



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

# Homeless in Europe

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## Free Movement and Homelessness



FEANTSA



## IN THIS ISSUE

- 2** Editorial
- 4** Do We Really Have Free Movement of Citizens Within the European Union? Case Study: Romanian Citizens Belonging to the Roma Minority in France  
*André Gachet*
- 7** Absent - Excluded – Alien: The European Homelessness of Polish Migrants  
*Barbara Goryńska-Bittner*
- 10** The Same But Different, EU Migration and Homelessness in Ireland  
*Wayne Stanley*
- 13** Free Movement Rights and Labour Market Integration of EU Citizens in Sweden  
*Fabrizio Vittoria and Tetyana Zhyla*
- 16** The Legal Aspects of EU Migrant Homelessness from a British Perspective  
*Adam Weiss*
- 19** Should I Stay or Should I Go? Border Controls vs The Right to the Freedom of Movement Within the EU Member States  
*Ian Tilling*
- 21** Homeless in the UK – A Case Study in Why the Immigrants Are Not to Blame  
*Don Flynn*
- 23** New Pan-European Project with Homeless Migrants to Contribute to Forming Decisive Tools in Relation to National and EU-Based Efforts and Policies on the Migrant Issue  
*Anne Sofie Ellesøe*

## Free Movement and Homelessness - Is Denying Services Really the Answer?

by **Mauro Striano**,<sup>1</sup> *FEANTSA Migration Policy Officer*

Free movement of persons is often considered as one of the most important achievements and as a fundamental principle of the European Union. However, free movement of persons has always provoked discussion about the level of rights accommodated for and has always been confronted with Member States that have tried – and still try – to impose restrictions on it or limit it outright, especially when it comes to persons who are not economically active. Indeed, most States already expressed objections to the introduction of free movement of workers during the 1956-1957 Treaty negotiations since such a legal framework would have given foreign workers – until then ‘used’ by States to fuel their economies – access to the host welfare systems. Only Italy had an actual interest in introducing free movement for workers seeing it as a means to solving its unemployment problems and, in the end, Member States agreed to include in the Treaty of Rome, in its article 49, the objective of “bringing about, by progressive stages, freedom of movement for workers”.

The role of the European Court of Justice has been paramount in further clarifying – and to a certain extent broadening – the definition of ‘worker’. Through several rulings, the Court explained the concept of ‘worker,’ pointing out that it should not be interpreted restrictively. Rules on the freedom of movement also concern part-time workers or workers who obtain remuneration lower than the minimum guaranteed in a specific sector, thus income is not important as long as the person pursues an activity that is ‘effective and genuine’. According to Union law, the status of worker is retained also by those job-seekers who are recorded as involuntarily unemployed after having been employed for more than a year or after having completed a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months. Furthermore, free movement of workers also includes the right for nationals of Member States to seek employment in another Member State though this can be subject to temporal limitation.

Freedom of movement of EU citizens has developed over the years, overcoming, at least partially, the reluctance of Member States and covering an increasing number of economic situations. However, the question FEANTSA has been putting to European and national institutions is what rights EU citizens have when they become destitute and homeless whilst exercising their right to free movement. Particularly in big cities of countries like the UK, Denmark, Sweden, the Netherlands, Ireland and France, a significant part of homeless service users and of rough-sleepers are citizens of other EU countries. The UK Department of Communities and Local Government’s latest rough sleeping figures reveal that 28% of people sleeping on the streets of London are from Central and Eastern European countries and 11% from other EU Member States. According to the Italian Census on Homelessness, published in 2012, 11.5% of people in homeless shelters in Italy are Romanians. In France, outreach organisations working in Paris indicate that 40% of their clients (mainly rough sleepers) are young people from Eastern Europe and recent data confirm that this trend would not only concern people coming from Central and Eastern European countries but also Spanish, Portuguese, Greek and Italian young people who are trying to escape the economic crisis.

Member States’ policies towards this new group of service users vary. In a number of Member States, no publicly-funded shelters are open to irregularly residing immigrants. In these countries, EU citizens have to rely on very limited, privately-funded support structures or may even be forced to develop autonomous survival strategies on the streets and in poor quality housing. Some Member States provide unconditional support in principle to all people in need. However, if resources are scarce, this obviously puts a lot of strain on service providers and risks creating a situation where a choice between nationals and non-national service users will have to be made. In addition, many homeless service providers are not sufficiently prepared to deal with this group of new EU service users

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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](mailto:suzannah.young@feantsa.org).

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.



that have different support needs from the 'local' homeless population. Besides language barriers, homeless services are less acquainted with the sometimes complex legislation regarding unemployment and welfare payments that apply to EU citizens. This negatively impacts on homeless services' capacity in supporting people and helping them to claim their correct benefits and move out of homelessness again.

Over the past few years, Europe has been experiencing an economic downturn that makes this issue even more visible and that jeopardises European solidarity. Unsurprisingly, at the end of April 2013, in a joint letter to the Irish presidency, four Ministers – representing Austria, Germany, the Netherlands and the United Kingdom – launched a strong attack regarding the freedom of movement of EU citizens using the argument that the EU needs to protect the principle of freedom of movement from 'social welfare abuse'. Only a few weeks earlier, the Dutch Secretary of State announced a proposed law that would prevent non-Dutch EU citizens who have been residing for no more than three months or are job-seekers from accessing emergency accommodation. The reason would be that accessing emergency accommodation would be considered as an unreasonable burden on the social assistance system. It is true that, according to directive 2004/38, art. 24 on equal treatment, Member States are not obliged to confer entitlement to social assistance to EU citizens in their first three months of residence and for longer periods to those who entered the host Member State in order to seek employment. If access to shelters is considered as an entitlement to social assistance, it might be possible for a Member State to forbid access to shelters to those who have been resident for no more than three months and to job-seekers who have never worked

in the host country (the categories of job-seeker who are still considered within the definition of 'worker' are entitled to equal treatment). On the other hand, a Member State cannot expel EU citizens in their first three months of residence or those job-seekers (with no employment record) "that can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged". Such policy plans lead shelters to deny services to homeless people who are in the situations described above, thus provoking an increase in rough-sleeping which cannot be solved through expulsion because these would not be in line with EU law.

Therefore, the question is whether denial of services and threats of expulsion are an effective way to solve the problems. I believe not. The 'social tourism argument' has never been demonstrated – a small number of fraud cases cannot account for millions of EU citizens residing in another EU Member State - and using it is counter-productive. Moreover, when it comes to addressing destitution among EU citizens who exercise the right to free movement, the Member States concerned push for burden-sharing and rely on civil society to provide services and even 'reconnections' to the country of origin, yet no Member State has ever offered to share the benefits of economic migration with the countries of origin – and these have been shown in several studies. Of course, the issue needs to be addressed and the EU certainly has a role to play but a long-term solution can only be achieved through adequate social policies which include access to basic services that would help people experiencing a personal crisis to get back on the right track.

FEANTSA would like to thank all the authors who have contributed to this issue of the magazine.





# Do We Really Have Free Movement of Citizens Within the European Union? Case Study: Romanian Citizens Belonging to the Roma Minority in France

By **André Gachet**,<sup>1</sup> *Technical Advisor, ALPIL, France*

*The European dimension of the migration issue is often raised. However, all too often, such debates are limited to simply placing all responsibility at the door of the migrants' countries of origin: the European dimension is dismissed as 'everyone else.' This is all the more true when the subject of the debates is Roma people from Romania or Bulgaria.*

## **HERE, WE WISH TO RECALL THAT NATIONAL CITIZENSHIP ALONE MEANS THAT EUROPEAN CITIZENSHIP APPLIES<sup>2</sup>**

The European dimension is the sum total of the national dimensions of the migration issue which each include the common rules enshrined within the Charter of Fundamental Rights, the European Convention on the Protection of Human Rights and all of the binding and reference texts which underpin the European Union.

In all EU countries, citizenship is expressed first and foremost through the ability to access basic rights. The Roma in Romania must have this possibility, and this must be extended to them when they are in France or elsewhere. It is the authorities who are responsible for ensuring that this is indeed the case, both in Romania and other countries, and they must shoulder this responsibility without being able to pass the buck. This message was hammered home in the Strasbourg Declaration on Roma<sup>3</sup> which was published following the unfortunate stances adopted by the French state in 2010. It reads 'Whilst the primary responsibility for promoting integration falls on the shoulders of either the member states of which the Roma are nationals or in which they are legal and long-term residents, recent developments regarding the Roma in Europe have shown that a number of the challenges we are facing have cross-border ramifications and that therefore, pan-European action is required.'

This issue is not simply of French and Romanian concern. Rather, it is a European issue because the Roma are scattered across the whole of Europe, both as a result of where they settled historically and of the migratory flows of which they have been at the forefront for the last two decades, along with other factors. Inevitably, the integration of migrants varies

according to whether it is a goal pursued in a country of immigration or emigration. Recent months have shown that Europe is vulnerable to changes which are sometimes incredibly brutal in nature. Host countries have become countries of departure. Jobs which were previously open to workers hailing from elsewhere have suddenly been closed to outsiders. The economic crisis is exacerbating tensions.

## **STRENGTHENING KNOWLEDGE AND MAKING THE BEST POSSIBLE USE OF HUMAN RESOURCES- THE KEYS TO THE EFFECTIVE MANAGEMENT OF MIGRATION WITHIN EUROPE**

Few answers can be found to questions which are not posed in unequivocal terms. As true as that may be, on what foundations can we build today when those working in the field are unanimous in declaring that the quality of university research leaves something to be desired?

Research provides an opportunity to draw upon the energy and resources of young academics from the Roma minority who contributed to the Sibiu declaration in 2002.

This declaration, signed by 16 organisations constitutes the common foundations laid by a new generation of stakeholders. It reaffirms the right to free movement as enshrined in legislation and calls upon the French and Romanian Interior Ministers and the governments of EU member states to avoid attaching stigma to any party during debates on migration. It emphasises the importance of both preventing and combating human trafficking. It calls for efforts to pinpoint the causes of migration and suggests national and international alternatives to migration with such force that the message deserves at last to be heard.

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<sup>2</sup> This article takes up part 5 of the report: D'Est en Ouest: la Citoyenneté ! *Après le voyage en Roumanie octobre/ novembre 2012*. Ed : André Gachet.

<sup>3</sup> 'The Strasbourg Declaration on Roma,' Council of Europe high-level meeting on the Roma, Strasbourg, 20th October 2010.



## ECONOMIC RESOURCES AND SOUND MANAGEMENT

At a time when debates are focused on preparing the 2014-2020 budget, the issue of pooling European and national resources is raised. The European framework must encourage action and act as a guide for the development of local strategies. It must foster the creation of national programmes which it must then support. As part of this relationship based on open dialogue, local stakeholders have a pivotal role to play.

Currently, 7.6% of the 20 billion euros available are used by Romania. Like other countries, Romania has not succeeded in using the opportunities provided by the amendment to the regulation on ERDF funds.

