

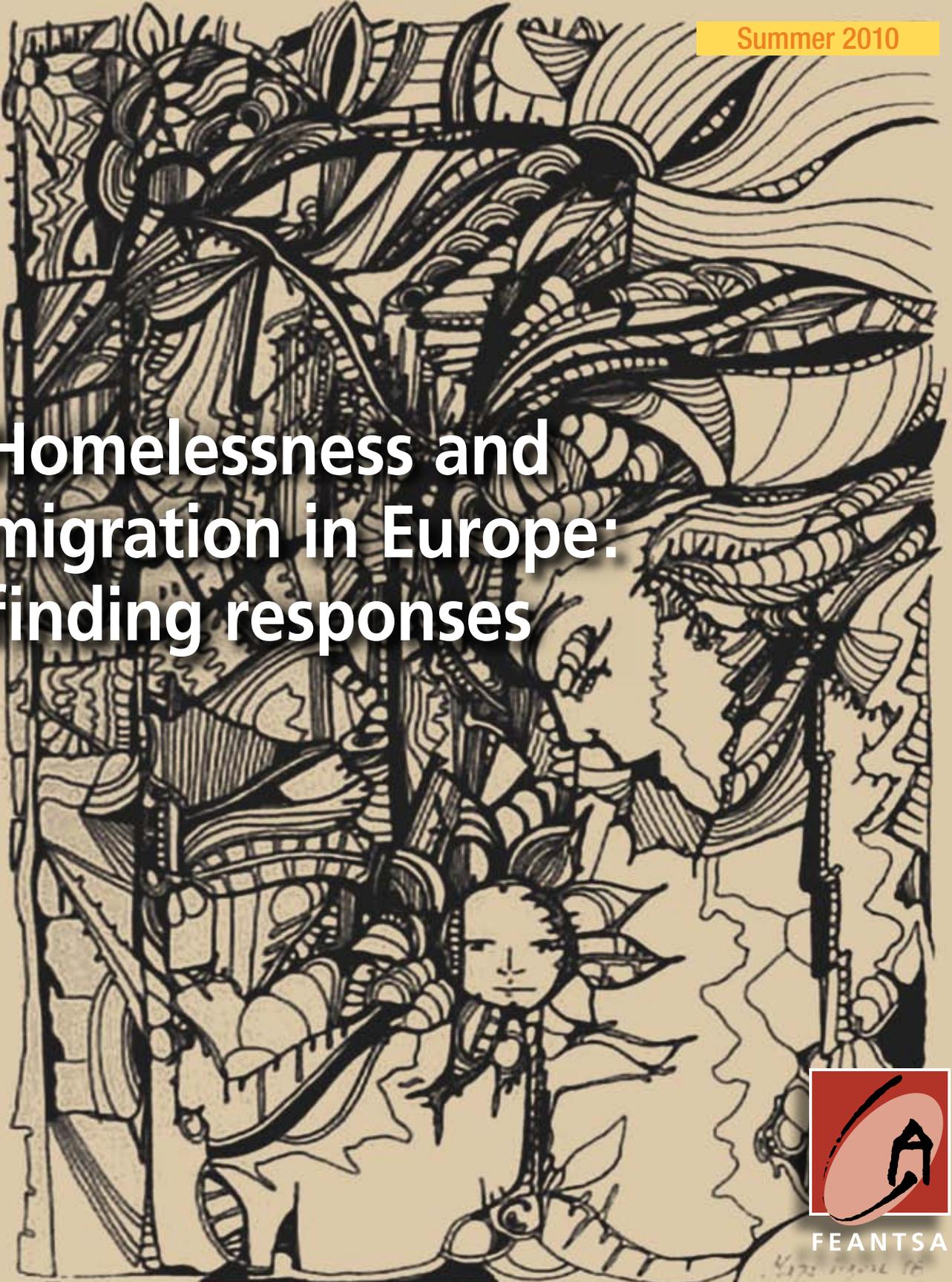


The Magazine of FEANTSA - The European Federation of National Organisations Working with the Homeless AISBL

Homeless in Europe

Summer 2010

Homelessness and
migration in Europe:
finding responses



FEANTSA

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LETTERS TO THE EDITOR

We would like to give you the chance to comment on any of the articles which have appeared in this issue. If you would like to share your ideas, thoughts and feedback, please send an email to the editor, suzannah.young@feantsa.org.

Homelessness and migration in Europe: finding responses

Migration to and within the European Union (EU) can take several forms and the experience of migration can have varying implications for migrants who come to or move around the EU. Migrants may be asylum seekers, refugees, undocumented migrants and economic or labour migrants. Each of these groups has access to different social rights.¹

Regular immigrants are legally resident in the host country, holding work and/or residence permits. Also, for EU citizens, the principle of free movement grants them the right to travel between Member States and to settle anywhere in the EU. However, it appears that moving to another Member State can lead some EU citizens into social exclusion and homelessness.² Conversely, the right to travel is restricted for undocumented or irregular migrants, as is their right to participate economically in EU society, and their access to public services such as health and publicly funded social accommodation.

Although the rights of asylum seekers vary between Member States, in general, asylum seekers are legally in the country while their asylum application is being processed, but do not have legal leave to remain, which means that their entitlements can be restricted. Refugees can be granted temporary protection in their host country, meaning that any entitlements are not permanent.

These situations can result in migrants not having access to certain rights and services, especially when they are homeless. In some cases, the lack of entitlements can be the cause of homelessness among migrants. Highly vulnerable and facing problems in terms of access to housing, migrants often turn to homeless services to meet their need for shelter, food and hygiene.

EU Member State policies on homeless migrants' rights can vary. In some States, access to publicly-funded homeless services is denied to non-nationals and to undocumented migrants. Other States provide unconditional support for all.³ However,

scarcity of resources puts strain on service-providers and risks creating a situation where a choice between national and non-national service users is made. Moreover, many service providers have difficulty supporting service users with different needs from their "traditional" users.

In line with growing interest in this area and a focus on EU migrants as a risk group by EU institutions,⁴ faced with the realisation that homeless service providers may need assistance and clarification to enable them to support the migrants who wish to access their services, and noticing that some service providers have developed solutions to meet this need, FEANTSA has chosen to focus on homelessness among migrants in the Summer 2010 issue of *Homeless in Europe* and give examples of responses to migrant homelessness found across Europe.

The following articles give several perspectives, from NGOs, local authorities, academics and legal professionals, of national and local responses to migrant homelessness among both EU and third-country nationals, and migrants with and without documentation. However, an opinion that reappears in many of our contributors' articles is that integration into the host society is a very important factor in guaranteeing that migrants do not become homeless.

Member States experience migration in differing ways. Some have a history of immigration because of a colonial past or labour migration. For others, immigration is a new phenomenon. Aris Sapounakis, Dafni-Efrosini Delfaki and Themis Pellas demonstrate the situation with regards to migration and living conditions in a country of recent inward migration, describing the different experiences of homelessness and housing exclusion of predominantly third-country national migrants in Greece. The article makes the case for better provision to integrate migrants, and thus improve their housing options.

1 For an explanation of different migration statuses, see FEANTSA's report on the Impact of Immigration on Homeless Services in the European Union: http://www.feantsa.org/files/immigration/imm_rept_en_2002.pdf

2 For more information on homelessness and migration in Europe, see the FEANTSA book, *Immigration and Homelessness in Europe*, ed. by Bill Edgar, Joe Doherty and Henk Meert (Bristol: The Policy Press, 2004)

3 Policy on the issue of access to homeless services irrespective of legal status will be addressed in December 2010 by the European Consensus Conference on Homelessness.

4 The Joint Report on Social Protection and Social Exclusion 2010 states that "policies [...] need to adapt to changing patterns of homelessness, and to new risk groups, such as people with low-paid, poor quality or intermittent jobs, including the young and migrant and mobile workers."

The articles in *Homeless in Europe* do not necessarily reflect the views of FEANTSA. Extracts from this publication can be quoted as long as the sources are acknowledged.



Olga Trostiansky's article also points to state policy as a cause of homelessness among migrants in Paris, as it steers them away from integration and towards schemes for foreign nationals, connecting them immediately with the social services. Moreover, tough immigration laws can lead to migrants becoming socially marginalised. Also highlighted is the paradoxical situation of local authorities supporting people left destitute as a result of state policy, and describes what form this support can take, including lobbying for better provision and services on the ground.

Another experience of a local authority providing support for homeless migrants comes from Emmanuel Cornélius, who explains the context in which support is organised for homeless migrants in Luxembourg, where responsibilities for EU migrants and for undocumented migrants and asylum seekers belong to different state departments. He draws similarities between migrants' needs and those of "traditional" homeless service users, whilst also signaling differences.

Wayne Stanley gives examples of EU citizens' entitlements and experiences of marginalization in Dublin, Ireland (also a country of recent inward migration), and of the legal and social support provided to migrants who are homeless or at risk of homelessness by the social care agency Crosscare. This support includes advocating on behalf of migrants experiencing marginalisation and providing support to help migrants claim their rights.

Joanne Crellen describes the situation for Eastern European migrants in the UK, whose numbers are growing among the UK homeless population. She also catalogues responses Homeless Link have found to the challenge of providing support to homeless service users whose needs and entitlements differ from those of "traditional" users, including: providing ways into employment and accommodation; "reconnection" services; language support and working with the government to achieve joined-up services and political commitment to ending homelessness.

A common challenge for many Member States relates to the difficulties immigrants face in accessing the housing market owing to discrimination. Christian Perl demonstrates how discrimination on the grounds of ethnic or cultural factors in the allocation of public housing in some Austrian communes contradicts national legislation, and presents how European funds⁵ can be used to support research programmes, training and policy and public relations work in this field and thus improve housing options for migrants in Europe.

Situations of homelessness and inadequate housing experienced by Roma people are often seen as a specific problem, to be dealt with following a racist or public-order approach. André Gachet and Véronique Gilet, service-providers working with Roma families in Lyons, France, demonstrate that the question must instead be addressed according to the principles of citizenship, human dignity and respect. They criticise public authorities who consider Roma people as "different" to justify evading their statutory obligations towards them. Responses that have worked in Lyons are individual or family-based but rooted in community action, and focus on housing, health, education, employment, and safety. The article also details points on which discussion must focus if EU progress is to be made on the issue.

Developments in the legal situation relating to migrants' right to shelter following a Collective Complaint against the Netherlands are explained by Joris Sprakel. He underlines the utility of knowing and promoting migrants' rights in attempting to improve their living situation and of the power of European and international legal instruments in ensuring better provision for people and better respect for their rights to housing.

As always, FEANTSA would like to extend its sincere thanks and gratitude to the contributors to this issue of the magazine.

