourism and nuisance[70]. Begging regulation is much about the governance of behaviour.

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[66] See Appendix 4: Legal Brief for further information.

[67] Summary offences are normally dealt with in the magistrates' court where they are governed by Part 37 Criminal Procedure Rules 2010. The Crown Court may, however, deal with a summary offence in the following circumstances: committal for sentence (sections 3 to 7 Power of Criminal Courts (Sentencing) Act 2000; alternative verdicts reached by a jury for a summary offence (section 6(3) Criminal Law Act 1967); conviction of a summary offence on the indictment (section 40 Criminal Justice Act 1988); a summary offence on the back of the indictment (section 41 Criminal Justice Act 1988) or section 51 and paragraph 6 of Schedule 3 Crime and Disorder Act 1998);

[68] See: http://www.pnsd.msc.es/Categoria2/legisla/pdf/Relaciones/NORMATIVAMUNICIPAL_CRONOLOGICOENERO(ExportadodeWeb18deSeptiembre).pdf.

[69] See Appendix 4: Legal Brief for further details.

[70] A Home Office (2004) report into defining and measuring social behaviour draws upon a one day count conducted in 2003 into anti-social behaviour reported to local service providers[70]. The report acknowledges that anti-social behaviour is highly subjective. A widely used definition of anti-social

Codes of conduct regulate the boundaries between 'them' and 'us'. Behaviour deemed as deviant marks those out as unwanted and excluded from public space/ sight. As such, legislation has additional functionality in that it constructs a certain image of social identity, into which deviants do not fit, and thus are viewed as "other" (Fernandez Evangelista, 2013). Thus it is important that "begging" becomes "aggressive begging" and terms such as 'zero tolerance' imply some sense of criminality to beggars (Hopkins Burke, 1999; Danczuk, 2000; Fernandez Evangelista, 2013). There have been some concerns about the policing of begging, for example, under *Operation Coin* in Brighton undercover police officers have been deliberately targeting and arresting beggars under the 1824 Vagrancy Act. Figures released under the Freedom of Information Act by Sussex Police show that 680 people were convicted of begging between 2010 and 2015.[71]

Begging and hierarchies of deservingness/belonging

Deservingness, labour, belonging and mobility, continue to have resonance in contemporary begging. Beggars in London are divided into two categories by our interviewees. Either nationals with substance abuse problems, or non-nationals consisting of predominantly Romanian Roma. Several of our respondents described a pattern of Romanian Roma travelling to wealthier EU member states under free movement rules to engage in begging and, they alleged, petty crime. Residing for longer than three months is difficult if a person is not a 'worker' , and since begging is not work this group move on to another member state before the expiration of the three month residence period. This kind of mobility was seen as an abuse of Treaty rights and held to be suspicious, though a perspective informed by the literature on the economy of makeshifts might argue that as the Roma are excluded from the formal labour market through discriminatory practices, so they seek income from alternative strategies and exercise their free movement rights to do so.

While begging may be directly criminalised, as discussed above, the control of mobility may also be used ostensibly as a means of controlling begging. Again, this has a long history within Europe, and Poor Laws in different territories facilitated the removal to other parishes or outside the boundaries of those who were felt likely to make a claim on the public purse and who did not belong. There has been growing interest in the ways in which anti-begging legislation is being used across Europe to control the mobility of unwanted populations, such as poor migrants (Meert et al.2006; Fekete, 2014; de Coulon et al. 2015) through the use of mechanisms such deportation, barring re-entry, and restricting access to welfare benefits. Richer member states of the European Union, have directly linked begging with EU migrant populations and have explicitly called for or tried to implement begging legislation specifically targeted at migrant populations. This may be expressed as attempts to prevent entry into a state of those who might beg, and as attempts to remove those who are found to be begging.

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behaviour is the definition contained in the Crime and Disorder Act (1998): *'Acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as (the defendant)'* (cited in Home Office, 2004: 3). For the purposes of the report, the Home Office Research Development and Statistics Directorate devised a typology of ASB which is wider than that definition. Begging falls under the 'misuse of public space' category. According to this count, reports of begging and street drinking totalled 3,239 out of a total 10, 686reported ASBs or 5% of the total complaints received. (see Table 4.2 in Home Office (2004:11). The majority of complaints received were for litter/rubbish (10,686) followed by criminal damage/ vandalism (7,855).

[71] Operation Coin was introduced in Brighton in 2005 with the specific aim of targeting beggars. See: http://m.theargus.co.uk/news/14260235.Undercover_police_targeting_beggars__Homeless_man_brought_to_court_after_asking_for_10p/?ref=twtrec

The Home Office does not routinely collect data on the number of EU nationals removed due to the inability to maintain themselves[72]. Data is collected on EEA removals for criminal behaviour, although this is not disaggregated (See D10.2 for further discussion of data limitations). As Table 1 below shows removals for this reason have increased significantly over the past four years.

[72] Lords Written Answers 27 October 2014. [HL2127]
http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141027w0001.htm

Table 1. Number of EEA nationals removed from UK for criminal behaviour

Year	Removals
2009	748
2010	933
2011	1,147
2012	1,653
2013	2,130

Source: House of Lords Written answers 27 October 2014

We do not mean to suggest that all these removals were for begging. However, there is evidence that some of them are. For example, Operation Chefornak, was a multi-agency initiative between Westminster Metropolitan police officers in partnership with Westminster City Council, Home Office Immigration Enforcement (HOIE), the Romanian Embassy, Thames Reach charity and the local Business Community in with the express aim of targeting rough sleepers, begging and associated criminality within Roma communities. Statistics obtained via this operation and reported in parliamentary debates reveal that 698 offences of begging and 922 instances of rough sleeping were recorded, and the council helped to arrange 169 repatriations, 138 of which were to Romania.[73] According to the Metropolitan Police press release: *"Begging will not be tolerated in Westminster. Wherever possible people begging will be arrested."*[74]

The control of the mobility of beggars is not only across international borders, but is also at the level of the city. In the UK people may be prohibited from staying in certain spaces for more than a certain period of time, those sleeping rough can be moved out of city centres. Public Service Protection Orders (PSPOs) introduced under the Anti-Social Behaviour, Crime and Policing Act in October 2014 allow councils to ban any activity which they judge to have a 'detrimental effect' on the 'quality of life' of an area[75]. Powers include banning rough sleeping and begging, but also ball games, 'inappropriate dress' and parking outside schools[76]. In Oxford city centre for example, begging near a cash machine has been defined as constituting 'aggressive begging' punishable by a fine. Interestingly 'aggressive begging' has often been used to mean the passage of passers-by being blocked so that he or she had to move to one side (Moore et al., 1995 in Fooks & Pantazis, 1999: 151). Thus at a local level

[73] House of Commons, Westminster Commons Hall Debates, 4th December 2012: http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121204/halltext/121204h0001.htm#12120444000001

[74] http://content.met.police.uk/News/Multiagency-approach-to-tackle-begging-and-antisocial-behaviour-in-Westminster/1400009988096/1257246745756

[75] Anti-Social Behaviour, Crime and Policing Act 2014: http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/crossheading/public-spaces-protection-orders/enacted

[76] See Manifesto Club Briefing (2014) for further details on planned and passed PSPOs: http://manifestoclub.info/wp-content/uploads/Manifesto%20Club%20briefing%20on%20Public%20Spaces%20Protection%20Order%20powers.pdf

the mobility of citizens who beg can be controlled through prohibiting access to certain spaces or through moving them on if they are found to be begging. In Croatia beggars may be expelled from the local authority where the offence was committed for a period of 30 days to six months if they do not have residence in that local authority. In the Spain and the Netherlands too bylaws often seek to control access to certain spaces, and beggars are continually negotiating public space (Wardaugh and Jones 1999), especially if they are 'marginal people in prime places'.

As with international mobility there are clearly discernible hierarchies of mobility. For example, in Ireland one consequence of begging singled out as of concern is 'obstructing public passage' (Ireland). In the UK train stations can revoke the rights of people to be present for 'undesirable behaviour' including begging. In Catalonia Chapter V of the Barcelona Ordinance makes clear that begging in itself is not prohibited, but obstructing the "peaceful free movement" of people is. That is, the movement of those who beg is limited in order to facilitate the movement of those who are not begging. So beggars can be moved on and punished for staying still as well as for being mobile, depending on the context. Enforcement actions often lead to widespread geographical displacement of street activity from the urban 'prime' spaces which are used and valued by mainstream society to 'marginal' spaces, which are not (Johnsen & Fitzpatrick, 2010: 1709). It has been found that enforcement simply 'displaces' people from more central locations to another (Hopkins Burke, 1999; Danczuk, 2000). The Good citizen should have the right to move freely and the right not to face uncivil behaviours. The Failed citizen, who fails to behave with civility, or exercise treaty rights, i.e. engage in work, is instead subject to being 'moved on' (cf Anderson, 2013). The criminality afforded to non-citizen beggars, both undocumented and EU without sufficient economic resources, renders them 'deportable subjects' (De Genova, 2002). Even those who are EU citizens by their failure to integrate and find (appropriate) work are excluded from the market, and hence their EU citizenship is not enough. Enforcement agendas are often justified by those implementing them as needed to protect the interests of the wider community, from which the beggar is excluded:

> 'Some [street users] will tell you that they wish they'd never had an ASBO and it wasn't right for them. But the bottom line is it was never 'about' *them* [street users], it was about the community.' (Local authority representative, Camden, cited in Fitzpatrick & Johnsen, 2007: 17, emphasis added).

The language describing actions taken against homeless and beggars of "raids" and being "picked up" is very resonant with immigration. The association between immigration and security is strong and control of public space can be seen as the control of 'disorder', thus immigration policies and securitization discourses feed into control measures around public space (Tosi, 2007). The figure of the beggar and legislation against him/ her epitomises this. Framed within social disorder narratives, the uncivil behaviour of the beggar is construed as a threat (*ibid.*). Such discourses have deep historical roots relating to unwanted populations (also Anderson, 2013).

The policing of begging often seems to affect ever more restrictive alternatives to more anti-social criminal activity and to make it the individual's responsibility to manage the contradiction between the requirement to be mobile for the purposes of labour and the requirement to be sedentary for the purposes of alms/poor relief/welfare. This is as apparent today in responses to EU mobility and welfare states, as it was in the era of industrialisation and mass rural/urban migration, the market which demands mobility, and the state which is troubled by the non-sedentary (Torpey, 2000). This is graphically illustrated in the London borough of Brent the AIRE Centre together with the Roma Support Group is challenging Brent Council's proposals seeks to clamp down on EEA nationals (with the right to work in the UK) from holding themselves out for casual employment in public spaces and thereby earning the money, which would reduce or avoid the need to beg. The Criminal Attempts Act 1981 abolished the offence under section 4 of the Vagrancy Act 1824 of "loitering with intent" which had often previously been used to challenge those whose presence in a particular place the officers of

the law found to be of concern.[77] Across the EU, mobile EU citizens who are not engaged in the labour market and who are a 'burden' on the host state, may lose their right of residence and become subject to removal.

As in the past there are social and legal divisions between true (deserving) and false (undeserving) beggars, and tensions between the requirement to be mobile for work, and to be stationary for claiming welfare benefits. Respondents described Roma beggars as 'savvy' (Local council representative) and they were seen as working around the legislation (Local council representative; Police Sergeant, British Transport Police; Chief Inspector, Metropolitan Police). As they fall outside welfare provision, yet immigration controls cannot govern their activities, the council and police have little legislative capacity to deal with Roma beggars. "At the moment I don't think we're having any effect whatsoever. We call it 'the revolving door', so one load go home and then we get another load the next day" (Chief Inspector, Metropolitan Police). Methods are currently being sought to rectify this.

Ethnicity and begging: the case of the Roma

The widespread stigmatization and criminalization of begging is often ethnicised and in contemporary Europe, begging as a 'social evil' has received particular attention in the context of migration from Romania and Bulgaria, with begging frequently being associated with Roma. Our respondents described the Roma as 'savvy' and 'conniving', operating strategically to maximise their earning from begging by, for example, dressing in Islamic dress during Ramadan (local council representative) . Discourses around Roma begging refer to the 'culture' of begging. Indeed the degradation of this culture is such that the Roma are presented as seeing begging as work: "their work is begging, it's almost like a piece of work" (Outreach Manager, homelessness organisation), "like it's a career, it's a business" (local council representative), "they are coming to make money" (Chief Inspector, Metropolitan Police). The term 'career beggars' was often applied to the Roma in interviews. Thus for the Roma, begging is seen as a 'cultural issue', and for non-Roma people with substance abuse problems held to be a degrading act of desperation. It is not a 'cultural' issue for the UK nationals begging to fund their habit.

This discourse was very strongly reflected in the media analysis (see Appendix 5). By far the largest number of articles related to beggar/ing and Roma/Romanian, at 133 articles (including duplicates) which was almost three times as many as the number of articles referring to begging and homelessness (43 including duplicates). Furthermore there was a spike in coverage in 2013, the year prior to the removal of transitional controls on Romanian and Bulgarian nationals (this was also the year that the power to impose PSPOs was debated). The vast majority of articles were negative, with just one positive article in 2009 and three positive articles in 2013. Many referred to acts of criminality and child trafficking and the language was one of flows and swamping; water metaphors being common in migration narratives constructing perceptions of danger and dehumanizing migrants (Kainz, 2016)[78]. This is in keeping with the negative portrayal of the Roma in some sections of the media, often epitomizing them as culturally backward and criminal (Richardson, 2010; Fox et al. 2012). The language used in media discourses distorts our perception of reality in a similar way as water surfaces distort the reflection of ourselves (Kainz, 2016). Under certain circumstances and for certain groups therefore, begging moves from the hidden to the hypervisible.

A recent study of street work in Scandinavia highlights most graphically the linkages between begging and the labour market. The study found that Roma migrants were more likely to beg than non-Roma migrants, and hold that this is due to structural factors such as poverty, marginalisation and a lack of formal education and basic

[77] Corresponding legislation did the same for Northern Ireland.