## A COMMON STRATEGY AND CO-ORDINATION OF STAKEHOLDERS' WORK

Taking account of the European dimension involves ensuring first and foremost that initiatives are co-ordinated and that they complement each other when the issue in question is one of shared concern. And indeed, the migration issue is by nature, an issue of shared concern. Of course, migration is not a European competence and in the majority of EU countries is governed by national law alone. Except, that is, when the specific issue in question is controlling migratory flows, an area in which a vast wealth of resources are used.<sup>4</sup>

*It should also be noted once again that when we talk about migration from outside Europe, what is being discussed is immigration in the classic sense of the term. However, when we discuss migration within EU member states, this is not immigration but rather free movement and free establishment.*

The Union was built and continues to be built on the eradication of internal borders. These internal borders are the root cause of internal migratory flows such as those which all countries have experienced and will continue to experience in the future (rural flight and the pulling power of major cities, migration towards job-rich areas or university towns,...) Whilst the Roma issue can and must be viewed in the terms outlined above, it continues to act all too often as an alibi for member states.

Ensuring that countries and national or international NGOs share a common line of argument is a vital prerequisite in order to establish a framework for initiatives which is common to all involved.

## USING THE LAW AS A GUIDE

The construction of Europe was and continues to be a process comprising various stages.<sup>5</sup> Today, and at least for the time being, the right of residence, which is extended to all EU citizens, is also applied in France:

- a) A stay of less than 3 months: the only condition to be fulfilled for this type of stay is the possession of a valid identity document. It is possible to be accompanied by family members. No proof of income is required.
- b) Freedom of establishment for longer than 3 months: citizens must register at their local town hall. Proof of income and health insurance must be provided, but a waiver can be granted if any of the following apply: the citizen is in employment (and has any necessary authorisation to perform his duties), is studying, is a family member of a person who has a residence permit, or is seeking employment and can provide proof that he is doing so actively and is likely to be successful.
- c) The right to permanent residence is acquired following a period of at least 5 years during which an individual has been a legal resident in a given place for the majority of that period. Acquiring this right means an individual is eligible for a 10-year permit which can be renewed and can only be revoked if the individual leaves their place of residence for more than two years.

When exactly is a Romanian citizen of Roma origin deemed to be an EU citizen?

## WILL THE TRANSITIONAL PERIOD SOON DRAW TO A CLOSE?

Without lifting the transitional measures in place, a circular issued by the French government on 26th August 2012 has seen rules relaxed considerably. It remains to be seen how this circular will be put into practice.

According to Romania's Treaty of Accession, a second extension of the transitional measures is only possible if there is a real risk of 'serious disruption' to the national labour market. Unfortunately, this definition is no more clearly defined in relevant texts and therefore remains subject to interpretation.

In 2008, and later in 2011, the European Commission published reports which described the impact of these transitional measures, or of their absence, on the various member states. Both reports appeared to conclude that free access to the paid labour market

**[W]hen we discuss migration within EU member states, this is not immigration but rather free movement and free establishment.**

<sup>4</sup> Xénophobie business, à quoi servent les contrôles migratoires ? Claire Rodier. Ed. La Découverte. October 2012

<sup>5</sup> A reminder: 1957, Treaty of Rome, free movement of workers established (Europe with 6 member states). 1986: Single Act- free movement applied to all people (Europe with 12 member states). 1992: Maastricht Treaty and the development of institutional architecture. 2000: the legally binding EU Charter of Fundamental Rights. 2004: Directive 2004/38/EC on citizens' right to free movement and free establishment. 2007: Lisbon Treaty ratified by 27 member states- enters into force in 2009. It is a treaty of civic, political, economic and social rights, and is legally binding.



In France as in Romania, several NGOs working on the ground work tirelessly to encourage those directly concerned to make their voice heard.

has a positive effect on the economy in the long term, and that the movement of Romanian and Bulgarian nationals within the EU represents only 0.6% of the total of the European population (figure from Eurostat, 2010). Out of a population of 21 million, it is estimated that between 1 and 1.5 million Romanians live outside their country (figures quoted by Mediapart).<sup>6</sup>

*The aim of recalling this context is to emphasise that the transitional period is the first obstacle to dealing with 'the Roma problem' in France, and that it also hinders free movement.*

#### THE ROLE OF THE NGOS

Cooperation between those working on the ground must go beyond merely sharing experiences. A joint initiative in order to ensure that knowledge is shared is of crucial importance. We must strengthen cooperation between those working on the ground and academics in Europe.

Several possible courses of action have already been marked out. The first involves mapping the places of origin and the sectors where the problem of the Roma minority is a significant and visible one. However, the same work must be carried out on places of arrival where the Roma migrants are forced to live together in the shantytowns and squats of large urban areas. Such work is currently being planned with geographers and anthropologists coming together as part of what could become 'research and participative action programmes.'

Joint reading of the press to closely monitor its contents is another possible course of action. A number of such experiments conducted recently have shown that the images which accompany articles are used - sometimes unconsciously - to produce stereotypes: any photo can be used to illustrate the issue

providing that it reflects what 'people' believe to be true.<sup>7</sup> The cross-border work carried out by the intercultural centre of Timisoara must be brought to the fore.<sup>8</sup> It too participates in the fight against stigmatisation which is often revealed through certain ways of writing about current affairs. Tackling this issue is not simply a matter of revealing the mechanisms at work in the media but also of encouraging meetings between those who write and those who are written about.

In France as in Romania, several NGOs working on the ground work tirelessly to encourage those directly concerned to make their voice heard. Such efforts are not replicated in sufficient number elsewhere. Work with women, which is adapted according to the situation and difficulties faced by individuals, allows them to effectively embark upon both training and a process of personal development. In broad terms, initiatives offering new prospects of accessing citizenship, employment and training to those who appear deprived of opportunities must be created and encouraged.

The training of mediators must be a responsibility jointly borne. Past experience has demonstrated the importance of a reference framework - which cannot be developed without shared standards. There are many obstacles along the path to such a framework, created as a result of the decrease in funds available for either initial or continued training, but also by the lack of recognition of such initiatives.

What we are able to write by drawing on the example of the situation of the Roma from Romania in France is ultimately a way of broaching the issue of free movement within the European Union. An issue of which is of direct concern to the concept of European citizenship today under construction.

6 Thanks to Marion Huissoud-Gachet for her permission to use statements made as part of training in the law pertaining to foreigners.

7 We prefer, by some margin, the works of Yves Leresche: Roma realities/ Decade 2005-2015, Confederation Suisse Agence pour le developpement et la Cooperation/ The World Bank, 2009.

8 <http://www.intercultural.ro>



# Absent - Excluded – Alien: The European Homelessness of Polish Migrants

By **Barbara Goryńska-Bittner, PhD,<sup>1</sup> Researcher,<sup>2</sup> Poland**

Free migration around Europe is one of the most important UE settlements according to which the citizens of the UE may choose the countries where they want to live and work. The inhabitants of the new part of the old continent<sup>3</sup> (since 2004) emigrate mainly in search of work whereas the citizens of the old Union more often seek an attractive living environment.

The dynamics of migration are slowly spreading all over the World. Some countries become not only the source but also the destination of the migration movement which is rapidly increasing. The countries of the so-called Eastern block are in an especially curious situation. So are the economically well-developed countries. After the year 2004, people from Poland emigrated to many places in the world, mainly searching for new jobs – however, the most attractive destinations proved to be the wealthy countries of the EU. The number of newcomers very often exceeded the expectations of the countries which were the first to open their job markets. The most popular destinations among Polish migrants are Great Britain and Germany, Italy, Holland and France. The USA, in turn, proved more popular than Spain, Ireland and Austria.

Although from the point of view of European law the Polish migrants had EU citizenship, migration after 2004 was so surprisingly extensive that the host countries felt forced to undertake many 'defence' measures. According to J. Carby-Hall (2008), in 2004 Europe received 900,000 migrants from the Eastern part of the continent, over half of which were Poles. Immediately after accession, over 1 million migrants from Poland lived outside their country – in the years 2007-2008 this number doubled. As the GUS data show, in 2008 2.2 million Poles resided in EU countries (MSWiA, 2011) but in 2009 the number decreased to 1.8 million people. Although the first phase of the crisis did not cause a considerable increase in the number of returns, the number of migrations obviously decreased, which can be explained by a more stable economic situation in the country of origin. In 2009, about 80% of migrating Poles moved to EU countries. According to BAEL, the returns were more numerous which was confirmed by the statistics made by host countries. Currently the number of

Poles migrating to the nearest neighbour – Germany – seems to be growing considerably.

The authors of the Polish Migration Strategy (Migration Council, MSWiA) accepted by the Polish Government in July 2012 – although they applied Polish statistics and the evaluation of the host countries – estimated the number of Polish migrants all over the world at about 10 million people, whereas the Polish national calculation in 2012 confirmed the absence of about 2 million Polish citizens.

The more and more intensive migration caused a variety of reactions from countries in Western Europe: from the common feeling of threat to the awareness of new challenges and possibilities. The countries of Old Europe, being afraid of the massive arrivals of migrants from the Centre-Eastern part of the continent and trying to defend themselves against the expected decrease in welfare contributions and increase of local unemployment, tried by all means to postpone the duty of opening their job markets, although the scientific analyses did not confirm any of those expectations (Boeri i Brücker, 2000; Kaczmarczyk, 2008).

Although migration considerably stimulated the economic development of the receiving countries after the year 2004, the migrants were not always welcomed by the local communities due to fear of competition from cheaper workers which was undoubtedly a threat for the interests of workers in the receiving countries.<sup>4</sup> When employment migration exceeded the needs of the host countries, in view of the economic crisis spreading over Europe, it was mainly the immigrants who faced hard times. They were the first victims of cuts in the job market, excluding them socially in many areas of life. The difficult migration reality revised their hopes for social improvement – for many it proved to be a painful answer (like homelessness) to their dreams about a better life. The bigger the scale of migration, the bigger the risk of migrants becoming homeless as they are subject to a special kind of exclusion – as the absent in their own country and as strangers<sup>5</sup> in the receiving country and excluded from its system (homeless).

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2 W POKL 1.18/zad 4 - as a member of the 2010 research team she worked on the diagnosis of scale and character of the homelessness among the Polish working immigrants in Europe, outside Poland. Now she is conducting preliminary research called "Homeless Polish Immigrants in the EU".

3 The countries of Central and Eastern Europe after accession in 2004 and 2007.

4 In the process of marginalisation, the media play a significant role in creating the image of otherness and increasing the feeling of threat in the receiving society.

5 Statistical counts of homelessness are difficult to define and verify because of the difficulty to decide of the definition of homelessness. Homeless Link, on the basis of their own data, evaluate street homelessness at about 500 people. Those data are not credible, though, as they only consider people sometimes or permanently sleeping on the street.