5 In this case the PROGRESS Programme: <http://ec.europa.eu/social/main.jsp?catId=327&langId=en>



Housing conditions of immigrants in Greece: A challenge to their smooth integration into Greek society

By **Aris Sapounakis PhD**,¹ *Assistant Professor at the University of Thessaly, Volos*,
Dafni-Efrosini Delfaki² and **Themis Pellas**,³ *Research Assistants, Greece*

INTRODUCTION

Over the last decades, Greece has been completely transformed from a country whose citizens emigrate to work abroad to one that receives economic refugees. Moreover, the last two decades have witnessed a growing influx of people from the developing world that has put excessive pressure on the country's existing economic and social structures. As figures have already reached 150,000 newcomers per year, that is more than 1% of the total population living in Greece, it is beyond any doubt that the need for a national policy to address the specific phenomenon, if not to integrate the people involved, is more than essential.

The situation has become more complicated recently as the change in government last September has led to a considerably more liberal administration. This shift was reflected in a significant legislative change supporting integration by addressing the nationality rights of second generation immigrants, an issue that has been tormenting the immigrant community for years.

On the other hand, as this move has not been the outcome of a holistic migration strategy, it is not expected to lead to the structural improvement of the manner in which immigrants are accommodated in the Greek society. This phenomenon is expected to escalate as an effect of the economic crisis that has hit the country threatening its already feeble economic and social structures with harsh austerity measures.

The aim of the present paper is to explore the manner in which the immigrant population in Greece achieves access to housing amidst this turmoil. The satisfaction of housing needs will have to be related to the extent to which the immigrant population is integrated in the Greek society as well as on their period of stay in the country.

THE DIMENSIONS OF MIGRATION IN GREECE

The task of estimating the number of immigrants in a specific period of time in Greece is exceptionally difficult as their actual number fluctuates significantly with time. This difficulty may often become worse due

to the constantly changing nature of their legal status as they move from legality to illegality. According to several writers, the estimate of the extent of migration in Greece is a typical case in which the observer's viewpoint may affect the result (Maroukis, 2008).

The safest manner to approach the issue is based on the three legalisation campaigns monitored in Greece since 1998 as well as the population statistics based on the 2001 census which had arrived at the figure of 610,000 people of foreign descent excluding EU nationals. On the other hand, the total number of work and stay permits issued for foreigners as a result of the three programmes, was 604,215 for the year 2005 and 695,979 for 2006 (IMEPO, 2008). Taking into account the strong incidence of illegal residence, it appears reasonable to argue that the number of immigrants currently in the country approximates the figure of one million people.

TYPES OF ACCOMMODATION

The systematic overview of the housing conditions of immigrants is based on the conceptual categories provided by the ETHOS typology of Homelessness and Housing Exclusion,⁴ the operational classification of accommodation patterns formulated by FEANTSA. According to the ETHOS typology, there are three domains that constitute a "home": the physical, the social and the legal domain. These domains correspond to three conceptual categories of accommodation: rooflessness, houselessness, and insecure housing, while a fourth category that must also be taken into account, i.e. inadequate housing, relates to the quality of housing. Due to the objectives of the present paper, the above typology will be viewed in as much as it relates to the immigrant population in the country.

It is evident that roofless immigrants are those who face the most adverse housing conditions and are exposed to the greatest danger. They usually live in the street or in public, open spaces such as squares and parks of the two main urban centers, Athens and Thessaloniki. In cases of emergency they may spend

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4 <http://www.feantsa.org/code/en/pg.asp?Page=484>



some time in night shelters. It is noted however that they are not allowed to stay in statutory shelters for homeless people.

These people are completely deprived of the material notion of a 'home'. They are in a state of extreme poverty, increased incidence of illegal status, complete lack of income and serious difficulty of organizing themselves in order to secure a job. These people generally originate from Asia or Africa and are particularly prone to staying excluded from the Greek society not only due to their social and cultural problems but also for personal reasons like physical disabilities, psychiatric problems, lack of basic education, etc. The loose safety net addressed to roofless immigrants is only supported by NGOs and a few government organizations that provide street work for the needs of substance abusers.

The next conceptual category of houseless immigrants relates to people who stay in temporary accommodation shelters. It must be noted that this form of accommodation is not yet fully developed in Greece while, as in the case of night shelters, many service providers do not offer beds to non-Greeks.

A special category of temporary accommodation institutions are the more than a dozen 'reception' centers for immigrants, refugees and asylum seekers organized and run by statutory or voluntary bodies. It must be noted however that the expression that qualifies in a more appropriate manner the character of these institutions is that of a 'detention' rather than reception centres due to the low living standards as well as the absence of the needed support and follow-up mechanisms after users leave.

People who are intercepted attempting to enter the country are led to reception centers where they are required to stay for a period of up to one year. Thus, people who have committed the crime of not having the necessary documents are bound to experience close confinement and freedom deprivation for a fairly long period,⁵ while it is beyond any doubt that this detention at least decelerates the process of their integration.

As the influx of immigrants has escalated recently, there are also many informally established camps where immigrants, apart from the overcrowded conditions they face, find themselves being accommodated in unsuitable structures such as old, abandoned stores, amenity centers, prisons and police stations. In this manner, almost every island of the eastern Aegean is equipped with an informal detention centre, the case of Agathonisi being exceptional as immigrants stationed there exceed the island's population.

On the whole, the reception/detention centers that currently operate in Greece are characterized as being particularly problematic both in relation to living conditions as well as employment and integration opportunities. Last year, central administration decided to expand the network of reception/detention centers either by refurbishing them or establishing new ones, the important center in Lesvos being closed and again reopened. However as funding has been recently subjected to severe cuts, the construction programme has come to a standstill. Nevertheless, it must be noted that even though the current economic crisis is expected to decelerate incoming movement, this may not be completely stopped as, for immigrants, Greece has traditionally been a stepping-stone for settlement in Europe.

Apart from reception/detention centers, the category of homeless immigrants comprises those accommodated in a fairly extended number of shelters generally organized and run by NGOs. A multitude of voluntary sector organizations, such as Caritas, the Red Cross, Doctors of the World, the Greek Institute of Solidarity and Cooperation, the Centre of Social Solidarity in Thessaloniki as well as the Greek Council for Refugees provide services which tend to combine temporary accommodation with psychosocial support for immigrants and asylum seekers.

The operation of such hostels, as well as special temporary housing programmes in apartments rented by NGOs, undoubtedly covers the housing problems of immigrants to a certain extent as they may seek employment, while also being capable of partly covering their social needs. Nevertheless, as their stay is restricted to a certain period of time and provisions do not include long-term support, it may only partially work towards their integration.

The third category in the ETHOS typology relates to insecure housing and, for this reason pertains to types of accommodation which are not legally sound. In the case of immigrants, it relates to squatters, as well as to people who cohabit.

The phenomenon of illegal occupation of privately owned or state-run abandoned buildings is quite evident especially in obsolete parts of the city centres. A typical example has been the case of the abandoned centrally located Court of Appeals in Athens which has been accommodating a considerable number of mostly African immigrants for more than a year and was violently evacuated by the police a few months ago. Since then the police has evacuated and guarded several obsolete buildings in the center of Athens.

[T]he reception/detention centers that currently operate in Greece are characterized as being particularly problematic both in relation to living conditions as well as employment and integration opportunities.

5 www.gcr.gr, Greek Council for Refugees



The last conceptual category of the ETHOS typology relates to inadequate housing. This category comprises people living in temporary, non-conventional structures such as caravans, containers, makeshift camps, huts etc. This type of accommodation is mostly found in the countryside and very often relates to people working in the fields. The majority of people experiencing inadequate housing are Indians, Afghans and Albanians while one should also mention the special case of Egyptians who work and sleep in fishing boats working as fishermen.

IMMIGRANTS AND THE HOUSING MARKET

The Greek housing provision system is not based on a comprehensive housing strategy but on a mixture of fragmented policies. The settlement and integration of immigrants is related to the affordability pattern allowed by the Greek private housing market in which the availability of low-cost existing housing stock is of crucial importance. Deprived from any statutory support, immigrants are bound to face the privately rented housing sector and its ever-increasing land values.

As a result, the majority of immigrants tend to take advantage of the obsolete housing stock in either a permanent or a temporary manner. The majority of immigrants are forced to concentrate in the urban quarters which have become obsolete. Although it has been argued that immigration does not alter the traditional pattern of a Greek city as this is composed by large socially mixed areas (Leontidou, 1997), evidence has shown that acute hostility may often develop in areas with high immigrant concentrations, either against locals or among different immigrant ethnic backgrounds.

CONCLUSIONS

It has become apparent that immigrants face serious housing problems during their stay in Greece. Despite the fact that the overall state of affairs and especially the current economic crisis are affecting the different categories of immigrants in varying ways, it is evident that those who have not managed to secure their legality of residence are the most vulnerable and hence susceptible to face complete detachment from both the housing and the labour market. In their attempt to stay in the country, not only do they experience exclusion but they are also inclined to accept unregistered employment at lower rates and to become dependent on criminal networks like trafficking, exploitation of children, etc.

It is obvious that the country is in need of a realistic strategy to cope with the growing immigration flow both in a macroscopic and a microscopic level. The development of a well-organized system of appropriate reception institutions is a prerequisite. In addition to this, Greece should also be adequately prepared to contribute to and participate in the discourse that is shaping the European migration framework.

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Migration and homeless people in Paris

By **Olga Trostiansky**,¹ *Deputy Mayor of Paris, responsible for Solidarity, the Family and Combating Exclusion, France*

Why is a growing proportion of the homeless community in Paris made up of immigrants? Young, with personal ambitions and often resourceful, these new arrivals have what it takes to integrate quickly, but are clearly becoming marginalised. State-organised reception provision for foreign nationals steers them not into a process of integration but towards the social-service first-contact schemes run by voluntary agencies and Paris City Council.

This trend is unfolding against a particular social and political backdrop. The end of the post-war boom period and the 1974 crisis marked a shift in French society's attitude towards immigration.

TOUGH LAWS AND LAW ENFORCEMENT LEAD TO MARGINALISATION

Since the door was closed on labour immigration in 1974, a section of the political debate has focused on the presence of migrants in France with practical consequences:

- Politically, strong and continuing electoral support for the far right
- The persistent, wilful confusion by the media of immigration, crime and problems on high-rise estates
- Legally, a continued tightening of the rules on entry and stay by foreign nationals and asylum seekers (including the 1991 ban on asylum seekers being allowed employment)
- despite all this, immigration flows have remained high, with the restrictive policies arguably having precious little effect.

In France today, non-regularised foreign nationals have no right to work, great difficulty in finding accommodation and leading a normal family life, and no access to the French social welfare system other than for health care through the State Medical Assistance scheme (AME).

To cap it all, anyone helping an undocumented foreign national living on French territory commits the offence of "délit de solidarité" ("actively facilitating illegal immigration"), which is designed to isolate and make life even more difficult for irregular immigrants.

Yet thousands of people in France - between 200,000 and 400,000 according to figures circulating - endure these situations for years. The end of automatic regularisation after 10 years' living in France means there is no longer a hard-and-fast rule for regularisation. It all depends on the individual circumstances of immigration, the family circumstances, what they have been doing since arriving in France - at least for those whose status is not determined at the prefectures' discretion. As a rule of thumb, however, it can be said that regularisation on personal criteria may be possible after 7-10 years living in France.