[78] https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/02/people-can%E2%80%99t

skills which render the Roma migrants unable to compete even on the fringes of the casual informal labour market: "*The beggars, in other words, appear to be the least successful in actually obtaining casual work or finding other means of earning an income*" (Djuve et al., 2015: 60). Djuve et al. (2015) found little evidence to suggest that begging was a preferred survival strategy. Most of the migrant street workers in the study perceive themselves as labour migrants, and would prefer to have jobs rather than engaging in their present kinds of income-earning activities.

Similarly, Hoffmann's (2016) case study of Croatia notes that common perceptions are that begging is highly prevalent among Roma, especially women and children. However, more detailed analyses disprove this to an extent. As demonstrated by a study of the socioeconomic standing of urban Roma in eight counties, begging, fortune-telling and other marginal forms of income make up or augment Roma household incomes to a small extent – less than 5% of those surveyed at the level of the entire sample have cited these activities among the top two sources of their household incomes (Rogić, 2005 in Hoffman, 2016). Begging therefore takes a distant place behind employment, seasonal work and other forms of income generating activities; overall, the issue of Roma begging is one of (ethnic) visibility rather than actuality.

With a focus on migration and begging, Djuve et al.'s study found that the majority of the migrant street workers have had previous migration experience, with Italy being the main country respondents had previously resided in (2015). Most had made their income from work in the informal labour markets (sometimes formal) of the countries they visited, usually within the agriculture or construction sectors. However, the research found that labour market opportunities of this type have now disappeared, due to the financial and economic crisis in southern Europe in combination with competition from illegal African migrants (ibid.). According to respondents in our small study, this pattern is being repeated in London, with Roma moving in to beg and then moving on to another EU country within the 30 day time limit allowed for by EU free movement rules, this was described as a "lifestyle" (Local council representative). According to the local council representative, when asked, the Roma state they are here to work; but this is not held to be true as they engage in begging and do not take up services offered of training and employment. Those people who are seen three times are evidently "here to con people and beg" (local council representative). They are not destitute, nor using money to feed their children.

Conclusion

Begging is increasingly constructed as a problem of criminality, and in a mirror of the dominant migration narratives, non-citizen beggars are seen as either deviant criminals themselves or as victims, exploited by criminal gangs. Thus begging governance is underpinned by notions of security, as is immigration. The structural reasons for migration/ begging are hidden in the criminalisation discourses and the economic element marginalised. Localised enforcement strategies both detract from wider structural problems and encompass an extension of borders to control unwanted populations. Local policing under the guise of local authority anti-begging regulations are utilised to connect with national laws and borders to remove people.

It is notable that not only is begging not work, but it is also not held to illustrate self-sufficiency, at least from the point of view of citizenship and immigration policy. It might be characterised as 'radical dependency', a relationship that in the past was associated with a dependence on god. Interestingly, according to some accounts authorities in Communist Yugoslavia applied the prohibition on begging to clergy gathering alms and blessing homes, using the argument that, unlike alms gathered within the space belonging to the Church, this constituted voluntary work and should not be remunerated (Akmadza, 2013). Begging exposes interdependence even as it exposes inequality but it does it on a peer to peer level, i.e. not mediated by charities or the welfare state – though charities are attempting to intervene under 'diverted giving' schemes. As in Luther's day begging continues to be regarded as 'degrading' and, interestingly, Crisis asserts 'those most damaged by the experience of begging are people who beg'. The shame of begging does not only attach to the

beggar (as Luther seems to be attempting) but to the society where they beg – which again resonates with the relation to the welfare state. Those who wish to remove beggars do so for matters of incivility: it is undignified for beggars to beg. Begging is not good for the beggar or for society. It is also bad for 'economic progress' – beggars are construed as an obstacle to tourism and a blight on the city (Beeman 1992).

Contemporary enforcement practice, both across Europe and in the UK sees anti-begging legislation utilised in the removal of unproductive migrants. The economic exclusion of such people is recognised, but as they are 'migrants' and out of place, the response is to move them on, back to their rightful place elsewhere. National and European policies' converge around the marketisation of citizenship. Across the EU, mobile EU citizens who are not engaged in the labour market and who are a 'burden' on the host state, may lose their right of residence and become subject to removal after the initial three months. Those who are visible beggars, like vagrants in the past, may be 'moved on' As de Noronha notes in relation to the Foreign National Prisoners (FNP) scandal, deportation becomes necessary, even righteous, not only or even primarily as a measure to control migration, but primarily as a means of reducing crime (Warner, 2005 in de Noronha, 2015:14). While the free movement of labour is encouraged under the EU framework, there is little regulation in place to address the free movement of poverty (Djuve et al., 2015), save through the framework of crime reduction. Replace 'economy of makeshifts' with 'precarious working' and there seem uncommon parallels with some of today's movements by EU nationals.

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Appendix 1: D10.3 Case study framework

Case study hidden population: Beggars

Justification:

Beggars are a socially excluded group consisting of both citizens (national and EU) and non-citizens. Beggars trace the boundaries of belonging and thus are a fascinating site for the examination of the nature of citizenship (Anderson, 2013; Dean & Gale, 1999). Yet, while there is comparative research on homelessness and on working poverty, there is surprisingly little on begging.

This case study will focus on beggars in the UK, with a particular focus on EU nationals. Across the EU, mobile EU citizens who are not engaged in the labour market and who are a 'burden' on the host state, may lose their right of residence and become subject to removal. As in the past there are social and legal divisions between true (deserving) and false (undeserving) beggars, and tensions between the requirement to be mobile for work, and to be stationary for claiming welfare benefits. This case study will explore the linkages between begging and work and begging and welfare benefits. It will explore calls from some scholars for begging to be examined as an informal economic activity (e.g. Dean, 1999; Helleiner, 2003).

Research questions:

- What is the definition of begging and its relation to work/the labour market and citizenship?
- What is begging? Is begging ever 'work'? How is begging gendered and racialised?
- What is the relation between mobility and begging?
- How are the deserving and the undeserving beggar imagined?

Methodology

Given the interdisciplinary and wide ranging nature of the literature on begging and vagrancy we will conduct a scoping study (Arksey and O'Malley, 2005) initially guided by the questions above. This will be developed into a more focused literature review of academic and grey literature and will also identify gaps in the field. This will examine work on begging in the UK. Finally, we will conduct an analysis of newspaper coverage of begging and citizenship.

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Appendix 2: D10.3 CROATIA: Case study on hidden populations: beggars

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Introduction

As is the case with many social issues, there is virtually no dedicated literature on begging available in Croatian or on Croatia specifically. The issue, where it is taken up, is usually framed as secondary, within the broader subjects of social exclusion, poverty or social deviation. Specifically, available literature on social conditions in Croatia mentions begging as a form of behaviour in the context of homelessness (Družić Ljubotina, 2012), and some mention of begging is made in studies of the socioeconomic standing of Roma (Rogić, 2005). Institutionally, very little public data is available on the prevalence of begging and information on the numbers and characteristics of persons who have engaged in begging seems to be individualized and relegated to the social services for the most part. Several small-scale studies have been conducted linking homelessness with begging and other behaviours of the extremely de-privileged and socially excluded (Družić Ljubotina, 2012). Still, large-scale data is unavailable and linkages between engaging in begging and other variables are examined at the level of very small and localized samples, at the very best.

The following is therefore an exploratory overview of the limited resources on begging available in the Croatian context, including the a basic historical context and earlier accounts of begging, the latest and still enforced legal treatment of begging, and current official statistics and figures from a study on the Roma population.

Historical and societal place of begging

Historically, begging is documented in Croatia in various sources and was usually described as a symptom of the ills that had befallen societies throughout history. The most relevant pre-modern accounts of surges in begging seem to be part of the preserved accounts of plague outbreaks that had ravaged Croatian lands from the 14th up to the 18th century. For example, mention is made of the 14th century Statute of the City of Split, which had stipulated that beggars and lepers were to abandon the city with haste (**Božić-Buž**ančić, 1996). Plague epidemics were especially frequent throughout the 14th through 16th centuries and, with the widespread poverty, begging was likely the same.

There is little evidence on what the social practices of dealing with poverty and resorts to begging during the late-Middle Ages and Renaissance times were, but the situation was probably one of clerical care for the poor and sick and the clergy distributing alms. The figure of the stoic, Christian beggar is culturally well-documented, often being the subject of works of art in painting and literature, and is almost certainly rather old.

Both simultaneously with and after the plague epidemics, several waves of famine have affected especially the coastal regions of Croatia, most severely in the 15th, 16th and 18th centuries. Due to rising food prices, exports, failed crops and ravages of the war with the Ottoman Empire, famines in the late 18th century were so common and so severe that entire social structures were in upheaval, with smaller and more rural areas especially being affected. This had led to surges in emigration and, for those who were unable to undertake migration due to poverty, illness or old age, resorting to begging wherever they would be accepted. Technological advances in the 19th century would alleviate this somewhat, but, according to accounts (Mucko, 2009), the long-lasting effects of impoverishment and famine in the coastal parts of Croatia had served to keep begging prevalent and legitimate as late as mid-20th century, especially among the elderly and infirm, or those with large families to feed.

An interesting regulation specifically concerning the Roma also stems from this time – the 1783 Edict of Emperor Joseph II. The Edict was a piece of legislation prescribed by the Austrian Emperor which intended to integrate Roma into local communities and fight deviant behaviours, among which vagrancy and begging. Vagrancy was prohibited, as was begging for anyone capable of earning a living in other ways. Blacksmithing was encouraged, as a means of enabling Roma to "contribute to whatever community deems it necessary". Busking was restricted (Matasović, 1928). The significance of the Edict lies in the fact that it is an early official document in Croatia that specifically targets begging (albeit that of a single ethnic group) and elevates it from the realm of alms and goodwill and to the status of a regulated activity, one with recognized social consequences.

As of the early 20th century, effectively the first waves of larger-scale urbanization had started in agrarian Croatia. Especially the two World Wars have led to surges in poverty and increased rates of begging, as people found themselves displaced due to the wars and deprived of work or other means of subsistence, often flocking to cities for refuge. Numbers of urban beggars surged, although clear figures are not cited anywhere, probably due to political and administrative discontinuities.

The WWII Nazi puppet state – the Independent State of Croatia, in place from 1941 to 1945 – had acted in line with a rigid vision of social order and instituted brutal repressive measures against vagrancy and begging, including enforced curfews and thorough control of mobility. Begging was strictly prohibited, except for alms to be distributed to the poor, and anyone caught begging would routinely be sent to prison for 60 days. When this form of repression had proven to be in vain, work-camps were instituted to put the beggars and vagrants to work – usually working in stone quarries – in order to "contribute to their communities" (Kovačić, 2012).
After WWII, with the modernizing reforms under the newly established Communist regime, begging and vagrancy continued to be punishable offences. According to some accounts, Communist authorities were expedient in applying the provisions of the legislation on prohibitively begging to clergy gathering alms and blessing homes, leading to fines and imprisonment for priests. The punishment was enforced with the arguments that, unlike alms gathered within the space belonging to the Church, this constituted voluntary work and could not be remunerated (Akmadža, 2013).

The notion of "deservingness" in begging is culturally present. Begging is subject to social stigma in the case of young persons or those apparently capable of work, as reported by Šućur (2000). Societally, begging is also notably gendered. Women begging alone (if they are older) or with young children are the "culturally expected" sight, with men begging alone almost as a rule and being more likely to demonstrate their inability to work for a living (by exhibiting their medical diagnoses, carrying crutches, prominently displaying amputated or prosthetic limbs etc.). Arguably, the criteria of belonging to the "deserving beggar" population are also gendered, as male beggars tend to argue for their position on grounds of inability, whereas women tend to appeal instead to poverty, age or motherhood.

Other forms of marginal, "street" income do not constitute misdemeanours. Regulations on busking do not exist at the state level, but are in the jurisdiction of local authorities, which may or may not require registering for a permit to busk in a specific location at specific times.

In 2008, the Secular Franciscan Order in Rijeka has launched a magazine called Ulične svjetiljke (*Street lamps*), which is produced, edited and distributed by homeless persons as street vendors, who purchase a number of issues from the print and sell them at 100% profit per issue sold (about 1€ per issue). The rationale behind this model is that such an economic activity can empower users, substitute begging, help preserve people's dignity and enable the sustainability of the undertaking itself.

Legal treatment of begging

In terms of modern-day regulation, begging is a misdemeanour, defined under the Act on Disorderly Conducts[79] (1990 text, last amendments in 1994), except in the case of forcing or causing (coercing) children to engage in begging, which is a criminal offence under the Criminal Code, Art. 117. The current legal treatment of begging ranges back to 1977, with the ex-Yugoslav Act on Disorderly Conducts. The 1977 Act instituted the treatment of both begging and vagrancy under the same article of the Law (an arrangement which would remain to this day), stipulating in Art. 8 that:

> *Whoever engages in vagrancy, or begging, or demands a fee for fortune-telling, dream interpreting or other such forms of deceit, will be punished by imprisonment lasting up to 30 days.*

Although data on the actual enforcement of the Act is not available, the exclusivity of imprisonment as a penalty of for begging is striking. Only in 1989 was the Act was amended to enable a monetary penalty for vagrancy or begging, instead of prison.

The 1990 amendment to the Act removed the provisions on activities that constitute "engaging in deceit", making the final formulation of the Article (still in force) read as follows:

> *Whoever engages in vagrancy, or begging, will be punished by a fine amounting to the amount of 50 to 200 German Marks (sic!) in domestic currency, or by imprisonment lasting up to 30 days.*

In addition, provisions of Art. 22 of the Act on Disorderly Conducts stipulate misdemeanour penalties for parents or legal guardians who encourage children to commit acts of disorderly conduct in their stead. In case of disorderly conduct wherein a perpetrator is liable to commit the offence again, the offences may also be punishable by expulsion from the local authority where the begging offence was committed, lasting from 30 days to six months and punishable again in case of breach. This does not apply to perpetrators who have residence in the local authority where the offence was committed, which in turn raises the question on how this provision affects homeless persons with no registered place of residence and whether begging or vagrancy may get them expelled.

Available data on begging

In Croatia, statistics on begging are systematically kept only on the legal-repressive dimension, as offences stipulated by the Act on Disorderly Conducts. An inquiry was sent to the Ministry of the Interior about the data-gathering practices with respect to begging offences, attempting to get the full extent of the data from as far back as they were available. The response was a ready-made dataset made up of the number begging offences nationwide, ranging from 2006 to 2014.