The problem of homeless Polish immigrants is gradually becoming a more and more serious challenge for the social assistance systems in EU countries. In the United Kingdom (according to Shaks Ghosh – the head of Crisis – about 500,000 homeless people (i.e. 200,000 + about 380,000 of the so-called ‘hidden homeless’ (hostels, squats etc.) live there. In his opinion, homelessness among the Polish encompasses a few thousand people and mainly concerns London. Polish migrants most often stay in big cities (London, Edinburgh). In Germany, where official estimations show that around 40% homeless migrants from Eastern Europe come from Poland, although the scale of homelessness in Germany is considerable, it is only in Hamburg (according to the Polish Embassy in Germany) that statistics are being analysed. While in 2002, 17% of homeless people there were immigrants, the number had increased to 27% by 2009. It should be noted, however, that there are no credible data about the homelessness of Poles but only the researchers’ conviction that this phenomenon is still increasing and changing its character (it becomes more and more permanent).

It is almost impossible to pin down the extent of homelessness among the Polish migrants in France. Prof. Carby-Hall (2008: 190, 243),<sup>6</sup> in a report prepared for the Polish Citizens’ Rights Bureau, estimated the number of homeless Polish migrants at over 1 million people at the end of 2007. In the opinion of the French coordinator of his report, groups of Poles (mostly men, 3-4 people) usually live in Paris for some time and then they part – very frequently moving to the streets where he thinks about 300-400 people reside every day. In 2008, an attempt was made at counting the number of homeless migrants. At that time, their population in Brussels was estimated at about 995 people, 545 of whom slept in deserted houses, parks and on the street. The staff at the biggest CASU dormitory say that in Winter they usually receive about 400 phone calls asking for accommodation for a night (Mostowska, 2010: 241-242). These opinions allow only a limited evaluation of this phenomenon – therefore it is understandably difficult to define the number of the Polish migrants from these numbers. In Italy, 4 in 10 migrants come from Romania, Morocco or Poland. 30% of them (around 800,000) try to settle down for good which is confirmed by the statistics showing that they have been there longer than 5 years. (Carby-Hall, 2008: 240-241). It is estimated that around 300,000 people come to Italy every year; according to the Italian coordinator of the report, about 1 million migrants from Eastern Europe are present in Italy and it is mainly Poles amongst those who come from the EU. In Spain, about 50,000 Polish

working migrants have resided there yearly since 2006 and over 50% of the homeless are Poles.

Homelessness among Polish migrants has its structural, cultural and psychological background. Its structural causes are, first and foremost, fluctuations in the job market. The current economic crisis shows the ‘shrinking’ of European job markets – making firms and companies collapse – also those that employ workers illegally. To be employed in a firm like this is traumatic experience as the illegal companies do not go bankrupt but rapidly disappear leaving their former workers without a job. Thrown out of the system, homeless migrants try to survive in many ways, begging, stealing, using their children to earn money and prostitution. The cultural reason is a poor adjustment of the migrants to the new living and working conditions – lack of language skills, job qualifications, trust problems and many addictions as a result of stress and danger.

In the generally difficult situation of the earning migrants there appear more and more obvious social consequences of their not always reasonable decisions, being frequently a reason for the social tensions in the receiving countries and leading to the social and cultural exclusion of a considerable number of newcomers. Although Polish migrants previously integrated well and quickly into local communities, given the changing situation in the job market, a lack and loss of health services, poverty and homelessness, gradually more and more of them gather in communities with low standards of living (ghettoes). When many of them experience living on the streets they find it painful how quickly guests may become strangers in the receiving communities – sometimes also among other homeless people (Oliwa-Ciesielska, 2006).

Structural and cultural factors are object of interest for the agencies supporting homeless migrants from Central and Eastern Europe. According to reports by the British organisation Homeless Link, the main reasons for migrant homelessness are relationship breakdown, employment collapse, lack of accommodation on arrival in the receiving country, and loss of legal status. In the opinion of the supporting agencies, the homeless immigrants they see are often people unable to work, earning illegally for little money or without an employment contract. There are cases of very poor physical and mental health, sexual abuse, prostitution and violence. Only 1/5 of the agencies are of the opinion that they may fulfill the expectations of their clients.

6 The quoted data – although imprecise – are doubtful when compared to the data presented in Carby-Hall’s report concerning the number of homeless people in France (around 1 million), medical reports giving around 3 million homeless Poles and C. Zofiedowski’s opinion – about 1.2 million.





A significant role in worsening the homelessness among Polish immigrants is played by their deep conviction that even if they lose their job nobody in Poland will help them and it will be much more difficult to regain their usual status than e.g. in Germany. A staff member from the Polish City Mission in Hamburg, A. Stasiewicz, notices the negative image of their own country shared by the homeless Polish people there – namely its low social standards, lack of solidarity and unfriendliness towards the homeless and excluded. A considerable role is also played by the shame of being unsuccessful and the hope for a better life which makes some of the working people start living in the streets rather than coming back to Poland.

According to the 2006 “A8 Nationals in London Homelessness Services” report, most of the excluded immigrants from the A8 countries using London charity assistance for the homeless were Polish. This forced the London authorities to take measures to reduce the most visible – street – homelessness. This problem, though, was otherwise solved in EU countries. In many of them, the authorities support activities helping the homeless immigrants – in others they do not. In response to the deteriorating situation of the earning migrants from the new EU member states, The European System of Migrants’ Integration was created in Great Britain in 2006. The Housing Justice programme, ‘Unleash’, the Simon Community, the Polish ‘Barka’ Foundation and the municipalities of Hammersmith and Fulham were invited to cooperate. The result of this initiative was the Polish-British Mission for employment (PBME) which gradually started to cooperate with many institutions from other EU countries.

In Paris there is a Polish organisation called *Pomost-Passerelle*, and the Polish Catholic Mission and the Church of Holy Mary have been helping since 2005. *Pomost-Passerelle* helps around 500 people, most of whom are homeless Poles. It also cooperates with French organisations (*Captif*, *SAMU Social*, *La Mie de Pain*) and it helps to prepare projects that help homeless migrants return to their countries of origin in cooperation with the Polish Embassy in Paris, Saint Albert Society and Social Aid Centres in Poland. These organisations especially help the Polish immigrants intensively within numerous addictions. In Belgium, the Social Unit of the Polish Community in Belgium Council helped 61 homeless Poles in the last 3 years.

The responsibility for the life of Polish migrants is a serious challenge both for Poland and for the receiving countries. In the current European and social reality it is particularly necessary to create a concise, official migration strategy within the EU. Therefore, EU Member States need to define precisely their own expectations. Even if the number of migrating Poles is decreasing, the number of homeless Poles is not (on the contrary, it is still increasing) – most probably in the near future this phenomenon will become a serious social problem requiring efficient decisions from the Polish authorities. They will have to decide whether to bring the homeless Poles back to Poland or to give them support where they are, in the receiving countries. It is also a great challenge for the other Union governments and the problem which must be solved by action which will create programmes to integrate immigrants within receiving communities at local and European level.

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The responsibility for the life of Polish migrants is a serious challenge both for Poland and for the receiving countries. In the current European and social reality it is particularly necessary to create a concise, official migration strategy within the EU.



# The Same But Different, EU Migration and Homelessness in Ireland

By **Wayne Stanley**,<sup>1</sup> *Research and Policy Analyst, Focus Ireland, Ireland*

## INTRODUCTION

The free movement of people is one of the foundation stones of the modern European Union (EU). While the route to this has been the free movement of workers, the European Court has found (in cases such as Baumbast and Grzelczyk) that it is our European citizenship that helps to define our rights within European borders. In any discussion on internal EU migration, we will find many who believe that this is how it should be, and many who argue that the Court is overreaching its mandate and we should limit ourselves to discussing the rights of workers.

The Irish government, like many others, in its structuring of the access to the labour market and the access to social protection, holds to the second position. The introduction of the Habitual Residency Condition in 2004 and the limiting of access to the labour market for Romanian and Bulgarian nationals in 2007 are evidence of this.

These limitations on support given to EU citizens in Ireland have in some cases contributed to homelessness and can hinder services in supporting people to move on from homelessness.

## BACKGROUND

Migration has always been a part of the Irish experience but historically this was primarily outward migration to the UK, Australia and The United States. However, Ireland saw significant inward migration from the mid-1990s, peaking in the mid-2000s. The graph below gives a sense of the scale of EU migration showing the number of Personal Public Service

Number (PPSN) numbers allocated to EU citizens from the 26 fellow members of the EU for 10 years from 2001. (A PPSN is required in order to work legally in Ireland.)

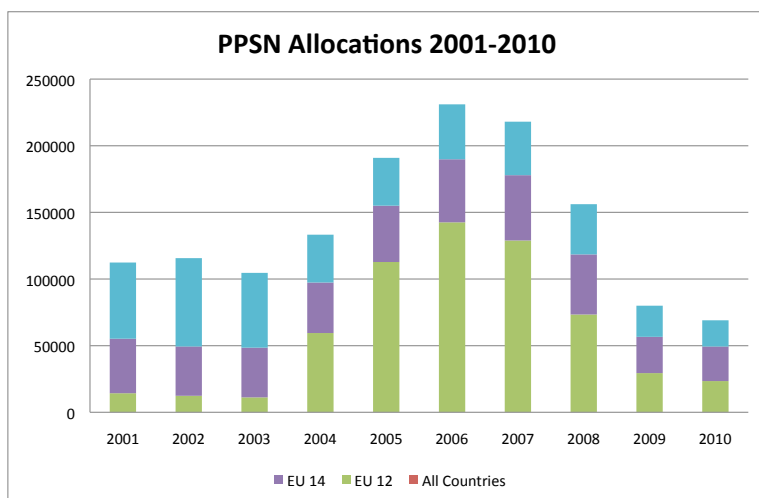
The graph also shows that the peak of inward migration co-insides with enlargement of the EU in 2004 and (more importantly in the context of the discussion for this article) shows that migration increased when there was work and declined rapidly when the work dried up.

Whilst considering EU migration into Ireland it is important, as mentioned above, to bear in mind that Ireland was one of the few countries that allowed 'unrestricted' access to the labour market for citizens of the 2004 accession countries, though restrictions were put in place for Romanian and Bulgarian citizens when they joined in 2007.

## HOW MANY EU MIGRANTS EXPERIENCE HOMELESSNESS?

All of the available data we have relates to 'point-in-time' counts. While these are very useful they also have their limitations, in that a one-night sample is clearly not representative of a year and they are always a minimum number. In 2008, the 'Counted In' survey<sup>2</sup> found 278 migrants from the 10 recently acceded members of the EU using Dublin's homeless services. The most up-to-date figures from Census 2011 found that, of the 2,367 people reported as experiencing homelessness in Dublin, 350 were non Irish<sup>3</sup>, with 190 of these being EU citizens.