The pull factor of Paris as a world-famed city and its geographical position in the pattern of migration streams combine to put the capital at the top of the list of departments receiving asylum seekers. 7,862 people claimed asylum in Paris in 2008 - 18.45% of total national claims. The waiting time for admission to CADAs (asylum seeker reception centres) was 126 days for asylum claimants in Paris. In 2006, there were 3,490 reception places in Paris, 370 of them in CADAs.

On average, 26% of claimants are granted asylum in France. Most of those whose claims are rejected will try to apply for regularisation. Many will join the non-regularised camp, sit tight and wait it out.

This stay of variable length between when individuals enter the country and have their rights normalised is in fact a sort of anteroom which is an uphill struggle for migrants. During this time, they are abandoned to their fate even though the State should provide for them as a matter of national solidarity.

This stay of variable length between when individuals enter the country and have their rights normalised is in fact a sort of anteroom which is an uphill struggle for migrants.

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THE PARIS LOCAL AUTHORITIES AND SOCIAL EMERGENCY PROVISION HELP FOREIGN NATIONALS IN THEIR DAILY LIVES

The result of this “organized deprivation” is that migrants fall back on local solidarity and social emergency provision, creating the paradox that while migration policy is made by the state, management of that policy’s consequences falls partly to local authorities.

- Many migrants use or are likely to use homeless shelter provision. The bureaucratic obstacles to the integration of migrants, their very long integration journeys, the ties to their communities of origin, require a very different form of initial support to that usually provided to homeless people, and this creates difficulties for dedicated integration provision. Also, healthy young male migrants are not considered as priority in humanitarian shelters, and the clear evidence is that they are excluded from the general, theoretically unconditional provision like the 115 homeless crisis line in Paris, which handles requests for emergency shelter. These groups are therefore forced to live on the street with the risks of marginalization and degradation that entails.
- The unconditional component of the food aid scheme in which Paris council is actively engaged is mainly directed towards migrants,
- Providing regularised families or non-adult migrants with accommodation often falls to the departmental authorities as a matter of child welfare. But the red tape surrounding the regularisation process creates great difficulties for many families, where some children may be regularised and others not. Parenting is also made difficult by long times spent apart.
- Heavy demands are placed on local social welfare provision: reductions for school meals or after-school activities, contact/signing-on addresses, parenting support, French as a foreign language classes, access to rights, access to health care, clothing provision, etc. - all activities run or actively supported by the City Council.

Paris council is trying to energise all the forms of provision that are city and departmental authority responsibilities to ensure that people living in our area have the most decent living conditions possible allowing for the wide variety of different circumstances .

AFGHAN EXILES AND ROMA COMMUNITIES - HOW CAN WE STOP THEM BEING MARGINALISED?

Afghan exiles have been present in the 10th district of Paris since 2003 when the Sangatte camp was closed.²

Since then, Paris City Council has been unremittingly calling the Government to account over the unfit living conditions of hundreds of adult and child refugees who have sought refuge in the district’s streets and gardens. The Government sees these people as passing through on their way to England or the Nordic countries; action must be taken against human trafficking and people smuggling networks.

Paris City Council is fully funding a reception and referral centre - the Kiosque – run by two voluntary agencies, Emmaüs and France Terre d’Asile. An analysis of the legal situation of Kiosque clients (about 380) shows that 60% are covered by the Dublin procedure,³ 15% are asylum seekers and 25% are priority procedure claimants.

Another very interesting fact reported by the Kiosque is that most exiles want to take French classes. 20% have already done so, but the demands are far from being met. It is very far from established that they are just passing through.

As well as the Kiosque, the Paris authorities have gone well beyond their statutory obligations in the welfare activities run with exiled groups by:

- Opening a centre for unaccompanied foreign minors,
- Providing premises for a temporary shelter for a hundred adults and thirty children,
- Providing a building in the 10th district to serve as a winter shelter for up to a hundred people. A personalised welfare assessment was done to determine the users’ requirements. Many wanted a CADA place, proving that their overriding desire was to remain in France.

A special focus is also called for on Roma people from Romania and Bulgaria.

2 Sangatte is a village in the Pas-de-Calais region of France which, between 1999 and 2002, was the site of an emergency humanitarian reception centre administrated by the Red Cross. More than 1000 migrants were accommodated there in difficult conditions: the building was designed to receive 200 people. The closure of this centre without the provision of an alternative meant that already marginalised people found themselves in even deeper hardship.

3 The European mechanism for the determination of the Member State responsible for an application for international protection.



Since these countries joined the EU on 1st January 2007, some of the migrating Roma populations are ending up in the Paris region. The nationals of both countries enjoy the same rights as other Community nationals, in particular freedom of movement. However, that freedom was not coupled with leave to remain, which is subject to conditions beyond a period of three months. After having been in France for that time, nationals of those countries must produce evidence of sufficient resources and in particular not "represent an unreasonable burden on the French welfare system".⁴

Be that as it may, Roma are establishing themselves with varying degrees of permanency in France, fleeing the poverty in which they live and the age-old discrimination they face.

Two forms of establishment are observable. One is people in families with young children living in the capital's outskirts in camps ranging from a few tents to dozens of huts effectively forming shanty towns; the other being individuals or couples living and begging around the department stores in neighbourhoods like the 9th district.

We are deeply committed to an overriding principle that the street is not a place for living in and no one should be forced to live there.

We will not have shanty settlements reappearing in the interstitial areas of the city. Likewise, begging, in particular using sometimes very young children, and unlicensed dealing in old clothing and other items reclaimed from rubbish bins, are not acceptable in a developed European country.

Our approach to these problems is to attempt to carry out a social and health assessment so that we can refer the groups concerned towards the best formal provision where it exists and look for appropriate solutions where it does not. Realizing that those living in the 9th district were unwilling to move to hostels further away, we initiated the opening of a day and night drop-in centre in the 9th district to provide somewhere local for them to shelter.

But how is progress to be made towards real social inclusion for people who, although part of the European Union, have no right to work? What is to be done when many local authorities refuse to provide them with a contact address, or even to accept their children in schools?

Again, we have taken the government to task over these stigmatized populations countless times, but to no avail. Again, the government's response has consistently remained focused on the issue of returning these communities to their countries of origin. This allows the Immigration Minister to meet the targets set for him for the deportation of irregular immigrants.

And yet the volume of the outgoing and return flows shows the limits of this policy, and in any event, the transitional arrangements for Bulgarian and Romanian nationals will end no later than 1st January 2014.

Paris City Council's policy action is based on the dignity and human and social rights of migrants, whether legally present or not. While in no way condoning mafia-style networks and people traffickers, it nevertheless argues that it is the irregular migrants that are their main victims.

Making a clear-cut separation between illegal immigrants to be hunted down and deported, and legal immigrants to be integrated, is mainly political rhetoric that is disconnected with the practical realities. In most cases, they are the same people at different administrative stages of their migration pathway.

By ensuring the right to come and go freely for its citizens, promoting access to housing or failing that, social housing, increasing access to the services provided by the Paris authorities, Paris City Hall is striving to guarantee everyone a right to the city and a right of citizenship. By so doing, it is striving to promote humanity in urban life that may perhaps lead on to new forms of local and cross-border citizenship.

It is also one of the conditions for Paris to remain a world-class city in terms of economic competition but also in terms of cultural and intellectual influence.

To all these things, the contribution made by immigrants is an asset.

Our approach to these problems is to attempt to carry out a social and health assessment so that we can refer the groups concerned towards the best formal provision where it exists and look for appropriate solutions where it does not.

⁴ Article R121-3 of the regulation pertaining to the right to entry and right to remain for foreigners and to the right to asylum, created by [Decree n°2007-371 of the 21st March 2007](#) and [art. 1 JORF of the 22nd March 2007](#). The text specifies that: "So long as they do not become an unreasonable burden on the social security system and in particular on the health insurance and social assistance mechanisms, nationals mentioned in the first paragraph of article L. 121-1, as well as the members of their family mentioned in article L. 121-3, have the right to remain in France for a period shorter than or equal to three months, without any condition or formality other than those provided for in article R. 121-1 on entry into French territory."



Migration and homeless shelter provision in the Grand Duchy of Luxembourg

By **Emmanuel Cornelius**,¹ *Social Development Officer, Esch-sur-Alzette Council, Luxembourg*

Migrants from an EU-27 country are normally asked to produce either an employment contract, a certificate guaranteeing financial support by a third party, or proof that they have sufficient resources to meet their own and their family's needs.

Apart from those reserved for homeless drug users, all homeless night shelters in Luxembourg are officially approved by the Ministry for the Family and Integration which sets the rules on access to the services provided. So, non-entitled migrants – i.e., those present in the Grand Duchy of Luxembourg without a valid residence permit – can only access the services of homeless night shelters for a very short time.

Non-entitled migrants are those who enter Luxembourg claiming international protection (asylum seekers) from third countries (non EU-27), third country migrants without a residence permit, and migrants from an EU-27 country who lack the liveli-

hood needed for their daily upkeep (food, clothing, rent, heating, etc.). Migrants from an EU-27 country are normally asked to produce either an employment contract, a certificate guaranteeing financial support by a third party, or proof that they have sufficient resources to meet their own and their family's needs.

Persons lawfully in Luxembourg also have to be distinguished from those claiming international protection, who fall under the Ministry of Foreign Affairs for all matters related to putting their situation in order, and under the Luxembourg Reception and Integration Office for all matters relating to their accommodation, social and health care support.

Entry and stay of foreign nationals in Luxembourg

A. EU CITIZENS AND THEIR FAMILY MEMBERS, WHATEVER THEIR NATIONALITY

Entry and stay for **less than three months**

Citizens of the Union (nationals of a Member State of the European Union) and nationals of an "equivalent country" (Norway, Iceland, Liechtenstein and the Swiss Confederation), as well as the members of their families who are themselves citizens of the Union or nationals of an "equivalent country" are entitled to enter the Grand Duchy of Luxembourg and stay there for a period of up to three months if they hold a valid identity card or passport.

Family members who are nationals of third countries and are accompanying or joining a citizen of the Union have the right to enter the Grand Duchy of Luxembourg and stay for a period of up to three months if they have a valid passport and the appropriate entry visa if required.

Stay **longer than three months**

Citizens of the Union and nationals of an "equivalent country" as well as the members of their families who are themselves citizens of the Union or nationals of an "equivalent country" wanting to stay in Luxembourg for more than three months must within three months of their arrival apply to the council offices in their place of residence to have a certificate of registration issued.

Family members who are nationals of third countries must apply to the council offices in their place of residence for a "temporary residence permit for a member of the family of a citizen of the Union or national of a State having acceded to the Agreement on the European Economic Area or the Swiss Confederation".