Table 1: *Number of instances of begging, as defined by Art. 11 of the Act on Disorderly Conducts*

	Total number of offences for the year								
	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Total misdemeanours	522	444	305	407	453	342	464	659	759
No. of underage perpetrators	32	24	8	38	17	9	9	11	21

[79] Unofficial translation.

Apart from the total number of cases, statistics are also available for the number of underage offenders, since this data is of special interest to social services. Other than this, disaggregation by age of perpetrators is not available. The data is believed to underestimate the total number of actual offences by several times, as it includes only registered instances of begging, with a much larger proportion going undetected, unreported or treated leniently by the police.

Disaggregation of data on the annual number of offenders by gender is a newer advancement in the data and was only available from 2011 onward.

Table 2: *Offenders prosecuted according to Art. 11 of the Act on Disorderly Conducts, by gender*

	Total number of offences for year			
	2011	**2012**	**2013**	**2014**
No. of male offenders	184	220	341	369
No. of female offenders	176	272	358	438
Total no. of offenders	360	492	699	807

It is notable that the disaggregation of data on persons convicted for begging by other potentially interesting dimensions – such as nationality, citizen/alien/ asylum seeker/refugee status or country of origin – are not available. Cross-overs of data on begging offences with substance abuse, mental health or vagrancy do not exist either, as begging is seemingly understood either as a prerogative of the police or of social workers who work with individual users. Perhaps tellingly of a system that has yet to build linkages across social issues including poverty, vagrancy, begging and other factors of social risk, breakdown by gender is the extent of the data available.

Roma are a group which is traditionally associated with mobility and begging in the social imaginaries of the post-Yugoslav space. At the level of "common knowledge" or societal stereotype, begging is perceived as being highly prevalent among Roma, especially women and children (Šućur, 2000). However, more detailed analyses disprove this to an extent. As demonstrated by a study of the socioeconomic standing of urban Roma in eight counties, begging, fortune-telling and other marginal forms of income make up or augment Roma household incomes to a small extent – less than 5% of those surveyed at the level of the entire sample have cited these activities among the top two sources of their household incomes (Rogić, 2005), with a tendency of diminishing since the late-1990s (comparison between 1998 and 2004 studies demonstrates a decline from 11 per cent to 4 per cent at the level of the entire sample of Roma). Begging therefore takes a distant place behind employment, seasonal work, social welfare and other forms of income; overall, the issue of Roma begging is one of (ethnic) visibility more than an actual state of affairs.

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Laws and regulations

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2. Criminal Code (Official Gazette 125/2011, 144/2012, 56/2015, 61/2015)

Appendix 3**: **Interview schedule (UK study)

1. What is your role in relation to begging (and homelessness/migration)?
   In what ways does your organisation work with people who beg?

2. How would you define begging? (busking, street performance,… etc?)

3. What do you know about the characteristics of people who beg?
   - Gender
   - Ethnicity
   - Age
   - Migration and status (check re asylum)
   - Mobility (i.e. from outside the borough? If so from where)

   Do any of these groups represent any challenges to you as service providers? Why?

4. Have you observed any changes in the population who beg in recent years? When would you date these changes from and what do you think accounts for these changes?
   - EU Enlargement?
   - Welfare changes?

5. Do you think begging is problematic? If so in what ways and why?

6. What do you know about how the general public respond to begging?

7. How does your agency/organisation respond to begging? Which other organisations/agencies do you work with?
   How has your approach changed and why?

8. Do your approaches have any effects on individuals' mobility or migration decisions? If so, how?

9. What are your views on strategies to combat begging (PSPOs/ diverted giving campaigns, etc.)?

Appendix 4: The Legal Framework Surrounding Begging in the United Kingdom, Ireland, the Netherlands and Spain

Nuala Mole
The AIRE Centre

> "hark hark the dogs do bark
> the beggars are coming to town
> some in rags and some in jags
> and one in a velvet gown"[80]

BACKGROUND

1. In many cultures and religions, giving to the poor (formally or informally) is not only a practice but also a required duty. Sometimes, it is formalised – as in a duty in many religions to give to organised religious bodies, not only to support the subsistence of the clergy but often for the churches to distribute to the poor or to provide medical and welfare services for them. The giving of donations to provide for those less well off is at the heart of many of the oldest subsisting institutions in Europe. In many European countries, a church tax (a relic of the "tithes" of olden days) still exists. In Islam, there is an express duty to give (*zakat* and *sadaqah*), with an enhanced obligation at Ramadan. In Judaism, there is a duty to give to charity (*tzedakah*), as there is in Hinduism and Buddhism. This formal religious *duty* is frequently accompanied by the exhortation that in addition to the *duty* to make formal donations, the pious will also make additional voluntary contributions to the welfare of the poor.

2. In the modern world, the voluntary sector is heavily dependent on such gifts from a variety of sources or grants from charitable foundations. Those running marathons, climbing mountains, fasting, and other more zany conceits often seek sponsorship to raise money, usually for philanthropic causes. This brief research has not been able to find any legal regulation of this kind of activity in the United Kingdom (UK) by the Financial Conduct Authority (FCA) – irrespective of whether the intended beneficiary is the individual himself or a worthy cause – so long as the solicitation is not found to be *fraudulent* by the Financial Conduct Authority (FCA). For example, the very recent modern phenomenon of "crowd funding", using modern technology and social media to solicit donations to support a particular purpose, not necessarily a philanthropic one, does not imply that the money raised will go to a good cause – other than the individuals themselves. This seems to be quite unregulated – even if the funds raised are for the benefit of the individual – so long as there is no fraud.[81] The law normally only intervenes if there is either harassment or fraud. However it distinguishes between charitable donations, which are eligible to benefit from tax advantages, and those that are not.

3. It is against the background of a deeply entrenched tradition of giving to those who are in need, and the concomitant tradition of asking for such donations that the regulation of begging must be examined. As long as poverty has been – so has begging been a social phenomenon and has to a greater or lesser extent been regulated, or the manner and place of begging has been regulated.

4. In Europe, the law now comes into play in two ways: **firstly** the begging regulation at national and local level determines whether and in what circumstances someone who begs is committing a criminal (or more often a petty or administrative) offence or can just be removed by the police and; **secondly** the law prohibits the exploitation of begging by others as a form of forced labour. Accordingly, in some jurisdictions – such as the UK – begging itself is an offence. Yet, individuals who have been trafficked for forced begging are also victims of the crimes committed by their traffickers and thus have the protection from prosecution and

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[80] This rhyme dates back to the 16th Century during the Dissolution of the Monasteries.

[81] See e.g. http://thinkprogress.org/economy/2015/06/12/3669013/crowdfunding-sites-get-major-blow-ftc-settles-first-fraud-case/.

punishment foreseen in the Council of Europe Convention on Action against Trafficking in Human Beings; the European Union Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims; and national legislation transposing the EU Directive 2011/36/EU (e.g. the Modern Slavery Act 2015 of the UK). So that those who beg voluntarily commit an offence for which they can be arrested, prosecuted and convicted, but those who are forced to beg have the protection of the anti human trafficking and modern slavery legislation.

5. Defining begging is this brief paper's first challenge. One characteristic that distinguishes other forms of soliciting of donations from what is conventionally recognised as "begging" is that in begging the intended beneficiaries are normally the people doing the asking and not third parties. However, "forced begging" particularly by children compelled by traffickers and other "handlers" is now a common and growing phenomenon. This will be further elabourated on in a separate section regarding the practice of forced begging.

6. The purpose of this paper is to explore what lies at the heart of the legal regulation concerning the identification of begging in the public nature of the activity. It will, therefore, briefly examine the international and national legislation and case law related to begging and other closely associated activities, such as street entertainments, with a particular focus on the situation in the UK, Ireland, the Netherlands and Spain. This paper begins by identifying the applicable European legal standards, with a particular focus on the European Convention on Human Rights (ECHR) and the European Union Free Movement law. It, hereby, focuses on the legal instruments complementary to the *lex specialis* instruments on trafficking. In will then go on to consider the specific legal framework regarding begging in four European Union countries, namely the UK, Ireland, the Netherlands and Spain. Particular emphasis will be placed on the legal regulation of begging in the UK. It will finally examine the legal regime surrounding forced begging and trafficking for forced begging.

THE APPLICABLE EUROPEAN LEGAL STANDARDS

Council of Europe: The European Convention on Human Rights

7. Potentially applicable provisions of the ECHR include:

(i). Article 11 ECHR – Freedom of assembly and association;
(ii). Article 4 ECHR – The prohibition of slavery and forced labour;
(iii). Article 2 Protocol 4 ECHR – Freedom of movement;[82]
(iv). Article 10 ECHR – Freedom of expression;[83] and
(v). Article 3 ECHR – The prohibition of torture, inhuman and degrading treatment.

Any restrictions on these rights (with the exception of Art 3 ECHR, which permits of no restrictions) must be prescribed by a clear and ascertainable law, be necessary in a democratic society, pursue a recognised legitimate name, and be proportionate to that aim.

(i). Article 11 ECHR – Freedom of assembly and association

8. The European Court of Human Rights (ECtHR) has held that the right to freedom of assembly in Art 11 ECHR did not protect ***groups*** of individuals who merely wished to pass their time in a shopping centre, which was a hybrid public/private space. In *Anderson and Others v UK* (App no 33689/96*)*, the old European Commission of Human Rights rejected a complaint by a group of young black men, who had been given an injunction for an indefinite period forbidding them from entering a shopping centre which they frequented. The Commission stated that Art 11 ECHR did not "guarantee a right to pass or re-pass in public places or to assemble for purely social purposes anywhere one wishes".[84]

[82] Not applicable in the United Kingdom.

[83] See below the specific section on Ireland.

[84] The issue, which arose under the Race Relations Act was, for technical reasons, not before Strasbourg.

9. The later case of *Appleby v UK* (App no 44306/98) concerned individuals, who were prevented from distributing leaflets in a shopping centre. The ECtHR summarised, in Appleby, the applicable English law:

> *22. At common law, a private property owner may, in certain circumstances, be presumed to have extended an implied invitation to members of the public to come onto his land for lawful purposes. This is the case with commercial premises, such as shops, theatres and restaurants, as well as private premises (for example, there is a presumption that a house owner authorises people to come up the path to his front door to deliver letters or newspapers or for political canvassing). Any implied invitation may be revoked at will. A private person's ability to eject people from his land is generally unfettered and he does not have to justify his conduct or comply with any test of reasonableness.*
>
> *23. In CIN Properties Ltd v. Rawlins ([1995] 2 EGLR (Estates Gazette Law Reports) 130),*[85] *where the applicants (young men) were barred from a shopping centre in Wellingborough as the private company owner CIN considered that their behaviour was a nuisance, the Court of Appeal held that CIN had the right to determine any licence which the applicants might have had to enter the centre. In giving judgment, Lord Phillips found that the local authority had not entered into any walkways agreement with the company within the meaning of section 18(1) of the Highways Act 1971 (later replaced by section 35 of the Highways Act 1980) which would have dedicated the walkways or footpaths as public rights of way and which would have given the local council the power to issue by-laws regulating the use of those rights of way. Nor was there any basis for finding an equitable licence.*[86]

Many train stations in the city centre (hybrid public private spaces) now carry notices alerting people to the fact that their licence to enter and pass through the station can be revoked for undesirable behaviour.

(ii). Article 4 ECHR – The prohibition of forced labour

10. This prohibition will be looked at in the separate section on forced begging.

(iii). Article 2 Protocol 4 ECHR – Freedom of movement

11. Although the UK has not ratified Protocol 4 to the ECHR, which includes the right to freedom of movement in Art 2, the ECtHR has looked – in relation to other jurisdictions – at the compatibility with that protocol to the Convention of excluding an individual from a designated public space. The leading case on restrictions on freedom of movement and exclusion from specified parts of a city for public order reasons is *Olivieira v Netherlands* (App no 33129/96). It concerned the designation by the Burgomaster of Amsterdam of an area in the city as a special emergency area with a view to controlling drug dealing and drug use. Mr Olivieira was ordered to stay away from the area for short periods on several occasions and breached these orders so was banned for 14 days. He appealed unsuccessfully against the 14-day order and breached it too. He was charged and convicted under section 184 of the Criminal Code of having breached the order and sentenced to 4 weeks in prison. He complained to the ECtHR that the 14-day order violated his right to freedom of movement guaranteed under Art 2 of Protocol 4 ECHR. The Court found by 4 votes to 3 that there was no violation, as the law governing the matter was sufficiently precise and ascertainable and the ban was proportionate to the legitimate aim pursued. The 3 dissenting judges considered that the interference was not in accordance with the law. Although the provisions of s 219 of Municipalities Act, which authorised the order, were clear, the actual text of the orders was not accessible.

(iv). Article 10 ECHR – Freedom of expression

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[85] This is the *Anderson v UK* case referred to above.

[86] The issues under the Race Relations Act were disposed of separately.

12. There is no reported case law to date on Art 10 ECHR with respect to the right to beg. Nevertheless, this Article is mentioned because it has been relied on both in Ireland[87] and in the USA to found successful claims that there is a constitutional right to beg.