These two counts are not directly compatible, they use different methodologies and are counting different things, but they do give us a sense of numbers. Perhaps the best way to take account of these numbers is to consider the numbers in percentage terms. That is, roughly 15% of people experiencing homelessness are non-Irish nationals and 9% are EU migrants. This compares with 12% of the total population being migrants and just under 9% being from other EU countries.



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 2 Homeless Agency (2008) *Counted In 2008*, Dublin, Homeless Agency.  
 3 CSO (2012) *Census 2011 Results, Homeless Persons in Ireland*, Dublin & Cork, CSO



## WHY DO EU MIGRANTS EXPERIENCE HOMELESSNESS?

As service providers we find that, in many cases, migrants experience homelessness for the same reasons as everyone else. Loss of employment, addiction, family breakup and mental health issues can all be contributing factors. Migrants can also face additional risks, including a lack of understanding of the social welfare system, language difficulties and the absence of a substantive social safety net such as close family and friends.

Another structural factor contributing to the vulnerability of migrants to exclusion and possibly homelessness is the slow development of policy and practice that properly understands and responds to the migrant experience. Frustratingly, it can take time to get an issue corrected even if it is putting migrants at risk of homelessness. One recent example is a housing circular outlining to officials in local authorities the qualifying conditions for migrants for social housing.<sup>4</sup> The circular fails to take account of the fact that the children of EU migrants are legally residing here and should have access to social housing support. The confusion arises as the circular set out the right to reside of EU migrants based on *worker* status. This fails to take account of the fact that the children of many EU migrants are now coming of age and making lives for themselves. In the current economic circumstances, not all of them will have the required work record but may have a housing need. The failure of the circular to take account of the fact that EU migrants may have a right to reside not based on worker status means that these young people are barred from access to social housing or support. Furthermore, they are barred even from having an assessment for social housing need. Where these young people are vulnerable to homelessness this, perhaps unintended, discrimination could be the difference between preventing homelessness and not.

Another area which advocates for migrants have found to be a contributing factor to homelessness has been that a small but significant number of EU migrants have not been able to get social welfare protection due to the Habitual Residency Condition or HRC.

Briefly, the HRC is an assessment of someone's residency status applicable to social welfare payments and housing support. The assessment is based on 5 factors, namely:

1. Length and continuity of residence in Ireland
2. Length and purpose of any absence from Ireland
3. Nature and pattern of employment
4. Applicant's main centre of interest
5. Future intentions of applicant

These factors have been open to interpretation and misinterpretation, pushing some people into destitution. The most manifest example of this misinterpretation was seen in decisions where a person living in Ireland for as much as 5 years and working for 4 of those years, was not found to be 'habitually resident'. This was based on the fourth factor (their mother was back in the country of origin) and factor 1 (they were in their 30's they had lived most of their life outside the State).

In the research and reports that have been produced on migrant experiences of homelessness, the HRC is consistently mentioned as a significant barrier to people exiting homelessness. This is also the experience of our services. Some have no entitlement as they have recently come to the country or have a very limited work record but for others the issue is the poor administration of the HRC usually combined with a lack of knowledge of their rights.

Advocacy for this group has become even more complicated of late with the introduction of a further 'right to reside' clause. The 'right to reside' clause, as the name suggests, is where a person must first demonstrate that have a right to reside in Ireland (usually based on worker status) and then show that they meet the HRC.

In order to address some of the poor decision-making on the HRC that has been seen in Ireland, a group of service providers, including migrant support organisations, law centres and homeless services came together to share experiences and support each other with cases and build expertise and lobby for changes in policy and practice. While it is difficult to gauge the influence such an informal grouping has had, we do know that the quality of decision-making and advocacy has been improved over the lifetime of the group.

Linked to the HRC is the issue of worker exploitation. 'Away from Home and Homeless',<sup>5</sup> a report on the experience of so-called EU10 migrants from 2006, and the first piece of research that addressed the increasing number of EU migrants that had begun to experience homelessness post 2004, highlighted this and recommended that the relevant department

**[A] structural factor contributing to the vulnerability of migrants to exclusion and possibly homelessness is the slow development of policy and practice that properly understands and responds to the migrant experience.**

4 Department of Environment Circular Ship 47 of 2011 updated by housing circular 41 of 2012

5 TSA Consultancy (2006) *away from home and homeless*, Dublin, Homeless Agency.



introduce protections that would allow migrants to report exploitation without fear of losing the chance of any income.

In 2011, the Migrants Rights Centre in Ireland surveyed 120 migrants working in the restaurant industry. This survey showed high levels of breaches of employment law and lack of any enforcement of employment standards. For example, 80% have no contract of employment and 88% of the work places have never been visited by a Labour inspector.

The most recent report, 'Homeless in My New Home'<sup>6</sup> found that, of 15 people interviewed, 11 had previously worked and five of those had worked in jobs which were casual and paid 'cash in hand'. So they had no official work record. This meant that when they applied for support they were denied or they did not even apply. This of course presented one of the most significant issues for service providers who found that service users were trapped in homelessness as they have very limited or indeed no resources to help them to exit.

### ISSUES OF ACCESS TO SERVICES

With what we as a service provider see as a progressive move to a housing-led approach and a re-configuration of services to meet the challenges that this system presents, we have seen the return of the exclusion from certain services for migrants who are not HRC-compliant in the main because the referral process has been centralised.

A response to this by Dublin City Council was to identify those people who did not have access to payment. Then they provided them with some stable hostel accommodation and brought in an advocate to work with them to see if they could be supported into payment. Those who could get payments were supported into housing or mainstream services. The remainder have been offered support to go back to their country of origin, with the City Council contracting the Polish-based organisation *Barka* to carry out this work with Eastern European citizens. Some have taken up this offer and some have not. While this kind of direct action is welcome within the confines of current legislation, it is important to recognise that there are also groups and individuals who are avoiding this service and get an emergency bed one night at a time or sleep rough.

### CONCLUSION

In Ireland, the experience of advocates for the rights of EU migrants is that it is important not to be limited by the narrow way in which State agencies interpret the rights of migrants, but instead to be fully informed of their rights as EU citizens.

The factors that stand out are: firstly, that experience and research show that migrants migrate for work and many will stay building a life, some will migrate again or return to their country of origin. But they are not only workers, they are also human citizens and may decide to remain for a variety of reasons - some will have nothing to return to and will stay even if it means living in destitution in the belief that they are better off where they are and tomorrow might be a better or breakthrough day, some have family and social connections.

Notions of 'welfare tourism' are massively overstated and pre-emptive actions such as the HRC are acts of bad faith that harm citizens.

The second thing is that we need to do more to ensure that migrants are not forced into homelessness because they were exploited while they were in work. A recent High Court ruling (concerned Amjad Hussein, trading as Poppadom Restaurant, challenging a decision of the Labour Court with respect to Muhammad Younis, who was awarded 92,000 for breaches of employment law) found that the Employment Permits Act 2003 prevents an undocumented worker from seeking redress under Irish labour law as the employment contract cannot be recognised. In effect, this prevents undocumented workers from seeking legal redress in the employment courts. While EU migrants would be afforded better protection than this, the premise of insulating the employer from worker's rights is a worrying one.

Finally and fundamentally, if the right to free movement is to be respected, provision must be made to allow for the fact that any person can experience a crisis that can make them vulnerable to homelessness. If a person has such a crisis even for a short period of time and do not have the protection of the host state, this person will, at best, be forced to return to their country of origin. At worst, they will be forced to live in destitution. It should not be beyond the wit of the member states of a Europe founded on the idea of free movement to ensure that those citizens who do experience a crisis have the resources to get back on their feet.

6 TSA Consultancy, Focus Ireland (2012) *Homeless in my new home*, Dublin, Dublin City Council, Focus Ireland and Immigrant Council of Ireland.





# Free Movement Rights and Labour Market Integration of EU Citizens in Sweden

By **Fabrizio Vittoria**,<sup>1</sup> Lawyer, EU Adviser at Crossroads Göteborgs kyrkliga Stadsmission (City Mission) and **Tetyana Zhyla**,<sup>2</sup> EU Adviser at Crossroads Göteborg kyrkliga Stadsmission (City Mission), Sweden

## INTRODUCTION

In recent years, the problem of homelessness has been escalating in Europe. Increasing numbers of migrating people, pursuing work and a better future for their kids, have become a rather high percentage among the homeless population in the European Union. Alongside other European countries, Sweden is experiencing inflows of European citizens, as well as third country nationals with permanent residence permits in another EU country. Both of these two categories are holders of the same rights in terms of free movement and social protection within EU.

Therefore, the purpose of this article is to review how the Swedish authorities have fared in the practical application of Directive 2004/38<sup>3</sup> based upon questions and complaints received by Crossroads, a new Information Centre run by the Göteborgs kyrkliga Stadsmission (City Mission) NGO in Göteborg which helps reduce social exclusion and homelessness among EU migrants. In particular, this article examines the extent of the difficulties faced by EU citizens and their family members in demonstrating that they fall within the scope of the Directive or that they meet the conditions that apply to their right of residence whether as jobseekers, workers, students or self-sufficient persons. The article also suggests recommendations to the Swedish Government to take short- and long-term action in order to combat homelessness in Sweden.

## PRACTICAL BARRIERS TO THE RIGHT OF RESIDENCE IN SWEDEN

In Sweden, the current legislation (the Aliens Act 2006) was adopted on 31st March 2006, replacing the 1989 Aliens Act.<sup>4</sup> This Act aims to distinguish more clearly between the grounds for a residence permit and to enforce the Swedish obligations under EU law. It regulates the conditions, rights and obligations of Union citizens and their family members. It mainly covers the legal basis for stay up to three months, residence for more than three months, employment

and studies in Sweden, and specifies who should be considered a family member. In addition, it extends and broadens the concept of 'EU' citizenship to cover EEA and Swiss citizens.

According to the Swedish Aliens Act, the relevant Articles applicable to the right of residence are set out in the Chapter 3a (1§-§14). Sweden has chosen to opt for the 'registration' clause, thus application forms for the right to reside (*Upphållsrätt*) must be completed and granted by the Migration Board (Migrationsverket). The Migration Board is the sole administrative entity that can issue the right to reside and is the sole entity responsible for the registration of Union citizens and their family members. It is not an application for a residence right or the equivalent; it is just an acknowledgement of the Union citizen's general rights under EU law.

However, if EU migrants want to stay in Sweden for a period longer than three months (i.e. jobseekers or workers), in addition to the aforementioned registration, they may apply to *Skatteverket*, the Swedish Tax Agency, for a *Personnummer*<sup>5</sup> (Personal Identity Number or Social Security number). This Social security number entitles one to all rights in Sweden, such as the right to register in the Accommodation register (*boplats*), the right to health and care services (including private insurance), the right to social allowances, the right to register with the Public Employment Service (*Arbetsförmedlingen*) and private recruiting agencies and the right to open a bank account in Sweden. The right to access the labour market (for active job seekers) and the right to learn the Swedish language are essential for the migrant to settle and integrate.<sup>6</sup> Since these rights are available only when one has a social security number, EU/EES citizens face hindrances to fully exercising the right to free movement according to the EU Directive 2004. In order to get these four digits, one has to have work, however in order to have work, one has to have these four digits. The vicious circle where EU citizens find themselves enhances the already escalating social exclusion in Sweden.