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B. THIRD COUNTRY NATIONALS

Entry and stay for **less than three months**

Conditions of entry

In order to enter the country lawfully, nationals of third countries must have a valid passport and a visa if required, and must also meet the following conditions;

- not be reported in the Schengen Information System (SIS);
- not be the subject of a prohibition entry order;
- not be considered likely to endanger the public order, national security, public health or international relations of the Grand Duchy of Luxembourg or of any State party to an international agreement on the crossing of external borders by which the Grand Duchy of Luxembourg is bound;
- substantiate the purpose and conditions of the intended stay and prove adequate personal resources both for the period of the intended stay and return to the country of origin or transit to a third country to which entry is guaranteed, or substantiate the ability to acquire such means lawfully and have health insurance covering all risks on the territory.²

The rule is that non-entitled migrants are allowed as many overnight stays as necessary until they are able to present themselves at the official immigration and integration agency – the Luxembourg Reception and Integration Office (Office Luxembourgeoise d'Accueil et d'Intégration - OLAI). This means a stay of one night on weekdays, and up to three consecutive nights at weekends. Night shelter managers must refer non-entitled migrants to the Office, but are not liable for their non-attendance.

The Luxembourg Reception and Integration Office is a state agency operating under the Ministry for the Family and Integration whose responsibilities include social policy which also includes homelessness. The OLAI replaces the Government Commissioner for Foreign Nationals; it was established as a statutory body on the 16th December 2008 and was inaugurated on the 1st June 2009.³

The OLAI's responsibilities are:

- to implement and coordinate reception and integration policy;
- to implement and manage the reception and integration contract (CAI);
- to facilitate integration for foreign nationals;
- to establish a national action plan for integration and action against discrimination;
- to prepare a five-year national report on the integration of foreign nationals;
- to manage temporary accommodation provision;
- to support applicants for international protection;
- to act against discrimination.

The fact of OLAI being authorized to manage temporary accommodation provision (art. 4 of the Act of 16th December 2008) may be an explanation and reason why the intake of non-entitled persons in homeless shelters is so limited. The idea behind this rule is to facilitate integration of migrants by having them dealt with by the migrant reception agency as immediate intake provision.

There may be a case for arguing that migration issues differ from homelessness issues, at least as regards the causes: whereas 'classic' homelessness is often linked to relationship problems (divorce, separation, etc.), domestic violence, health, job loss, dependence, mental health, etc., homelessness related to migration often has different causes. Understandably, therefore, different solutions may be required.

To some extent, at least, because some central features of social casework are alike: looking for permanent housing coupled with a contact address, a job, a source of income, etc.

Others, by contrast, are more specific, like the proposals for return to countries of origin or the country of entry into European territory that can be made to non-entitled migrants under different authorities, including the EU treaty in relation to freedom of movement of economically active and economically inactive persons.

Needless to say, not all the issues raised by freedom of movement advocates are addressed by the distinction between the homeless and migrant communities. The presentation by Professor Herwig Verschueren to FEANTSA's annual conference of 4 June 2010 illustrated the difficulties of interpreting statutory provisions.⁴

² Source: www.mae.lu

³ Published in Mémorial A (Official Gazette) No 209 of 24th December 2008, available at www.legilux.lu

⁴ See Professor Verschueren's presentation on the FEANTSA website: <http://feantsa.horus.be/code/EN/pg.asp?Page=1250>



Providing advice and homeless support services for Eastern European citizens in Dublin

By **Wayne Stanley**,¹ *Policy Officer, Crosscare, Ireland*

[T]he reasons why people from migrant communities find themselves homeless [...] can be the same issues of mental health and addiction that can contribute to vulnerability to homelessness for any individual. However there are also issues around the individual's right to reside in the state and the individual's right of access to social welfare.

Crosscare is the social care agency of the Catholic Diocese in Dublin and has been responding to the needs of people on the margins of society since 1941. Currently Crosscare employs close to 170 staff with an annual expenditure running towards €11 million. Our range of programmes is diverse, incorporating 3 Homeless services, 7 Community Services and 5 Young People services.

Over the last two years there has been an increase in the numbers of migrants becoming vulnerable to homelessness. This article looks at issues that some of our services are seeing clients encounter.

Crosscare has two emergency homeless services and an Information and Advocacy service (CHWI) based in Dublin city centre, which have seen a growing trend of homelessness in migrant communities.

With the support of volunteers, the information service has been running specialized clinics for the Polish and Roma communities for a number of years. In 2009, CHWI had over 1500 interactions with clients of the Polish clinic and got regular calls from Cork, Limerick, and people travelling from Wexford, Meath and Kildare to use the service.

When the Polish service began in 2007, the majority of the queries related to family benefit payments and the Habitual Residency Condition.² However, with the economic crisis, social security issues have arisen that had not previously been contemplated and correspondingly the range and complexity of queries have increased exponentially. While the types of queries differed, in the main they related to social welfare with housing and homelessness generating the next most common requests.

MIGRANT HOMELESSNESS IN DUBLIN

Ireland had a long history of outward migration dating back to the 1800s. This historical trend was reversed in 1996 and inward migration became the norm until 2008. With the accession of the EU10 countries in 2004, Ireland adopted an open economy position and all the members of those countries were free to travel and work in Ireland. While Ireland has seen a return to net immigration, it should be noted that the vast majority of those migrating are from the EU12 countries.

With regard to homelessness, recent counts on the number of people sleeping rough across the four local authority areas in Dublin confirms a continuing decline. The count takes place in spring and winter of each year, with 60 people confirmed to be sleeping rough on a specific night in November 2009 and 98 people in April of 2009. In the November count of the people whose identity had been confirmed, over 50% were not Irish.

Crosscare's Charlemont Street service, with 56 beds available per night, in 2009 provided accommodation to 1150 unique individuals. Of those 152 stated their nationality to be other than Irish. Of the 152, 104 were EEA nationals. In the first 3 months of 2010, Charlemont Street had 125 new service users. Of these, 25, or 20%, were from outside Ireland, with 20 of these being EEA nationals.

Crosscare's Amien Street service monthly statistics show that for the first months of 2010, up to and including the 18th of April, 116 new service users presented to the service and 37 of those or 32% presented their nationality as being other than Irish. It should be noted however that the Amien Street service appears to have a significant percentage of the migrant homeless population referred there, and this might account for the difference with Charlemont Street.

Crosscare has not as yet conducted any significant research into the reasons why people from migrant communities find themselves homeless. However, staff of the services find that there can be the same issues of mental health and addiction that can contribute to vulnerability to homelessness for any individual. However there are also issues around the individual's right to reside in the state and the individual's right of access to social welfare.

In the Charlemont Street service, there is a designated information worker who will support and advocate for individuals in these situations. A questionnaire has been developed with the Amien Street service that provides basic information and the person who is not receiving benefits will be referred to the information and advocacy service. The directions and questionnaire are provided in Polish and English.

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² See below.



As an example of the difficulties that individuals can find themselves in please consider the following;

The Key-worker from another service brought Mr. A (EEA citizen) to our service in 2009. He was unable to meet the nightly cost of the homeless accommodation and the service felt they could not afford to sustain him. Mr. A had begun begging in order to pay his contribution to the homeless service. His Key-worker had discussed with him his circumstances and was convinced that he should have some entitlement. Mr. A had come to Ireland in 2006 and had worked for a significant part of 2008 before becoming unemployed and subsequently homeless due to addiction. It transpired that Mr. A had erroneously been advised by the welfare office that he needed to apply for a Job Seekers' allowance payment. This had been denied as he was found not to be habitually resident. In fact he had a substantive work record in his country of origin and should have combined his contributions from his previous work under EU regulations. After assisting him to secure payments Mr. A was able to engage more fully in the available programs that his service offered.

It's important to note that this example is not offered as an admonishment of either the State or NGO service involved. Clearly Mr. A could have been better served but the significant part of the example is that the loss of work and subsequent homelessness was not a direct result of either service but of structural issues in Mr. A's life. However, when he was not granted his entitlement, he was forced to become further entrenched in homelessness. When, in the end, his situation was regularized, he was able to address the underlying issues of his homelessness.

MIGRANTS WITH NO ENTITLEMENTS

While we find that access to social welfare is a heavily contributing factor in the possibility to become or remain homeless for migrants it is not the only factor. There have been also a small but not insignificant number of migrants who have come to Ireland to seek work and have ended up homeless without ever entering the workforce. These are usually EEA work-seekers and have an entitlement to live and work in Ireland.

Usually for personal reasons or a belief that they will eventually find work they do not wish to return home. While we will offer what support we can, in these cases generally we try and outline to people exactly the difficulties they are in with regard to having little

or no entitlement and we would advocate that they be given a period of accommodation in one of our services or an appropriate service in the city. What we find, particularly in the cases where there are children, is that once the immediate needs of food and shelter are met, the people involved are able to take proper stock of their situation. In some cases, this has resulted in the family taking the offer of a return ticket to their country of origin from the Community Welfare Service.

RIGHTS AND ENTITLEMENTS OF EEA WORKERS

An EEA migrant worker who is in 'genuine and effective' employment in Ireland is regarded as a worker for EU purposes. This excludes work which is on such a small scale that it is considered to be 'marginal and ancillary.'

For example, an EEA national comes to Ireland, does not have an offer of a job when s/he arrives in the country, and stays with a cousin who owns a shop. If s/he helps out in the shop for an hour or two and gets paid 30 € per week and three months later claims that her cousin has sacked him/her, then this irregular work could be considered 'marginal and ancillary'.

However, part-time work can be considered 'genuine and effective'. For example, an EEA national who can show s/he has been working for 3 hours per day, five days a week for the last 3 months could be considered to have 'effective and genuine' work.

Under EU law, a worker who is a national of a member state may not be treated differently from national workers and s/he shall have the same 'social advantages' as national workers.³ In Ireland the relevant department has deemed Supplementary Welfare Allowance (SWA) to be a social advantage payment. Basic SWA is a weekly allowance paid to people who do not have enough means to meet their needs and those of their qualified adult or any qualified children.

An EEA national can retain their status of 'worker' if they become involuntarily unemployed. Nationals from EEA countries other than the host state who have been working in the state for 12 months are entitled to SWA if they meet the qualifying conditions.

If they have been working in the state for less than 12 months they are still entitled to SWA but it can be limited to a period of 6 months on the condition they have registered as a job seeker with a relevant office of the Department of Social Protection and FÁS;⁴ or take up vocational training related to your previous employment.

³ Article 7(2) of EEC Regulation 1612/68

⁴ Irish State Employment and training agency.



To illustrate why this can cause confusion please consider the following example:

EEA Worker B commences working in Ireland and remains in his job for fourteen months and become involuntarily unemployed. He can receive SWA for as long as he is seeking work, which also guarantees him access to homeless services.

EEA Worker C commences working in Ireland and works there for nine months, becomes involuntarily unemployed for a period and then finds new employment for a further six months before becoming involuntarily unemployed. Although he has worked the same number of months, he can only receive SWA for 6 months. After six months he may be offered a ticket to his country of origin but he is not guaranteed access to homeless services.

HABITUAL RESIDENCY CONDITION

The habitual residency condition in Ireland is applied to a number of social welfare payments, including Supplementary Welfare Allowance (SWA), Job Seekers Allowance (JA) and Child Benefit. This condition was brought into place in 2004 because of government concerns over 'welfare tourism'. The individual's habitual residency is based on five factors set out below.