(v). Article 3 ECHR – The prohibition of torture, inhuman and degrading treatment

13. By way of background to the recourse to begging by those who are destitute (as opposed to those for whom it is a lucrative economic activity), it should be noted that even in Europe in 2015, the entitlement to an adequate income to maintain a minimum level of dignity (and thus be free from being in a degrading situation) is not secured in law. In the decision *Budina v Russia* (App no 45603/05), the ECtHR dismissed, as inadmissible, claims that the small and inadequate state pension, on which Mrs Budina was required to live, threatened her very right to life or constituted inhuman or degrading treatment. While the Court acknowledged that:

> *"State responsibility [under Article 3] could arise for 'treatment' where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity".*

It nevertheless held that Mrs Budina had been unable to substantiate her claim that her insufficient state pension resulted in "concrete suffering". As further elaborated by the Court:

> "Indeed there is no indication in the materials before the Court that the level of pension and social benefits available to the applicant *have been* ***insufficient to protect her from damage to her physical or mental health or from a situation of degradation incompatible with human dignity*** *(…). Therefore even though the applicant's situation was difficult, especially from 2004 to 2007, the Court is not persuaded that in the circumstances of the present case the high threshold of Article 3 has been met (emphasis added)".*[88]

14. In the case of *MSS v Greece and Belgium* (App no 30696/09), however, the Court found that the conditions of "extreme material poverty" to which asylum seekers in Greece were condemned did reach the threshold for a violation of Art 3 ECHR to be found. By referring to the statement in *Budina* that "a serious situation of deprivation or want" could result in a situation of inhuman and degrading treatment per Art 3 ECHR, the Court considered that:

> *"the Greek authorities have not had due regard to the applicant's vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.*[89]

This judgment indicates that, if the national authorities can be shown to be *wrongly* withholding adequate reception conditions for asylum seekers, they may be held responsible for the destitution of those individuals. By analogy, this statement would seem to indicate that, despite *Budina*, withholding social welfare benefits to which European Economic Area (EEA) nationals are entitled would entail state responsibility per Art 3 ECHR in situations of extreme material poverty. For this reason, the next section will further explore the legal framework in the European Union concerning the rights of EEA nationals, who engage in begging, to social

[87] See below the specific section on Ireland.

[88] See Appendix A.

[89] See Appendix B.

welfare benefits. The other significant EU legal framework, namely the EU Anti-Trafficking regime, will be discussed in-depth in the final section of the paper regarding forced begging.

European Union: EU Free Movement Law

Background

15. EEA nationals and their family members have the right to move to other EEA countries to live, work and study, as well as look for employment. These rights are set out in the EU treaties and further detailed in the EU 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 (Citizens Directive). In the UK, this Directive was implemented by the Immigration (EEA) Regulations 2006. Accordingly, EEA nationals can live in another EU country for the first three months without restrictive conditions, and for longer than three months if the person is looking for work, working, studying or has enough money to live on, without becoming an 'unreasonable burden' on the social assistance system of the host Member State. Notably, starting a business, being self-employed or working for an employer all count, as does part-time and casual work, as long the work is 'genuine and effective'. In addition, EEA national have the right to stay in another EU country, if they are actively looking for work for at least six months. Students and those living on their own resources also need to have comprehensive sickness insurance to qualify for residence under the Citizens Directive.

16. In the UK, individuals can be removed to another country on the basis of having been convicted of a crime committed. This usually applies to those people, who have been sentenced to over 12 months (24 months for EEA nationals). However, under the joint Police Home Office Operation called Operation Nexus attempts are being made to remove EEA nationals administratively, when a person did not commit a crime but is merely suspected of crimes. Remarkably, the basis for the removal of the people to their home country is that they are apparently not exercising their Treaty rights, i.e. not working or looking for work, studying, or being self-sufficient. The British government seems to be of the opinion that they are allowed to do this. Per Regulation 19(3)(a) of the UK Immigration (EEA) Regulations 2006, it is allowed to administratively remove EU citizens, where there is evidence that the person never had, or has stopped having, what the UK authorities call a 'right to reside'. Under Regulation 19(3)(c), an EU citizen may be removed on the grounds of an 'abuse of rights', where there are reasonable grounds to suspect that such abuse is taking place and it is proportionate to do so. In contrast, the presumption in EU law is that EU citizens have the right to reside and, more significantly, EU free movement law gives strong protection against expulsion to EU migrant.

Protection from Expulsion

17. Under EU law, EU citizens' freedom of movement can only be restricted in very specific circumstances. Under Article 27(1) of the Citizens Directive**,** Member States may restrict this freedom of movement and residence only on grounds of public policy, public security or public health. The Citizens Directive further specifies that 'these grounds shall not be invoked to serve economic ends'. So, for example, it is not permissible for a government to decide that in order to save some money, as a matter of policy, it will send other EU countries' citizens, who are on benefits, away. In all cases, the personal conduct of the individual concerned must represent a **genuine, present and sufficiently serious threat affecting one of the fundamental interests of society**. Moreover, every removal or deportation decision must comply with the fundamental EU law principle of proportionality. Consequently, in the UK, where begging is an offence but not an imprisonable offence, it would not meet the sufficient serious threat level required to justify removal.[90] In addition, Article 27(2) of the Citizens Directive clearly states that 'previous criminal convictions shall not in themselves constitute grounds for taking such measures.'

[90] See below for further elabouration on the regulation of begging in the UK.

18. The Citizens Directive does not envisage the removal of EU citizens only because they either do not have or lost their 'right to reside'. It also does not allow for deporting EU citizens solely on the basis of having committed petty crime or minor offences (e.g. theft or 'vagrancy', such as sleeping in the street or begging) or just because they had a previous conviction in their home country. The grounds for removal or deportation have to be sufficiently serious and the individual must represent a sufficiently serious present threat to a fundamental interest of society.

19. Until very recently the jurisprudence from the Court of Justice of the European Union (CJEU) did not specifically addressed the challenges to residence or removal but has dealt with the challenges to benefit entitlements. The CJEU case *Elisabeta Dano and Florin Dano v Jobcenter Leipzig* (C-333/13) concerned an economically inactive Roma Romanian living with her child and other family members, who received welfare benefits. She had been granted a residence permit of unlimited duration by the German authorities but was not looking for (and had no prospect of finding) work. As a result, she was now claiming additional benefits. Despite her residence permit, Mrs Dano could not claim a right of residence under Article 7(1) of the Citizens Directive, without disclosing sufficient resources. Consequently, without that right of residence, she (and her baby) could not invoke the principle of non-discrimination and equal access to social assistance, as safeguarded by Article 24(1) of the Citizens Directive. The CJEU held that:

> *"It follows that there is nothing to prevent the grant of such benefits to Union citizens who are not economically active from being made subject to the* ***requirement that those citizens fulfil the conditions for obtaining a right of residence under Directive 2004/38*** *in the host Member State."*[91]

Even though the German authorities had given her a residence permit of unlimited duration – and did not appear to be proposing to withdraw it – the CJEU found that this was not a "right of residence" under the Citizens Directive, which was a necessary pre-requisite for her to claim the welfare benefits in question. There has not, as yet, been any decision from the CJEU as to whether States are justified in expelling EEA nationals simply because they do not meet the self sufficiency conditions for the residence requirements of the Citizens Directive. But in the recent infringement proceedings brought by the Commission against the UK for applying a "right to reside" test for family benefits (case 308/14 the Advocate General gave a negative opinion. The AG stated that it cannot be inferred that the UK presumes that claimants are unlawfully resident, adding that European citizenship would preclude such a presumption, and that claimants should ***not*** systematically be required to prove they are not unlawfully resident. The judgment of the Court is awaited but seems unlikely that , in the present fragile political climate the court will go against both the UK and the Advocate's General's Opinion (see http://free-group.eu/2015/10/09/an-insubstantial-pageant-fading-a-vision-of-eu-citizenship-under-the-ags-opinion-in-c-30814-commission-v-uk/)

20. At present, therefore, it would seem that merely being found begging, even in countries where this is an offence, cannot justify removal from the Member State in question. EU Law regulates the situation of all EEA nations, who are currently in another Member State. For this reason, the EU Charter of Fundamental Rights applies to them.

THE UNITED KINGDOM

Historical Background

21. The Statute of Cambridge 1388 was the first major statute to address law specific to the poor and poverty. It commenced the sequence of related legislation, which was subsequently codified and known as the old Poor Law. It distinguished between the "sturdy beggars", capable of work, and the "impotent beggars", those incapacitated by age or infirmity. It forbade servants to move out of their "hundred" (the local

[91] See Appendix C.

administrative area) without legal authorisation. Travelling around the countryside in search of work was no longer allowed and the law introduced a formal geographic basis for accountability for the poor. For the next two centuries, the aged and infirm depended upon charity from monasteries and the church communities. The Dissolution of the Monasteries led to an increase in the number of impoverished vagrants and to the passing in 1547 against beggars who were bracketed together with suspected witches, conjurors, and gypsies. But it did nothing to solve the underlying problem, which increased when the Industrial Revolution began. The Vagrant Act of 1744 divided beggars and "idle persons" into the unemployed, without means of support or refusing to work, and "incorrigible rogues" already convicted of other offences. The focus in the next decades was on paying people to collect vagrants and move them on towards the authority responsible for them.

22. The Vagrancy Act 1824 codified and amended this law. The 1824 Act was directed at conduct that forced passers-by to deal with the defendant's activities. Pointon v Hill [1884] 12 QBD made clear that collecting money for food for strikers and their families did not constitute vagrancy. In addition, the case of Mathers v Penfold [1915] 1 KB 514 held that collecting money in aid of strikers and charities is not begging in contravention of the 1824 Vagrancy Act. Moreover, there is authority to suggest that a single act of approaching one person and asking for money is not, without more, enough to raise a prima facie case of begging (R v Dalton [1982] Crim LR 375).

23. Collecting for charity, however, whether on the street or door to door will normally require the permission of the local authority. Street collections for charity normally require a license and the requirements and regulations in many cases are very strict. In the City of London, for example, the kind of street collectors who solicit people to sign up for regular donations – and are paid for doing this – are apparently acting in breach of their license:

> *"No payment by way of reward shall be made to any collector and no payments from the proceeds of a collection may be made either directly or indirectly to any persons connected with the promotion or conduct of such collection or in respect of services connected therewith unless approved.*
>
> *No collector shall importune any person to the annoyance of such person, which effectively means tin rattling and shouting should be avoided and no collection shall be made in a manner likely to cause danger, obstruction or inconvenience to any person."*[92]

The Current Legal Framework Regarding the Practice of Begging

24. The 1824 Vagrancy Act has been subjected to several amendments since but is still the primary legislation regulating begging. It not only criminalises begging but also "rough sleeping" (s. 4). Section 3 still regulates the summary offence[93] of begging or gathering alms in streets and public places. It is an offence under section 3 to "**beg or gather alms**" in any public place, street or highway or to cause, procure or encourage any child to do so. Under section 4, it is an offence to obtain alms by the exposure of wounds or deformities or to obtain alms or charitable contributions under false or fraudulent pretences or to be a recidivist offender under section 3. There is a summary offence of 'persistent' begging, and both offences (s. 3

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[92] See http://www.cityoflondon.gov.uk/business/licensing/charity-collections/Documents/Guidance%20Notes.pdf.

[93] Summary offences are normally dealt with in the magistrates' court where they are governed by Part 37 Criminal Procedure Rules 2010. The Crown Court may, however, deal with a summary offence in the following circumstances: committal for sentence (sections 3 to 7 Power of Criminal Courts (Sentencing) Act 2000; alternative verdicts reached by a jury for a summary offence (section 6(3) Criminal Law Act 1967); conviction of a summary offence on the indictment (section 40 Criminal Justice Act 1988); a summary offence on the back of the indictment (section 41 Criminal Justice Act 1988) or section 51 and paragraph 6 of Schedule 3 Crime and Disorder Act 1998);

and s. 4) are 'trigger offences' for the purposes of the Criminal Justice and Court Service Act 2000. This has a number of consequences for those charged with such an offence. The principal consequence is that he/she will come within the provisions of section 63B of the Police and Criminal Evidence Act 1984. This effectively allows (in certain circumstances) for a sample of urine or a non-intimate sample to be taken for the purpose of ascertaining the presence of any specified Class A drug in his/her body

25. Whether or not a situation is regulated in practice will, however, normally depend not on the **giving** but the **asking**. Those who position themselves outside supermarkets and cafes and *receive* donations – often of food and drink – but, importantly, do not **solicit** donations, seem not to attract the enforcement of section 4, which prohibits the gathering of alms, if they are isolated individuals and are not committing any other public order offences. Soliciting donations in a public place is the regulated activity in practice.

26. Begging is not expressly defined in legislation but the law talks about begging OR gathering alms in the alternative. Section 3 of the Vagrancy Act 1824 makes it an offence to *beg **or** gather alms* (emphasis added) so that it would seem that there is a distinction between asking and receiving but that both are prohibited. Section 4 of the same act makes it an offence "by the exposure of wounds or deformities or to obtain alms or charitable contributions under false or fraudulent pretences."

27. Since Criminal Justice Act 1982 (s. 70) begging *simpliciter* is no longer an imprisonable offence in England and Wales, but since the 2003 National Police Records (Recordable Offences) Amendments Regulations begging is a "recordable offence", that is, it will be kept on the national police computer and can be referred to in the future. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale. Failure to pay fines will attract a custodial sentence in the normal way.

Areas of Law that Impact on Begging

28. Many complaints arising out of begging come from the aggressive or intimidating approach of the 'beggar'. Where the level of threat or intimidation is sufficiently high, other offences of harassment, public disorder and possibly robbery in extreme circumstances might be considered.

29. A raft of different measures previously provided for the regulation of public and hybrid public private spaces. Issues of this kind have been dealt with in the UK by an accumulation and combination of many different laws but recently primarily under the Public Order Act 1986 under section 5 of which "disorderly behaviour" was an offence; the Crime and Disorder Act 1998, which prohibits misuse of a public space; the Violent Crime Reduction Act 2006, which introduced drink banning orders; and the Anti-social Behaviour Act 2003 and the Antisocial Behaviour etc. (Scotland) Act 2004, which gave the police new powers to disperse groups in authorised areas. With local authority agreement, a police superintendent could designate a defined area as a 'dispersal zone' for a period of up to six months (renewable) in England and Wales or three months in Scotland.

30. Now, the Anti-social Behaviour Crime and Policing Act 2014 provides for Public Spaces Protection Orders (PSPO). Section 30 of the Anti-social Behaviour Act 2003 requires consultation with the local council to designate a dispersal zone in advance. In a fast-moving situation, where groups could quickly convene to cause anti-social behaviour or disorder and then move to different areas, it was considered that the powers under the 2003 Act were not effective. Under section 34 and 35 of the Anti-social Behaviour Crime and Policing Act 2014, an area can be declared a dispersal zone if an officer of the rank of police inspector or above is satisfied on reasonable grounds that the use of those powers in the locality during that period may be necessary for the purpose of removing or reducing the likelihood of:

(a) members of the public in the locality being harassed, alarmed or distressed, or
(b) the occurrence in the locality of crime or disorder.