The vicious circle where EU citizens find themselves enhances the already escalating social exclusion in Sweden.

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3 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 158, p. 77), as corrected by corrigendum (OJ 2004 L 229, p. 35).

4 This Act has been amended several times. The first amendment was made in order to transpose the Directive (Lag 2006:219) followed by several further amendments with the last one on 1 July 2008 (Lag 2008:884).

5 For more information, see <http://www.skatteverket.se/download/18.71004e4c133e23bf6db8000112641/1349182189662/717B05.pdf>

6 In the Swedish labour market, employers expect fluent communication skills for all jobs, in particular for low-skilled jobs such as cleaning, construction and restaurants. It appears that employers have a much higher expectation of the language required to function in the workplace than the education and training system allows. Thus, it follows that the language requirement can be considered a practical barrier to free movement of economically active citizens, such as workers, self-employed persons and service providers. According to EU law, a language requirement may constitute indirect discrimination if the requirement to the person's ability to speak or write Swedish is disproportionate and without relevance for the maintenance of the job in question.



The aim of the EU Directive is to simplify the formalities involved in the exercise of the right of free movement. To achieve this objective, the Directive attempts to lay down the formalities governing the issue of registration certificates, residence cards and documents attesting to permanent residence.<sup>7</sup> Recital 14 makes clear the Member States are precluded from requiring documents which are not specified in the relevant provisions of the Directive.

Nevertheless, complaints received by Crossroads Göteborg demonstrate that the Swedish authorities, in particular *Skatteverket* and *Arbetsförmedlingen*, often request information and documents which are not listed in the Directive. For instance, EU citizens are being asked for irrelevant information not provided for under the Directive such as 1) questions relating to their employment contract (a short-term contract is not considered long enough in order to get a *personnummer*); 2) questions relating to the barriers in accessing the Swedish labour market for EU job-seekers.

### DURATION OF THE EMPLOYMENT CONTRACT

Issues have been identified concerning the duration of the employment contract. In particular, when an EU citizen is employed by companies in Sweden and s/he seeks to apply to the Swedish tax office in order to get a *Personnummer*, this authority rejects the application because of the short period of the employment contract; only a contract with a duration at least of 1 year is considered sufficient for persons to be entitled to the *Personnummer*. This is clearly related to art. 3 of the *Folkbokföringslag* (Swedish Civil Registration Rules) which provides that EU citizens must spend at least one year in Sweden in order to enter in the population register and, consequently, to be entitled to the same rights as everyone else in the country.<sup>8</sup> Thus, EU workers (employed and self-employed) during the first year in Sweden are asked to apply for a so-called *Samordningsnummer* (Co-ordination Number), which only allows those people to pay taxes;<sup>9</sup> it excludes them from all rights linked to the right of residence and their status of worker within the meaning of EU law (i.e. health care, Swedish language courses, social contribution benefits.)<sup>10</sup> It follows that this condition of residence fails to comply with EU free movement of persons and workers regulations, discriminating *de facto* an EU worker legally resident in another member State on the grounds of his/her nationality.<sup>11</sup> The case law of the European Court of Justice has also been sensitive regarding the short-lived and low-paid nature of the employment relationship and has developed a number of criteria for the application of

Article 45 TFEU.<sup>12</sup> For instance, as concerns the low paid issue, in the *Levin* case<sup>13</sup> the Court held that for it to be found that a worker falls within the scope of Article 45 TFEU, that person must be engaged in "effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary". In other words, the European Court established that the decisive factor for the purposes of applying Article 45 TFEU is the nature of the work, viewed objectively, and not the amount of pay received by the worker, nor the duration of the employment relationship which determines whether it is to be considered genuine and effective. It was first stated in *Levin*, mentioned above, that part-time contracts are not excluded from the scope of Article 45 TFEU. Also, in the *Ninni-Orasche* case;<sup>14</sup> it was held that employment for two and a half months was sufficient to confer on the employee the status of Community worker and as long as there is genuine employment, **albeit brief or poorly paid**, thus the Court has no difficulty in applying Article 45 TFEU. It may therefore be inferred from the case-law that there is a tendency to interpret the concept of 'Community Worker' in Article 45 TFEU broadly, to cover genuine and effective employment relationships of many different types.

### EU JOBSEEKERS ON THE SWEDISH LABOUR MARKET

In Sweden, *Arbetsförmedlingen*, the Swedish Public Employment Service, is Sweden's largest employment agency. *Arbetsförmedlingen* provides services to help job seekers find employment and the first step to gaining access to these services is to register with their official database. Nevertheless, a personal identity number (*personnummer*) is considered mandatory information to be registered. Therefore, it is almost impossible for an EU citizen coming to Sweden and remaining as a jobseeker to provide this information, since the Swedish Tax Agency requires a job contract in order to get a *personnummer*.

As registration with the population register in Sweden is a condition for registration with *Arbetsförmedlingen* and registration with the public employment office is a condition for availability of the recruitment process, a Swedish employer wishing to recruit a jobseeker is more likely to recruit a person resident in Sweden, whose profile will normally be available, than an EU jobseeker, whose will not. Thus, it is likely to be more difficult for EU jobseekers residing outside Sweden to obtain employment there. Such a condition is therefore likely to discourage such persons from moving to Sweden.

7 Articles 8, 10, 19 and 20 of the EU directive 2004/38.

8 See for more information on <http://www.notisum.se/Pub/Doc.aspx?url=/rnp/sls/lag/19910481.htm>

9 The Tax office (*Skatteverket*) can allocate a co-ordination number on the request of an authority. See more information at <http://www.skatteverket.se/download/18.3dfca4f410f4fc63c86800016383/70702svartvit.pdf>

10 There have been plenty of social security cases in which the European Court of Justice has concluded that a residence requirement amounted to prohibited discrimination under EU law. See for instance Case C-111/91 Commission v. Luxembourg [1993] ECR I-817.

11 European Court of Justice, Case C-85/96, *María Martínez Sala v. Freistaat Bayern*, [1998] ECR p. I-2691.

12 In particular, art. 45 TFEU states "The freedom of movement of workers shall be secured within the Community". Also, the second paragraph adds "Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment".

13 European Court of Justice, Case 53/81 D.M. *Levin v (Secretary of State for Justice)*

14 European Court of Justice, Case C-413/01 *Ninni-Orasche*.



Accordingly, it should be noted that a residence requirement such as that at issue is a restriction on freedom of movement for workers within the European Union guaranteed by Article 45 TFEU.

Furthermore, in the context of free movement rights, Regulation 492/11<sup>15</sup> (former Reg. 1612/68) is also significant in that it relates to migrant workers where some provisions overlap with Directive 2004/38. In particular, article 1(1) of Regulation 492/11 provides that *"any national of a Member State shall, irrespective of his place of residence, have the right to take up an activity as an employed person within the territory of another Member State"*. In addition, article 5 of the regulation provides that *"a national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment"*. It can be noted already at this stage that nationals of a Member State seeking employment in another Member State are included in the set of persons referred to in Article 1 of Regulation No 492/11 as having the right to take up an activity as an employed person in the territory of another Member State. Indeed, as the European Court of Justice has consistently held, freedom of movement for workers forms one of the foundations of the Community and, consequently, the provisions laying down that freedom must be given a broad interpretation.<sup>16</sup>

Crossroads was informed in April 2013 that the Public Employment Service has now changed its policy. All EU citizens who lack Swedish personal numbers and who want to register with the service are allowed to request for a Co-ordination number and therefore be entitled to limited rights on the Swedish labour market. This followed extensive correspondence lasting several months between the Public employment officials and a number of EU citizens being advised by Crossroads Göteborg.

## RECOMMENDATIONS

To conclude, it is clear that certain provisions of the Directive have not been properly transposed into Swedish law. The article has conveyed that EU citizens and their families are constantly facing obstacles to fully exercising their rights to available social services, healthcare services and free movement for job seekers, as well as the right to enroll onto Swedish language courses for immigrants. In addition, there is a growing number of homeless people migrating intra-EU, seeking a better life.

Despite the fact that these categories of people fall within the scope of EU regulations, they find themselves deprived and marginalised.

Taking into serious consideration the various impediments/difficulties revealed above, this article gives the following recommendations which should be considered at national and local level. We argue that the strategy to tackle intra-EU homelessness must employ a rights-based approach which should be pillar for the legal basis as well as practice. The national homelessness strategy may consist of actions which will coherently complement each other to fight homelessness.

## SHORT-TERM ACTION

Crossroads Göteborg lacks sleeping places (shelters) for homeless EU citizens. It also appears to be rather difficult for some persons to access available sleeping places in the city. Since quite a high percentage of EU citizens are in need of emergency housing, this has placed them in a sort of competition with the local homeless citizens. Moreover, homelessness among the local population has different reasons from the issue among EU citizens. As the evidence shows, homelessness among EU citizens and their families is determined by outside factors, for instance, economic recession, financial crisis, etc. Therefore, it is necessary to differentiate these two aspects of the same social problem and develop a multidimensional mechanism to approach homelessness among citizens within the scope of free movement.

## LONG-TERM ACTION

Coherent and transparent implementation of EU Directive 2004/38 and EU Regulations that are legally binding for the Member State is fundamental as it may end the violation of EU citizens' rights in Sweden. The gap in knowledge among local authorities in charge means NGOs, as civil society representatives, immediately respond to the current situation. Accordingly, the long-term plan should pursue informative measures for the local actors in the field about the regulations in regards to the obligations of EU citizens falling under the free movement. Special attention should be paid to enhancing the human rights perspective when educating health care professionals at all levels; social workers; front-line workers in homeless services. In the long run, it is highly recommended to develop a mechanism to allow vulnerable EU citizens to access health care in emergency situations.

In order to uphold the free movement of EU citizens, we suggest that public authorities respect the right of every citizen of the community to seek employment. According to this recommendation, local Employment Offices should be responsible for providing equal opportunities for every job seeker – the same as for those residing in Sweden permanently. It should include full registration and access to possible job coaching, training programs, recruiting meetings and job fairs.

<sup>15</sup> Regulation no. 492/2011 of the European parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

<sup>16</sup> See in particular Case 139/85, *Kempf v Staatssecretaris van Justitie* ECR 1741, paragraph 13.



# The Legal Aspects of EU Migrant Homelessness from a British Perspective

By Adam Weiss,<sup>1</sup> Legal Director, AIRE Centre, UK

[I]n the AIRE Centre's experience of working with EU migrants in the UK, many face destitution because of national rules restricting their access to housing and benefits.