- a) the length and continuity of residence in the State or in any other particular country;
- b) the length and purpose of any absence from the State;
- c) the nature and pattern of the person's employment;
- d) the person's main centre of interest, and
- e) the future intentions of the person concerned as they appear from all the circumstances.

The intention is that the person should have a clear link to the country before they can have access to social welfare payments. Each of the five factors should be given equal weighting when a decision is being made by a social welfare or supplementary welfare officer.

However, what is often found is that one factor is generally given greater weight. In some cases it has been the length of residence in the state. A 'two year rule' was commonly quoted by Social Welfare Officers as a reason for refusal and while we still see some decisions on this ground it is much less frequent. We have also seen decisions that conclude that a person is neither a worker or habitually resident.

Mr. D came to Ireland in 2004 he worked continuously until 2006 when he was made unemployed. He received a Job Seekers'-contribution-based benefit payment until his entitlement finished and then moved onto a Job Seekers' Allowance payment (for which he was found habitually resident.) In 2009, he was involved in an anti-social incident and was subsequently imprisoned for 3 months. When released from prison he was directed to the appropriate Community Welfare service where he was informed that he was no longer deemed to be a worker or habitually resident. As he had no means, he presented to homeless services.

ACCESS TO HOUSING & HOMELESS SERVICES

There is a link between access to housing and homeless services and access to payments. In the context of local authorities they will require that a person be in payment in order to have access to local authority housing or equal access to homeless services.

Crosscare hostels have been directed by the local authority and the social welfare offices that anyone who has not been deemed to have an entitlement to a payment or who has simply not yet claimed an entitlement should only be given one night's accommodation at a time and has to be directed to the 'New communities unit' (a Supplementary Welfare Section in Dublin to which non-Irish people are directed) the following morning. Here they can be assessed for entitlement and offered a ticket home if there is no entitlement.

As an example please consider the case below:

Mr. E came to Ireland in 2004 and has resided here continuously since. He has a substantive work record during that time of more than 12 months' continuous employment. He had been receiving benefits and state funded accommodation after becoming unemployed and homeless. His payment was reviewed and he was found not to be a worker or habitually resident and was excluded from his accommodation. When he presented to Crosscare we appealed the decision on the grounds that he was clearly a worker under EU law and argued that under the five factors he was habitually resident. We accommodated him in one of our hostels but were advised by funding bodies that we did not have the right to do so and that Mr. E had to contact and be referred a referring body.



This example is not included to admonish a particular body or deciding officer. Crosscare are clearly arguing that the decision taken was an erroneous one but there are appeal processes in place to address these issues. The reason for the inclusion of this example is to highlight that EEA and other migrants are not always afforded full protection while awaiting their appeal decision. Mr. E was only offered a ticket back to his country of origin and as such he has not been given full and proper access to his right to appeal.

BEYOND INCORRECT DECISIONS

While the cases outlined above highlight the difficulties that are encountered when clients are subject to incorrect decisions combined with services that do not have the broad range of social welfare knowledge to counteract those poor decisions, there are also more structural issues that could be addressed.

Issues include people being allowed to have translation. In some instances we have found that people have not been provided with professional translation services and so were not fully aware of what was required of them. It also has to be said that we do get reports of some overt racism (such as people being told to go back to where they come from without being afforded even the chance to apply for a payment) but it should be highlighted that, while we do hear about incidents from clients and some workers would hear worrying statements from officials, this issue is thankfully rare.

The broader issues however are ones of indirect discrimination. The economic crisis has seen a great many changes in social welfare over the last few years. Very few of these changes would constitute a policy of direct discrimination towards EEA migrant workers. However, there is a lack of care taken when changes are being made to the system to ensure that these changes do not constitute indirect discrimination. The test is usually whether an Irish person would be subject to the same ruling, however consideration is not always clearly given to the fact that the nature of the payments involved differ in form and importance from the EEA Migrant worker and the Irish national.

As an example we will look at the nature of the payment that EEA workers are directed. For a national worker, SWA is deemed to be a 'safety net' payment⁵ to ensure that no-one falls below a basic minimum income. Given that for many EEA workers SWA is currently the only payment available to them, they are in effect without a 'safety net'. As shown in the examples above this can lead to extreme hardship for individuals.

It's important to say as well that not all the responsibility lies with the state; a lack of knowledge on the part of clients and service providers on the right to social welfare also contributes to the overall difficulties of migrant service users. This, combined with a

lack of awareness of the potential discrimination of changes in social welfare, is the most problematic area with regard to the issues raised above.

Crosscare has developed 'Know your Rights' posters and leaflets in English, Polish and Russian in order to try and address some of the deficit in client knowledge. The CHWI service has developed training for service providers and funding has been sourced for an EU worker who will develop this training and offer it out to the sector.

In partnership with Northside Community Law Centre (a community law centre with whom we have worked closely over the last 2 years on housing issues) and FEANTSA member Focus Ireland, we called together a Habitual Residency Condition (HRC) group which includes a variety of NGOs who have clients experiencing difficulties because of the HRC.

After some inflammatory comments from a city mayor, some members of the HRC group came together to produce a Briefing Document on the rights and entitlements of Migrants to social welfare, attempting to outline how the individuals involved had earned their entitlement. This information document was circulated to members of our Senate and Parliament and to the media.

CONCLUSIONS

As a final point it should be noted that Homelessness in Ireland has remained an important political issue despite the significant pressure that the current economic crisis has placed on public finances in Ireland. The Department for the Environment increased funding in 2009 and maintained the level of funding for 2010. The Department of Health funding has seen some reduction but this has not seen any major disruption or reduction in quality of Crosscare services.

This commitment is beginning to bear fruit: as stated above, the numbers of people sleeping rough in the capital are seeing a consistent reduction and the reconfiguration of services in Ireland has the possibility to bring us substantively towards a situation of ending long-term homelessness and the need to sleep rough by the end of this year. It is clearly the hope of the government that this will lead to significant savings in the medium term and meeting the problem of homelessness should result in less need for services, particularly expensive residential services.

However, in the context of this positive progress towards the eradication of homelessness, it will be disastrous if the state fails to think collectively and cross-departmentally about the issues that are encountered by new residents in Ireland.

The views expressed in this article are those of the author.

[N]ot all the responsibility lies with the state; a lack of knowledge on the part of clients and service providers on the right to social welfare also contributes to the overall difficulties of migrant service users.

5 Department of Social and Family Affairs, Report of the Working Group on the Review of the Supplementary Welfare Allowance Scheme Phase II November 2006.



Sharing solutions: how can we support Central and Eastern Europeans who become homeless in the UK?

By Joanne Crellen, *Innovations Project Manager, Homeless Link, UK*

Being clear about individuals' entitlements is key to supporting them.

Over the past six years, the problem of street homelessness among Central and Eastern Europeans, particularly those from the new accession states, has grown rapidly in the UK. We now have a situation where more than a quarter of the people seen sleeping on the streets of London are from Central and Eastern Europe. Similar situations occur in other major cities and, out of public view, there are new rough sleeping encampments found in rural areas.

Expansion of the European Union (EU) in 2004 and 2007 led to an increase in migration from Central and Eastern Europe to Britain. The majority of individuals from these A8 and A2¹ countries successfully obtain employment and accommodation in the UK. However, for those who find themselves unemployed and homeless, options can be limited due to the restrictions placed on access to social provision and benefits. When the accession countries joined the European Union, the existing member states were given the option of implementing transitional arrangements restricting the freedom of movement of workers from these countries for up to seven years. The measures remain in place until 2011 for A8 nationals, but then they should have the same access to European labour markets as other European Economic Area (EEA) nationals. Although the UK decided not to restrict the free movement of workers from A8 countries, it did introduce a Worker Registration Scheme (WRS) to monitor the impact of EU enlargement on the UK labour market and control access to social entitlements. Social security legislation was amended to restrict access to certain means-tested benefits. Further restrictions were placed on A2s who have more limited access to the labour market and welfare assistance.

In 2007, a report into street homelessness in London found that 18% of rough sleepers were from A8 and A2 countries. When this research was repeated in November 2008, rough sleepers from these countries had reached 25% of the total.² Not all of those in need are sleeping rough – others are living in squats and other insecure housing or experiencing poor health or support needs such as alcohol or drug misuse. Across England, a study we conducted in 2009 found that 47% of advice and homelessness agencies were working with European migrants in need.³

Given the limitations placed on A8 and A2 nationals' entitlements to public funds, it can be difficult for agencies to know what support to offer to these homeless clients who present at their services. The traditional routes off the streets may not be accessible to those who are not entitled to housing benefits. There may be other barriers to working with this client group such as language difficulties, cultural differences and limitations of existing resources. Moreover, they may present with different support needs from 'traditional' clients.

RESPONDING TO THE CHALLENGES

Since the issue first presented itself in 2004, homelessness agencies have developed their practice in order to find solutions for these clients. Furthermore, in its strategy 'No One Left Out – Communities ending rough sleeping' the then Labour government committed to ending rough sleeping by 2012.⁴ To reach this aim, homelessness among migrant groups needs to be addressed.

Being clear about individuals' entitlements is key to supporting them, and there has been a lot of confusion about the transitional arrangements and what they mean for clients. Homeless Link has produced a briefing on entitlements for A8 and A2 nationals to the labour market and unemployment benefits, statutory homelessness assistance, housing/council tax benefit, local authority accommodation, and the National Health Service. This has been made widely available to all our members and to local authorities across England. While legal advice should be sought on individual cases, this guidance does go some way to clarifying the entitlements for clients presenting at homelessness services.

Under the existing arrangements, there are really only two ways to avoid ongoing destitution in the UK for these clients, which are to secure legal employment, or to return to their country of origin. A number of initiatives have been developed to assist with supporting these options, including:

- 1 'A8 countries' refers to those countries which joined the EU in 2004: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. 'A2 countries' refers to Bulgaria and Romania who joined in 2007. This group is collectively referred to as 'A10'.
- 2 http://www.homeless.org.uk/sites/default/files/repeat_survey.pdf
- 3 http://www.homeless.org.uk/sites/default/files/Migrants%20and%20Homelessness%20report_March_prm.pdf
- 4 No-one Left Out: Communities ending Rough Sleeping - <http://www.communities.gov.uk/publications/housing/roughsleepingstrategy>



- Accommodation and employment projects set up to support migrants back into employment, then housing, or support them with reconnection where appropriate.
- Reconnection services – these services reconnect EU migrants to support in their home countries. So far, a reconnection service run by the charity Thamesreach operates in London, and a National Reconnection Service is also being piloted in areas elsewhere in England.
- Barka UK - established in London in June 2007, this organisation operates across a number of areas across London, supporting people to return to services in their home countries.