31. A police officer can order members of the public to disperse from this area if they have reasonable grounds to suspect that the behaviour of the person in the locality has contributed or is likely to contribute to:

(a) members of the public in the locality being harassed, alarmed or distressed, or
(b) the occurrence in the locality of crime or disorder. The officer can specify the route by which a person must leave the area, and the 'exclusion period' within which they must not return.

32. Failure to comply with the dispersal order is a criminal offence and will carry a maximum penalty of a £2,500 fine and/or three months imprisonment. According to the Daily Telegraph (17 June 2015), data obtained under the Freedom of Information Act found that in the first six weeks of the law coming into force, dispersal powers were used 528 times against more than 1300 people.

33. However, on the spot Dispersal Orders are now complemented by PSPO's. The making of PSPO's can only be initiated by a "community trigger" and does require mandatory consultation. Typically such orders include some regulation of begging but often only of persistent begging or begging with harassment.[94] The Antisocial Behaviour, Crime and Policing Act of 2014 has introduced new stronger powers to regulate and prohibit – in advance – begging, busking and street selling amongst other more obvious conduct, such as drinking and public hygiene offences, as well as giving the police powers to make on the spot dispersal orders. Several Councils have introduced or tried to introduce PSPO's prohibiting certain conduct in certain places.[95] In some cases, these have been the subject to legal challenge (but not so far to litigation challenges). The NGO Liberty has challenged the Oxford orders, which included reference to persistent begging, and the AIRE Centre together with the Roma Support Group is challenging Brent Council's proposals. The latter's proposal is of indirect relevance to the issue of begging. Instead of targeting begging, it seeks to clamp down on EEA nationals (with the right to work in the UK) from holding themselves out for casual employment in public spaces and thereby earning the money, which would reduce or avoid the need to beg. The Criminal Attempts Act 1981 abolished the offence under section 4 of the Vagrancy Act 1824 of "loitering with intent" which had often previously been used to challenge those whose presence in a particular place the officers of the law found to be of concern.[96]

Busking, Street Entertainment and Street Selling

34. There is a distinction to be drawn between busking and begging. However, both activities may be the subject of PSPO's under the 2014 Act. In English law, buskers are not considered to be beggars: they provide an entertainment "service" in return for which they solicit donations. So, where the person seeking money is doing something in exchange, such as singing as a busker, it has been held that this conduct does not amount to begging, as it ostensibly gives "value for money".[97] In many places buskers have to be licensed and in the most popular locations often have to pass an "audition", which assesses the quality of their performances before they are granted a licence. Special provisions exist in Edinburgh during the Festival period in August. Street traders with stalls and others seeking to sell on the streets are regulated by local byelaws, which can vary from city to city or from borough to borough within cities.

35. The legal status of Big Issue sellers was unclear for a long time till the decision in Bristol City Council v FV (HB) [2011] UKUT 494 (AAC). This case affirmed that the Big Issue seller in question was exercising a genuine and effective economic activity (she was making £100 a week from selling the Big Issue) and 'the fact that the appellant's earnings were not sufficient to mean she did not need recourse to benefits to live was not the test to be applied in assessing whether the work was genuine and effective. Indeed, the tax credits and housing benefit schemes are based on the fact that people in work will need to have recourse to those benefits to live'.

36. Rough sleeping is also regulated by the 1824 Act but under section 4[98] not section 3. Section 4 states that an offence is committed by "every person **wandering abroad and lodging** in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, **and not giving a good account of himself or herself** (*emphasis added*)". However it is important that, in order for the

[94] See http://www.manifestoclub.com/files/Dispersal%20Powers%20Briefing%20Document_0.pdf

[95] See https://www.liberty-human-rights.org.uk/campaigning/public-space-protection-orders.

[96] Corresponding legislation did the same for Northern Ireland.

[97] See Gray v Chief Constable of Greater Manchester Police [1983] Crim LR 45.

[98] This was the provision which until repealed created the offence of " loitering with intent".

offence to be committed, an essential element of the offence is that the individual did not "give a good account of himself".

Sex work

37. Section 16 of the Policing and Crime Act 2009 amends section 1(1) of the Street Offences Act 1959 to create an offence for a person (whether male or female) persistently to loiter or solicit in a street or public place for the purposes of offering services as a prostitute, with effect from 1 April 2010. The term "common prostitute" has now been removed.

Scales of governance

Regions and Devolved Administrations

38. The Vagrancy Act 1824 applies, as it always has, in England and Wales. The laws are different in Scotland and Northern Ireland. Bizarrely, research indicates that the Northern Irish law and practice falls within the scope of the Vagrancy Act 1824, though it should logically have come under the 1847 Act[99] but this may be for some historical reason.[100] The relevant provision (s. 3) of the 1824 Act was never extended to Scotland. Section 22 of the Act (as amended) states:

> *22. Not to extend to repeal any Act in force in Scotland or Ireland relative to the removal of poor, &c.*
> **N***othing herein contained shall be construed to extend or apply to Scotland or Ireland, nor to alter any law now in force for the removal of poor persons born in Scotland, Ireland, or the Isles of Man, Jersey, and Guernsey, and becoming chargeable to parishes in England, such persons not having committed acts of vagrancy as herein-before described, nor to alter any law now in force relating to lunatic vagrants.*

39. However other elements of the Vagrancy Act 1824, in particular those parts of section 4 relating to "loitering with intent", were extended to Scotland via Section 15 of the Prevention of Crimes Act 1871, street-begging was decriminalised in Scotland when the Civic Government (Scotland) Act superseded the Vagrancy Act in 1982. Section 53 and 55 of the Civic Government (Scotland) Act, however, are relevant to the de facto approach taken to begging:

> **53. OBSTRUCTION BY PEDESTRIANS.**
> *Any person who, being on foot in any public place—*
> (a) *obstructs, along with another or others, the lawful passage of any other person and fails to desist on being required to do so by a constable in uniform, or*
> (b) *wilfully obstructs the lawful passage of any other person*
> *shall be guilty of an offence and liable, on summary conviction, to a fine (…).*
>
> ***55. TOUTING.***
> (1) Any person who—
> (a) in a public place—
> (i) touts for the purpose of selling or advertising anything or otherwise obtaining custom so as to give any other person reasonable cause for annoyance; or
> (ii) importunes any other person for that purpose so as to give that, or any other, person reasonable cause for annoyance; and

[99] See below the specific section on Ireland.

[100] The Act originally also said **"**nor to alter any law now in force for the removal of poor persons born in Scotland, Ireland, or the Isles of Man, Jersey, and Guernsey, and becoming chargeable to parishes in England, such persons not having committed acts of vagrancy as herein-before described, nor to alter any law now in force relating to lunatic vagrants."

(b) fails to desist when required to do so by a constable in uniform,

shall be guilty of an offence (…).

40. Street begging was decriminalised in 1982, when the entire 1824 Act was repealed in Scotland by the Civic Government (Scotland) Act. However section 55 of that Act retains touting as an offence.

IRELAND[101]

Anti-Social Behaviour

41. Part 11 of the Criminal Justice Act 2006 provides for proceedings to be taken in Ireland against adults, who engage in anti-social behaviour. Anti-social behaviour by children is addressed in a separate section of the Act and the rules regarding anti-social behaviour orders for children are different from the anti-social behaviour orders (ASBOs) for adults. The section of the Criminal Justice Act 2006 dealing with ASBOs for adults came into effect on 1 January 2007. These provisions allow Gardaí (Irish Police Corps) to deal with anti-social behaviour by adults through a civil process using behaviour warnings and orders. Failure to comply with a behaviour order is a criminal matter. Section 113 of the Criminal Justice Act 2006 defines anti-social behaviour as:

113. (...)

(2) (…) a person behaves in an anti-social manner is the person causes, or in the circumstances, is likely to cause, to one or more persons who are not of the same household as the person—

(a) harassment,

(b) significant or persistent alarm, distress, fear or intimidation, or

(c) significant or persistent impairment of their use or enjoyment of their property.

Begging

42. The Vagrancy Act 1824, described in detail above, was not extended to Ireland at the time of its enactment in relation to England and Wales. It was not until 1847 that Ireland got its own Vagrancy Act (subsequently amended by the Public Assistance Act 1939). For over one hundred and fifty years the offence of begging in Ireland was prosecuted under section 3 of the Vagrancy (Ireland) Act 1847. In December 2007, however, the constitutional validity of the Act was challenged. Mr Justice de Valera, in the High Court case of *Dillon v D.P.P.,* [2007] IEHC 480 (2007), found that section to be unconstitutional. The opening lines of the 2007 judgment tell the background to the tale of the enactment of the 1847 Act:

1. On the 19th day of August, 1847 in the 10th year in the reign of Queen Victoria the Parliament sitting at Westminster passed into law the Vagrancy (Ireland) Act 1847. At this time the Disaster, known to us now as "The Great Hunger" was at its height and on its way to reducing the population of Ireland from eight and a half million to under four million in a few short years.

2. The Vagrancy (Ireland) Act 1847, (hereinafter referred to as the Act) was, clearly, passed into law to assist the authorities in controlling the social effects of this calamity.

43. The Act criminalised begging in Ireland at the height of the famine and was widely seen as adding insult to the injury being inflicted by the British on the destitute and dying population of Ireland. As Mr Justice de Valera noted:

3. "Section 3 of the Act is declared in the preamble to be for the:-

"Punishment of persons wandering abroad or begging in public places"

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[101] The law relating to a variety of public order offences in Ireland - including begging - can be found at: http://www.citizensinformation.ie/en/justice/criminal_law/criminal_offences/public_order_offenses_in_ireland.html.

"And be it enacted, that every person wandering abroad and begging, or placing himself in any public place, street, highway, court or passage to beg or gather alms, or causing or procuring or encouraging any child or children so to do, and every person who, having been resident in any union in Ireland, shall go from such union to some other union, or from one electoral or relief district to another electoral or relief district in Ireland, for the purpose of obtaining relief in such last mentioned union or district shall on conviction thereof before any justice of the peace, if such justice shall see fit, be committed to the common jail or house of correction, there to be kept to hard labour for any time not exceeding one calendar month."

This section constitutes a prohibition against begging in any public place in all circumstances and remains in force to this day, over one hundred and fifty years later.

The Judgment in Dillon struck down the 1847 Act. Justice de Valera held:

There are four ingredients which constitute an offence under s. 3 of the Act. To be convicted, a person must be:-

(a) Wandering abroad,
(b) In a public place,
(c) Begging, or,
(d) Seeking alms.

The phrase "wandering abroad" is not defined in the Act and has been held when used in another similar Act (Vagrancy Act 1824) in the matter of Maghers v. Penfold [1915] 1 K. B. 514, which referred to the judgment of Cave J. in Pointon v. Hill [1884] 12 Q.B.D. 306, to mean persons who have "given up work and adopted begging as a habit or mode of life"; to carry out begging "as a means of livelihood". The respondent, in his submissions, argues that s. 3 of the Act should be interpreted as meaning that begging in a public place, simpliciter, constitutes an offence in that the term "wandering abroad" is without any meaning in this context and should be ignored. In the light of the decision in Maghers v. Penfold and Pointon v. Hill, already referred to, I do not accept this submission: the phrase is included in the section and cannot be ignored, it must have some meaning and I accept that the interpretation which has been applied to it in Maghers v. Penfold and Pointon v. Hill is the correct one.

14. This means that an ingredient of this offence must be "related to rumour, or in repute or past conduct" and this in turn pursuant to the decision of Henchy J. in King v. Attorney General [1981] 1 I.R. 233 at p. 257 which stated:-

"In my opinion, the ingredients of the offence and the mode by which its commission may be proved are so arbitrary, so vague, so difficult to rebut, so related to rumour or ill-repute or past conduct, so ambiguous in failing to distinguish between apparent and real behaviour of a criminal nature, so prone to make a man's lawful occasions become unlawful and criminal by the breadth and arbitrariness of the discretion that is vested in both the prosecutor and the judge, so indiscriminately contrived to mark as criminal conduct committed by one person in certain circumstances when the same conduct, when engaged in by another person in similar circumstances, would be free of the taint of criminality, so out of keeping with the basic concept inherent in our legal system that a man may walk abroad in the secure knowledge that he will not be singled out from his fellow-citizens and branded and punished as a criminal unless it has been established beyond reasonable doubt that he has deviated from a clearly prescribed standard of conduct, and generally so singularly at variance with both the explicit and implicit characteristics and limitations of the criminal law as to the onus of proof and mode of proof, that it is not so much a question of ruling unconstitutional the type of offence we are now considering as identifying the particular constitutional provisions with which such an offence is at variance."

The offence both in its essential ingredients and mode of proof of commission violates Article 34.1, Article 40.4.1, Article 40.1 and Article 40.3 of the Constitution.

44. However, as a matter of Irish Constitutional Law, the Act was struck down mainly on the basis that it infringed the right to communicate with other persons – freedom of expression – by prohibiting them from asking for alms. Article 40.6.1 of the Irish Constitution provides for freedom of expression. Having established that there was, in principle, a constitutional right to beg, the Court was at pains to make clear that this was not an unfettered right. The High Court was quite clear in its judgement on the right of the Oireachtas (Irish Parliament) to legislate to *control* begging, stating clearly therein that:

> *"the right to communicate and the right to freedom of expression can be limited in the interests of the common good. Nothing in this judgement should be construed as preventing the legislature from making laws controlling the location, time, date, location and manner in which begging or the seeking of alms might take place and the age of any persons involved in such activity".*

45. Accordingly, on foot of this judgement, the Irish Government approved in 2008 the drafting of a Criminal Justice (Public Order) Bill, which later became the Criminal Justice (Public Order) Act 2011. Section 2 of the Criminal Justice (Public Order) Act 2011 provides that:

> "A person who, while begging in any place—
>
> (a) harasses, intimidates, assaults or threatens any other person or persons, or
>
> (b) obstructs the passage of persons or vehicles,
>
> is guilty of an offence and is liable, on summary conviction, to a class E fine [an amount up to €500] or imprisonment for a term not exceeding one month or both."

"Begging" is defined in section 1 (2) as follows:

> "For the purposes of this Act, a person begs if—
>
> (a) other than in accordance with a licence, permit or authorisation (howsoever described) granted by or under an enactment, he or she requests or solicits money or goods from another person or other persons, or
>
> *(b)* while in a private place without the consent of the owner or occupier of the private place, he or she requests or solicits money or goods from another person or other persons."