People born in other EU Member States make up 4.3% of the population of England and Wales and 10.3% of the population of London.<sup>2</sup> Their statistical representation in various aspects of British life does not stray far from these figures: EU migrants made up 4.9% of the prison population in England and Wales;<sup>3</sup> 7.6% of the women who gave birth in 2011 in England and Wales were born in other EU Member States;<sup>4</sup> and 10.2% of registered doctors in the UK completed their medical training elsewhere in the EU.<sup>5</sup> There is one statistic however that seems entirely out of proportion: 32% of rough sleepers in London in 2011-12 were EU migrants.<sup>6</sup> The purpose of this article is to discuss the legal aspects why EU migrants in London (and probably the UK as a whole) are disproportionately homeless.

Law alone of course cannot explain the high EU migrant homeless population that exists in London. However, in the AIRE Centre's experience<sup>7</sup> of working with EU migrants in the UK, many face destitution because of national rules restricting their access to housing and benefits. The UK's national equality body noted the following in a 2010 report:

*[EU] migrants are not eligible for certain benefits, increasing the risk to which they expose themselves. In particular, since many are not eligible for housing benefit, they can be refused entry from homeless shelters that rely on public funds. By consequence, a distinctive type of homelessness has arisen among [migrants from the eight Central and East European countries which joined the EU in 2004].<sup>8</sup>*

The law in the UK works as follows. People on low incomes with little savings can claim Housing Benefit, a cash benefit to pay their rent.<sup>9</sup> They can also claim certain other benefits (known in EU law as 'special non-contributory benefits', or SNCBs<sup>10</sup>) depending on whether they are unemployed and seeking work (income-based Jobseeker's Allowance), unable to work (income-related Employment and Support Allowance) or have reached pension age (State Pension Credit).<sup>11</sup> Local authorities also have a duty to provide housing for certain homeless people.<sup>12</sup> These forms of support assist people based on need and sit within a larger system of social protection covering people based on a variety of factors (e.g. contributions made, disability). For those facing street homelessness, the baseline social assistance system – the combination of Housing Benefit, homelessness assistance, and one of the three SNCBs listed above<sup>13</sup> – spreads a low-level safety net that does not catch everyone, but keeps many people from ending up on the street.

There is a particular hole in this safety net through which many EU migrants slip. Eligibility for homelessness assistance, Housing Benefit and the three SNCBs mentioned above is controlled through a habitual residence test. Claimants must show they are actually habitually resident in the Common Travel Area (i.e. the British Isles);<sup>14</sup> this applies to anyone, and a British Citizen who habitually resides in Canada, for example, will be refused, even if he is present in the UK. Claimants must also show that they have a 'right to reside'. Some people who are exercising certain rights to reside automatically pass the whole of the habitual residence test. This includes, for example,

- 1 The author is the Legal Director of the AIRE Centre (see below, note 9), where he has worked since September 2007, running the Centre's advice service for EU migrants. He can be contacted at [aweiss@airecentre.org](mailto:aweiss@airecentre.org). The author is grateful to his colleagues, Nicole Francis, Eleanor Sibley and Marieke Widmann, for their comments and assistance. All errors are the author's.
- 2 These statistics date from the 2011 census, which is available from the Office of National Statistics (<http://www.ons.gov.uk/ons/guide-method/census/2011/index.html>).
- 3 The statistics are drawn from the Ministry of Justice, 'Offender management statistics quarterly', for July to September 2012, the most recent report, which can be downloaded from <http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly>.
- 4 'Births in England and Wales by Parents' Country of Birth, 2011', Office for National Statistics, 30 August 2012, available at [http://www.ons.gov.uk/ons/dcp171778\\_276702.pdf](http://www.ons.gov.uk/ons/dcp171778_276702.pdf).
- 5 The data is available from the General Medical Council at [http://www.gmc-uk.org/doctors/register/search\\_stats.asp](http://www.gmc-uk.org/doctors/register/search_stats.asp). The country where a doctor completed her medical training of course does not necessarily indicate her nationality.
- 6 The data is available from: <https://www.gov.uk/government/publications/rough-sleeping-in-england-autumn-2012>
- 7 The AIRE Centre is a London-based NGO which, among other activities responds to about 600 queries from EU migrants and their family members in difficult circumstances, and those advising them. The AIRE Centre also represents EU migrants in immigration and benefits tribunals and intervenes as a third party in cases in the UK courts.
- 8 'The UK's new Europeans: Progress and challenges five years after accession', Equality and Human Rights Commission, January 2010, available at [http://www.equalityhumanrights.com/uploaded\\_files/new\\_europeans.pdf](http://www.equalityhumanrights.com/uploaded_files/new_europeans.pdf). References in the quotation have been removed.
- 9 General information on Housing Benefit is available at <https://www.gov.uk/housing-benefit/overview>
- 10 See EU Regulation 883/04, Article 70 and Annex X.
- 11 Information about these benefits is available at <https://www.gov.uk/browse/benefits>. In autumn 2013, the UK will start phasing in a new benefit, Universal Credit. This will replace Housing Benefit, income-based Jobseeker's Allowance, income-based Employment and Support Allowance and some other benefits, but not State Pension Credit.
- 12 Unlike the benefits mentioned above, homelessness assistance is regulated differently in England, Northern Ireland, Scotland and Wales. General information is available at <https://www.gov.uk/emergency-housing-if-homeless>.
- 13 Some people who are not expected to work receive a different fixed-rate benefit, Income Support, which used to be an SNCB but which has recently been reclassified as social assistance. It too forms part of the safety net available to people in the UK facing destitution.
- 14 See, e.g., The Housing Benefit Regulations 2006, Regulation 10(3).





EU migrant workers. In theory, this could leave some EU migrants better off than British Citizens. On the whole, however, the right-to-reside limb of the test hurts EU migrants, as they must show that they have worker or self-employed status, or have acquired permanent residence, or are the family members of other EU migrants in one of those categories. British and Irish citizens, on the other hand, always have a right to reside in the UK.<sup>15</sup>

An EU migrant who is working, and many who have worked in the UK, will be eligible for benefits. Workers who are temporarily unable to work due to illness or accident retain their worker status; those who have been made involuntarily unemployed and who register with the unemployment office as jobseekers will also retain their worker status.<sup>16</sup> Many of those who become permanently incapacitated will acquire permanent residence.<sup>17</sup> But EU law does not cover everyone, even many long-term migrants. A single parent who gives up work to look after her child is not covered, on the present interpretation of the law.<sup>18</sup> A person who never worked, but was supported by an unmarried partner she has now left will be told she is ineligible. Even though informal work or self-employment counts, those who cannot prove they have been working or self-employed will have problems. While those who have lived in the UK for five years should have acquired permanent residence under EU law, they must prove they have been exercising residence rights that entire time, which is virtually impossible for those who have been economically inactive for any significant period.<sup>19</sup> Restrictions on Bulgarians' and Romanians' right to work in the UK, which will remain in place until 31 December 2013, make it difficult for them to access support.

Many aspects of these restrictions, and the way they are applied, are probably illegal:

- Although the Supreme Court of the United Kingdom has found that it is lawful to apply the right-to-reside test to SNCBs,<sup>20</sup> the European Commission disagrees and has started infringement proceedings against the UK about this.<sup>21</sup>

- In the case of EU migrants claiming they have acquired permanent residence by residing in the UK for five years, those who have been economically inactive are required to show that they have been 'self-sufficient', which includes having comprehensive sickness insurance. The UK authorities currently require people to show that they had private sickness insurance, while the European Commission believes that cover from the UK's National Health Service (which virtually all EU migrants living in the UK enjoy) is enough; again, infringement proceedings are pending.<sup>22</sup>
- The Commission also brought infringement proceedings against the UK for restrictions on benefits for EU migrants from the Central and East European Member States which joined the Union on 1 May 2004; the infringement was withdrawn after the transitional period for these new EU citizens ended.<sup>23</sup>
- There is litigation pending about the refusal of benefits to single women who stop work in the late stages of pregnancy.<sup>24</sup>

All of this litigation is happening against the backdrop of a fundamental lack of clarity about when it is legal to refuse social support to EU migrants. EU law clearly foresees some circumstances where Member States are permitted to refuse support to migrants. For example, Directive 2004/38 states that there is an initial right to reside for three months for economically inactive EU migrants as long as they do not become an 'unreasonable burden on the social assistance system'.<sup>25</sup> Does this imply a right to become a burden (but not an unreasonable one) during those first three months? The Directive also says that an EU migrant's expulsion 'shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system'.<sup>26</sup> This too seems to assume a right to benefits at least briefly for those who have been exercising residence rights (even if they are not exercising them now). Case law from the Court of Justice of the European Communities

15 See *Patmalniecie v Secretary of State for Work and Pensions* [2011] UKSC 11, paragraph 3.

16 EU Directive 2004/38, Article 7(3).

17 EU Directive 2004/38, Article 17(1).

18 See, e.g., *JS v Secretary of State for Work and Pensions* [2011] EWCA Civ 806, a case now pending before the Supreme Court of the United Kingdom and, on a reference for a preliminary ruling, before the Court of Justice of the European Union (Case C-507/12).

19 EU Directive 2004/38, Article 16(1); and Cases C-424 & 425/10, *Ziolkowski*, paragraph 46.

20 *Patmalniecie v Secretary of State for Work and Pensions* [2011] UKSC 11.

21 The Commission's press release is available at [http://europa.eu/rapid/press-release\\_IP-11-1118\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1118_en.htm)

22 The Commission's press release is available at [http://europa.eu/rapid/press-release\\_IP-12-417\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-417_en.htm?locale=en)

23 Please contact the author for correspondence relating to this infringement.

24 Case C-507/12 *Saint-Prix*.

25 EU Directive 2004/38, Article 14(1).

26 EU Directive 2004/38, Article 14(3).



suggests this is right.<sup>27</sup> The Court of Justice remarked in one case that an EU migrant should be able to access benefits on the same basis as host Member State citizens ‘where he has been lawfully resident in the host Member State for a certain time’;<sup>28</sup> even if s/he is not exercising residence rights under EU law.

The ambiguity about the rights of destitute EU migrants under EU law does not have neutral consequences. Those charged with implementing the law in the UK, are cash-strapped local authorities and a government department under political and other pressures to reduce payments. Judges in the UK have, by and large, been sympathetic to their restrictive approach, often interpreting ambiguous laws in a way unfavourable to EU migrants in need.

Anyone who works with EU migrants will know that they move with hopes for a better life and do not plan on becoming dependent on State support. Ill health, domestic violence, accidents, depression, single parenthood and other events or conditions they did not anticipate leave them in need of temporary support. Greater guidance from the EU institutions on the rights of this group will bring greater legal certainty. The AIRE Centre, along with the Migrants Resource Centre, and other partners from Ireland (the Immigrant Council of Ireland) and Belgium (*l’Association pour le Droit des Etrangers*) is trying to secure this guidance in a project funded by the European Programme for Integration and Migration.<sup>29</sup> The hope is that greater legal certainty will mean fewer EU migrants sleeping rough in London and around Europe.