Employment⁵ is a key route out of homelessness for clients from Central and Eastern Europe who have no recourse to public funds. Some arrive in the UK with little or no knowledge of working or living here. Assisting them to understand the processes, and providing support through these, can help these clients to access work and prevent entrenched rough sleeping. For services to help their clients access work they need to:

- Fully explore clients' expectations and give factual information
- Stress the importance of working legitimately
- Have an information pack to give out so that people can read it at leisure
- Assess clients' experience and skills so that they can be matched to appropriate jobs
- Be clear that clients need to have the basics such as identification, National Insurance numbers and bank accounts in place before seeking work
- Build the trust of clients by doing tasks with them present
- Deliver or source training that will meet the needs of the clients – but be clear how this will help them to prepare for work
- Have a list of reputable agencies or job-search software to help clients look for work
- Help clients to prepare for any interviews
- Advise clients on how to prevent exploitation at work, and provide a contact number for any follow-up support that may be needed.

Reconnection is also an important option to be able to offer for those who are unable to access the labour market or support services in the UK. Those with no recourse to public funds have few appropriate alternatives if they are unable to secure work and

find themselves destitute. Investing in reconnection schemes can prevent entrenched rough sleeping and the personal issues and difficulties associated with this. It is important that reconnection is a voluntary option, as not everyone will want to return home. There may be a number of reasons for this, such as pride, a determination to succeed, having no ties at home, and legal history.

Where clients show no signs of being capable of work and are destitute but do not want to go home, building a relationship of trust over time and frequently exploring the benefits of returning home can be useful. It is also important to reconnect in the way which takes in to account the support needs of the clients and the resources and capacity available.⁶ As part of assessing clients' needs it is useful to discuss the return and any expectations they may have in relation to this.

For these solutions to be effective, services first need to overcome the language and cultural barriers that exist between themselves and their clients. First of all clients should be aware of what the service offers and at least basic information that they may need should be available to them in a language they understand. It could include having information about services translated into different languages, or having staff learn basic phrases in those languages so that they are able to provide a welcoming reception to clients. They also need to make sure that translated information that is frequently needed, such as on living and working in the UK, is available. However services do not need to translate everything themselves, as there are many publications already available with information that has been translated.

Where clients need more assistance than services can provide through translated materials but they are unable to communicate in English, interpreters may be required. It is important that this is viewed as a short-term, emergency response to an individual, and that services are advising and encouraging their clients to begin to learn and practise speaking English as soon as possible. Also, translators require resources and an alternative approach is to use volunteer translators/interpreters either for one-off sessions, for example to conduct focus groups to help better understand the needs of clients, or to have a regular bank of volunteers who can respond to emergencies.⁷ Similarly, services could include language skills as a desirable feature in new job descriptions for paid staff.

5 For detailed information on helping clients to access and maintain employment, see <http://www.homeless.org.uk/cee-employment>

6 For a full guide on this, visit <http://www.homeless.org.uk/cee-reconnection>

7 For information on recruiting volunteers, visit <http://www.homeless.org.uk/cee-guidance>



While Central and Eastern Europeans sleeping rough in England remains a considerable issue, a great deal of progress has been made towards identifying solutions [...] through the innovation and flexibility of the third sector, and the joint working between charitable and statutory services.

Fundamentally, services should encourage their clients to improve their English in order to have a greater chance of success in living independently in the UK. Many English classes are available and services should support their clients to identify one that is appropriate to their needs in terms of the level of English it requires learners to have already, the location, and the times it runs. Services could also deliver some classes themselves, if no other suitable arrangement can be found.

LOOKING TO THE FUTURE

Of course, people must take responsibility for preparing themselves well before taking the decision to move to a different country to seek work or begin a new life. We collectively need to ensure that these decisions are well informed, based on an accurate awareness of entitlements, job restrictions, and living realities in other member states, particularly in the context of the current economic climate. Unfortunately, we have witnessed the devastating impact that a lack of basic welfare provision can have on the lives of those vulnerable people who are less well prepared for the restricted job market, or who find themselves out of work and destitute and with no recourse to public funds.

Britain has just ushered in its new government following our general election, and we currently await further clarity about what this might mean for the way this issue is approached at a national level. However, it is clear that this situation must be addressed. Homeless Link has called on the new government to take action to prevent this situation worsening further. We have called for immediate steps to end exclusions from support linked to the Workers Registration Scheme and for further measures at a local level to ensure all homeless and destitute people from Central and Eastern Europe receive short-term support to enable them to find work or to make a dignified return home. And importantly, we believe the government must establish “destitution-proofing” for new proposals which could inadvertently result in people becoming destitute.

While Central and Eastern Europeans sleeping rough in England remains a considerable issue, a great deal of progress has been made towards identifying solutions. This has only been possible through the innovation and flexibility of the third sector, and the joint working between charitable and statutory services. As we work towards our commitment to ending rough sleeping, we hope different services will continue to come together to build on the progress we have already made, and help achieve our vision of a country without homelessness.



Equality in Public and Social Housing Allocation

By Christian Perl, *BAWO Project Coordinator and FEANTSA Board Member, Austria*

The allocation of public housing in Austria resembles a delicate balancing act between the concern for socially and ethnically mixed neighbourhoods on the one hand, and anti-discrimination legislation on the other. The question of allocation to migrants, minorities and people of different religious affiliation is politically sensitive and legally unclear for many of the involved stakeholders. Again and again the national ombudsman for equal treatment, local anti-discrimination bodies and NGOs report cases, where the allocation of public housing is linked to diffuse criteria that are not in line with antidiscrimination legislation. For instance, communes have connected the allocation of public housing with "sufficient" German language skills or have introduced maximum quotas for migrants. Reservations held against socially or ethnically unpopular house-hunters are apparently objective, but in reality this is often the result of discrimination against people with different ethnic or religious backgrounds.

To tackle the problem, Volkshilfe Austria¹ has designed targeted measures and launched a special project together with the Austrian umbrella organization BAWO² and the Klagsverband,³ an NGO specialized in representing of the victims of discrimination. The national contact point for anti-discrimination in the Ministry of Social Affairs has chosen the project for a collaborative PROGRESS application. The Austrian Ministry for Trade, the National Ombudsman for Anti-discrimination, the Tyrolean and Viennese governments and different local anti-discrimination bodies support the project financially and/or as strategic partners.

Volkshilfe Austria is a non-governmental and non-profit organization in the tradition of the workers welfare movements providing a broad range of social services. Its values and practical approaches are based on the principles of human rights, human dignity, social dialogue, fairness, justice and equality. Volkshilfe's activities focus on health and care services for elderly, counseling for refugees, migrants, homeless and unemployed persons as well as services for children both in Austria and abroad.

Bundesarbeitsgemeinschaft Wohnungslosenhilfe (BAWO) is the umbrella organization of Non Governmental social services working with homeless people in Austria. BAWO has about 150 members, of which 50 are service providers offering emergency-, devel-

opmental- and long-term social services across all Austrian provinces. Because BAWO's main topic is the fight against homelessness, the members are active in all fields of social work. Together with the members BAWO tries to find (new) solutions for people who belong to the most vulnerable and excluded groups in society especially for people with multiple needs, including people who are homeless, people with alcohol and substance abuse problems, people with mental health problems, people with multiple and complex needs, people with long-term care needs and migrants.

The proposed project consists of three interlocking implementation modules: a legal and socio-scientific study; networked training; and policy advice and public relations.

The study comprises both a legal and a social dimension. For the legal aspect, an overview of the relevant European and Austrian legislation related to the allocation of public housing and anti-discrimination will be compiled. The relevant legislation will be studied and it will subsequently be analyzed how little or how well the anti-discrimination legislation is implemented in Austrian law. The procedures of social housing allocation, the possibilities of appeal and responsibilities will be documented and analyzed. Based on this analysis, recommendations will be given to various legislative bodies on how to improve anti-discrimination law. Furthermore, regional and local integration plans will be analyzed comparatively in terms of their relevance to reaching equality in the housing market.

In a second step, the study will shed light on whether and if so, how, in practice, persons are discriminated against on the basis of ethnic origin, appearance, religion or other grounds of discrimination. In particular we also want to look at the connection between discrimination and poverty. In this socio-scientific part of the study, quantitative and qualitative surveys will be carried out through questionnaires, telephone interviews and case studies on allocation practices in selected regions and cities. Good practice examples of social housing allocation in Europe and Austria will be researched and documented. The socio-scientific part will be conducted in the regions of Tyrol and Lower Austria and in different-sized cities : Vienna, Linz and Bregenz.

1 www.volkshilfe.at

2 BAWO: Bundesarbeitsgemeinschaft Wohnungslosenhilfe; www.bawo.at

3 www.klagsverband.at



Detailed legal documentation and the analysis of relevant legislation and their implementation in allocation practice will hopefully enable communities and contracting authorities to enhance their knowledge on the implementation of European anti-discrimination legislation as well. The analysis of local integration plans will help develop national and local policy to combat discrimination and promote equality in the existing legal framework. The socio-scientific part of the study will allow an insight into whether there is discrimination in the allocation of public housing using the narrow legal framework of ethnic discrimination, revealing, for instance, if there is discrimination because of poverty.

The second aspect, networked training/good practice workshops, are aimed at employees of housing companies, regional and local allocation bodies, representatives of political parties and employees of NGOs that are engaged in the field of prevention, housing assistance, and legal and social counselling. In a first step, the knowledge of antidiscrimination legislation will be improved. Using concrete examples and practical reports of the participants in an inventory of one's "own" housing allocation practices, can allow room for reflection on these practices. Austrian and European good practice strategies in the allocation of public housing and specific mainstreaming tools will be presented or worked out together. New ways of allocation can thus be developed together (internal guidelines, quotas, criteria for urgent claims, allocation practices, support services for housing and living environments). Practical implementation projects involving the participants can be led by the project team.

The examples of good practice and mainstreaming instruments should motivate public authorities to examine their social housing allocation practices. This will result in better implementation of the anti-discrimination legislation. The examples of good practice and mainstreaming tools will be documented in a report by the project partners and distributed through partner networks. Decision makers will thus have new, innovative guidelines to hand, with which they can improve the planning of their allocation practices. Already the development of good practice examples, together with the municipalities and prop-

erty management companies can lead to awareness-raising that helps promote equality in the allocation of public housing. Discrimination across the poverty spectrum and effective discrimination because of institutional economic barriers are presented. A re-organisation based on the guidelines presented by the good practice examples and mainstreaming instruments can be achieved. It is a declared goal of the measures to initiate relevant projects at local/regional level and subsequently carry out these projects.

The third aspect concerns policy advice and public relations (PR). The results of the study and the good practice models shall be opened to the general public in an interesting format, and distributed widely by the media and distribution networks of the project partners. The project's PR activities will also be aimed specifically at professionals. Existing contacts with journalists and media by the project partners' PR departments will be used. In addition, four press releases to promote the specific highlights of the project will be launched. The resulting materials will be the starting point for further development of targeted anti-discrimination tools and projects in regional conferences and policy seminars.

The results of the project shall be presented in at least two Austrian states in the form of a local parliamentary survey, allowing it to reach political decision-makers. In these parliamentary surveys, the outcomes can be discussed in a structured and in-depth manner. We have already contacted politicians in the Tyrol, Lower Austria, and Viennese governments.