46. Since the judgment in *Dillon,* and the enactment of the Criminal Justice (Public Order) Act 2011, begging of itself is not an offence and only becomes an offence when accompanied by certain actions or behaviours that interfere unacceptably with the rights of others. As can be seen from section 2, the Act creates an offence around harassment, intimidation, assault and threatening or obstructive behaviour. Organising or directing another to beg is an offence under section 5 of the Act and is not limited to the type of begging offence set out in section 2.

47. Subsequent to the enactment of the Criminal Justice (Public Order) Act 2011 and during the prosecution of two individuals (Florin Rostas and John Maughan) in relation to alleged offences under section 2,[102] the defence questioned whether the prosecution had to adduce some evidence to prove that the accused did not act in accordance with a licence, permit, etc., or whether it fell to the defence to prove that the person did have such a licence. The trial judge referred the question to the High Court by way of the case stated. In a judgement delivered in January 2012 Justice White states that:

> *"The prosecution must adduce some evidence to show that the accused person did not act pursuant to license, permit or authorisation granted by or under statute."*

Earlier in his judgement Justice White states that:

> *"There is no constitutional infirmity in transferring the burden of proof of an element of an offence to the accused. This is normally done by reversal of the burden, or by rebuttable presumption."*

[102] DPP v Rosta & Ors [2012] IEHC 19.

48. It is likely that the 2011 Act will be amended in due course (when an appropriate legislative vehicle is available) so as to transfer the burden of proof to the accused in relation to the existence of a licence, permit, etc.

49. In any event, although begging itself is not illegal, obstructing public passage is. Section 3 of the 2011 Act also gives the Garda Síochána (the Irish police) powers to direct persons who are begging in certain places, such as near or at entrances to business premises, ATM machines or night safes, to desist and leave the vicinity in a peaceful and orderly manner. This power, directed at specific locations, provides a useful alternative to prosecution, making for a quicker and more efficient way of dealing with begging. Failure to comply with the directions of the Gardai is an offence.

50. NASC (The Irish Immigrant Support Service) has reported that many Roma are arrested and prosecuted particularly in Cork on somewhat spurious charges, which appear to thinly disguise (and often not even that) that the prosecutions are in fact for the begging itself – which is not permissible.

THE NETHERLANDS

51. Since 2000 Dutch law no longer criminalises begging as such but – like most other European countries – regulates it either specifically or through the regulation of the use of public spaces. Regulations are at local rather than national level.

Freedom of Movement within Public Spaces

52. The leading case of *Oliveira*, which concerned restriction the use of and dealing in drugs, is discussed above in the section on the ECHR. Similar provisions would in principle be available to municipalities to exclude beggars from designated areas provided that the law was precise and ascertainable and proportionate to the legitimate aim pursued.

Legal Regime Regarding Begging in the Netherlands

Overview

53. Begging was formerly a criminal offence under the old Dutch Criminal Code (section 432) but this offence was abolished in 2000. The legislator felt there was no longer any need for the separate criminalisation of begging, particularly given that municipalities could constitute local legislation[103] and could act under the Municipalities Act in cases, where begging disturbed public order or threatened to disturb public order. The legal basis for a town council to decree a municipal byelaw ('algemene plaatselijke verordening') is section 149 in conjunction with section 154, 172 and 174 of the Municipalities Act.[104]

Specific

Leiden

Section 2: 65 municipal byelaw Leiden

Cumbersome or threatening begging

It is forbidden to beg for money of other matter when one begs:

a) Intimidatingly
b) By restricting the freedom of movement of the other person
c) By persistently imposing against the explicit wishes of the other person
d) By following the other person
e) Jointly with one or more others
f) When the other person is a minor

[103] Parliamentary Documents II 1996- 1997, 25437, No. 3.

[104] The Municipalities Act has been amended since the *Olivieira v the Netherlands* case.

54. A maximum sentence of 3 months imprisonment, a fine of the second category can be imposed or disclosure of the court judgment according to section 6: 1(1) municipal byelaw Leiden.

Amsterdam

Section 2. 21 municipal byelaw Amsterdam

Begging

It is forbidden in or near the road or in a public accessible building to beg for money or other matter.

55. A maximum sentence of 3 months imprisonment can be imposed or a fine of the second category according to section 6. 1 municipal byelaw Amsterdam. On the basis of section 2. 8 municipal byelaw Amsterdam, the mayor is authorized to (temporarily) designate a certain area as a 'disturbance area' ('overlastgebied'), when in his opinion there is a serious disturbance or threat to the public order. At the moment there are two indefinite disturbance areas and four temporary disturbance areas designated in Amsterdam. These areas are all in the centre and (south) east of Amsterdam.

56. The mayor may determine that article 2. 9 municipal byelaw Amsterdam applies to this area. The mayor can command, that a person who violates section 2.21 (the general ban on begging) in conjunction with section 2. 9 (1e) in one of the disturbance areas must immediately remove himself from the designated disturbance area. The person must not relocate himself there for the duration of 24 hours. When a person in a period of one year, gets a 24-hour removal order twice, a removal order of a month may be imposed on the ground of section 2. 9 (2a) municipal byelaw Amsterdam. The removal order can be for a duration of up to three months (section 2. 9 (2b- c)) when within a year the removal order of one month is given but after that the begging happens again. Breach of a removal order is a criminal offence with a sentence of imprisonment for up to 3 months on the ground of section 184 of the Criminal code.

Rotterdam

Section 2: 65 municipal byelaw Rotterdam

Beggary

It is forbidden in or near the road or in a public accessible building to beg for money or other matter.

57. A maximum sentence of 3 months imprisonment or a fine of the second category can be imposed or disclosure of the court judgment according to section 6: 1(1) municipal byelaw Rotterdam.

58. The mayor can also designate a certain area as a safety risk area ('veiligheidsrisicogebied') when there is a threat to the public order according to section 2: 76 municipal byelaw Rotterdam. The mayor can give someone a ban to be in a certain area for a certain period (laid down in the ban) when he commits an offense (section 277b(1) municipal byelaw Rotterdam). Is the criminal offence repeated within six months, a ban to be in the area can be imposed of at most 30 days (section 227b(2 and 3) municipal byelaw Rotterdam). Exceptions can be made, if this is necessary in connection with the personal circumstances of the person concerned (section 227b(4) municipal byelaw Rotterdam). It is forbidden to violate the ban imposed by the mayor (section 227b(5) municipal byelaw Rotterdam).

The Hague

Section 2: 52 municipal byelaw The Hague

Beggary

It is forbidden in by the mayor designated roads and times in or near the road or in a public accessible building to beg for money or other matter.

59. The website of The Hague municipality mentions, as designated areas, places in the city centre, near the Central station, the Hollands Spoor station, the Haagse market (on market days). Additionally, begging is forbidden near schools, cemeteries and places of worship (when meetings are held). Finally, buildings where

the user indicates of that he does not appreciate such activities and the entrance and exit of premises within a distance of 3 meters.[105]

60. A maximum sentence of 3 months imprisonment or a fine of the second category can be imposed or disclosure of the court judgment according to section 6: 1 (1) municipal byelaw The Hague. The exploitation of someone, by forcing him to do labour, is prohibited in section 273f of the Criminal code. The section includes begging as a form of forced labour. A maximum sentence of twelve years imprisonment can be imposed. The issue of forced begging is discussed in a separate section below.

Jurisprudence

61. The only case law in relation to begging concerns whether the application of a municipal byelaw was in conflict with proportionality and subsidiarity.[106] There are two cases where Romanians exploited other Romanians, by forcing them to sell papers (this was called disguised begging) and hand over all the money.[107] In Parliamentary documents, there is a case of a Burmese monk, who was refused a residence permit because he did not want to adjust his way of living. He did not want to work, wear shoes, he wanted to beg for food and meditate the whole day.[108]

Relevant laws

62. The Minister of Security and Justice can reject a request for a indefinite residence permit or he/she can withdraw a residence permit when the foreigner (a non-national who has, immediately prior to the application, enjoyed lawful residence for five consecutive years) has been convicted by final court judgment for an offence with a prison sentence of three years or more on the ground of section 21 (1)(c) and 22 (c) of the Aliens Act (2000). The statute is clearly not applicable to begging.

63. An indefinite residence permit can be withdrawn or a definite residence permit can be rejected, when the foreigner is in such a state of destitution that he can no longer provide adequately for the maintenance of himself and his legitimate family. A state of destitution can be when someone falls into begging or vagrancy according to section 5. 41 Decision admission and expulsion- BES 2000. This decision is a so-called general administrative order, which is lower in hierarchy than a formal law.

64. In the Netherlands, the Immigration and Naturalisation Service assesses asylum applications. They reject a request for a residence permit when there is a threat to the public order. There is a threat when the non-national, inter alia, commits a crime and gets an unconditional imprisonment sentence, according to section 4. 4 of the Aliens Circular 2000. This circular is an instruction for the agency and is lower in hierarchy then a formal law and a general administrative order.

SPAIN

Freedom of Movement

65. While Spain is a State Party to Protocol 4 to the ECHR of which Article 2 regulates the right to freedom of movement, thus far neither admissibility decisions nor judgments have been decided on this particular issue in relation to Spain. on this issue in relation to Spain.

66. The use of public spaces is regulated by municipal ordinances. For example, Chapter V of the Barcelona Ordinance regulates the use of public spaces.[109] It makes clear that begging in itself is not prohibited, but obstructing the peaceful free movement of people is – particularly if the begging is "insistent, intrusive or

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[105] http://www.denhaag.nl/home/bewoners/to/Verbod-bedelarij-en-straatmuzikanten.htm

[106] ECLI: NL: HR: 2008:BB4096, ECLI: NL: GHSGR: 2006:AV6352

[107] ECLI: NL: RBNNE:2013:3918, ECLI:NL:RBGEL:2014: 7747; See below the section on forced begging.

[108] Parliamentary Documents 2006- 2007, 19 637, No. 1126.

[109] Ordenanza Municipal de Barcelona:
http://www.pnsd.msc.es/Categoria2/legisla/pdf/legislaAUT176.pdf

aggressive, whether it is direct or on the pretext of offering small unrequested services or any other equivalent formula, or any other form of begging which utilises minors or if minors accompany the person exercising this activity."

{formas de mendicidad insistente, intrusiva o agresiva, así como organizada, sea ésta directa o encubierta bajo prestación de pequeños servicios no solicitados, o cualquier otra formula equivalente, así como frente a cualquier otra forma de mendicidad que, directa o indirectamente, utilice a menores como reclamo o éstos acompañen a la persona que ejerce esa actividad.}

67. Art 35 goes on to elabourate that behaviour, under the appearance of begging or in an organised form, constitutes harassment:

Artículo 35 – Normas de conducta

1. Se prohíben aquellas conductas que, bajo la apariencia de mendicidad o bajo formas organizadas, representen actitudes coactivas o de acoso, u obstaculicen e impidan de manera intencionada el libre tránsito de los ciudadanos y ciudadanas por los espacios públicos.
2. Queda igualmente prohibido el ofrecimiento de cualquier bien o servicio apersonas que se encuentren en el interior de vehículos privados o públicos. Se considerarán incluidos en este supuesto, entre otros comportamientos, la limpieza de los parabrisas de los automóviles detenidos en los semáforos o en la vía pública así como el ofrecimiento de cualquier objeto.

68. Due to a previous legal void in this field, the Generalitat (Government of Catalonia) approved a *civic* (not criminal) law enforceable by the application of fines for misuses and abuses of public space, namely urinating or defecating in public, begging, juggling, selling goods without permission, vandalism and now skateboarding. Fines can reach an astonishing 3000€ (ironically for begging) and serve as a means of deterring the general public. Similar provisions apply in other cities and the regulations follow the scheme in Barcelona.[110]

69. Begging in itself does not constitute **criminal** conduct (i.e. conduct prohibited by the Criminal Code) anywhere in Spain. Articles 177bis and 232 criminalise the conduct of those who use others to beg, which, under certain circumstances, is defined as "trafficking" and trade in human beings (""trata", in Spanish includes trafficking but is wider). The 1970 "Ley Sobre Peligrosidad y Rehabilitación Social" did impose custodial measures on people who begged, as well as on several other categories of people.[111] This law repealed the 1933 "Ley de Vagos y Maleantes" (**attached**) on the same subject. Subsequently, the 1995 Criminal Code repealed the 1970 law. The old system (established by Franco in 1933 and continued/reformed during the dictatorship) deprived people, who had not committed a criminal conduct, from liberty (in addition to beggars, prostitutes, homosexuals, etc., who were included). This would have become unconstitutional ipso jure as of the entry into force of the 1978 Spanish Constitution.

FORCED BEGGING

70. Some of those who beg do so "voluntarily" without direct coercion from other people because they are destitute or to support a drug habit. Some beg because this is seen, culturally, as a normal economic activity. Many of the foreigners begging on the streets of western Europe are from Romania and Bulgaria, although, paradoxically, these are two of the few countries in the EU where begging is a criminal offence, under

[110] See: http://www.pnsd.msc.es/Categoria2/legisla/pdf/Relaciones/NORMATIVAMUNICIPAL_CRONOLOGICOENERO(ExportadodeWeb18deSeptiembre).pdf.

[111] See: http://www.boe.es/diario_boe/txt.php?id=BOE-A-1970-854.

Article 326 of the Romanian Penal Code and Articles 189, 328 and 329 of the Bulgarian Penal Code.[112] Begging is very often seen as a normal economic activity amongst some members of the Roma communities of Central and Eastern Europe, who have long suffered discrimination, poverty and lack of education and are often excluded from mainstream economic activities, especially from stable employment (as opposed to being casual workers, or providing services such as repairing tools and re-furbishing white goods). Many of those who are begging on the streets of Europe are the victims of exploitation. Adults and children, who are the victims of exploitation, have also often, but not always, been trafficked for this purpose. This is a complex phenomenon.