27 Case C-184/99 *Grzelczyk*.

28 Case C-456/02 *Trojani*, paragraph 43.

29 For more details, contact Ellie Sibley ([esibley@airecentre.org](mailto:esibley@airecentre.org)).



# Should I Stay or Should I Go? Border Controls vs The Right to the Freedom of Movement Within the EU Member States

By **Ian Tilling**,<sup>1</sup> *President, Casa Ioana, Romania*

*Should I stay or should I go?  
If I go there will be trouble  
And if I stay it will be double.*

The 90's single hit, "Should I Stay or Should I Go?", is a song by the English punk rock band 'The Clash' and mirrors the dilemma faced by many poor, as well as many young professional, Romanians facing hardship and a lack of opportunities.

I want to join the debate about the free movement of EU citizens within the Member States because I have an unusual perspective. Although I am a United Kingdom national, I moved to Romania to live more than 20 years ago. Moreover, I represent a Bucharest-based Romanian NGO that provides temporary accommodation and professional psychosocial support to lower-income families and single women who have lost their homes. Some of the people we support have lived and worked in other Member States, particularly Spain and Italy, whilst others have been undocumented immigrants from North Africa and the Middle East.

People emigrate for many economic, social and physical reasons, characterised by push and pull factors. Push factors are connected with origin, whilst pull factors are those related to destination. The principle motive for migration is economic with pull factors for example being better wages and greater employment opportunities in industry and commerce. On the other hand, socioeconomic push factors include cultural discrimination or intolerance and the absence of economic opportunity.

It is important however, when discussing the free movement of persons within the EU, to take into consideration the historical context, particularly as the United Kingdom's position means that for the time being anyway, it still maintains its right to border checks on all persons entering and leaving the country. Despite these controls, at the end of March 2013, the British Home Secretary told British MPs that the UK Border Agency was being scrapped because "its performance was not good enough".

The Agency was formed in 2008, by the merger of the Border and Immigration Agency, UKvisas and parts of HM Revenue and Customs, and was responsible for securing the UK border at air, rail and seaports. It was also responsible for migration controls, such as the issuing of visas. It employed the full-time equivalent of 23,500 people across the world, including 13,100 in the UK. The Home Secretary, Theresa May, was quoted as saying, "The number of illegal immigrants removed does not keep up with the number of people who are here illegally." It seems that despite these controls, the number of 'illegal' immigrants in the UK has reached alarming proportions. It is no wonder then that the UK government is panicking about the possible influx of citizens from Romania and Bulgaria, as it will soon be unable to block their freedom to work in the UK once the transitional period set by the Treaty expires.

Despite its abysmal record, the UK attempts to shift the blame for 'illegal' immigration over to the EU, accusing it of destabilising the UK's ability to control immigration. This encourages further anti-European rhetoric which directly feeds the protectionist and nationalist agenda. It is a sad fact that large sections of the UK press are 'anti-immigration', including The Daily Mail, The Daily Express and the Sun. It is difficult to tell whether it is these media outlets that have fuelled the fire or whether public opinion is merely being reflected by these newspapers.

Notwithstanding a global campaign that was aimed at promoting the UK's 'Greatness' (the wedding of Prince William and Catherine Middleton, Queen Elizabeth's Diamond Jubilee and the London Olympic games) UK politicians actually considered a negative UK image campaign to deter any possible migration from Romania and Bulgaria! In a surprisingly sophisticated response, the Romanian *Gândul* newspaper launched a hugely popular 'we might not like Britain, but you will love Romania' campaign.<sup>2</sup>

**Some of the people we support have lived and worked in other Member States, particularly Spain and Italy, whilst others have been undocumented immigrants from North Africa and the Middle East.**

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<sup>2</sup> <http://whydontyoucomeover.gandul.info/>



During the 1980s, the meaning of 'free movement of persons' was about distinguishing between EU citizens non EU nationals and whether it was prudent to maintain internal border checks to identify EU and non-EU citizens or simply to end internal border checks altogether. In 1985, France, Germany, Belgium, Luxembourg and the Netherlands decided to create a territory without internal borders, which became known as the 'Schengen area' which gradually expanded to include nearly every member state.

In accordance with the protocol to the Treaty of Amsterdam, the UK's request to cooperate in some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS) was approved in 2000. The Commission issued opinions on the UK application (and subsequently Ireland) emphasising that their partial participation should not reduce the consistency of the *acquis* as a whole.

In 2004, the EU adopted a Directive that gave EU citizens the right to move and reside freely within the Member States. The Directive allows EU citizens the right to move and the right to reside in a Member State for up to three months by virtue of the possession of a valid identity card or a valid passport. These measures were designed, among other things, to encourage EU citizens to exercise these rights and regulated:

- the conditions in which EU citizens (and their families) exercise their right to move and reside freely within the Member States
- the right of permanent residence
- restrictions on the aforementioned rights on the grounds of public policy, public security or public health

Whether the decision was a correct one or not, the EU political forces allowed Romania and Bulgaria to accede to the European Union on 1 January 2007, thus giving its citizens the freedom of unrestricted travel within the EU. However, as we know, member states were authorised to impose transitional work controls for up to seven years, which were intended to allow time for the economies of the two countries to grow and reduce the gap in living standards between the new member states and the older EU member states. Accordingly, these restrictions were imposed by the UK government and according to EU law must be lifted by 1 January 2014.

Presently, these restrictions mean that Romanian and Bulgarian citizens can only enter the UK to work if they have a permit, and:

- work in the agricultural or food processing sectors (capped at 21,250 per annum) for a maximum period of six months
- are qualified and have been recruited for a skilled job for which no suitable British candidate can be found
- have a 'particularly high skills level and experience'
- are working part-time (up to 20 hours per week) and are studying in the UK.

Romania, Bulgaria and Cyprus are not yet fully-fledged members of the Schengen area and their border controls with the Schengen area are maintained until the European Council decides that the conditions for abolishing internal border controls have been met. Although the EC recognises Romania and Bulgaria's ability to secure their borders to non-EU countries, Germany and the Netherlands are unconvinced, having postponed the abolition of border controls with both countries on several occasions. In any case, Romania and Bulgaria are bringing asylum and visa policies in line with EU rules, increasing border checks with non-EU countries, combating drug crime, and fighting against smuggling and trafficking. Both countries are part of the "Schengen Information System" (SIS), providing police authorities in the EU, with easy access to border data.

Yet it can be argued that Romania and Bulgaria are already in the Schengen area because they legally entered it by joining the European Union in 2007. The rules of the original Schengen agreements are key elements of EU treaties and the cornerstones of the internal market and free movement within the EC. The single regulation that Romania and Bulgaria have yet to apply is the lifting of border controls which is after all, the most noticeable aspect of the Schengen agreement. Besides, Romanian and Bulgarian citizens can already travel freely in the EU and take up residency in many member states. In essence, both Romanian and Bulgaria have similar status in the Schengen area as the UK, although the UK's position is one of choice and not an imposition as far as Romania and Bulgaria is concerned.

Will there be a mass exodus of Romanian and Bulgarian citizens to other EU countries after 1 January 2014? I doubt it. Since 2007, many thousands, if not a million or more, poor rural subsistence farmers left Romania to find low-paid agricultural jobs in the West, mainly in Spain, France and Italy because of language similarities. Poverty, an almost non-existent welfare system, cultural discrimination and lack of opportunities drove them away. For many poor Romanians, the financial crisis resulted in their slipping into a similar situation in their host countries causing many to return. Again, many thousands of young well-educated young people have been recruited by UK universities to study. Likewise, many talented young Romanians have been lured westward towards better-paid jobs, better employment opportunities and a better standard of living in general. In short, the migration of Romanians to the EU has already peaked.

Besides, the debate should not be about a hysterical and hypothetical mass immigration of Romanians and Bulgarians to other member states, but about the 'free movement of people within the EU member states as a right'. The controls at the UK's borders should not be an obstacle to any citizen coming from the member states and that includes citizens from Romania and Bulgaria.





# Homeless in the UK – A Case Study in Why the Immigrants Are Not to Blame

By **Don Flynn**,<sup>1</sup> *Director, Migrants' Rights Network, UK*

No one seems to doubt that homelessness in the United Kingdom has increased at an alarming rate since the onset of the economic crisis in 2008, but the various statistics available give only approximate ideas on the numbers involved.

The homeless count is sub-divided into a number of different categories, with 'rough sleepers' representing those literally without any form of shelter and subsisting on the streets, through to the hidden numbers in over-crowded accommodation, so-called 'sofa surfers' dependent on the goodwill of friends for a place to stay for the night, through to officially defined 'statutory homeless' – in the main, people with dependent children who are inadequately housed in terms of their acknowledged needs.

According to the estimates of the various specialist housing organisations, the numbers of statutory homeless 'households' is in the region of 7,000 across the UK, with a further 1,700 individuals who are sleeping rough on any particular night. These figures are likely to be dwarfed by those who do have some sort of a roof over their head but are in a permanently precarious situation and at risk of falling into the rough sleeper category.

## IS IMMIGRATION RESPONSIBLE?

Public discussion about the extent and causes of housing pressure in recent years has considered the contribution that immigration might have made to the situation. Inward net immigration (the difference between those leaving the country and those arriving) has been taking place at high levels since the mid-00s, the years which followed the UK's lifting in 2004 of most of the controls on the free movement of citizens of the EU 'Accession 8' countries. Between 2004 and 2010, migration from these sources had added 354,000 people to the population.

It is tempting to assume that the arrival of these numbers is at least part of the answer to questions about increased housing problems in recent years. This would be a simplistic response. In still-wealthy countries like the UK, housing should not be considered a fixed resource, but something which has the potential to expand (or contract) in response to

demand. If housing markets and housing policy are working properly, the increase in demand from migration ought to be met by the appropriate increase in supply.

Housing supply can be met through private home ownership, the private rented sector, or through social housing. The problem in the UK is that each of these areas has been hit by an array of difficulties which have all fed into a generalised housing crisis. New home building has plunged by 43% since 2008, contributing to pressure coming from increased demand for the limited resources available for the domestic property market and for renting. The credit crash of the same year ended the possibility for the type of affordable mortgage borrowing which wage earners typically need to finance the purchase of their first homes. The net result has been a rise numbers of young people who have been locked out of the market for private home purchase and who consequently have been forced to prolong their residence in the parental household.

## SOCIAL HOUSING

Social housing has been a Cinderella sector since 1979 when the government of Margaret Thatcher forced local authorities to sell off housing stock under the 'right to buy' scheme and at the same time discouraged them from replacing it with newly-built properties. In the region of 1.6 million local authority-rented homes were disposed of through private purchase during this period. The portion that remained in the social housing sector tended to be located in areas suffering from multiple social deprivation, which had the effect of associating it with poverty, hardship, anti-social behaviour and crime. By 2005, socially-rented accommodation made up only one-fifth of the total 20.5 million homes in the UK. By 2010 it was meeting the housing needs of only around 18% of households.