In addition, a closing conference at federal level for the integration and presentation of all results is envisaged. This conference is planned in cooperation with the National Body for Anti-Discrimination in the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) and the Department for Housing and Housing Policy of the Federal Ministry for Economic Affairs, Family and Youth (BMWFF).

The broadness and the variety of the partnership give our proposition the possibility to produce socially relevant outcomes and lead to an effective and sustainable change.



Roma and homeless people, is voluntary agency action inadequate?

By **André Gachet**,¹ *Lead Administrator for European issues, Fapil*, and **Véronique Gilet**,² *Project Officer, Alpil, France*

A EUROPEAN TALE TOLD LOCALLY: THE LYONS EXPERIENCE

Many Roma from Romania or former Yugoslavia have been living in our towns and cities since the early 1990s in some of the direst housing conditions, most often without support of any kind. The lack of access to rights is compounded by public bodies' attempts to evade their statutory obligations towards these families. This is a particular issue in the Lyons metropolitan area.

In 1993, the Assistant to the Mayor of Lyons in charge of human rights, asked us to do an on-site survey of the homeless foreign nationals living in a disused railway station. They were Romanians who had previously sought asylum in Germany and had ended up in Lyons after being shunted from pillar to post, wanting to claim asylum in France.

The presence of children and elderly people in particular was a new development: before then, Lyons' homeless population had been exclusively made up of unattached individuals.

These families were starting procedures to claim asylum just as the Schengen Information System (SIS) file was getting going.³ In Germany, situations had worsened locally (the Rostock attacks took place in 1992.⁴) They arrived in Lyons, and after a few months had become so numerous as to form an identifiable group in the city: the Eastern European Roma.

The migrations are not nomadic in nature (90% of Europe's Roma are sedentary) but with a view either to settling permanently, including having children educated and finding work, or a more traditional economic migration with the aim of an eventual return.

Faced with this new demand between 1993 and 1995, Lyons City Council and voluntary agencies made every effort to provide shelter for rough sleepers. A headline-grabbing takeover of the Fourvière basilica esplanade forced central government to take action. A disused barracks was turned into temporary accommodation for over 300 people. It was run by the Salvation Army, and remained in use for about a year. But the Roma had already become identified as an issue. These families were seen as too numerous, and

despite having put in official paperwork (filing asylum applications), the establishment felt they had no business staying there. In October 1995, Philip Videliere wrote an article entitled "Riding roughshod over the right to asylum" in *Le Monde diplomatique*, shedding light on the policy operated by central government's local representative towards these families: "Pre-empting whatever OFPRA⁵ might decide, the Rhône prefect's office cautioned the voluntary community "not to complicate the inescapable operations to send these people back", emphasising that the State, which is "responsible for these difficult return-migration operations, knows it has the understanding" of the general public."

So was the future of the Romanian Roma mapped out for them around a simple response: go back home or "anywhere but here." The take on these families' situation and how their needs are perceived will therefore be dictated by the belief that they are shuttle migrants rather than ones wishing to integrate into the local community and that their on-off presence does not require long-term provision to be made for them.

REJECTION OF THE ROMA BECOMES INSTITUTIONALLY ENTRENCHED

The fact of Romania being recognized as a safe country was yet further reason not to take in its poorest nationals.

The Romanian Roma were to be joined from 1999 onwards by families from Yugoslavia (Bosnia, Serbia, Kosovo, Macedonia) fleeing the war and its consequences. Many of these illiterate and non-French-speaking families would be hard put to find places in asylum-seeker reception provision. Some are still awaiting regularisation in 2010.

The arrival of families from former Yugoslavia and the lack of institutional provision resulted in the reappearance of shanty settlements over the winter of 2000/2001 in the form of shacks erected on the banks of the River Rhône on building land designated for new offices. The newly-elected council agreed to a temporary shelter solution for these families being put in place. We developed the first shipping container "village" which would remain there for a year, after which all the occupants were relocated into housing or hostels. None have since returned to living in squatter settlements.

The presence of children and elderly people in particular was a new development: before then, Lyons' homeless population had been exclusively made up of unattached individuals.

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3 The SIS data file is intended to enable Schengen area countries to establish a common policy to control entry into the Schengen area and so facilitate free movement for their citizens while preserving public order and public security. On 1st February 2009, the national SIS file contained alerts on 1,223,871 persons.

4 In summer 1992, skinheads attacked an asylum-seeker hostel for Romanians in Rostock with Molotov cocktails and rocks, forcing the hostel to be evacuated.

5 The French Office for the Protection of Refugees and Stateless Persons



Successful though this operation was, these were the only families for which this outcome was achieved. At the same time, a very large shantytown (almost 600 people) grew up. In April 2004, two young girls died in a caravan fire on the site. Once the initial outpouring of emotion stirred by the tragedy had subsided, the Roma presence was again rapidly reduced to a public order issue and a string of evictions followed.

Stories about the Romanian and former-Yugoslavian Roma are reported as “other news” in local newspapers, but have dropped off the public policy agenda. The Lyons metropolitan area is getting used to the presence of some fifty permanent sites - land and buildings - occupied by 6 to 700 Roma migrants on its territory.

A number of families are voluntary or involuntary shuttle migrants, going back and forth between France and Romania, or circular migrants moving to different European countries as a function of work opportunities (agriculture, etc.) – a form of migration we have become unaccustomed to since borders were closed to labour migration in 1974. And the unfamiliar is unsettling. Also, the rules in force before Romania joined the EU do not allow Romanians to stay longer than three months in France.

Far from being calm and measured, the debates about the presence of Roma polarized the views and stances of those involved. For some, the Roma were to be seen as non-legitimate migrants, a category apart that required different treatment. This gave rise to an ethnic-background-based approach which became “the Roma problem”. Others stood by their belief that the Roma could also have a relevant place in the city, that they prompted us to question our practices and provision, but also to develop a genuine social contract with them that included respect for shared dignity. Community groups took action alongside the “professional” voluntary agencies to help the children get educated (CLASSES⁶), be witnesses to squatter settlement evictions (Collectif Roms⁷), etc.

THE IDEA OF EUROPEAN CITIZENSHIP NOT TAKING HOLD

It was not until early 2007 when Romania joined the European Union that central government took action again. The Prefect – central government’s representative in the department – facilitated large-scale action to address all the issues involved: housing, health, education, employment and security.

These aims quickly fell foul of red tape but also the continuing refusal to make any real allowance for the situation of the shantytown population.

A new Prefect was appointed and halted the scheme. In the absence of any assessment, he decided it was not working.

The evictions resumed, the humanitarian repatriations were stepped up (followed soon thereafter by a return to the metropolitan area by those concerned) as part of a quota policy for removals from French territory of which the Romanian Roma were the first victims, made use of to massage the figures. These so-called “voluntary” repatriations were also used locally for political purposes, fuelling the perceptions of Roma families as having practices not common to mainstream society (constant coming and going, no plans for integrating, habitual begging) or at least driven by self-interest (households creating entitlements to family benefits from the family allowances fund (CAF) and accepting assistance for a voluntary return to Romania, etc.).

Time was at a standstill; the clock had turned back 10 years.

FIGHTING FOR ACCESS TO ORDINARY RIGHTS

Local conditions not having moved on, we decided in 2009 to take action on the basis that collective problems had to be settled by taking into account individual situations; we therefore worked on a personal basis. While the provision of decent housing to get people out of the shanty settlements still needs to be addressed, they are just the expression of a refusal to acknowledge family homelessness because of the ethnic approach taken.

The first results are filtering through. Rehousing was achieved with great difficulty due to the widely differing administrative situations. Some Romanians have earned incomes or transfer incomes (RSA⁸ and/or PF⁹) while others do not. Access to ordinary housing is reserved for the former while the others are excluded from it and have to look for temporary accommodation.

In the final analysis, the story of the plight of the Roma in the Lyons metropolitan area is mirrored in other towns and cities in France and other EU countries where within a single territory (region, country) innovative initiatives to address these families’ housing needs rub shoulders with a lack of public initiatives against a backdrop of public order approaches.

6 Collectif Lyonnais d’Aide à la Scolarisation des Enfants des Squats (Lyons Action Group for the Schooling of Children in Squats)

7 An alliance of voluntary organisations working with families to prevent evictions from squats and shanty settlements without a prior solution

8 Revenu de Solidarité Active = earned income supplement

9 Family benefits as understood for the purposes of RSA



A QUESTION FOR ALL EUROPEAN ACTORS INVOLVED IN THE FIGHT AGAINST HOMELESSNESS

How do we get to grips with this singular and much-discussed yet elusive issue in which some organizations working with homeless people are active?

A workshop was held in Linz, Austria on 3rd July 2009; another in Bordeaux in France at the same time; a meeting was held in Rhône-Alpes in September 2009;¹⁰ and a French network "Romeurope" brings together local actors from different regions in the country.¹¹ What have emerged from these meetings are significant differences at EU and national level that make a collective approach hard to come by.

The main heads of difference at national and European level are also the points on which discussions must focus:

1. The differential approach to national minorities

The approach to the issue of national minorities differs in different countries. While the principles of equality and non-discrimination most often arise in connection with legal proceedings, the formal difference lies mainly in the recognition or non-recognition of minority status.

2. The emotionally-charged local debates and the development of particularly virulent anti-Roma racism

The issue of homeless Roma stirs high passions. Defenders and detractors seem to agree that it is a "singular" problem. At the extremes, some defenders of the "Roma identity" argue for "appropriate" treatment, while the most virulent opponents tend more towards a scorched earth policy. The conditions that impede access to ordinary entitlements are easily fulfilled and may result in clear discrimination.

3. Blurring the distinction between national and migrant populations

While the dividing line between migrant and native populations in Eastern Europe may be blurred for historical reasons and by geographical and 'cultural' proximity, it is growing sharper in countries where the gypsy population – whether sedentary or traveller – is a community unto itself.

In neither case is the place of migrants easy to define, partly because of the intrinsic nature of the migrations – involving families and different generations – and partly because of the difficulty of defining them – nomadic travelling or migration? This is the context in which the issue of new migrations arises.

4. Legal differences between EU countries

Some EU countries have chosen to postpone full access to freedom of establishment for new entrants in order to protect their labour markets. The law allows such restrictions to be imposed where establishment is for the purpose of taking up salaried employment; they also include a reciprocity clause. France decided to apply the transitional measures and keep them in place for Romania and Bulgaria until 2012.

5. A lack of tools for knowledge sharing

Knowledge is key. Where the issue of Roma migrants is concerned, there is an acute lack of resources in regard to recognition of the demand, how it is expressed and classified, in regard to unequal access to rights (right to accommodation and housing, traveller and sedentary populations, etc.), interpreting the trends in migration and homelessness, and so on. This knowledge gap is to do with the segmentation of public policies and the conflicting objectives of immigration policies and policies to tackle exclusion. A lack of knowledge about situations and needs, and the lack of recognition of the responses required to address homelessness among these families allows the status quo to continue and discourages action.¹² The only way to work out practical ways of addressing this form of homelessness is by establishing common analytical frameworks and indicators.