71. In September 2014, Anti-Slavery International's 'RACE in Europe' project released an important report publishing the research carried out in a number of EU countries. The report explores the situation in Ireland, the UK, the Czech Republic, and the Netherlands and provides an overview of the rest of Europe. The report, entitled 'Trafficking for Forced Criminal Activities and Begging in Europe' analyses the phenomenon of trafficking into crime such as cannabis cultivation, ATM theft, pickpocketing, bag-snatching, counterfeit DVD selling, benefit fraud and forced sham marriage, as well as being forced to beg. A distinction must be drawn between trafficking into crime and trafficking for forced begging. Many victims of trafficking and exploitation carry out a raft of activities some of which are in themselves offences and some of which – like begging – are not offences in many jurisdictions. As noted previously in this paper, unlike the other activities noted above, begging *per se* is not a crime in most European countries, although many common forms of begging (e.g. the use of children, harassment, obstruction) may be offences. However, since the coming into force of the EU Directive (2011/36), trafficking for exploitation, including for forced begging, is an offence in most EU countries. Because of the prohibition on forced labour and services, exploitation, even without the trafficking element, is often an offence irrespective of whether the begging is itself an offence.

72. Historically the authorities have dealt with this problem by prosecuting those who steal and or beg. But it has now been realised that those who are exploited to carry out these activities are primarily the victims of crimes and should be treated as such rather than being treated as perpetrators.

73. Article 26 of the Council of Europe 2005 Trafficking Convention states that parties shall:

> "provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."

74. Article 8 of the EU Directive (2011/36) goes further by stating that:

> "Member States, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities'… [which are committed as a result of their trafficking]."

75. In the UK, as noted in the Anti-Slavery International's RACE project report:

> '*The Crown Prosecution Service provides legal guidance to prosecutors in cases where the suspect is a potential victim of trafficking. In such cases, the prosecutor must make full enquiries as to the circumstances in which they were apprehended and whether they would support a defence of duress in law. If the requirements for a defence of duress cannot be met then it must be considered whether it is in the public interest to continue with the prosecution. However, as the data gathered by the RACE Project shows, this guidance is often not followed.*'

76. Additionally, the Anti-Slavery International report notes that cases of individuals, being trafficked and forced to beg by criminal gangs or by family members (sometimes the two are the same), have been reported all across Europe for a number of years. Furthermore, the country reports of the Group of Experts on Action against Trafficking in Human Beings (GRETA), the group of experts who monitor the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, made references to incidences of forced begging in 22 out the 28 countries that had then been evaluated. Although research undertaken on this issue has primarily focused on child begging, adults are also known to be exploited through begging.

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[112] Begging is also an offence in UK Greece and Denmark.

77. As the Anti-Slavery International report notes, those who are forced to beg are made to hand over their earnings to their exploiters and commonly suffer abuse if they fail to reach the monetary targets they have been set. Children forced to beg experience serious violations of their rights, and are often exposed to severe physical, psychological and emotional abuse. In some cases, the victims are deliberately maimed, or their clothes or shoes are taken away to attract more sympathy. This will in many cases necessitate them from being removed from their families and placed in public care. Traffickers will deliberately target mothers with children or persons with visible disabilities.

78. Forcing others to beg (and undertake begging-related activities, such as selling small items in return for money that may have little to do with the value of the item) can be an extremely lucrative business. For example, the UK and Romanian police carried out so-called Operation Golf, which revealed that children begging and pick-pocketing in central London could each generate £100,000 a year. Victims may be also concurrently exploited through other activities, such as petty crime or benefit fraud, to further increase the profits for their traffickers.

79. Begging is a complex issue, both legally and socially. Research on forced child begging, rather than voluntary child begging, shows that children may be trafficked and forced to beg by their parents and guardians or by third parties, such as organised criminal gangs. Cases have also come to light where whole families have been trafficked by criminal gangs and forced to beg as a family unit. A host of factors make certain individuals and ethnic groups particularly at risk of being exploited.

The Applicable European Standards

Council of Europe

European Convention on Human Rights

80. Article 4 ECHR prohibits forced labour. Two landmark cases have been decided by the Court: (a) *Siliadin v France* (App no 73316/01), which concerned a situation of domestic slavery and (b) *Rantsev v Cyprus and Russia* (App no 25965/04), which concerned a Russian woman, who was trafficked to Cyprus for labour and sexual exploitation, and, after she went to the police to complain about her plight, was handed back to her "employers", which resulted in her dead. Cyprus was found in violation for failing to have in place and apply the necessary safeguards and Russia for failing to take steps to prevent the trafficking.

Council of Europe Convention Against Trafficking in Human Beings

81. Article 4(a) of the Council of Europe Convention Against Trafficking in Human Beings defines 'trafficking in human beings' as:

> (T)he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

It should be noted that the "transportation" referred to can be internal and does not necessarily involve ***international*** trafficking. The Convention made no express reference to forced begging as an evil it sought to address.

European Union

82. The EU Council Framework Decision on combating trafficking in human beings (2002/629/JHA) was similarly silent about forced begging. The subsequent EU Anti-Trafficking Directive (2011/36/EU) was the first European instrument in which a specific reference to forced begging was made. In Recital 11 the Directive says:

> *In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation.* ***Within the context of this Directive, forced begging should be understood as a form of forced labour or services*** *as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour,*

83. Article 2 of the 1930 ILO Convention states:

> The expression 'exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.[113]

84. The EU Anti-Trafficking Directive refers to exploitation for criminal activities *and* forced begging as two discrete phenomena, as in most EU member States begging *simpliciter* is not a criminal offence unlike e.g. pickpocketing or benefit fraud, which are other common focuses of exploitation. Article 2 of the EU Anti-Trafficking Directive states:

> **Offences concerning trafficking in human beings**
>
> 1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
>
> 2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
>
> 3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services**, including begging,** slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
>
> 4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.
>
> 5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
>
> 6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

United Kingdom

The Modern Slavery Act

85. The Modern Slavery Act 2015 of England and Wales (Scotland and Northern Ireland have their own legislation), which came into force on 31st July 2015, is, like the curate's egg, good in parts. Forced labour was already a criminal offence under the Coroners and Justice Act 2009. The focus of the Bill was directed towards sexual exploitation and then, later, to conventional labour exploitation. Unlike the EU Anti –Trafficking Directive, it does not specifically mention forced begging as a specific form of forced labour or services. The

[113] Exploitation for other criminal activities (for example working on cannabis farms) has been well researched and the subject of litigation but is beyond the scope of this paper.

Modern Slavery Act has, however, seen a new post – Anti-Slavery Commissioner (ASC) – created. The ASC is described as being independent, but he reports to the Home Secretary, not Parliament and the Home Secretary can redact his reports before they are published.

Ireland

86. In Ireland, the Criminal Law (Human Trafficking) Amendment Act section 1 (b) (a) expands the definition of 'labour exploitation' as subjecting the person to forced labour (including forcing him or her to beg).

Czech Republic

87. The Anti Slavery International report – commenting on the Czech Republic – makes a comment of more general application:

> *The measures taken by the Czech authorities seem to have significantly reduced forced child begging in the country. However, cases of forced begging have subsequently mushroomed in neighbouring countries, such as Italy, indicating that the problem has been displaced rather than eradicated.* ***This is further evidence that traffickers tailor their activities based on the social and legal landscape of the environment in which they operate, adapting to changes in legislation and efforts by the authorities. Addressing forced child begging requires not only a national level response but also a coordinated response across European borders.*** *The Czech government has (upon the initiative of NGOs dealing with this issue and in cooperation with the police) made considerable efforts to develop detailed instructions for a course of action to be followed by state administration in relation to forced child begging. and recommends that it should be presumed that the child is a victim of trafficking, unless proven otherwise* (emphasis added).[114]

Trafficking of People of Roma Origin[115]

88. Membership of a particular ethnic group has been identified as one of the vulnerabilities exploited by traffickers. Roma communities are particularly vulnerable to trafficking for the purposes of street crime and begging. Roma communities in countries, such as Romania, Slovakia and Bulgaria, suffer particularly high levels of poverty, unemployment and discrimination. It is well known that these factors significantly increase vulnerability to trafficking. For instance, the 2011 report on Bulgaria by GRETA recorded that NGO data indicates that over 50% of trafficking victims were from the Roma community, and according to police officers, who were interviewed for the report, the Roma community accounted for over 80% of trafficking victims. The historical exclusion, marginalisation and discrimination experienced by the Roma across Europe has led to low levels of education and high unemployment.[116]

89. In 2010, the Metropolitan Police and the Romanian police, by a joint operation, arrested 18 Romanian child traffickers for forcing Romanian Roma children to beg and steal on London's streets. They were thought to be responsible for trafficking at least 168 children to Britain. The arrests took place in an area of the Romanian town, which in the last few years had seen a dramatic rise in prosperity. New unexplained wealth brought local residents luxury homes and expensive cars. In addition to these arrests, the operation recovered and seized four AK47 rifles, 12 hunting rifles, 12 shotguns, including military grade weapons, and six handguns. Other items seized included: €25,000, £25,000 and 40,000 Romanian Lei; 13 high value cars; six houses; and a

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[114] See: http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_for_the_study_on_typology_and_policy_responses_to_child_begging_in_the_eu_0.pdf

[115] See: http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf.

[116] See: http://www.antislavery.org/includes/documents/cm_docs/2014/t/trafficking_for_forced_criminal_activities_and_begging_in_europe.pdf.

substantial amount of evidence linking the gang to crime in the UK and other EU countries. The gang were responsible for getting hold of children aged between seven and 15 who were then trained to beg and steal in London. Police claim that children were making their traffickers up to £100,000 a year, through begging and stealing credit cards, cash and mobile phones.

90. It is rare that children are only being forced to beg. They are usually also being exploited for other criminal activities. Some are thought to have been taken by force or given away by desperate parents in debt bondage, while others were sold by their parents for as little as €200 each. Some children rescued from the gang have been placed into care in Britain, whilst others have been returned to their families. The gang placed children with families under their control in grossly overcrowded accommodation. The children were deprived of education and healthcare and forced into crime.

91. Operation Golf was a Metropolitan Police investigation into what is one of the largest human trafficking rings in Europe. It is a Joint Investigation Team (JIT) with the Romanian National Police operating under EU law. It targets Romanian organised criminal gangs, who traffic children to the UK, who are forced to beg and steal on the streets of London. The Tandarei raids are part of wider efforts against Romanian traffickers, which have become active across Europe since Romania joined the EU in 2007. Other European cities long affected by crime caused by Romanian trafficked children include Madrid and Milan. In 2008, 95 per cent of children up to 14-year-old caught stealing on Madrid's streets were Romanian Roma, according to the Spanish Police. Children under the age of 14 are protected from prosecution under Spanish law. In 2007, Italian police investigating the rise of pick-pocketing in Milan were able to expose a criminal gang controlling 50 Roma children forced to steal. The operation resulted in the imprisonment of 26 Romanians for up to 14 years for child slavery offences.

CONCLUSION

Begging was historically closely associated with " vagrancy" with its connotations of homelessness. Many of those who beg in Europe today are not homeless (although some are - but that is a different issue) . The state seems to tolerate low levels of begging provided that it does not constitute harassment or obstruction and provided that there are not such significant numbers of people begging in any one place so as to constitute a public nuisance . The response of the authorities is normally just to warn and move them on. Everywhere in Europe , even where some kinds of begging are offences , they are only a minor offences and not imprisonable crimes. Those who are actually **arrested** for begging are usually also charged with other offences such as pickpocketing, and minor shoplifting, or are arrested in connection with drugs related offences Migrants, particularly Roma migrants, from Central and Eastern European countries have often seen begging as a normal traditional means of subsistence as they are frequently excluded from mainstream economic activities as a consequnence of discrimination in their countries of origin and now also in Western Europe, and it is difficult for them to understand , culturally , that it is not acceptable conduct. However, child beggars across Europe are often victims of trafficking and form part of highly lucrative business enterprises ,frequently operated by their families, and which are now targeted by anti trafficking legislation.

APPENDIX A

***Budina v Russia* App no 45603/05 (ECtHR, 18 June 2009)**

"*In the present case, it cannot be said that the State authorities have imposed any direct ill-treatment on the applicant. The essence of the applicant's complaint is that the State pension on which she depends for her subsistence and livelihood is not sufficient for her basic human needs. The Court cannot exclude that State responsibility could arise for "treatment" where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity (see O'Rourke v. United Kingdom, no. 39022/97, 26 June 2001, where the Court held that the applicant's suffering, notwithstanding that he had remained on the streets for 14 months to the detriment of his health, had not attained the requisite level of severity to engage Article 3 and had, in any event, not been the result of State action rather than his own volition as he had been eligible for public support but had been unwilling to accept temporary accommodation and had refused two offers of permanent accommodation; also see, mutatis mutandis, Nitecki v. Poland, no. 65653/01, 21 March 2002, where, in rejecting the applicant's complaint about the State's refusal to refund him the full price of a life-saving drug, the Court noted while Article 2 might be engaged if the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally, in this case 70% of the drug price had been compensated by the State and the applicant only had to stand for the outstanding 30%).*

Turning to the facts of the present application, the Court notes that the applicant's income within the period in question was not high in absolute terms. However, the applicant has failed to substantiate her allegation that the lack of funds translated itself into concrete suffering. On the contrary, in her observations the applicant explained that in 2008 her pension was enough for flat maintenance, food, and hygiene items, but was not enough for clothes, non-food goods, sanitary and cultural services, health and sanatorium treatment. Of these latter items, it appears that the applicant was in fact eligible for free medical treatment. While she claimed that in practice the paperwork for sanatorium treatment was prohibitive, she has not shown that essential medical treatment has, for that reason, been rendered unavailable. Indeed there is no indication in the materials before the Court that the level of pension and social benefits available to the applicant have been ***insufficient to protect her from damage to her physical or mental health or from a situation of degradation incompatible with human dignity*** *(…..). Therefore even though the applicant's situation was difficult, especially from 2004 to 2007, the Court is not persuaded that in the circumstances of the present case the high threshold of Article 3 has been met* ***(emphasis added)***

APPENDIX B

MSS v Belgium and Greece App no 30696/09 (ECtHR, 21 January 2011)

252. That said the Court must determine whether a situation of extreme material poverty can raise an issue under Article 3.