With social housing squeezed by the politically-motivated decisions of government, and the option of private home purchase closed off by the shortage of new stock and the credit crunch, the private rented sector has emerged as the one segment of supply which has been able to expand to meet rising demand

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for homes. In the 1990s, it had met the housing needs of around 9% of households but then expanded across the 2000s to the point where it provided homes for 17% - effectively the same as the social housing sector - by 2010.

The expansion had been driven by the erosion of statutory protection for private tenants and the creation of 'assured shorthold tenancies' in the 1990s, which increased the power of landlords to limit periods of tenure and maximise rent-seeking opportunities. The consequent increase in profits to be got from the sector brought more prospective landlords into the market. This movement was further enhanced by the emergence of 'buy to rent' mortgage schemes, which extended loans to people who anticipated covering repayment from the rents they would extract from tenants.

### PRIVATE-RENTED INSECURITY

Though private lettings grew rapidly over this period, a large segment of the sector was marked by high levels of insecurity for tenants and poor housing standards. Insecurity arises from the terms of short-term leases, which allow properties to be repossessed at two months' notice, but also from the fact that the tenant loses her home if the landlord defaults on his mortgage. With regard to standards, in 2007, 45% of lettings in the private rented sector did not meet the 'Decent Homes' benchmark, introduced by the government in 2004, compared to 30% for social housing.

To summarise, the housing situation in the UK had been shaped by policies developed by government since the late 1970s which had been consciously designed to increase the role of the market as a provider of homes and limit that which had previously existed for the public sector. The dogmatic belief underpinning this was that the demand for housing would be registered by market mechanisms and channelled in the direction of either more home building in the event of surplus demand, or lower prices if excess supply. However, these factors themselves were mediated by other matters, such as planning laws and policies which prevented speedy starts to new house-building programmes when this was required, and also the impacts on the earnings of citizens of up- and downturns in the economy, which affected the earnings of would-be purchasers and frequently prevented actual social demand being realised as effective consumer power.

All these problems implicit in the system came to a head in 2008 to produce a situation in which, (a) not enough houses were being built; (b) the financial system was not providing mortgages to people who needed to borrow to buy; (c) the neglected social sector had no capacity to cater for the level of demand which the housing market was unable to

meet; and (d) the excess of demand was funnelled into the private rented sector, which had emerged across this period as the place offering the least security and the poorest housing conditions to tenants.

The potential for a housing crisis - indeed its inevitability - was firmly established by the direction which government policy had taken over the course of two-and-a-half decades of free market-orientated reform. But a portion of the frustration which the public has felt since the first phase of the current crisis as a credit crunch in 2008 has been deflected by the rhetoric of the tabloid media and right wing allies away from politicians and towards the 354,000 extra residents of the UK who arrived as migrants after 2004.

### DON'T BLAME IMMIGRANTS

This seems grossly unfair. The evidence available from official statistics shows that the majority of these newcomers were either working single people or dependent members with levels of dependency on social welfare benefits that ran at about half the rate of British citizens. What does seem to be the case was that they had been disadvantaged even before the onset of the crisis in terms of accessing mortgage borrowing to enter the housing market, and were also usually disbarred from social housing by regulations which required a long-term 'local connection' in order to qualify. They were therefore funnelled in disproportionate numbers into private renting on terms and conditions which combined the highest costs for housing with the poorest conditions and the least security.

Add to this the fact that the jobs market where migrants were concentrated were typified by the prevalence of casual and short-term contracts which produced frequent periods of joblessness or under-employment. As the economic crisis rolled over the labour market, increasing unemployment, it was often migrants who lost their jobs first, and consequently got into rent arrears for their accommodation, with inevitable homelessness as a result.

The real story which is revealed by this account of housing in the UK is that migration is not in itself a problem. But at particular points in time the presence of migrants can throw into the sharpest of reliefs the problems which exist in other areas of social provision, in this case housing, but there is also parallel pressure in the fields of healthcare, education and social welfare. The lesson, when it is properly learned, is not that we should impose an undue burden of blame on migrants for a situation which is continuing to deteriorate, but acknowledge instead our chronic failure to build more robustness into the system's capacity to promote and sustain the public welfare in areas like housing, to make sure that we can meet the bad times as well as the good.



## New Pan-European Project with Homeless Migrants to Contribute to Forming Decisive Tools in Relation to National and EU-Based Efforts and Policies on the Migrant Issue

By **Anne Sofie Ellesøe**,<sup>1</sup> *Journalist and Communications Officer at projekt UDENFOR, Denmark*

You see them in Denmark and in every major city in Europe. You could say we are dealing with poverty-driven migration that seems set to increase, rather than decrease, over the coming years. Homeless migrants live their lives in the streets, lives characterised by poverty, sickness and no right to make use of either health services or public homeless programmes. Difficult existences caused by various conditions that we know only little about. For this reason, *projekt UDENFOR* in Denmark is presently working on setting-up a new, Pan-European project to create new insights into and knowledge of internal European migration.

For three years, *projekt UDENFOR* has been helping the growing number of homeless migrants, many of whom have given up all hope of a job, a better life and a brighter future in Denmark after having become stranded on the streets of Copenhagen. They are here because of the open borders and labour mobility within the EU. But they have ended up as some of the most vulnerable human beings of our time - in Denmark as well as in other European countries.

The homeless migrants who do not have residence permits in Denmark are a group of homeless people who live in poverty and do not have the right to health services besides emergency help or to social benefits according to the Social Services Act, including the right to make use of public homeless programmes.

Through *projekt UDENFOR*'s three-year project, project Foreign Rough Sleepers, we have encountered people who have gone from being relatively well-functioning and resourceful individuals to becoming poor, homeless persons lacking resources and with active addictions. We have met mentally ill persons who are not entitled to medical treatment, and therefore experience further social isolation, with the streets as their permanent 'place of residence'. Persons who, even though they have not completed their medical treatment, are discharged from their hospital beds

and sent back onto the streets, with reference to the law that the Danish Healthcare System only has to treat foreigners for acute conditions.

Back in 2010, project Foreign Rough Sleepers came about as a consequence of a steep rise in the number of homeless migrants. In particular, we at *projekt UDENFOR* had experienced that the number of particularly vulnerable migrants who needed help was rising and that the lawful options for taking action when working with homeless migrants were few. Therefore, 'project Foreign Rough Sleepers' was launched, based on a sense of duty to help society's absolute outcasts, and a wish to create knowledge about a group of utmost marginalised persons, whom no one else could or would help.

The purpose of the work in project Foreign Rough Sleepers was to focus on remedying the immediate needs of the individual homeless person through working on establishing direct relations to, and providing acute assistance for, the individual homeless person, plus finding and describing the conditions of particularly vulnerable migrants through the collection and presentation of knowledge about the group's existence and life conditions. Purposes which are moreover tied to *projekt UDENFOR*'s conventions, in which we are obliged to work to improve conditions for the absolute outcasts at street level, as well as uncovering and documenting ostracising factors in society in order to avoid their further ostracism.

Many of the homeless migrants we have been in contact with in connection with project Foreign Rough Sleepers can only be contacted by reaching out to them at street level. First and foremost, these are the ones with mental health problems, considerable substance abuse problems or who, rightly or wrongly, are afraid of contacting the authorities. It is *projekt UDENFOR*'s estimation that in Copenhagen alone, they make up roughly 200 persons at any given time, and around 500 different persons over the course of

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**[W]e have to develop a new, shared, European approach to working with homeless migrants living on the streets, just like we have to secure a basis for a less emotionally- and intuitively-driven policy.**

a year. Many of these homeless persons do not seek out the available help. Instead, they sleep rough, and are either afraid to or unable to seek out the established channels of help, which, besides, are few for the homeless migrants who do not have permission to reside in this country. For this reason, we see a big need to continue the relief work for this new group of homeless migrants who have been made vulnerable; but also a need for more knowledge about both the way to practically go about working with homeless migrants and the nature of migration as such.

In *projekt UDEFOR*, we do not believe there will be a spontaneous decrease in migration levels, just as we do not put our trust in initiatives aiming at an economical and socio-political adjustment between the European nations during the next couple of years. Thus, homeless migrants will increasingly constitute a challenge for the individual European countries. A challenge that demands Pan-European cooperation between the different actors in the different countries.

Therefore, it is urgent to alleviate the suffering that homeless migrants endure in many European countries. This could happen by adding an extra element to the already existing relief measures - social outreach efforts. At the same time, we have to develop a new, shared, European approach to working with homeless migrants living on the streets, just like we have to secure a basis for a less emotionally- and intuitively-driven policy. What we need is research documenting and presenting the necessary tools to form a policy that provides the possibility of demonstrating European responsibility for the poor and homeless who, forcibly or of their own free will, migrate within the EU.

For this reason, *projekt UDEFOR* is presently working on setting-up a new, Pan-European project that can create new insight and knowledge on internal EU migration. Knowledge that can be employed in a persistent, local social effort with poor, homeless migrants in Copenhagen and other cities in Denmark; and that can create new forms of cooperation between NGOs working with homeless people around Europe.

The long-term goal of the project is to contribute to the development of decisive tools in connection with national and EU-based efforts and policies. The starting point is a project based in Denmark, but carried out in cooperation with other Danish and European actors through cooperative agreements and partnerships.

With the project, *projekt UDEFOR* thus wants to pinpoint central questions such as: What characterises migrants from EU countries who experience homelessness? What are the reasons behind their migration? How can efforts in the receiving country help resolve the migrants' situation, minimise the damaging effects of extreme poverty, and support a process of returning to the home country, or integration (such as work) in the host country? How can efforts in the home country be organised with a view to support migrants in the process of returning to their home countries and maintain further social inclusion?

As things stand, the project will contain a polyphonic working model that draws up both the practical street-level work and the methodological development and knowledge.

Just like *projekt UDEFOR*'s other outreach activities, the street-level activities will be centred on the daily presence of out-reaching and relation-creating social work on the street with respect to homeless migrants from the other EU countries. As regards methodology, the purpose is to develop a model for working socially in networks across national borders and to create an understanding of and insight into the social realities in different countries. Thus, we wish to develop a method that can form the basis for tools which are employable in the political processes surrounding migration. Finally, the purpose of the research project is to inquire about poverty migration within the European Union, with a special focus on migrants who experience being homeless in the receiving country.

Method development and knowledge will emerge from the street-level efforts, as well as from the experiences and barriers to providing aid that the different NGOs will encounter in their daily work. Needless to say, they will be influenced by different factors, but they will have both considerable theoretical and practical significance if respectful and professional relations between social workers across national borders are to be established in the future.





## Notes

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## Notes

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This programme was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA and EU candidate and pre-candidate countries.

To that effect, PROGRESS purports at:

- providing analysis and policy advice on employment, social solidarity and gender equality policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in employment, social solidarity and gender equality policy areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- relaying the views of the stakeholders and society at large.

For more information see:

<http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

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