6. Inability to address situations that do not fit (or not easily) in a standard approach: a proposal for collective action

It is essential to promote a revamped approach to homelessness among Roma people.

Apart from an analytical approach, an examination of resources for action (ordinary instruments and mechanisms, appropriate responses) would over time help to roll back discrimination.

Field experience shows that the main obstacles lie in the great difficulty of bringing joint local/national government resources to bear on the question.

The people we are talking about and alongside whom we are working are citizens of the European Union, asylum seekers or migrants and living in unfit conditions before they are Roma. What we are fighting for is dignity and access to entitlement.

The people we are talking about and alongside whom we are working are citizens of the European Union, asylum seekers or migrants and living in unfit conditions before they are Roma.

¹⁰ Summary of proceedings and action kit on www.habiter.org

¹¹ www.romeurope.org

¹² It is worth noting that at FEANTSAs 4th research conference held in Paris in September 2009, reporting that the EU native population in emergency provision amounted to 20-30%, the French government representative added: "not including the Roma population"



The right to shelter for irregular migrants – a fact-based approach in the Netherlands

By Joris Sprakel, LL.M.,¹ Lecturer in Human Rights Law at the Hague University and Researcher at the Bynkershoek Institute, The Netherlands

INTRODUCTION

In the Netherlands, similar to most countries in the world, the right to housing and shelter is classified as a social and economic right. This classification makes the protection of this right difficult where it concerns vulnerable groups such as children, the homeless and irregular migrants. In the Netherlands since the late 1990s, national laws have effectively excluded the last group from any government assistance.² As of 1st January 2010, the situation worsened when local authorities were instructed by the national government no longer to provide emergency shelter to any irregular migrant, including families with children.

Although the Netherlands constitution allows for the direct application of international treaties by the Netherlands courts,³ the high courts in the Netherlands have consistently deemed the right to shelter, and more general, social and economic rights, not 'clear and unequivocal' enough for direct application by the courts. The initial attempts to gain some form of protection through articles 3 and 8 of the European Convention of Human Rights (ECHR) failed because the assessment of the courts allowed a very wide margin of appreciation for the government in relation to migration policy. In the courts' view the access to government assistance, including emergency shelter, for irregular migrants would prolong their stay needlessly and 'seriously undermine' the Netherlands migration policy. In other words, the fair balance test that was established by the European Court of Human Rights (ECtHR) was applied in support of the government policy.

Over the last couple of years the Netherlands courts have ventured on a more fact-based approach. In 2006 for example the Central Council of Appeal (*Centrale Raad van Beroep*), the highest appeals court in social benefits and assistance cases, granted protection (in this case the right to water) to a child of irregular migrants on the basis of the Convention on the Rights of the Child (CRC).⁴ The Central Council of Appeal took into consideration that the child and

parents were not unlawful residents as they were allowed to await the decision on their second asylum request in the Netherlands. The Central Council of Appeal rightfully concluded that the child could not be held responsible for the (possibly wrong) decisions of the parents.

Although this decision offers protection to children, it still leaves children that are residing in the Netherlands unlawfully without protection. Recently a change in that respect has been noticeable in the decisions of courts and political discourse. This change has in part been made possible thanks to the Decision of the European Committee of Social Rights (Committee) of 27th October 2009⁵ in which the Committee reaffirms the right to shelter for children of irregular migrants on the basis of the European Social Charter (ESC). In this article I will discuss some developments in the Netherlands that occurred as a result of this decision.

POLITICAL DEBATE

It may be clear that the decision of 27th October 2009 has implications for the Netherlands' policy on emergency shelter for children and their families. Because of the way this is organised in the Netherlands, the discussion takes place at both the national and local level. The Minister of Justice on the basis of the Alien Act 2000⁶ is responsible for national immigration policy, which includes irregular migrants. The city council is responsible for providing emergency shelter to those in need on the basis of the Social Support Act.⁷ It is also the city council that is ultimately faced with the consequences of the national policy decisions in the sense that they have a public order issue if families with children end up living on the streets. This is reflected in the policy statements. The Minister of Justice does not want to effectuate the decision of the Committee, where some city councils are (more) willing, sometimes even eager, to combat the homelessness of these vulnerable individuals. The Second Chamber of Parliament in a motion of 20th May 2010⁸ has urged the Minister of Justice on the basis of the decision of the Committee to put an end to the

1 j.sprakel@hhs.nl. I would like to thank Pim Fischer (Fischer Advocates, Haarlem, The Netherlands) and Carla van Os (DCI-Netherlands), co-authors of Collective Complaint 47/2008 DCI v. the Netherlands, for their comments on this article.

2 On the basis of Article 10 Vw2000, irregular migrants are entitled to some government services such as education, legal aid and emergency medical care.

3 Article 93 and 94 of the Netherlands Constitution.

4 Central Council of Appeal, Decision of 24th January 2006, Case Number 05/3621 WWB and 05/3622 WWB (LJN: AV0197).

5 ECSR, CC 47/2008, Decision on the Merits of 27 October 2009 (published 28th February 2010).

6 Act of 23rd November 2000, Stb. 2000, 495.

7 Act of 29th June 2006, Stb. 2006, 351.

8 Tweede Kamer, Vergaderjaar 2009-2010, 19637, nr. 1342.



practice in which families with children are rendered homeless. At the moment of writing this article the Minister has yet to answer this motion. What the Minister has said in previous comments is that he is willing to offer the children shelter, but not the parents. This raises the question whether that would be in 'the best interest of the child' as is formulated as a guiding principle in the CRC.

RECENT COURT DECISIONS

As described above, for many years the exclusion of irregular migrants from government services was considered by the Netherlands courts to be proportionate to the aim pursued, being the need to control the so-called 'influx of immigrants' into the Netherlands. Both the Council of State (*Raad van State*), the highest appeals court in migration cases, as well as the Central Council of Appeal, have consistently concluded (in respectively >200 and >150 cases) that the fair balance test favoured the government.

What has changed? Most importantly, the decision by the Committee has determined that the Netherlands policy is in violation of the European Social Charter (and other international agreements). Secondly, the approach to case building appears to be of the utmost importance for success. In other words, the facts of the case need to be presented in such a fashion that the fair balance topples to favour the migrant's protection. This can be illustrated on the basis of two recent cases by courts in the Netherlands.

The Utrecht District Court heard the first case.⁹ The applicant is a woman with a one-year-old, sick child who has recently been removed from an asylum centre in the North of the Netherlands. According to policy she is given a train ticket to 'anywhere' upon removal from the centre, and she ends up in the city of Utrecht. The city council says that according to policy nothing can be done, and the case ends up at the Utrecht District Court. The Court is faced with a law that allows for emergency protection for people in dire situations. This exception however, was never given effect by the national legislature. On the other hand the Court is faced with a child in need of protection and a city council that is willing to help. The Court turns to the Committee decision of 27th October 2009 for guidance. Although national and international law do not (necessarily) give binding effect to the decision, the Court uses the decision as an inspiration. It concludes that the decision, although non-binding, cannot remain without any effect in the Netherlands

jurisdiction, and that the decision is specifically aimed at protecting children such as the applicant's child. The Court decides to extend the protection of the law 'in light of the decision of the Committee'.

The second case was heard by the 's-Gravenhage District Court.¹⁰ The applicant in this case is a woman with three minor children. The Court was to decide on the lawfulness of the eviction of the applicant and her children from the asylum centre in which they were staying. The Court was specifically asked to take into consideration the decision of the Committee of 27th October 2009. In this case the Court concludes without hesitation that the decision of the Committee is not binding on the Netherlands. The Court further concludes that the first responsibility for the wellbeing of the children lies with the mother, who should have cooperated with her deportation from the Netherlands.

The difference between the two cases seems to be twofold. Firstly there is a noticeable difference in the substance of the case. The Utrecht case deals with a mother and child already living on the streets. The 's-Gravenhage case deals with a future forced eviction. In light of the Committee decision this should not make a difference as it is aimed at preventing homelessness. Secondly the parties' positions in the Utrecht case have contributed greatly to the solution. The city council was well aware that something needed to be done. The counsel of the applicants managed to convince the Court that the facts met the criteria needed for interpreting the Netherlands law in light of international standards. The 's-Gravenhage Court was only asked to take into consideration the Committee decision, without being offered any guidance or direction towards a solution.

At about the same time as the two decisions above the Central Council of Appeal decided in a case concerning emergency shelter for an irregular migrant in need of medical care.¹¹ The case differs from the cases above in that the applicant was allowed to stay in the Netherlands during his second asylum request, meaning he had lawful residency without an entitlement to government services. The Central Council of Appeal based its decision on Article 8 of the ECHR. It concluded that although in general the state may limit access to shelter on the basis of residence status. In this case however the fair balance was decided in favour of the applicant because of his vulnerable state.

[T]he approach to case building appears to be of the utmost importance for success.

⁹ District Court Utrecht, 6th April 2010, case number SBR 10/867 WMO (LJN: BM0846).

¹⁰ District Court 's-Gravenhage, interim injunction of 15th April 2010, case number: 363137 / KG ZA 10-426.

¹¹ Central Council of Appeal, Decision of 19th April 2010, Case Number 09/1082 WMO (LJN: BM0956).



FUTURE DEVELOPMENTS

As of yet it is unclear what the future will bring with respect to the protection of social and economic rights, including the right to shelter, for irregular migrants in the Netherlands. But some conclusions can be drawn on the basis of the recent developments I have described above.

The first conclusion that can be drawn is that international human rights norms and standards are capable of influencing the outcome of decisions of courts in the Netherlands. Whereas the Minister of Justice refuses to implement the decision of the Committee because in his view the decision is not binding on the Netherlands, for the courts the same decision provides them with an explanation or guideline on how to apply the national regulation in accordance with the international standard. It is clear that the courts need to be presented with facts that support the claim of a human rights violation.

Which brings me to the second conclusion, being that the Netherlands legal tradition is still not familiar with basing cases on facts, and consequently on case-law.

The courts have a tendency to conclude that a certain international (social and economic) norm as a whole is not 'clear and unequivocal' (i.e. directly applicable by Netherlands courts) rather than to assess on the basis of the facts whether under the specific circumstances the international norm is clear in its meaning. It may be clear that the legal tradition influences both the courts and legal aid providers. On this last group lies the burden of presenting the facts in such a way that courts can apply the international standards.

The third and final conclusion that can be drawn is that the discourse has only just started. Legal aid providers need to share best practises in order to secure shelter and housing rights for all vulnerable groups in need of protection. The different levels of government need to determine what the international standards for housing and shelter are, in order to guarantee nation-wide protection of the most vulnerable groups. Finally, the courts need to continue their approach of fact-based case solving in accordance with international law. It would of course help if the different court branches (civil, administrative, and criminal law) could agree on the applicable standard.



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'Faith and Hope' by Maya Vrzina

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