253. The Court reiterates that it has not excluded the possibility "that State responsibility [under Article 3] could arise for 'treatment' where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity" (see Budina v. Russia (dec.), no. 45603/05, 18 June 2009).

254. It observes that the situation in which the applicant has found himself is particularly serious. He allegedly spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live. Added to that was the ever-present fear of being attacked and robbed and the total lack of any likelihood of his situation improving.

258. In any event, the Court does not see how the authorities could have failed to notice or to assume that the applicant was homeless in Greece. The Government themselves acknowledge that there are fewer than 1,000 places in reception centres to accommodate tens of thousands of asylum-seekers. The Court also notes that, according to the UNHCR, it is a well-known fact that at the present time an adult male asylum-seeker has virtually no chance of getting a place in a reception centre and that according to a survey carried out from February to April 2010, all the "Dublin" asylum-seekers questioned by the UNHCR were homeless. Like the applicant, a large number of them live in parks or disused buildings (see paragraphs 169, 244 and 245 above).

The Court considers that the Greek authorities have not had due regard to the applicant's vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.

264. It follows that, through the fault of the authorities, the applicant has found himself in a situation incompatible with Article 3 of the Convention. Accordingly, there has been a violation of that provision.

APPENDIX C

C-333/13 *Elisabeta Dano and Florin Dano v Jobcenter Leipzig* [2014]

"In the main proceedings, according to the findings of the referring court the applicants do not have sufficient resources and thus cannot claim a right of residence in the host Member State under Directive 2004/38. Therefore, as has been stated in paragraph 69 of the present judgment, they cannot invoke the principle of non-discrimination in Article 24(1) of the directive.

82 Accordingly, Article 24(1) of Directive 2004/38, read in conjunction with Article 7(1)(b) thereof, does not preclude national legislation such as that at issue in the main proceedings in so far as it excludes nationals of other Member States who do not have a ***right of residence under Directive 2004/38*** *in the host Member State from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004* (emphasis added).

83 The same conclusion must be reached in respect of the interpretation of Article 4 of Regulation No 883/2004. The benefits at issue in the main proceedings, which constitute 'special non-contributory cash benefits' within the meaning of Article 70(2) of the regulation, are, under Article 70(4), to be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. It follows that there is nothing to prevent the grant of such benefits to Union citizens who are not economically active from being made subject to the ***requirement that those citizens fulfil the conditions for obtaining a right of residence under Directive 2004/38*** *in the host Member State (see, to this effect, judgment in Brey, EU:C:2013:965, paragraph 44)* (emphasis added).

APPENDIX D

National Referral Mechanism[117]

The National Referral Mechanism (NRM) in the UK is a framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support.

The NRM is also the mechanism through which the UKHTC collect data about victims. This information contributes to building a clearer picture about the scope of human trafficking and modern slavery in the UK.

The NRM was introduced in 2009 to meet the UK's obligations under the Council of European Convention on Action against Trafficking in Human Beings. At the core of every country's NRM is the process of locating and identifying "potential victims of trafficking".

From 31st July 2015 the NRM was extended to all victims of modern slavery in England and Wales following the implementation of the Modern Slavery Act 2015.

Modern Slavery encompasses:

1. Human trafficking
2. Slavery, servitude and forced or compulsory labour

From 31st July 2015, in all UK referrals, the Competent Authority (trained decision makers) must consider whether the person is a victim of human trafficking. In England and Wales, if someone is found not to be a victim of trafficking, the Competent Authority must go on to consider whether they are the victim of another form of modern slavery, which includes slavery, servitude and forced or compulsory labour. The Act makes no specific reference to forced begging.

The NRM grants a minimum 45-day reflection and recovery period for victims of human trafficking or modern slavery. Trained decision makers decide whether individuals referred to them should be considered to be victims of trafficking according to the definition in the Council of Europe Convention. In England and Wales, further consideration is made to those who do not meet the definition of trafficking. Their cases are then considered against the definitions of slavery, servitude and forced or compulsory labour.

[117] See http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism.

Appendix 5: Media and parliamentary analysis

Media.

In line with John et al. (2013) and Soroka (2006) we selected one national newspaper, *The Times* as a measure of media agenda over time to explore media framing of begging and related issues, and how beggars and begging are constituted in media discourses. We used Factiva to carry out an analysis of content and frequency of articles in *The Times* for the time period 01/01/2004 – 31/12/2014 which referred to (begging OR beggar) and related issues. Figure 1 below highlights the keywords that were used in the text search[118]. By far the largest number of articles related to Beggar/ing and Roma/Romanian, at 133 articles (including duplicates), this was almost three times as many as the number of articles referring to begging and homelessness, (43 (including duplicates)), the second largest. The other terms had far less coverage.

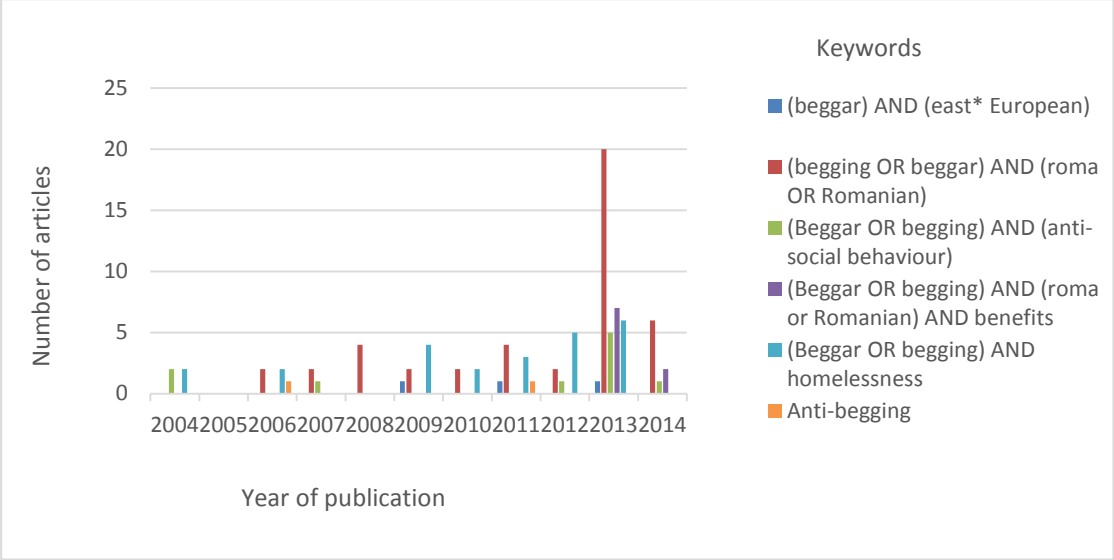
Additionally, as figure 1 below clearly shows, there was a spike in coverage in 2013 relating to the terms (begging OR Beggar) and (Roma OR Romanian). This was the year prior to removal of transitional controls on Romanian and Bulgarian nationals following their entry into the EU in 2007. From 1 January 2014 the restrictions on the right to work and claim benefits for nationals of these two countries were lifted in the UK. It was also in 2013 that the power to impose Public Spaces Protection orders (PSPOs) was being discussed; coming in to force by the Anti-Social Behaviour, Crime and Policing Act 2014.[119] Under the act, local authorities can use PSPOs to ban certain activities they believe are having a "detrimental impact" on quality of life. People who do not comply can be required to pay a £100 fixed penalty fine or face prosecution.

During 2013, media coverage of (begging OR beggar) AND anti-social behaviour increased twofold in *The Times*. This year also saw a jump in coverage of begging in relating to Roma/Romanian and benefits. In contrast, articles relating begging and homelessness show relatively stable coverage over the time period, with a slight increase in 2013.

[118] Additional terms of (Beggar OR begging) AND children (Beggar and drug OR “substance abuse) were searched for but both brought up too many irrelevant articles and so had to be excluded from results

[119] http://www.bbc.co.uk/news/uk-32109545

Fig. 1 Media coverage in *The Times* as per keywords search



Source: Factiva database, 2016

Atkinson et al. (2014) find that two factors — average levels of coverage, and whether there is a spike in coverage — account for around 90% of the factors that predict whether a national media agenda exists for a particular subject or not. Results from this small scale media analysis would suggest a media agenda exists for Roma, whereby they are racialised and constituted as linked to begging and deviancy. Similarly, de Noronha (2015) in his analysis of media coverage of Foreign National Prisoner (FNP) 'crisis', found that newspaper articles on 'foreign criminals' and 'foreign prisoners' skyrocketed in 2006, the year the FNP was 'discovered' (Anderson, 2013 in de Noronha, 2015:6), revealing the media agenda.

Content analysis of *The Times* articles on Roma and Romanian or begging, reveals the vast majority of articles were negative, with just one positive article in 2009 and three positive articles in 2013. Many articles referred to acts of criminality and child trafficking. As the below examples of three headlines from articles in *The Times* (print and online) from 2013 containing the words begging/beggar and Roma/Romanian reveal, the language is one of flows and swamping:
'Homeless services are swamped by Romanian beggars'
'Gangs enslave Romanian disabled as street beggars'
'Gypsies who flood into Britain'

Water metaphors elude to an image of out of control movement. Such metaphors are commonly used in media migration narratives; constructing perceptions of danger and dehumanizing migrants (Kainz, 2016)[120]. Other scholars, when analysing media narratives around asylum have also found the dominant metaphors portray asylum seekers as water, as criminals, or as an invading army (El Refaie, 2001). The language of begging is one of criminality and sensationalised, linked to terms of slavery, gangs and exploitation. The mobility of the Roma is thus similarly constructed as a threat.
Richardson (2010)'s analysis of media and political discourse on Roma and the impact on policy implementation looked at the relationship between press coverage and political discourse[121]. She found that media discourse showed a pattern of broadly negative portrayal but there was more dissonance within the

[120] https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/02/people-can%E2%80%99t

[121] See Fig. 3 on page 179

political discourse. However, whilst negative anti-Roma campaigns in the tabloid press were extreme points of anti-Gypsy discourse, she contends they were also part of a longer-entrenched ongoing negative political and media discourse on a local, national and European level (Ibid.). Other research has highlighted the racialization of the Roma in tabloid press, whereby the stereotypes of the Roma are portrayed as epitomizing and embodying cultural backwardness (Fox et al. 2012). Roma often appears coupled with the 'numbers game' and 'crime' (Clark & Campbell, 2000 in Fox et al. 2012).

The negative portrayal of the Roma in some sections of the media, serve as a tool to highlight their 'otherness' and their so-called deviancy from societal norms. Thus constructing their identity as different (Richardson, 2006 in Richardson, 2010: 168). Fox et. al's media analysis of Eastern European migrants found Romanian migrants portrayed as 'dangerous criminals and social parasites' (Fox et al. 2012: 687). Such discourses are found to reinforce and complicate the implicit racial profile of the Romanian through their culturally inflected discourse of exclusion (ibid:691).
Many researchers draw attention to a particular relation between public opinion and the content of the media (e.g. Gilens 1999; Golding and Middleton 1982). Media portrayal of specific social groups is claimed to be influential in shaping people's perceptions and evaluation of those groups, especially in situation in which direct contact and exchange with those groups is limited (cf. McCombs and Reynolds 2009; Thompson 1995), such as the poor or ethnic minorities. On the other hand, it is also claimed that the (stereotypical) images of socially vulnerable groups that emerge from the media constitute a reflection of the perceptions that dominate the society (Gilens 1999; McKendrick et al., 2008) and/or mirror the institutional climate and existing political agenda (Larsen and Dejgaard 2013).

It has also been suggested that that popular deservingness opinions and attitudes are rooted in (popular) culture (van Oorschot and Roosma, forthcoming) and that they might be reflected in but also reinforced by the mass media (cf. Lepianka 2015).

Following Atkinson et al. (2014), and in a reflection of de Noronha's (2015) findings, in the case of the Roma, there is evidence of a media agenda linked to a perceived increase in numbers following the lifting of transitional restrictions. Indeed, the media analysis conducted for this study reveals the strong association between Roma and begging, constructing Roma identities as criminals, engaging in anti-social behavior and thus subject to exclusionary measures.

Parliamentary

An additional search of parliamentary debates using Dods monitoring to search for references to 'begging' and 'beggar' from 2006 (when archive records commence) through to December 2013 found references related to human trafficking, child slavery, policing and antisocial behaviour, as well as immigration controls – particularly with reference to Romania and Bulgaria. References to Romania and Bulgaria occurred once in 2007 and in 2012 and twice in 2013. All references in 2011 were in relation to trafficking as this was when the Modern Slavery Act was being debated in parliament. A linkage between begging, mobility and criminality is evident.

Table 1. References to 'beggar' or 'begging' in UK parliamentary debates 2006 – December 2013

2013	2012	2011	2010	2009	2008	2007	2006
Immigration (Bulgaria and Romania)	Immigration (Romania and Bulgaria)	Human Trafficking	Anti-Slavery Day	Antisocial Behaviour	Home Affairs and Justice	Asylum Seekers	Human Trafficking
immigration controls		Policing and Crime - Opposition Debate (16th Day)		Housing and the Credit Crunch	Fighting Crime (Public Engagement)	Welsh Affairs	Street Children (Congo)
zero hours contracts		Trafficking in Human Beings - Motion to Approve		Looked-after Children	Population Estimates (Westminster Council)	Homelessness (A8 Nationals)	Drug Intervention programme
Anti-social Behaviour, Crime and Policing Bill - remaining stages		Child Slavery		Public Order Offences	Enforced Criminal Activity (Children)	Safeguarding Runaway and Missing Children	Human Trafficking
Developing Countries: Children		Protection of Freedoms Bill - Second Reading		Begging and Vagrancy	Human Trafficking		Drug Intervention programme
				Thames Valley Police	Zimbabwean refugees		Gurkhas
				Policing and Crime Bill			

Source: Dods monitoring report

The racialized figure of the Roma beggar, is outside of societal norms and inclusion in the community; constructed as an issue of cultural difference as narratives that emerged in the interviews confirmed. Referring to earlier press coverage in the late 1990s when Roma asylum seekers arrived in the UK, Guy notes that alarmist press reports at the time helped cement the 'iconic figure of the Romani beggar from Romania' in the British consciousness (2003 in Fox et al. 2012:690). It would seem that such discourses are being retold today.